

PENNSYLVANIA BULLETIN

Volume 37
Saturday, February 17, 2007 • Harrisburg, PA
Number 7
Pages 743—918

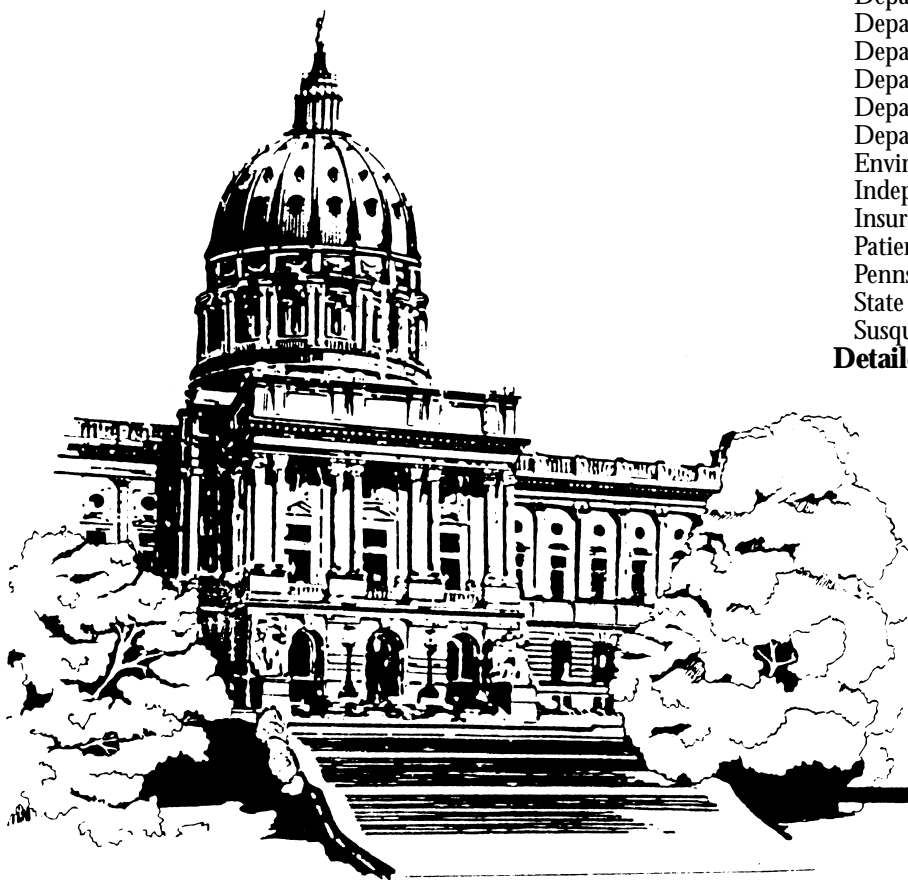
See Part II page 883 for the
Environmental Quality Board's
Standards for Mercury Contaminants

Part I

Agencies in this issue

The Governor
The General Assembly
The Courts
Delaware River Basin Commission
Department of Banking
Department of Conservation and Natural Resources
Department of Corrections
Department of Environmental Protection
Department of General Services
Department of Health
Department of Transportation
Environmental Quality Board
Independent Regulatory Review Commission
Insurance Department
Patient Safety Authority
Pennsylvania Public Utility Commission
State Board of Nursing
Susquehanna River Basin Commission

Detailed list of contents appears inside.



PRINTED ON 100% RECYCLED PAPER



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

No. 387, February 2007

CUT ON DOTTED LINES AND ENCLOSE IN AN ENVELOPE

CHANGE NOTICE

If information on mailing label is incorrect, please make changes in space provided below and mail to:

FRY COMMUNICATIONS, INC.

Attn: *Pennsylvania Bulletin*

800 W. Church Rd.

Mechanicsburg, PA 17055-3198

CUSTOMER NUMBER (6 digit number above name)

NAME OF INDIVIDUAL

OFFICE NAME—TITLE

ADDRESS (Number and Street)

(City)

(State)

(Zip Code)

TYPE OR PRINT LEGIBLY

PENNSYLVANIA



BULLETIN

(ISSN 0162-2137)

published weekly by Fry Communications, Inc. for the Commonwealth of Pennsylvania, Legislative Reference Bureau, 647 Main Capitol Building, State & Third Streets, Harrisburg, Pa. 17120, under the policy supervision and direction of the Joint Committee on Documents pursuant to Part II of Title 45 of the Pennsylvania Consolidated Statutes (relating to publication and effectiveness of Commonwealth Documents). Subscription rate \$82.00 per year, postpaid to points in the United States. Individual copies \$2.50. Checks for subscriptions and individual copies should be made payable to "Fry Communications, Inc." Periodicals postage paid at Harrisburg, Pennsylvania.

Postmaster send address changes to:

FRY COMMUNICATIONS

Attn: *Pennsylvania Bulletin*

800 W. Church Rd.

Mechanicsburg, Pennsylvania 17055-3198

(717) 766-0211 ext. 2340

(800) 334-1429 ext. 2340 (toll free, out-of-State)

(800) 524-3232 ext. 2340 (toll free, in State)

Orders for subscriptions and other circulation matters should be sent to:

Fry Communications, Inc.

Attn: *Pennsylvania Bulletin*

800 W. Church Rd.

Mechanicsburg, PA 17055-3198

Copyright © 2007 Commonwealth of Pennsylvania

Editorial preparation, composition, printing and distribution of the *Pennsylvania Bulletin* is effected on behalf of the Commonwealth of Pennsylvania by FRY COMMUNICATIONS, Inc., 800 W. Church Road, Mechanicsburg, Pennsylvania 17055-3198.

CONTENTS

THE GOVERNOR

Proclamation of disaster emergency 750

THE GENERAL ASSEMBLY

House of Representatives

Committee designation under the Regulatory Review Act 751

THE COURTS

DISCIPLINARY BOARD OF THE SUPREME COURT

Notice of hearing 773

JUDICIAL CONDUCT

Amendment to the rules of procedure of the court of judicial discipline; doc. no. 1 JD 94 752

LOCAL COURT RULES

Butler County

Local rules of court; MsD. no. 07-40028 761

Carbon County

Revision of rule of orphans court procedure 14.2—adjudication of incapacity and appointment of a guardian of the person and/or estate of an incapacitated person; no. 07-9026 768

Delaware County

Fees of clerk of orphans' court division; no. 84-2007 768

Fees of register of wills; no. 83-2007 770

Lackawanna County

Repeal and adoption of rules of civil procedure; no. 94 CV 102 772

Montgomery County

Amendments to local rules of civil procedure governing custody mediation orientation program 772

Bail money applied to fines, costs and restitution; AD 15-07 773

Warren and Forest Counties

Local rule of juvenile procedure; dependency matters; rule 1167; no. 8 of 2007 miscellaneous 773

RULES OF CRIMINAL PROCEDURE

Order amending rules 403, 409, 414, 424, 430, and 454; no. 354 criminal procedural rules; doc. no. 2 752

EXECUTIVE AGENCIES

DELAWARE RIVER BASIN COMMISSION

Proposed Rulemaking

Public hearing regarding proposed amendments to the comprehensive plan and water code relating to a flexible flow management plan for operations of the New York City Delaware Basin Reservoirs 785

DEPARTMENT OF BANKING

Notices

Action on applications 794

DEPARTMENT OF CONSERVATION AND NATURAL RESOURCES

Notices

Conservation and Natural Resources Advisory Council meeting 794

DEPARTMENT OF CORRECTIONS

Proposed Rulemaking

State intermediate punishment 786

DEPARTMENT OF ENVIRONMENTAL PROTECTION

Notices

Applications, actions and special notices 795

Coastal resources management program; approval of routine program changes 849

NOx budget trading program new source set-aside 2007 proposed allocations 850

Proposed revision to the State implementation plan for the Erie county 8-hour ozone nonattainment area; public hearing 852

Upper/middle Susquehanna Regional Water Resources Committee; meeting change 852

DEPARTMENT OF GENERAL SERVICES

Notices

State contracts information 877

DEPARTMENT OF HEALTH

Notices

Application of Altoona Specialty Center for exception 852

Application of Betz Ophthalmology Associates, ASC for exception 853

Application of Clearfield Hospital for exception 853

Application of Mercy Jeannette Hospital for exception 853

Application of Ohio General Hospital for exception 853

Application of PRISM Center for Spine and Pain Care for exception 854

Application of Regional Ambulatory Surgical Center for exception 854

Application of The Surgery Center of Central Pa. for exception 854

Application of UPMC St. Margaret Harmar Outpatient Center for exception 855

Cervical cancer task force meeting 855

Oral health promotion program mini-grants; availability of Title V funds 855

Request for exception; long-term care nursing facilities 857

WIC program public meetings 857

Now Available Online at <http://www.pabulletin.com>

DEPARTMENT OF TRANSPORTATION**Notices**

Application for lease of right-of-way (8 documents)	858, 859
Contemplated sale of land no longer needed for transportation purposes	860
Finding	860

ENVIRONMENTAL QUALITY BOARD**Rules and Regulations**

Standards for contaminants; mercury	883
---	-----

INDEPENDENT REGULATORY REVIEW COMMISSION**Notices**

Notice of comments issued	860
Notice of filing of final rulemakings	867

INSURANCE DEPARTMENT**Notices**

Agency contract termination of Black, Davis & Shue Agency, Inc. under Act 143; Eastern Alliance Insurance Group; doc. no. AT06-12-012	868
Altoona Hospital; prehearing	868
Application and request for a certificate of authority	868
Bryn Mawr Hospital; prehearing	868
Donna Dobrinski; hearing	869
Insurance Service Office, Inc., rate filing for private passenger automobile loss cost revision	869
Donald Oakes; prehearing	869

Sulochana Pradhan, M. D., prehearing	869
Ramana Petro, Inc.; hearing	870
Reighard's Service Station; hearing	870
Review procedure hearings; cancellation or refusal of insurance	870
Review procedure hearings under the Unfair Insurance Practices Act	871
Charles Sullivan M.D., prehearing	871
Young's Sales and Service; prehearing	871

PATIENT SAFETY AUTHORITY**Notices**

Public meeting	872
----------------------	-----

PENNSYLVANIA PUBLIC UTILITY COMMISSION**Notices**

Gas service	872
Service of notice of motor carrier applications	872
Telecommunications	875
Tentative order (2 documents)	875

STATE BOARD OF NURSING**Notices**

Bureau of Professional and Occupational Affairs v. Brian A. McCarthy; doc. no. 1814-51-05	876
---	-----

SUSQUEHANNA RIVER BASIN COMMISSION**Rules and Regulations**

Review and approval of projects; special regulations and standards; hearings and enforcement actions ..	774
---	-----

READER'S GUIDE TO THE PENNSYLVANIA BULLETIN AND PENNSYLVANIA CODE

Pennsylvania Bulletin

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

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

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

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

Adoption, Amendment or Repeal of Regulations

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

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

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

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

Citation to the *Pennsylvania Bulletin*

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

Pennsylvania Code

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

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

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

How to Find Documents

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

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

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

**SUBSCRIPTION INFORMATION: (717) 766-0211
GENERAL INFORMATION AND FINDING AIDS: (717) 783-1530**

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.

Reproduction, Dissemination or Publication of Information

Third parties may not take information from the *Pennsylvania Code* and *Pennsylvania Bulletin* and reproduce, disseminate or publish such information except as provided by 1 Pa. Code § 3.44. 1 Pa. Code § 3.44 reads as follows:

§ 3.44. General permission to reproduce content of Code and Bulletin.

Information published under this part, which information includes, but is not limited to, cross references, tables of cases, notes of decisions, tables of contents, indexes, source notes, authority notes, numerical lists and codification guides, other than the actual text of rules or regulations may be reproduced only with the written consent of the Bureau. The information which appears on the same leaf with the text of a rule or regulation, however, may be incidentally reproduced in connection with the reproduction of the rule or regulation, if the reproduction is for the private use of a subscriber and not for resale. There are no other restrictions on the reproduction of information published under this part, and the Commonwealth hereby consents to a reproduction.

List of Pa. Code Chapters Affected

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

4 Pa. Code (Administration)		Temporary Rules	
Statements of Policy		401	21
9	27	425	21
		491a	23
7 Pa. Code (Agriculture)		Proposed Rules	
Adopted Rules		147	211
130e	194		
Proposed Rules		204 Pa. Code (Judicial System General Provisions)	
21	672	Adopted Rules	
23	672	71	311
25	672	Proposed Rules	
27	672	81	394
		83	394, 520
22 Pa. Code (Education)		207 Pa. Code (Judicial Conduct)	
Adopted Rules		Adopted Rules	
49	209	1	752
		3	752
25 Pa. Code (Environmental Protection)		210 Pa. Code (Appellate Procedure)	
Adopted Rules		Adopted Rules	
93	11	1	521
123	883	3	521
126	209	9	521
803	774		
804	774	225 Pa. Code (Rules of Evidence)	
805	774	Proposed Rules	
806	774	VIII	669
807	774	231 Pa. Code (Rules of Civil Procedure)	
808	774	Adopted Rules	
		200	312
Proposed Rules		1910	522
901	785	Proposed Rules	
		4000	7
34 Pa. Code (Labor and Industry)		234 Pa. Code (Rules of Criminal Procedure)	
Statements of Policy		Adopted Rules	
123	317	4	523, 752
		7	523
37 Pa. Code (Law)		10	312
Proposed Rules		237 Pa. Code (Juvenile Rules)	
97	786	Proposed Rules	
		1	527
40 Pa. Code (Liquor)		3	527
Adopted Rules		5	527
5	16		
11	16	255 Pa. Code (Local Court Rules)	
13	16	Unclassified ..	255, 400, 401, 404, 530, 670, 671, 761, 768,
17	16		770, 772, 773
49 Pa. Code (Professional and Vocational Standards)			
Adopted Rules			
7	20		
52 Pa. Code (Public Utilities)			
Statements of Policy			
69	29		
58 Pa. Code (Recreation)			
Proposed Rules			
135	315		
501a	416		
503a	416		

THE GOVERNOR

Proclamation of Disaster Emergency

Whereas, The weather across Pennsylvania beginning February 3, 2007, and continuing, consists of sub-freezing temperatures including single digit temperatures overnight; and

Whereas, this weather has caused the increased use of fuel across the Commonwealth; and

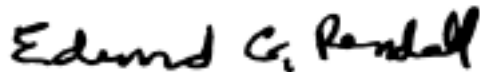
Whereas, investigations made on my behalf have determined that at present fuel price is constant and supply is sufficient, but the Commonwealth is in need of greater flexibility on truck driver regulations to accommodate truck drivers making deliveries and transporting fuel across the Commonwealth; and

Whereas, the impact of the current weather conditions in conjunction with the regulations limiting truck drivers' hours of service could cause impediments to the safety and welfare of the citizens of the Commonwealth; and

Whereas, the Secretary of Transportation is authorized to waive the regulations regarding hours of service limitations for drivers of commercial vehicles.

Now Therefore, Pursuant to the provisions of Subsection 7301(c) of the Emergency Management Services Code (35 Pa.C.S. Section 7101 et seq.), I do hereby proclaim the existence of a disaster emergency across the Commonwealth permitting the waiver of the requirements to comply with the drivers' hours of service limitation in the interstate and intrastate delivery of fuel.

Given under my hand and the Seal of the Governor, at the City of Harrisburg, this seventh day of February in the year of our Lord two thousand and seven, and of the Commonwealth the two hundred and thirty-first.



Governor

[Pa.B. Doc. No. 07-231. Filed for public inspection February 16, 2007, 9:00 a.m.]

GENERAL ASSEMBLY

HOUSE OF REPRESENTATIVES

Committee Designation Under the Regulatory Review Act

The document regarding the designation of the jurisdiction of each standing committee of the House of Representatives which appeared at 37 Pa.B. 667 (February 10, 2007) has been amended by Speaker Dennis M. O'Brien.

The standing committee to which State Lottery regulations shall be submitted has been changed from the Gaming Oversight Committee to the Finance Committee.

DENNIS M. O'BRIEN,
The Speaker

[Pa.B. Doc. No. 07-197. Filed for public inspection February 9, 2007, 9:00 a.m.]

THE COURTS

Title 207—JUDICIAL CONDUCT

PART IV. COURT OF JUDICIAL DISCIPLINE

[207 PA. CODE CHS. 1 AND 3]

Amendment to the Rules of Procedure of the Court of Judicial Discipline; Doc. No. 1 JD 94

Order

Per Curiam

And Now, this 1st day of February, 2007, the Court, pursuant to Article 5, Section 18(b)(4) of the Constitution of Pennsylvania, having adopted amendments to Rules of Procedure Nos. 110 and 302, as more specifically hereinafter set forth, *It Is Hereby Ordered*:

That Rules of Procedure Nos. 110 and 302 shall become effective immediately.

Annex A

TITLE 207. JUDICIAL CONDUCT

PART IV. COURT OF JUDICIAL DISCIPLINE

ARTICLE I. PRELIMINARY PROVISIONS

CHAPTER 1. GENERAL PROVISIONS

IN GENERAL

Rule 110. Entry of Appearance.

(A) Counsel for a Judicial Officer shall file an entry of appearance with the Clerk of the Court and shall serve a copy of the entry on the Board Counsel.

(B) The entry of appearance shall include counsel's name, address, phone number, and Pennsylvania Supreme Court Identification Number. Admission Pro Hoc Vice shall be in accordance with the Pennsylvania Bar Admission Rules.

(C) An attorney's appearance for a Judicial Officer may not be withdrawn without leave of Court unless another attorney has entered or simultaneously enters an appearance for the Judicial Officer and the change of attorneys does not delay any stage of the proceedings.

ARTICLE II. PROCEEDINGS BASED ON THE FILING OF FORMAL CHARGES

CHAPTER 3. INITIATION OF FORMAL CHARGES

Rule 302. Contents of Board Complaint.

(A) For each charge against the Judicial Officer, the Board Complaint shall:

(1) state in plain and specific language the nature of the charge;

(2) specify the allegations of fact upon which the charge is based.

(B) The Board Complaint shall give notice to the Judicial Officer of the time period within which the Judicial Officer must file an omnibus motion pursuant to Rule 411.

(C) The Board Complaint shall be signed and verified by counsel for the Board.

[Pa.B. Doc. No. 07-232. Filed for public inspection February 16, 2007, 9:00 a.m.]

Title 234—RULES OF CRIMINAL PROCEDURE

[234 PA. CODE CH. 4]

Order Amending Rules 403, 409, 414, 424, 430, and 454; No. 354 Criminal Procedural Rules; Doc. No. 2

Order

Per Curiam:

Now, this 26th day of January, 2007, upon the recommendation of the Criminal Procedural Rules Committee; the proposal having been published before adoption at 36 Pa.B. 2505 (May 27, 2006) and in the *Atlantic Reporter* (Second Series Advance Sheets, Vol. 865), and a Final Report to be published with this *Order*:

It Is Ordered pursuant to Article V, Section 10 of the Constitution of Pennsylvania that Rules of Criminal Procedure 403, 409, 414, 424, 430, and 454 are amended in the following form.

This *Order* shall be processed in accordance with Pa.R.J.A. 103(b), and shall be effective February 1, 2008.

Annex A

TITLE 234. RULES OF CRIMINAL PROCEDURE

CHAPTER 4. PROCEDURES IN SUMMARY CASES

PART B. Citation Procedures

Rule 403. Contents of Citation.

(A) Every citation shall contain:

(1) the name and address of the organization, and badge number, if any, of the law enforcement officer;

(2) the name and address of the defendant;

(3) a notation if the defendant is under 18 years of age and whether the parents or guardians have been notified of the charge(s);

(4) the date and time when the offense is alleged to have been committed, provided however, if the day of the week is an essential element of the offense charged, such day must be specifically set forth;

(5) the place where the offense is alleged to have been committed;

(6) a citation of the specific section and subsection of the statute or ordinance allegedly violated, together with a summary of the facts sufficient to advise the defendant of the nature of the offense charged;

(7) the date of issuance;

(8) a notation if criminal laboratory services are requested in the case;

(9) a verification by the law enforcement officer that the facts set forth in the citation are true and correct to

the officer's personal knowledge, or information and belief, and that any false statements therein are made subject to the penalties of the Crimes Code, 18 Pa.C.S. § 4904, relating to unsworn falsification to authorities.

(B) The copy delivered to the defendant shall also contain a notice to the defendant:

(1) that the original copy of the citation will be filed before the issuing authority of the magisterial district designated in the citation, the address and number of which shall be contained in the citation; and

(2) that the defendant shall, within 10 days after issuance of the citation:

(a) plead not guilty by:

(i) notifying the proper issuing authority in writing of the plea and forwarding as collateral for appearance at trial an amount equal to the fine and costs specified in the citation, plus any additional fee required by law. If the amount is not specified, the defendant shall forward the sum of \$50 as collateral for appearance at trial; or

(ii) appearing before the proper issuing authority, entering the plea, and depositing such collateral for appearance at trial as the issuing authority shall require. If the defendant cannot afford to pay the collateral specified in the citation or the \$50, the defendant must appear before the issuing authority to enter a plea; or

(b) plead guilty by:

(i) notifying the proper issuing authority in writing of the plea and forwarding an amount equal to the fine and costs when specified in the statute or ordinance, the amount of which shall be set forth in the citation; or

(ii) appearing before the proper issuing authority for the entry of the plea and imposition of sentence, when the fine and costs are not specified in the citation or when **required to appear pursuant to Rules 409(B)(3), 414(B)(3), or 424(B)(3)**; or

(c) appear before the proper issuing authority to request consideration for inclusion in an accelerated [**disposition**] rehabilitative **disposition** program;

(3) that all checks forwarded for **the** fine and costs or for collateral shall be made payable to the magisterial district number set forth on the citation;

(4) that failure to respond to the citation as provided above within the time specified:

(a) shall result in the issuance of a summons when a violation of an ordinance or any parking offense is charged, or when the defendant is under 18 years of age, and in all other cases shall result in the issuance of a warrant for the arrest of the defendant; and

(b) shall result in the suspension of the defendant's driver's license when a violation of the Vehicle Code is charged;

(5) that failure to indicate a plea when forwarding an amount equal to the fine and costs specified on the citation shall result in a guilty plea being recorded; and

(6) that, if the defendant is convicted or has pleaded guilty, the defendant may appeal within 30 days for a trial de novo.

Comment

A law enforcement officer may prepare, verify, and transmit a citation electronically. The law enforcement officer contemporaneously must give the defendant a paper copy of the citation containing all the information

required by this rule. Nothing in this rule is intended to require the defendant to sign the citation.

Paragraph (A)(3) requires the law enforcement officer who issues a citation to indicate on the citation if the defendant is a juvenile and, if so, whether the juvenile's parents were notified. See the Judicial Code, 42 Pa.C.S. § 1522, concerning parental notification in certain summary cases involving juveniles.

Paragraph (A)(8) requires the law enforcement officer who issues a citation to indicate on the citation whether criminal laboratory services are requested in the case. This information is necessary to inform the [**district justice**] **magisterial district judge** that, in addition to any fines, restitution, or costs, the [**district justice**] **magisterial district judge** may be required to sentence the defendant to pay a criminal laboratory user fee. See 42 Pa.C.S. § 1725.3 which requires that a defendant be sentenced to pay a criminal laboratory user fee in certain specified cases when laboratory services are required to prosecute the case.

[If the law enforcement officer specifies the fine and costs in the citation, the defendant may plead guilty by mail.] As provided in paragraph (B)(2)(b)(i), the defendant may plead guilty by mail only when the fine and costs are set forth in the citation. The law enforcement officer may specify the fine and costs in the citation only when the penalty provided by law does not include a possible sentence of imprisonment and the statute or ordinance fixes the specific amount for the fine. [Consequently, if by statute a sentence of imprisonment is authorized for the offense(s) charged, such sentence may only be imposed if neither the fine nor costs is specified in the citation and the defendant therefore must personally appear before the issuing authority.]

Paragraph (B)(4)(a) provides for notice to the defendant who is under 18 years of age that a summons will be issued if the defendant fails to respond to the citation.

Paragraph (B)(4)(b) provides notice to the defendant that his or her license will be suspended if the defendant fails to respond to the citation or summons within the time specified in the rules. See 75 Pa.C.S. § 1533.

Paragraph (B)(5) provides a uniform procedure for handling cases in which a defendant returns the [**fines**] **fine** and costs but fails to sign the citation and, therefore, does not indicate a plea. See Rule 407.

Paragraph (B)(6) was amended in 2000 to make it clear in a summary criminal case that the defendant may file an appeal for a trial de novo following the entry of a guilty plea. See Rule 460 (Notice of Appeal).

It is intended that the notice to the defendant, required by paragraph (B) to be on the copy of the citation delivered to the defendant, shall be simply worded so the plain meaning of the notice is easily understandable.

For consequences of defects in a citation, see Rule 109.

With regard to the "proper" issuing authority as used in these rules, see Rule 130.

See Rule 401 for procedures for instituting cases in which there is a parking violation. When the parking violation information is electronically transmitted as permitted by Rule 401(A), only a summons is issued as provided in Rule 411.

Official Note: Previous rule, originally numbered Rule 133(a) and Rule 133(b), adopted January 31, 1970, effective May 1, 1970; renumbered Rule 53(a) and 53(b) September 18, 1973, effective January 1, 1974; amended January 23, 1975, effective September 1, 1975; Comment revised January 28, 1983, effective July 1, 1983; rescinded July 12, 1985, effective January 1, 1986, and not replaced in these rules. Present Rule 53 adopted July 12, 1985, effective January 1, 1986. The January 1, 1986 effective dates all are extended to July 1, 1986; amended February 1, 1989, effective as to cases instituted on or after July 1, 1989; amended January 31, 1991, effective July 1, 1991; amended June 3, 1993, effective as to new citations printed on or after July 1, 1994; amended July 25, 1994, effective January 1, 1995; renumbered Rule 403 and Comment revised March 1, 2000, effective April 1, 2001; amended March 3, 2000, effective July 1, 2000; Comment revised February 6, 2003, effective July 1, 2003; amended August 7, 2003, effective July 1, 2004; **amended January 26, 2007, effective February 1, 2008.**

Committee Explanatory Reports:

Report explaining the January 31, 1991 amendments published at 20 Pa.B. 4788 (September 15, 1990); Supplemental Report published at 21 Pa.B. 621 (February 16, 1991).

Report explaining the June 3, 1993 amendments published with the Court's Order at 23 Pa.B. 2809 (June 19, 1993).

Report explaining the July 25, 1994 amendments published with Court's Order at 24 Pa.B. 4068 (August 13, 1994).

Final Report explaining the March 1, 2000 reorganization and renumbering of the rules published with the Court's Order at 30 Pa.B. [1477] 1478 (March 18, 2000).

Final Report explaining the March 3, 2000 amendments concerning appeals from guilty pleas published with the Court's Order at 30 Pa.B. 1509 (**March 18, 2000**).

Final Report explaining the February 6, 2003 Comment revisions cross-referencing Rule 401 concerning electronic transmission of parking citations published with the Court's Order at 33 Pa.B. 973 (February 22, 2003).

Final Report explaining the August 7, 2003 amendments to paragraph (B)(4)(a) concerning juveniles published with the Court's Order at 33 Pa.B. 4293 (August 30, 2003).

Final Report explaining the January 26, 2007 amendments to paragraph (B)(2)(b)(ii) and revisions to the Comment published with the Court's Order at 37 Pa.B. 760 (February 17, 2007).

PART B(1). Procedures When Citation Is Issued to Defendant

Rule 409. Guilty Pleas.

(A) A defendant may plead guilty by:

(1) notifying the issuing authority in writing of the plea and forwarding to the issuing authority an amount equal to the fine and costs specified in the citation; or

(2) appearing before the issuing authority for the entry of the plea and imposition of sentence when the fine and costs are not specified in the citation **or after receipt of notice that a guilty plea by mail has not been accepted by the issuing authority pursuant to paragraph (B)(3).**

(B) When the defendant pleads guilty pursuant to paragraph (A)(1):

(1) The defendant must sign the guilty plea acknowledging that the plea is entered voluntarily and understandingly.

(2) The issuing authority may issue a warrant for the arrest of the defendant as provided in Rules 430 and 431 if the amount forwarded with the plea is less than the amount of **the** fine and costs specified in the citation.

(3) Restrictions on the acceptance of guilty plea by mail:

(a) The issuing authority shall not accept a guilty plea that is submitted by mail when the offense carries a mandatory sentence of imprisonment.

(b) In those cases in which the charge carries a possible sentence of imprisonment, the issuing authority may accept a guilty plea submitted by mail.

(c) In any case in which the issuing authority does not accept a guilty plea submitted by mail, the issuing authority shall notify the defendant (1) that the guilty plea has not been accepted, (2) to appear personally before the issuing authority on a date and time certain, and (3) of the right to counsel. Notice of the rejection of the guilty plea by mail also shall be provided to the affiant.

(C) When the defendant is required to personally appear before the issuing authority to plead guilty pursuant to paragraph (A)(2), the issuing authority shall:

(1) advise the defendant of the right to counsel when there is a likelihood of imprisonment and give the defendant, upon request, a reasonable opportunity to secure counsel;

(2) determine by inquiring of the defendant that the plea is voluntarily and understandingly entered;

(3) have the defendant sign the plea form with a representation that the plea is entered voluntarily and understandingly;

(4) impose sentence, **or, in cases in which the defendant may be sentenced to intermediate punishment, the issuing authority may delay the proceedings pending confirmation of the defendant's eligibility for intermediate punishment;** and

(5) provide for installment payments when a defendant who is sentenced to pay a fine and costs is without the financial means immediately to pay the fine and costs.

Comment

The rule was amended in 2007 to make it clear (1) that a defendant may not enter a guilty plea by mail to an offense that carries a mandatory sentence of imprisonment, and (2) in those cases in which the offense carries a possible sentence of imprisonment, the issuing authority has the discretion whether or not to accept a guilty plea submitted by mail.

Nothing in this rule is intended to require that an issuing authority should proceed as provided in paragraph (C) when the defendant returns the written guilty plea and **the** fine and costs in person to the issuing authority's office pursuant to paragraphs (A)(1) and [(b)] (B). The issuing authority's staff should record receipt of the plea and monies in the same manner as those received by mail.

Paragraph (C)(4) was added in 2007 to permit an issuing authority to delay imposition of sentence in order to investigate a defendant's eligibility for intermediate punishment. For example, under 42 Pa.C.S. § 9763 and § 9804, defendants may be sentenced to intermediate punishment for certain offenses, including summary violations of 75 Pa.C.S. § 1543(b) (driving while license is under a DUI-related suspension) but only if they meet certain eligibility requirements, such as undergoing a drug and alcohol assessment. Often this information will not be available to the issuing authority at the time of sentencing, especially when the defendant appears personally to enter a guilty plea.

When the defendant is under 18 years of age at the time of the offense and appears as provided in paragraph (C), if a mandatory sentence of imprisonment is prescribed by statute, the issuing authority must forward the case to the court of common pleas for disposition. See the Juvenile Act, 42 Pa.C.S. §§ 6302 and 6303.

For the procedure upon default in payment of the fine or costs, see Rule 456.

For appeal procedures in summary cases, see Rules 460, 461, and 462.

For procedures regarding arrest warrants, see Rules 430 and 431.

With regard to the defendant's right to counsel and waiver of counsel, see Rules 121 and 122.

Official Note: Previous Rule 59 adopted September 18, 1973, effective January 1, 1974; rescinded July 12, 1985, effective January 1, 1986, and replaced by present Rule 430. Present Rule 59 adopted July 12, 1985, effective January 1, 1986; amended September 23, 1985, effective January 1, 1986. The January 1, 1986 effective dates are all extended to July 1, 1986; amended May 28, 1987, effective July 1, 1987; amended January 31, 1991, effective July 1, 1991; renumbered Rule 409 and amended March 1, 2000, effective April 1, 2001; Comment revised August 7, 2003, effective July 1, 2004; **amended January 26, 2007, effective February 1, 2008.**

Committee Explanatory Reports:

Report explaining the January 31, 1991 amendments published at 20 Pa.B. 4788 (September 15, 1990); Supplemental Report published at 21 Pa.B. 621 (February 16, 1991).

Final Report explaining the March 1, 2000 reorganization and renumbering of the rules published with the Court's Order at 30 Pa.B. [1477] 1478 (March 18, 2000).

Final Report explaining the August 7, 2003 new Comment language concerning defendants under the age of 18 published with the Court's Order at 33 Pa.B. 4293 (August 30, 2003).

Final Report explaining the January 26, 2007 amendments to paragraphs (A)(2), (B)(3) and (C)(4) published at with the Court's Order at 37 Pa.B. 760 (February 17, 2007).

PART B(2). Procedures When Citation Filed

Rule 414. Guilty Pleas.

(A) A defendant may plead guilty by:

(1) notifying the issuing authority in writing of the plea and forwarding to the issuing authority an amount equal to the fine and costs specified in the summons; or

(2) appearing before the issuing authority for the entry of the plea and imposition of sentence when the fine and costs are not specified in the summons **or after receipt of notice that a guilty plea by mail has not been accepted by the issuing authority pursuant to paragraph (B)(3).**

(B) When the defendant pleads guilty pursuant to paragraph (A)(1):

(1) The defendant must sign the guilty plea acknowledging that the plea is entered voluntarily and understandingly.

(2) The issuing authority may issue a warrant for the arrest of the defendant as provided in Rules 430 and 431 if the amount forwarded with the plea is less than the amount of the fine and costs specified in the summons.

(3) Restrictions on the acceptance of guilty plea by mail:

(a) The issuing authority shall not accept a guilty plea that is submitted by mail when the offense carries a mandatory sentence of imprisonment.

(b) In those cases in which the charge carries a possible sentence of imprisonment, the issuing authority may accept a guilty plea submitted by mail.

(c) In any case in which the issuing authority does not accept a guilty plea submitted by mail, the issuing authority shall notify the defendant (1) that the guilty plea has not been accepted, (2) to appear personally before the issuing authority on a date and time certain, and (3) of the right to counsel. Notice of the rejection of the guilty plea by mail also shall be provided to the affiant.

(C) When the defendant is required to personally appear before the issuing authority to plead guilty pursuant to paragraph (A)(2) the issuing authority shall:

(1) advise the defendant of the right to counsel when there is a likelihood of imprisonment and give the defendant, upon request, a reasonable opportunity to secure counsel;

(2) determine by inquiring of the defendant that the plea is voluntarily and understandingly entered;

(3) have the defendant sign the plea form with a representation that the plea is entered voluntarily and understandingly;

(4) impose sentence, **or, in cases in which the defendant may be sentenced to intermediate punishment, the issuing authority may delay the proceedings pending confirmation of the defendant's eligibility for intermediate punishment;** and

(5) provide for installment payments when a defendant who is sentenced to pay a fine and costs is without the financial means immediately to pay the fine and costs.

Comment

The rule was amended in 2007 to make it clear (1) that a defendant may not enter a guilty plea by mail to an offense that carries a mandatory sentence of imprisonment, and (2) in those cases in which the offense carries a possible sentence of imprisonment, the issuing authority has the discretion whether or not to accept a guilty plea submitted by mail.

Nothing in this rule is intended to require that an issuing authority should proceed as provided in paragraph (C) when the defendant returns the written guilty

plea and the fine and costs in person to the issuing authority's office pursuant to paragraphs (A)(1) and (B). The issuing authority's staff should record receipt of the plea and monies in the same manner as those received by mail.

Paragraph (C)(4) was added in 2007 to permit an issuing authority to delay imposition of sentence in order to investigate a defendant's eligibility for intermediate punishment. For example, under 42 Pa.C.S. § 9763 and § 9804, defendants may be sentenced to intermediate punishment for certain offenses, including summary violations of 75 Pa.C.S. § 1543(b) (driving while license is under a DUI-related suspension) but only if they meet certain eligibility requirements, such as undergoing a drug and alcohol assessment. Often this information will not be available to the issuing authority at the time of sentencing, especially when the defendant appears personally to enter a guilty plea.

When the defendant is under 18 years of age at the time of the offense and appears as provided in paragraph (C), if a mandatory sentence of imprisonment is prescribed by statute, the issuing authority must forward the case to the court of common pleas for disposition. See the Juvenile Act, 42 Pa.C.S. §§ 6302 and 6303.

For the procedure upon default in payment of the fine or costs, see Rule 456.

For appeal procedures in summary cases, see Rules 460, 461, and 462.

For arrest warrant procedures, see Rules 430 and 431.

With regard to the defendant's right to counsel and waiver of counsel, see Rules 122 and 121.

Official Note: Previous rule, originally numbered Rule 136, adopted January 31, 1970, effective May 1, 1970; renumbered Rule 64 September 18, 1973, effective January 1, 1974; rescinded July 12, 1985, effective January 1, 1986, and replaced by present Rule 455. Present Rule 64 adopted July 12, 1985, effective January 1, 1986; amended September 23, 1985, effective January 1, 1986. The January 1, 1986 effective dates all are extended to July 1, 1986; amended May 28, 1987, effective July 1, 1987; amended January 31, 1991, effective July 1, 1991; renumbered Rule 414 and amended March 1, 2000, effective April 1, 2001; Comment revised August 7, 2003, effective July 1, 2004; **amended January 26, 2007, effective February 1, 2008.**

Committee Explanatory Reports:

Report explaining the January 31, 1991 amendments published at 20 Pa.B. 4788 (September 15, 1990); Supplemental Report published at 21 Pa.B. 621 (February 16, 1991).

Final Report explaining the March 1, 2000 reorganization and renumbering of the rules published with the Court's Order at 30 Pa.B. [1477] 1478 (March 18, 2000).

Final Report explaining the August 7, 2002 new Comment language concerning defendants under the age of 18 published with the Court's Order at 33 Pa.B. 4293 (August 30, 2003).

Final Report explaining the January 26, 2007 amendments to paragraphs (A)(2), (B)(3) and (C)(4) published at with the Court's Order at 37 Pa.B. 760 (February 17, 2007).

PART C. Procedures in Summary Cases When Complaint Filed

Rule 424. Guilty Pleas.

(A) A defendant may plead guilty by:

(1) notifying the issuing authority in writing of the plea and forwarding to the issuing authority an amount equal to the fine and costs specified in the summons; or

(2) appearing before the issuing authority for the entry of the plea and imposition of sentence when the fine and costs are not specified in the summons **or after receipt of notice that a guilty plea by mail has not been accepted by the issuing authority pursuant to paragraph (B)(3).**

(B) When the defendant pleads guilty pursuant to paragraph (A)(1):

(1) The defendant must sign the guilty plea acknowledging that the plea is entered voluntarily and understandingly.

(2) The issuing authority may issue a warrant for the arrest of the defendant as provided in Rules 430 and 431 if the amount forwarded with the plea is less than the amount of the fine and costs specified in the summons.

(3) Restrictions on the acceptance of guilty plea by mail:

(a) The issuing authority shall not accept a guilty plea that is submitted by mail when the offense carries a mandatory sentence of imprisonment.

(b) In those cases in which the charge carries a possible sentence of imprisonment, the issuing authority may accept a guilty plea submitted by mail.

(c) In any case in which the issuing authority does not accept a guilty plea submitted by mail, the issuing authority shall notify the defendant (1) that the guilty plea has not been accepted, (2) to appear personally before the issuing authority on a date and time certain, and (3) of the right to counsel. Notice of the rejection of the guilty plea by mail also shall be provided to the affiant.

(C) When the defendant is required to personally appear before the issuing authority to plead guilty pursuant to paragraph (A)(2), the issuing authority shall:

(1) advise the defendant of the right to counsel when there is a likelihood of imprisonment and give the defendant, upon request, a reasonable opportunity to secure counsel;

(2) determine by inquiring of the defendant that the plea is voluntarily and understandingly entered;

(3) have the defendant sign the plea form with a representation that the plea is entered voluntarily and understandingly;

(4) impose sentence, or, in cases in which the defendant may be sentenced to intermediate punishment, the issuing authority may delay the proceedings pending confirmation of the defendant's eligibility for intermediate punishment; and

(5) provide for installment payments when a defendant who is sentenced to pay a fine and costs is without the financial means immediately to pay the fine and costs.

Comment

The rule was amended in 2007 to make it clear (1) that a defendant may not enter a guilty plea by mail to an offense that carries a mandatory sen-

tence of imprisonment, and (2) in those cases in which the offense carries a possible sentence of imprisonment, the issuing authority has the discretion whether or not to accept a guilty plea submitted by mail.

Nothing in this rule is intended to require that an issuing authority should proceed as provided in paragraph (C) when the defendant returns the written guilty plea and the fine and costs in person to the issuing authority's office pursuant to paragraphs (A)(1) and (B). The issuing authority's staff should record receipt of the plea and monies in the same manner as those received by mail.

Paragraph (C)(4) was added in 2007 to permit an issuing authority to delay imposition of sentence in order to investigate a defendant's eligibility for intermediate punishment. For example, under 42 Pa.C.S. § 9763 and § 9804, defendants may be sentenced to intermediate punishment for certain offenses, including summary violations of 75 Pa.C.S. § 1543(b) (driving while license is under a DUI-related suspension) but only if they meet certain eligibility requirements, such as undergoing a drug and alcohol assessment. Often this information will not be available to the issuing authority at the time of sentencing, especially when the defendant appears personally to enter a guilty plea.

When the defendant is under 18 years of age at the time of the offense and appears as provided in paragraph (C), if a mandatory sentence of imprisonment is prescribed by statute, the issuing authority must forward the case to the court of common pleas for disposition. See the Juvenile Act, 42 Pa.C.S. §§ 6302 and 6303.

For the procedure upon default in payment of the fine or costs, see Rule 456.

For appeal procedures in summary cases, see Rules 460, 461, and 462.

For procedures regarding arrest warrants, see Rules 430 and 431.

With regard to the defendant's right to counsel and waiver of counsel, see Rules 122 and 121.

Official Note: Previous rule, originally numbered Rule 140, adopted January 31, 1970, effective May 1, 1970; renumbered Rule 69 September 18, 1973, effective January 1, 1974; Comment revised January 28, 1983, effective July 1, 1983; rescinded July 12, 1985, effective January 1, 1986, and not replaced in these rules. Present Rule 69 adopted July 12, 1985, effective January 1, 1986; amended September 23, 1985, effective January 1, 1986. The January 1, 1986 effective dates are all extended to July 1, 1986; amended May 28, 1987, effective July 1, 1987; amended January 31, 1991, effective July 1, 1991; renumbered Rule 424 and amended March 1, 2000, effective April 1, 2001; Comment revised August 7, 2003, effective July 1, 2004; **amended January 26, 2007, effective February 1, 2008.**

Committee Explanatory Reports:

Report explaining the January 31, 1991 amendments published at 20 Pa.B. 4788 (September 15, 1990); Supplemental Report published at 21 Pa.B. 621 (February 16, 1991).

Final Report explaining the March 1, 2000 reorganization and renumbering of the rules published with the Court's Order at 30 Pa.B. [1477] 1478 (March 18, 2000).

Final Report explaining the August 7, 2003 new Comment language concerning defendants under the age of 18 published with the Court's Order at 33 Pa.B. 4289 (August 30, 2003).

Final Report explaining the January 26, 2007 amendments to paragraphs (A)(2), (B)(3) and (C)(4) published at with the Court's Order at 37 Pa.B. 760 (February 17, 2007).

PART D. Arrest Procedures in Summary Cases

PART D(1). Arrests With a Warrant

Rule 430. Issuance of Warrant.

(A) ARREST WARRANTS INITIATING PROCEEDINGS

A warrant for the arrest of the defendant shall be issued when:

- (1) the citation or summons is returned undelivered; or
- (2) the issuing authority has reasonable grounds to believe that the defendant will not obey a summons.

(B) BENCH WARRANTS

(1) A bench warrant shall be issued when:

(a) the defendant fails to respond to a citation or summons that was served upon the defendant personally or by certified mail return receipt requested; or

(b) the defendant has failed to appear for the execution of sentence as required in Rule 454 [(E)] (F)(3).

(2) A bench warrant may be issued when a defendant has entered a not guilty plea and fails to appear for the summary trial, if the issuing authority determines, pursuant to Rule 455(A), that the trial should not be conducted in the defendant's absence.

(3) A bench warrant may be issued when:

(a) the defendant has entered a guilty plea by mail and the money forwarded with the plea is less than the amount of the fine and costs specified in the citation or summons; or

(b) the defendant has been sentenced to pay restitution, a fine, or costs and has defaulted on the payment; or

(c) the issuing authority has, in the defendant's absence, tried and sentenced the defendant to pay restitution, and/or to pay a fine and costs and the collateral deposited by the defendant is less than the amount of the fine and costs imposed.

(4) No warrant shall issue under paragraph (B)(3) unless the defendant has been given notice in person or by first class mail that failure to pay the amount due or to appear for a hearing may result in the issuance of a bench warrant, and the defendant has not responded to this notice within 10 days. Notice by first class mail shall be considered complete upon mailing to the defendant's last known address.

Comment

Personal service of a citation under paragraph (B)(1) is intended to include the issuing of a citation to a defendant as provided in Rule 400(A) and the rules of Chapter 4, Part B(1).

When the defendant is under 18 years of age, and the defendant has failed to respond to the citation, the issuing authority must issue a summons as provided in Rule 403(B)(4)(a). If the juvenile fails to respond to the summons, the issuing authority should issue a warrant as provided in either paragraph (A)(1) or (B)(1).

A bench warrant may not be issued under paragraph (B)(1) when a defendant fails to respond to a citation or summons that was served by first class mail. See Rule 451.

Rule 454 provides that the issuing authority is to direct any defendant who is sentenced to a term of imprisonment to appear for the execution of sentence on a date certain following the expiration of the 30-day stay required by Rule 461. Paragraph (A)(1)(d) was added in 2003 to make it clear that an issuing authority should issue a warrant for the arrest of any defendant who fails to appear for the execution of sentence.

Ordinarily, pursuant to Rule 455, the issuing authority must conduct a summary trial in the defendant's absence. However, if the issuing authority determines that there is a likelihood that the sentence will include imprisonment or that there is other good cause not to conduct the summary trial, the issuing authority may issue a bench warrant for the arrest of the defendant pursuant to paragraph (B)(2) in order to bring the defendant before the issuing authority for the summary trial.

The bench warrant issued under paragraph (B)(3) should state the amount required to satisfy the sentence.

When a defendant is arrested pursuant to paragraph (B)(3), the issuing authority must conduct a hearing to determine whether the defendant is able to pay the amount of restitution, fine, and costs that is due. See Rule 456.

If the defendant is under 18 years of age and has not paid the fine and costs, the issuing authority must issue the notice required by paragraph (B)(4) to the defendant and the defendant's parents, guardian, or other custodian informing the defendant and defendant's parents, guardian, or other custodian that, if payment is not received or the defendant does not appear within the 10-day time period, the issuing authority will certify notice of the failure to pay to the court of common pleas as required by the Juvenile Act, 42 Pa.C.S. § 6302, definition of "delinquent act," paragraph (2)(iv). Thereafter, the case will proceed pursuant to the Rules of Juvenile Court Procedure and the Juvenile Act instead of these rules.

If the defendant is 18 years of age or older when the default in payment occurs, the issuing authority must proceed under these rules.

When contempt proceedings are also involved, see Chapter 1 Part D for the issuance of arrest warrants.

See Rule 431 for the procedures when a warrant of arrest is executed.

Official Note: Rule 75 adopted July 12, 1985, effective January 1, 1986; effective date extended to July 1, 1986; amended January 31, 1991, effective July 1, 1991; amended April 18, 1997, effective July 1, 1997; amended October 1, 1997, effective October 1, 1998; amended July 2, 1999, effective August 1, 1999; renumbered Rule 430 and amended March 1, 2000, effective April 1, 2001; amended February 28, 2003, effective July 1, 2003; Comment revised August 7, 2003, effective July 1, 2004; Comment revised April 1, 2005, effective October 1, 2005; amended June 30, 2005, effective August 1, 2006; **amended January 26, 2007, effective February 1, 2008.**

Committee Explanatory Reports:

Report explaining the January 31, 1991 amendments published at 20 Pa.B. 4788 (September 15, 1990); Supplemental Report published at 21 Pa.B. 621 (February 16, 1991).

Final Report explaining the April 18, 1997 amendments concerning arrest warrants when defendant fails to appear for trial published with the Court's Order at 27 Pa.B. 2117 (May 3, 1997).

Final Report explaining the October 1, 1997 amendments in paragraph (3) and the provisions of new paragraph (4) published with the Court's Order at 27 Pa.B. 5414 (October 18, 1997).

Final Report explaining the July 2, 1999 amendments to paragraph (3)(c) and the Comment concerning restitution published with the Court's Order at 29 Pa.B. 3718 (July 17, 1999).

Final Report explaining the March 1, 2000 reorganization and renumbering of the rules published with the Court's Order at 30 Pa.B. 1478 (March 18, 2000).

Final Report explaining the February 28, 2003 amendments adding paragraph (A)(1)(d) published with the Court's Order at 33 Pa.B. 1326 (March 15, 2003).

Final Report explaining the August 7, 2003 new Comment language concerning failure to pay fines and costs by juveniles published with the Court's Order at 33 Pa.B. 4293 (August 30, 2003).

Final Report explaining the April 1, 2005 Comment revision concerning application of the Juvenile Court Procedural Rules published with the Court's Order at 35 Pa.B. 2213 (April 16, 2005).

Final Report explaining the June 30, 2005 changes distinguishing between warrants that initiate proceedings and bench warrants in summary cases published with the Court's Order at 35 Pa.B. 3911 (July 16, 2005).

Final Report explaining the change to the Rule 454 reference in paragraph (B)(1)(b) with the Court's Order at 37 Pa.B. 760 (February 17, 2007).

PART E. General Procedures in Summary Cases

Rule 454. Trial in Summary Cases.

(A) Immediately prior to trial in a summary case:

(1) the defendant shall be advised of the charges in the citation or complaint;

(2) if, in the event of a conviction, there is a reasonable likelihood of a sentence of imprisonment or probation, the defendant shall be advised of the right to counsel and

(a) upon request, the defendant shall be given a reasonable opportunity to secure counsel; or

(b) if the defendant is without financial resources or is otherwise unable to employ counsel, counsel shall be assigned as provided in Rule 122; and

(3) the defendant shall enter a plea.

(B) If the defendant pleads guilty, the issuing authority shall impose sentence. If the defendant pleads not guilty, the issuing authority shall try the case in the same manner as trials in criminal cases are conducted in the courts of common pleas when jury trial has been waived; however, in all summary cases arising under the Vehicle Code or local traffic ordinances, the law enforcement officer observing the defendant's alleged offense may, but shall not be required to, appear and testify against the defendant. In no event shall the failure of the law enforcement officer to appear, by itself, be a basis for dismissal of the charges against the defendant.

(C) The attorney for the Commonwealth may appear and assume charge of the prosecution. When the violation of an ordinance of a municipality is charged, an attorney

representing that municipality, with the consent of the attorney for the Commonwealth, may appear and assume charge of the prosecution. When no attorney appears on behalf of the Commonwealth, the affiant may be permitted to ask questions of any witness who testifies.

(D) The verdict and sentence, if any, shall be announced in open court immediately upon the conclusion of the trial, **except as provided in paragraph (E).**

(E) If the defendant may be sentenced to intermediate punishment, the issuing authority may delay imposing sentence pending confirmation of the defendant's eligibility for intermediate punishment.

(F) At the time of sentencing, the issuing authority shall:

(1) if the defendant's sentence includes restitution, a fine, or costs, state the date on which payment is due. If the defendant is without the financial means to pay the amount in a single remittance, the issuing authority may provide for installment payments and shall state the date on which each installment is due;

(2) advise the defendant of the right to appeal within 30 days for a trial de novo in the court of common pleas, and that if an appeal is filed:

(a) the execution of sentence will be stayed and the issuing authority may set bail or collateral; and

(b) the defendant must appear for the de novo trial or the appeal may be dismissed;

(3) if a sentence of imprisonment has been imposed, direct the defendant to appear for the execution of sentence on a date certain unless the defendant files a notice of appeal within the 30-day period, and advise that, if the defendant fails to appear on that date, a warrant for the defendant's arrest will be issued; and

(4) issue a written order imposing sentence, signed by the issuing authority. The order shall include the information specified in paragraphs **[(E)] (F)(1)** through **[(E)] (F)(3)**, and a copy of the order shall be given to the defendant.

Comment

No defendant may be sentenced to imprisonment or probation if the right to counsel was not afforded at trial. See *Alabama v. Shelton*, 535 U.S. 654 (2002), *Scott v. Illinois*, 440 U.S. 367 (1979), and *Argersinger v. Hamlin*, 407 U.S. 25 (1972). See Rules 121 and 122.

The affiant may be permitted to withdraw the charges pending before the issuing authority. See Rule 457 (Withdrawal of Charges in Summary Cases).

Paragraph **[(E)] (F)(2)(b)** is included in the rule in light of *North v. Russell*, 427 U.S. 328 (1976). For the procedures for taking, perfecting, and handling an appeal, see Rules 460, 461, and 462.

As the judicial officer presiding at the summary trial, the issuing authority controls the conduct of the trial generally. When an attorney appears on behalf of the Commonwealth, or on behalf of a municipality pursuant to paragraph (C), the prosecution of the case is under the control of that attorney. When no attorney appears at the summary trial on behalf of the Commonwealth or a municipality, the issuing authority may ask questions of any witness who testifies, and the affiant may request the issuing authority to ask specific questions. In the appropriate circumstances, the issuing authority may also permit the affiant to question Commonwealth witnesses,

cross-examine defense witnesses, and make recommendations about the case to the issuing authority.

Although the scheduling of summary trials is left by the rules to the discretion of the issuing authority, it is intended that trial will be scheduled promptly upon receipt of a defendant's plea or promptly after a defendant's arrest. When a defendant is incarcerated pending a summary trial, it is incumbent upon the issuing authority to schedule trial for the earliest possible time.

When the defendant was under 18 years of age at the time of the offense, if a mandatory sentence of imprisonment is prescribed by statute, the issuing authority may not conduct the trial, but must forward the case to the court of common pleas for disposition. See the Juvenile Act, 42 Pa.C.S. §§ 6302 and 6303.

Under paragraph **[(E)] (F)(2)(a)**, the issuing authority should explain to the defendant that if an appeal is filed, any sentence, including imprisonment, fines, or restitution, will be stayed.

When setting the specific date for the defendant to appear for execution of a sentence of imprisonment pursuant to paragraph **[(E)] (F)(3)**, the issuing authority should set the earliest possible date for sentencing after the appeal period expires.

When a defendant has waived the stay of the sentence of imprisonment pursuant to Rule 461, the issuing authority may fix the commencement date of the sentence to be the date of conviction, rather than after the 30-day stay period has expired. The defendant, of course, still would be able to pursue an appeal under Rules 460—462.

For the statutory authority to sentence a defendant to pay a fine, see 42 Pa.C.S. § 9726.

For the statutory authority to sentence a defendant to pay restitution, see 42 Pa.C.S. § 9721(c) and 18 Pa.C.S. § 1106(c). See also 18 Pa.C.S. § 1106(c)(2)(iv), which prohibits the court from ordering the incarceration of a defendant for failure to pay restitution if the failure results from the defendant's inability to pay.

Before imposing both a fine and restitution, the issuing authority must determine that the fine will not prevent the defendant from making restitution to the victim. See 42 Pa.C.S. §§ 9726(c)(2) and 9730(b)(3).

Paragraph (E) permits an issuing authority to delay imposing sentence in summary cases in order to investigate a defendant's eligibility for intermediate punishment. For example, under 42 Pa.C.S. § 9763 and § 9804, defendants may be sentenced to intermediate punishment for certain offenses, including summary violations of 75 Pa.C.S. § 1543(b) (driving while license is under a DUI-related suspension) but only if they meet certain eligibility requirements, such as undergoing a drug and alcohol assessment. Often this information will not be available to the issuing authority at the time of sentencing.

See Rule 456 for the procedures when a defendant defaults in the payment of restitution, fines, or costs.

A defendant should be encouraged to seek an adjustment of a payment schedule for restitution, fines, or costs before a default occurs. See Rule 456(A).

Official Note: Rule 83 adopted July 12, 1985, effective January 1, 1986; amended September 23, 1985, effective January 1, 1986; January 1, 1986, effective dates extended to July 1, 1986; amended February 2, 1989, effective March 1, 1989; amended October 28, 1994,

effective as to cases instituted on or after January 1, 1995; Comment revised April 18, 1997, effective July 1, 1997; amended October 1, 1997, effective October 1, 1998; Comment revised February 13, 1998, effective July 1, 1998; renumbered Rule 454 and Comment revised March 1, 2000, effective April 1, 2001; amended February 28, 2003, effective July 1, 2003; Comment revised August 7, 2003, effective July 1, 2004; amended March 26, 2004, effective July 1, 2004; **amended January 26, 2007, effective February 1, 2008.**

Committee Explanatory Reports:

Final Report explaining the October 28, 1994 amendments published with the Court's Order at 24 Pa.B. 5841 (November 26, 1994).

Final Report explaining the April 18, 1997 Comment revision cross-referencing new Rule 87 published with the Court's Order at 27 Pa.B. 2119 (May 3, 1997).

Final Report explaining the October 1, 1997 amendments to paragraph (E) and the Comment concerning the procedures at the time of sentencing published with the Court's Order at 27 Pa.B. 5414 (October 18, 1997).

Final Report explaining the February 13, 1998 Comment revision concerning questioning of witnesses published with the Court's Order at 28 Pa.B. 1127 (February 28, 1998).

Final Report explaining the March 1, 2000 reorganization and renumbering of the rules published with the Court's Order at 30 Pa.B. [1477] 1478 (March 18, 2000).

Final Report explaining the February 28, 2003 amendments published with the Court's Order at 33 Pa.B. 1326 (March 15, 2003).

Final Report explaining the August 7, 2003 changes to the Comment concerning defendants under the age of 18 published with the Court's Order at 33 Pa.B. 4293 (August 30, 2003).

Final Report explaining the March 26, 2004 changes concerning *Alabama v. Shelton* published with the Court's Order at 34 Pa.B. 1931 (April 10, 2004).

Final Report explaining the January 26, 2007 amendments adding paragraph (E) concerning intermediate punishment published with the Court's Order at 37 Pa.B. 760 (February 17, 2007).

FINAL REPORT¹

Proposed Amendments to Pa.Rs.Crim.P. 403, 409, 414, 424, 430, and 454

Summary Guilty Pleas; Sentencing

On January 26, 2007, effective February 1, 2008, upon the recommendation of the Criminal Procedural Rules Committee, the Court amended Rules 403, 409, 414, 424, 430, and 454 to permit delay in sentencing and the refusal of acceptance of the plea in appropriate cases involving the entry of guilty pleas to summary offenses.

BACKGROUND

The amendments to Pa.Rs.Crim.P. 403 (Contents of Citation), 409 (Guilty Pleas), 414 (Guilty Pleas), 424 (Guilty Pleas), and 454 (Trial in Summary Cases) address two issues concerning the entry of guilty pleas in summary cases: (1) the timing of sentencing in order to determine a defendant's eligibility for intermediate punishment; and (2) procedures for the entry of guilty pleas

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

in cases in which there is a likelihood of a sentence of imprisonment or a mandatory sentence of imprisonment.

Intermediate Punishment

The first portion of the amendments provides that sentencing may be delayed to determine whether or not a defendant is eligible for intermediate punishment (IP). Specifically, under 42 Pa.C.S. § 9804 and § 9763, defendants may be sentenced to intermediate punishment for certain offenses, including violation of 75 Pa.C.S. § 1543(b) (driving with a license under a DUI-related suspension), but only if they meet certain eligibility requirements, such as undergoing a drug and alcohol assessment.² Often this information will not be available to the issuing authority at sentencing, especially when the defendant appears personally to enter a guilty plea.

Previously, Rules 409(C)(4), 414(C)(4), and 424(C)(4) required the sentence to be imposed at the time the plea is entered with no provision for delaying imposition of sentence to determine eligibility for intermediate punishment. With these amendments, the rules now permit the issuing authority the flexibility in the timing of sentencing to determine such eligibility.

Pleading Guilty by Mail in Cases with Sentences of Imprisonment

The second portion of the amendments address the situation that arises when a police officer cites a defendant for a summary offense, with a possible sentence of imprisonment, including a charge under 75 Pa.C.S. § 1543(b), that carries a mandatory sentence of imprisonment. There have been occasions in which, although the offense charged carries a likelihood of a sentence of imprisonment, the officer includes on the citation the total of the fines and costs. Because the fines and costs have been specified on the citation, and Rules 409(A)(2), 414(A)(2), and 424(A)(2) only require an appearance if the fines and costs are not specified, a defendant potentially could plead guilty by mail, not realizing that a sentence of imprisonment should be imposed. The Comment to Rule 403 contributed to the confusion by providing:

If the law enforcement officer specifies the fine and costs in the citation, the defendant may plead guilty by mail. The officer may specify the fine and costs only when the penalty provided by law does not include imprisonment and the statute or ordinance fixes the specific amount for the fine. Consequently, if by statute a sentence of imprisonment is authorized for the offense(s) charged, such sentence may only be imposed if neither the fine nor costs is specified in the citation and the defendant therefore must personally appear before the issuing authority.

This language in the Rule 403 Comment has been interpreted as meaning that a defendant who pleads guilty by mail because the police officer has listed the amount of the fines and costs on the citation may not be incarcerated. This interpretation not only frustrates the statutory intent but also is a usurpation of the judicial function of the issuing authority by the police.

II. DISCUSSION OF THE PROPOSED RULE CHANGES

To address the first issue, the summary guilty plea rules, Rules 409, 414, and 424, and Rule 454 are modified

² Under 42 Pa.C.S. § 9804 (County Intermediate Punishment Programs), a defendant punished under 75 Pa.C.S. § 1543(b) may only be admitted to an intermediate punishment program if he or she undergoes a drug or alcohol assessment and is determined to be in need of drug or alcohol treatment. This restriction also is contained in 42 Pa.C.S. § 9763 (Sentence of County Intermediate Punishment), which states that a defendant who is to be sentenced for a Section 1543(b) offense "may only be sentenced to county intermediate punishment after undergoing an assessment under 75 Pa.C.S. § 3814 (relating to drug and alcohol assessments)."

to permit an issuing authority to delay the sentencing proceeding to investigate those cases in which intermediate punishment might be available to the defendant. Paragraph (C)(4) of Rules 409, 414, and 424, and Rule 454(E) are amended by the addition of language authorizing the issuing authority to delay sentencing for this purpose and the Comments provide further explanation.

To address the second issue, amendments to the summary guilty plea rules provide that an issuing authority must not accept a guilty plea that is mailed in when the offense charged has a mandatory sentence of incarceration, and that an issuing authority has the discretion to not accept guilty pleas in those cases when there is a possible sentence of incarceration. See Rules 409(B)(3)(a), (b), 414(B)(3)(a), (b), and 424(B)(3)(a), (b). The issuing authority is also required to notify the defendant (1) of the rejection of the guilty plea by mail, (2) to appear in person to enter the plea, and (3) of the right to counsel. The issuing authority also is required to notify the affiant that the guilty plea by mail has not been accepted. See Rules 409(B)(3)(c), 414(B)(3)(c), and 424(B)(3)(c). The Comments to the guilty plea rules provide additional guidance about this new procedure.

Rule 403(B)(2)(b)(ii) includes a cross-reference to the new provisions in Rules 409(B)(3), 414(B)(3), and 424(B)(3) concerning acceptance of guilty pleas by mail, and the Rule 403 Comment is revised to remove the troublesome language that the possibility of a jail sentence could be precluded by the police officer listing fines and costs on the citation. A cross-reference to Rule 454 that is contained in Rule 430 also has been corrected to reflect the new paragraph structure in Rule 454.

[Pa.B. Doc. No. 07-233. Filed for public inspection February 16, 2007, 9:00 a.m.]

Title 255—LOCAL COURT RULES

BUTLER COUNTY

Local Rules of Court; MsD. No. 07-40028

Administrative Order of Court

And Now, this 1st day of February, 2007, it is hereby ordered and decreed that Local Rules of Court pertaining to Family Court, adopted March, 2002 are *Rescinded* effective thirty days after publication of this notice in the *Pennsylvania Bulletin*.

It is further ordered and directed new Local Rules L1905, L1910.4, L1910.11, L1915.1—13 and L1920.33—.55 are *Adopted* effective thirty days after publication of the within Local Rules of Civil Procedure in the *Pennsylvania Bulletin*.

The Court directs the Court Administrator to:

1. File seven (7) certified copies of this Administrative Order and the within Local Rules of Civil Procedure with the Administrative Office of the Pennsylvania Courts.
2. File two (2) certified copies of this Administrative Order and the within Local Rules of Civil Procedure and one (1) diskette with the Legislative Reference Bureau for publication in the *Pennsylvania Bulletin*.
3. File one (1) certified copy of this Administrative Order and the within Local Rules of Civil Procedure with the Domestic Relations Procedural Rules Committee.

4. Forward one (1) copy of this Administrative Order and the within Local Rules of Civil Procedure to the administrative office of the *Butler County Legal Journal* for publication.

5. Forward one (1) copy of this Administrative Order and within Local Rules of Civil Procedure to the Butler County Law Library.

6. Keep continuously available for public inspection copies of this Administrative Order of Court and the within Local Rules of Court in the Office of the Butler County Prothonotary, the Butler County Domestic Relations Section and the Office of the Court Administrator.

By the Court

THOMAS J. DOERR,
President Judge

LOCAL RULES OF COURT FAMILY DIVISION

Introductory Comment—2006

The Court of Common Pleas of Butler County has traditionally utilized the services of masters in a variety of family law cases, most prominently in juvenile and divorce matters. These rules continue the evolution of that tradition.

Historically, in divorce cases, Butler County has tried two, almost conceptually opposite, methods for the selection of masters. For many years, any locally based attorney licensed to practice law was eligible for inclusion on the divorce master list maintained by the prothonotary. The system worked reasonably well when the local bar consisted of fewer than 60 attorneys, and the substantive law of divorce had not been materially reformed in 200 years.

Following the adoption of the Pennsylvania Divorce Code in 1980, with the introduction of new and complex concepts related to equitable distribution of marital property and alimony, and the virtual elimination of fault divorce which had been the exclusive focus of master's proceedings prior to that time, the court quickly realized that the all-inclusive master system could not continue. With a new and unfamiliar Divorce Code, and little or no appellate guidance at the time, family law was being reinvented constantly on a local level by countless masters with differing experience levels and personal viewpoints as to how the new Code should be interpreted. Long delays in the completion of master's proceedings and inconsistent legal interpretations were typical. Practitioners had little ability to forecast the outcome of a master's proceeding and consequent inability to advise clients appropriately. Reform of the system for appointing masters was generally conceded to be necessary.

Responding to the outcry for consistency and predictability which were paramount considerations at the time, the court adopted a very restricted standing master system. Individual attorneys applied for the post of standing master and, if selected, were required to relinquish their family law practice within the county. The Local Rules provided for compensation of standing masters at an hourly rate far below what the same individuals could command in their private practices. In general, the standing master system in divorce cases did achieve the continuity and consistency of decision making which was its *raison d'être*.

Nevertheless, the local legal landscape continues to evolve. Butler County continues to grow and the demand for judicial time allocated to family law, civil, criminal,

Orphans' Court and miscellaneous types of cases grows along with the population. The number of cases assigned to each judge has increased, while pressure to dispose of cases expeditiously has intensified. At the same time, on a statewide level, we now have a full generation of appellate case law to guide us to reasonably nuanced interpretations of the Divorce Code.

The court believes that now is an appropriate time to experiment with changes to the existing standing master system. Based on the relative stability of the Divorce Code, and the abundance of appellate case law, the court is less concerned than previously with the probability of inconsistent legal interpretations of similar factual matrices, provided that the court is careful to limit the masters it appoints to practitioners with whom the court is familiar, and who possess both substantial family law experience and appropriate judicial temperament. Specifically, the court envisions appointing masters which the court is aware have particular expertise in the type(s) of issue(s) presented by the case requiring a master's appointment. The court also wants to permit the parties attorneys to mutually nominate a master to hear a particular issue, whom the court will appoint if the parties nominee meets the court's masters criteria.

Under these rules, the standing master system for divorces is replaced by a special master system. The court will still utilize standing masters in Juvenile cases. Standing masters and custody conciliators will still be prohibited from practicing family law in Butler County. However, other practitioners will be permitted to practice family law, in spite of their appointments from time to time as special masters.

Practitioners will also notice some changes to the custody rules. An additional Order is required at the time of filing directing registration and attendance at the divided families seminar. The issue of undue delay is addressed in several ways. In an effort to emphasize the importance of keeping cases from languishing in the evaluation phase of the process, a pre-trial conference will be scheduled as part of the original conciliation order, if evaluations are ordered. This emphasizes to all parties the need to comply with the schedule for arranging and completing any evaluations. Prior to the pre-trial conference, a type of pre-trial statement, with prescribed disclosures, will now be required. As of the pre-trial conference, such additional pre-trial disclosure as is mandated by the assigned judge will be discussed and ordered.

As an aid to understanding the new rules, and the court's perspective concerning the subject matter of the rules, footnotes have been inserted and comments have been appended at the end of the complete statement of a rule, when appropriate. This is consistent with Pa.R.C.P. No. 129(e). An asterisk (*) has been employed to direct the reader's attention to the inclusion of a comment related to a particular rule or a particular subsection of a rule.

PROTECTION FROM ABUSE

L1905 Orders

At any time that the Court of Common Pleas of Butler County is participating in any program to develop a data base for protection from abuse orders, only orders produced by that system shall be presented to the court for review and signature, if the system is operational. If the system used to produce orders is temporarily non-operational, orders created outside the system shall be integrated therein as soon as possible.

SUPPORT

L1910.4 Domestic Relations Fee Schedule

(a) A fee schedule for Domestic Relations administrative costs, the filing of support complaints, petitions to modify support orders, issuance of bench warrants, petitions for contempt, and other related fees shall be as established by order of court from time to time.

(b) Except for the filing of an initial support complaint, the fee shall be required to be paid in advance. All fees shall be collected and administered by Domestic Relations personnel.

L1910.11 Motions to Continue Support Conferences and Hearings; Use of Masters

(a) & (i) Support matters scheduled before the court or in the Domestic Relations section shall be continued only by leave of court, with good cause shown, presented at least 15 days before the actual support conference or hearing.¹

CUSTODY AND VISITATION

L1915.1 Scope. Definitions.

(a) These rules govern all actions for custody, partial custody and visitation, including original actions, petitions for relocation, petitions to modify orders and petitions for contempt.

(b) These rules supplement the Pennsylvania Rules of Civil Procedure governing custody actions, Pa.R.C.P. No. 1915.1 et seq.

(c) These rules modify Rules L1915.1—L1915.13 of the Butler County Local Rules of Court

L1915.3 Commencement of Action. Complaint. Order. Service.

(a) All custody complaints shall be filed with the prothonotary.² In addition to the scheduling Order required by Pa.R.C.P. No. 1915.3, there shall be attached by the Conciliator's office, an additional Order with the following text:

"All adult parties to this action, who have not yet attended the seminar for divided families endorsed by the Butler County Family Court, shall within 5 days of receipt of this Order register to attend the next available seminar. Contact 724 XXX-XXXX to register.³ Attendance at this seminar is mandatory, unless, within 5 days of receipt of the Order, a party seeks permission to attend a comparable program in another county, and within 10 days, permission is granted by the custody conciliator."

(b) In addition to the filing fees assessed by the prothonotary, an administrative fee for conciliation services shall be assessed by administrative order of court, and shall be submitted to the prothonotary at the time of the filing of the custody complaint unless otherwise directed by the court.

¹ The court will ordinarily consider the mutual written consent of the parties to be "good cause" for a continuance, regardless of the proximity to the scheduled conference or hearing date. However, motions for non-consensual postponements shall be filed at least 15 days before the scheduled Domestic Relations conference or court hearing. Butler County motions practice is described in Rule L208.3(a).

² The traditional alternative practice of ex parte presentation of custody complaints, custody modification or custody contempt petitions in motions court is discouraged. The practice originated because of the need to secure a judge's signature on the order scheduling a conciliation conference or hearing. However, experience indicates that the prothonotary and custody conciliator's offices can be relied upon to bring the proposed scheduling order to the court's attention promptly and efficiently, eliminating the waiting and presentation time of attorneys at motions court, and thereby reducing the parties expenses. The parties or attorneys may monitor the progress of their pleadings, within the system, by communications with the prothonotary and conciliator's offices.

³ The phone number of the endorsed seminar (which could change from time to time) will be published by Administrative Order.

(c) After filing, all complaints or motions for conferences shall be immediately forwarded to the custody conciliator's office which shall set the time, date, and place for a custody conference. Said conference shall be held no less than 20, nor more than 40 days from the filing of the complaint/order or petition/order, unless the normal time interval is shortened or lengthened by the court, upon good cause shown.

(d) Within 5 days of service of any claim for custody, partial custody, or visitation, any party to an action who has not previously attended the education seminar for divided families shall register to attend said seminar. Information concerning the seminar shall be provided by the prothonotary of the Court of Common Pleas of Butler County, Pennsylvania, to the filing party. Said party shall be responsible for service of such information on the opposing party.

(1) Failure of either party to register for the seminar, prior to the conference, may subject the noncompliant party to such sanctions as may be appropriate, including an award of counsel fees.

(2) Unless otherwise requested by both parties, the parties will be scheduled for separate education seminar sessions.⁴

(e) Fees and policies pertaining to custody conciliation shall be adopted from time to time by administrative orders of court. A copy of said policies and fee schedule will be available at the Domestic Relations office/custody conciliator's office.

L1915.4

(a) The complaint/order or petition/order and the order to attend the divided families seminar, shall be served by the moving party in accordance with the Pennsylvania Rules of Civil Procedure.

(b) Proof of service of the complaint/order or the petition/order, and the Order to attend the divided parents seminar, shall be filed with the prothonotary prior to the custody conference.

L1915.4-1 Continuances of Conciliation Conferences or Custody Hearings

Custody matters scheduled before the court, or in the custody conciliators office shall be continued only by leave of court, with good cause shown. For such a request to be considered, the motion shall be filed with the court in accordance with local civil motions practice/procedure.

Comment: Butler County motions practice is described in Rule L208.3(a).

L1915.5 Jurisdiction, Venue, Standing, and Relocation Issues.

(a) The court may direct that issues pertaining to jurisdiction, venue, standing, and relocation be referred to custody conciliation.

(b) Alternatively, the court may schedule a hearing before the court for disposition of the jurisdictional, venue, standing or relocation issue, or the court may take such other action as may be prescribed by statute, compact or treaty.

⁴ This rule is renumbered and changed. The previous Rule limited a party's right to request a separate seminar to cases in which abuse had been found or was alleged. The committee felt that many family situations not rising to the level of abuse might warrant a party seeking separate seminar registration. The goal is to promote and facilitate seminar attendance. Separate registrations cannot justifiably deter attendance; simultaneous registration might, even in non-abuse cases. The Court is advised that the practice of the current seminar provider is to schedule attendance of opposing parties on different dates. The Court endorses that practice.

Comment: The court will always dispose of interstate or international jurisdictional issues, outside the conciliation process. In such cases the court may defer to a foreign court the right to conduct a fact-finding hearing related to the jurisdictional issue.

L1915.7 Custody Conciliation Conference Consents and Recommendations.

(a) All parties named in an action for custody shall be present at the custody conciliation conference unless excused by the custody conciliator. Failure of a party to appear at the conference may result in the entry of a custody or visitation order by the court on the recommendation of the conciliator in the absence of that party. Unless ordered by the court for good cause shown, children shall not be brought to the conciliation and shall not be heard on the issues by the conciliator.⁵

(b) To facilitate the conciliation process and to encourage frank, open and meaningful exchanges between the parties and their respective counsel, statements made by the parties or their attorneys at the conference shall not be admissible as evidence at a later custody hearing. The custody conciliator shall not be a witness for or against any party.

(c) The court-appointed custody conciliator shall encourage consent agreements on the custody issues pending between/among the parties. If agreements are reached, they shall be reduced to writing and submitted to the court for adoption as an order. The parties will also be encouraged to equitably divide the custody administrative fee.

(d) If no consent agreement is reached, the conciliator shall file a report with the court within five days of the conference which may contain the following:

(1) recommendations that custody investigations, such as physical or mental evaluations, home studies, drug and alcohol evaluations, counseling, education seminars to be undertaken, and appointment of a guardian ad litem, as well as equitable division of the fees for same. In order to insure that all studies and evaluations ordered, expert testimony supplied, and seminar attendance occur without delay, the Order directing such activities shall provide that each parties share of the relevant fees be paid as allocated in the Order, subject to reallocation at a later stage of the case as provided in Rule L1915.4(c). Evaluations shall proceed without the participation of a party who fails to timely pay his/her share of the evaluator's fee. A non-paying or non-participating party shall also be subject to the contempt powers of the court;

(2) conciliator's review of jurisdiction, venue, standing and relocation issues;

(3) progress, if any, on issues before the conciliator, as well as any recommendations for temporary custody/visitation orders, including the need for an expedited hearing in emergency cases.

(4) recommendations concerning an equitable division of the custody administrative fee among the parties.

⁵ The previous Rule required children nine or older to attend the conference. The children were not usually part of the mainstream conciliation process. Participation was marginal and infrequent. School was missed. Only when both parties agreed to be bound by a child's stated preference did children's participation become meaningful. Bringing children to court, even the conciliator's office, invited parties to lobby the children for support at the expense of the other parent, often before the parents have attended the educational seminar which discourages such conduct. Lobbying also suggests to the children that their views may be more dispositive of the ultimate custody determination than is in fact the case, and does little to promote agreements or the orderly process of advancing those cases which are not resolved by agreement. On balance, under the new Rule, the court has chosen to excuse children from most conferences. If a party feels strongly that his/her child(ren) should attend, he/she may present a motion setting forth the basis of that belief and requesting an order for attendance.

(5) recommendations that a case be diverted to counseling.

(6) scheduling of pre-trial conferences, or requesting trial dates.

(e) As part of the order resulting from the initial conciliation conference, custody cases will ordinarily⁶ be scheduled for a pre-trial within 120 days after service of the initial pleading, in those cases when evaluations are ordered by which time the evaluations are expected to be completed and available. The initial conciliation order shall also provide that the costs of any evaluations, home studies or tests, including the cost of in-court testimony needed to authenticate and explain expert reports of the results thereof, shall be shared by the parties, initially as allocated by the court in the post-conciliation order, but subject to reallocation as part of the pre-trial conference order and the final order in the case as the equities in the case may dictate. In cases where no agreement is reached, and no evaluations are ordered, and the case is not diverted to counseling on the Conciliator's recommendation, either party may request a Pretrial Conference within 30 days. See Rule L 1915.10, *infra*.

(f) At the request of either party, the report under subsection (c) shall be filed with the court before the judge assigned to that case and presented at his/her motion court. The parties and/or the attorneys shall be informed at the conclusion of the conference of the date of the applicable motion court session.

(g) Upon receipt of evaluation reports, the conciliator's office will make the same available to counsel of record, or pro se litigants where applicable.⁷

L1915.10. Request for Custody Pretrial Conference. Pretrial Conference. Decision

(a) A party may request a Custody Pretrial Conference anytime within 30 days after service of a Custody Order issued as a result of a Conciliation Conference, in cases where a comprehensive agreement is not reached at the Conference. The moving party shall deliver the Request to the chambers of the assigned judge for the scheduling of a Pretrial Conference. Said request shall be served on the opposing party, or counsel, if represented.⁸ The assigned Judge will transmit the completed Pretrial Scheduling Order to the Prothonotary for filing and service.⁹

(b) The Request for Custody Pretrial Conference and Scheduling Order shall be substantially as follows:

⁶ Delays may occur for various reasons, most commonly the untimely submission of court ordered custody evaluations. Custody evaluation reports are delayed for many reasons, some of which include deliberate delay in scheduling or postponing meetings with the evaluator or delay in the payment needed to secure release of the report, by a party perceiving him/herself to benefit from the status quo. Other reasons for delay are wholly innocent and beyond the control of either party, such as the press of other duties upon the custody evaluator. The court firmly believes that delay in resolving custody cases perpetuates stress on the parties and children involved, is harmful, and is to be eliminated. Consequently, the parties are charged with the knowledge that a finding of deliberate and unexcused conduct by him or her, which significantly delays the trial of the case may adversely affect that party's position in the litigation, because dilatory conduct is itself harmful to the children.

⁷ The mandatory second conciliation contemplated in the prior rules is abandoned in favor of more judicial involvement in the form of a pre-trial conference. The pre-trial judge will determine if a second conciliation is likely to be helpful in resolving the case, in which case he/she may direct one, or if the matter should proceed to trial.

⁸ The requirement of service is a matter of courtesy. The "Request" contemplated by the rule is in the nature of a Praecipe, requesting a ministerial act. The Court will not entertain argument as to the propriety of a scheduling order. If an opposing party believes that a Pretrial Conference is not appropriate, that party may present a motion to vacate the scheduling order, at which time the issue may be argued.

⁹ Pursuant to Rule 1915.7(e) when Custody Evaluations have been ordered, a Pretrial Conference is automatically scheduled and a Request need not be filed.

Caption

REQUEST FOR CUSTODY PRETRIAL CONFERENCE

I, _____, hereby request a pretrial conference before the Court of Common Pleas. This Request is being filed within 30 days of the date of Service of the Custody Order.

The issues to be considered are:

- Relocation
- Time/Length/Number of Visits
- Primary Residence
- Other:

VERIFICATION

I verify that the statements made in this request are true and correct. I understand that false statements herein are made subject to the penalties of 18 Pa.C.S.A. § 4904 relating to unsworn falsifications to authorities.

Date _____ Signature of Petitioner or
Petitioner's Counsel
Printed Name
Address
Telephone Number

Caption

SCHEDULING ORDER*

The above named parties and trial counsel are hereby ordered to appear in person on _____, 20____ at _____ .m. before the Honorable _____, in Courtroom _____ in the Butler County Government Center, for a Pretrial Conference. Counsel or the parties, if unrepresented, shall file a Pretrial Narrative at least seven days prior to the Pretrial Conference. The parties are required to attend the Pretrial Conference pursuant to Butler County L 1915.10 (d).

Seven days prior to the Pretrial Conference, each party or counsel shall file and submit a Pretrial Narrative to the chambers of the assigned judge. Copies shall be served on all parties. If no Pretrial Narrative is filed, the offending party may be fined or otherwise sanctioned by the Court. The Pretrial Narrative shall include:

- (1) Names and addresses of all witnesses, including experts;
- (2) Summary of each witness's anticipated testimony;
- (3) Copies of all exhibits;
- (4) Proposed custody arrangement;
- (5) Requested stipulation of facts.

BY THE COURT:

Date: _____ J.

(c) All parties and trial counsel shall be present at the Pretrial Conference unless otherwise provided by Order of Court. Failure of a party to appear at the Pretrial Conference may result in the entry of a custody/visitation order by the Court.

(d) Any agreement reached at the Pretrial Conference shall be reduced to writing and entered as an order of Court.

Comment: The language of the Scheduling Order will also be found as part of the Order following conciliations which result in evaluations.

L1915.12 Enforcement. Contempt.

(a) The custody conciliator may attempt to enforce existing custody/visitation orders upon receiving informal written objection from a party or attorney of record that said order is being misinterpreted or willfully disobeyed. Such objection shall be served upon the opposing party or attorney of record by the complaining party.

(b) Upon the filing of any motion or petition alleging violation of a custody, partial custody or visitation order, and seeking enforcement of the order, whether or not sanctions are requested, the court shall direct the parties to appear before the court for a 15 minute conference to conciliate the disagreement.*

(c) If the enforcement request is not disposed of at the initial judicial conciliation, the court shall direct appropriate additional proceedings, which may include a full conciliation with the conciliator, a direction to participate in counseling, temporary orders relative to interpretation of the existing order pending further conciliation or trial, scheduling of a trial date, or such additional matters as justice may require.

(d) Actions referred to the conciliator shall be subject to the administrative fees and conciliation procedures set forth in these Rules.

(e) If no agreement is reached at the scheduled enforcement conciliation conference, a conciliator's report shall be filed and the matter shall be scheduled before the court for hearing.

Comment: Subsection (b) of this rule is new. Experience has shown that numerous disagreements concerning the interpretation of the language of custody orders are amenable to simple clarification by the trial court, at a brief conciliation conference, without subjecting the court system to the burden of a full conciliation or trial, and without subjecting the parties to the expense and delays which were inherent under the previous system which required each case to be initially heard at the conciliator's office, before judicial intervention of any kind would be considered.

Subsections (c), (d), and (e) of the former Rule have been re-lettered and altered where appropriate to conform to the changed approach of attempting to conciliate all enforcement matters at the trial court level. For example, language in former subsection (c) suggesting that the conciliator might recommend that the court dispose of the contempt petition at motions court, by oral argument, no longer makes sense, in light of the fact that the court will have already heard the parties positions at an initial judicial conciliation, and the conciliator's office will have failed to bring the parties together at a second, full conciliation. In such cases, in which the parties have already been given two opportunities to argue their positions, it is obvious that only a hearing will resolve the matter.

L1915.13 Special Relief

(a) All petitions and motions for special relief may be referred to the custody conciliator, pursuant to these Rules, at the discretion of the court.

(b) Alternatively, the court may schedule a hearing to determine the appropriateness of such request for special relief. If a hearing is granted, the court may continue a scheduled custody conference until the court has rendered a decision on the request for special relief.

(c) If, in an emergency, the court grants ex parte special relief, the court shall conduct a hearing within ten

days, to address the merits of the petition for special relief. The court may continue the hearing, if requested by the non-moving party, for a reasonable time to allow that party to seek counsel and/or prepare a defense to the petition.

DIVORCE**Introductory Comment—2006**

The court, counsel and litigants have all expressed continuing concern with the expense and delay involved in finalizing divorce cases. These rules attempt to address both issues.

Expense. Often under prior practice, the trial court did not become involved with the substantive issues in a case until conducting a de novo review of a master's recommendation, after a full hearing had already occurred. Extensive master's fees and court reporting costs were incurred, sometimes unnecessarily. These rules address the problem by mandating a conciliation by the court, after discovery is closed and before a master is appointed. It is contemplated that some cases which would otherwise be tried will be resolved through the conciliation process. Other cases, which do not settle at the conciliation, will nevertheless be simplified by settlement of some issues, stipulations arrived at through the conciliation process, and clarification of the parties positions through full disclosure, which is the sine qua non of successful conciliation.

Delay. At the outset, it may be observed that delay is not always a bad thing. Reconciliations do occur. And even when they do not, the cooling of the parties emotions across time may permit a more focused and constructive approach to necessary litigation. It is also true that the divorce law as currently constituted provides incentives for (or at least permits) delay in fully consummating divorce cases under certain factual scenarios. To take one example, a dependent spouse might want to take full advantage of the two year waiting period under § 3301(d) before allowing a divorce to be finalized. It must be assumed that these incentives and opportunities for delay are well understood and intended as policy by the legislature. This court does not make policy. Consequently, these rules do not address policy driven/permitted delays.

However, there are other types of delays which can be addressed by the court in a variety of ways. These include the enforcement of existing temporal mileposts, such as the requirement of Pa.R.C.P. No. 1920.33(a) that each party file an inventory within 90 days after the filing of a claim for distribution of property, or the requirements of Pa.R.C.P. No. 4006(a)(2) and Pa.R.C.P. No. 4009.12(a) that interrogatories be answered or documents produced within 30 days. It is the responsibility of the parties to observe the time frames established by the rules, or secure written reasonable extensions. The court recognizes that many deadlines imposed by rule may be viewed as arbitrary. What is the difference between providing answers to interrogatories in 35 days instead of 30? In most instances, none. **However, the processes of disclosure and discovery which the rules abet are central to the problem of delay.** Delay is reduced, and settlements occur, when all appropriate information and documents have been exchanged, and not before. The court's goal is to promote settlements and process cases with a minimum of delay. Therefore, it is the policy of the court, as well as its duty, to insure compliance with the intent of the rules, and when necessary, impose sanctions.

From the standpoint of local rule making the court believes that the three keys to promoting settlements by

minimizing delay are: (1) terminating discovery in a reasonable and orderly fashion, (2) insisting on full compliance with the intent of Pa.R.C.P. No. 1920.33 (b) which requires the filing and prescribes the content of pre-trial statements, and (3) timely judicial conciliation.

Too often, cases languish for years before discovery is undertaken because it is apparent that one party will not consent to the divorce within the two-year period afforded by the legislature. It does seem reasonable, however, to afford the moving party an opportunity to complete the case within a reasonable time after the two-year period has elapsed, especially in view of the current legislative emphasis on non-bifurcated divorce. Therefore, these rules provide for the establishment of a cut off date for discovery, on application of a party, when both parties have conceded that the marriage is irretrievably broken, or when an affidavit has been filed that the parties have lived separate and apart within the meaning of the divorce code for at least 18 months. This does not imply that the parties will be unable to update asset values reasonably proximate to trial.

Too often, cases fail to settle because the parties pre-trial statements are incomplete or misleading. The court believes that the primary function of the pre-trial statement is to reduce surprise at trial, both as to the claims and contentions of the parties, the witnesses, and the documentary evidence each will present. The court expressly disapproves such practices as: (1) referring to but failing to attach expert reports; (2) attaching previously filed inventories already of record; (3) failing to expressly assert all claims a party intends to pursue at trial, some of which, such as real estate rental claims, or reduction of equity claims in consideration of projected sales expenses or taxes, may not be directly referred to in the Inventory or discovery materials; (4) making general references to "other witnesses identified" or "other documents furnished during discovery." Some attorneys set forth in the pre-trial statement a summary of their client's perspective relative to salient equitable distribution or alimony factors. While not contemplated by Pa.R.C.P. No. 1920.33 (b) such statements may be helpful to the master or court as a trial outline and are therefore acceptable. In its review of evidentiary objections, the court will be vigilant to protect the parties from unfair surprise created by noncompliant pre-trial statements.

Too often, cases fail to settle because the parties are unaware of (or labor in disbelief about) how certain factors are likely to influence the overall outcome of the trial, from the trial court's perspective. Examples might include the impact of marital misconduct, future prospects for inheritance by a party, directly or in trust, how to quantify goodwill in connection with business valuations of sole proprietorships or other entities, and so on. The court believes that disclosure of these issues through the discovery process and the filing of pre-trial statements, followed by frank discussion of the issues at a judicial conciliation attended by the parties, may result in many cases being settled which in the past would have been tried before the master, simply because the parties did not have access to the court's perspective on the most complex issues.

After consideration of the procedure followed in several other counties, some of which prescribe the use of additional forms not contemplated by the statewide rules, the court has elected, at this time, not to prescribe special forms. For example, some counties provide a form checklist of documents to be introduced at trial, requiring the opposing party to either consent or oppose to both

authenticity and admissibility of each document. However, if the same documents are disclosed as part of a parties pre-trial statement, and the authenticity or admissibility of any document is questioned, those issues will be addressed at the pre-trial judicial conciliation and, as appropriate, ruled upon or preserved for trial. All that is needed is a sentence in the pre-trial order indicating that it is the responsibility of each party to identify all documents in the opposing parties pre-trial statement to which there will be some objection at trial. Alternatively, a party may obtain admissions as to authenticity during discovery.

Finally, the court recognizes that not all cases are susceptible of successful conciliation, in terms of a total settlement. Even so, many issues may be capable of resolution, permitting the master's proceedings to be less expensive and time-consuming. For those cases requiring the services of a master, every effort has been made to streamline the process and reduce costs, particularly court reporting expenses.

L1920.33(b) Pre-trial Procedures

(a) Either party may file an affidavit with the court alleging that the parties have lived separate and apart within the meaning of the Domestic Relations Code for a continuous period of 18 months prior to the filing of the affidavit. Upon either the filing of said affidavit, or the expiration of 18 months since the filing of a divorce complaint being acted upon in this County, or upon the filing by both parties of affidavits conceding that the marriage is irretrievably broken, either party may present a motion to establish a deadline for the initiation and/or completion of pre-trial discovery. Upon consideration of the motion, and the arguments of counsel, the court shall establish a pre-trial discovery order, with appropriate deadlines.*

(b) After discovery is closed, the court shall conduct a pre-trial conciliation conference, which may be scheduled as part of the discovery order described in subparagraph (a). Ten (10) business days before the pre-trial conference, each party shall file with the Prothonotary, and serve upon opposing counsel, a pre-trial statement which complies in all material respects with the requirements of Pa.R.C.P. No. 1920.33(b).* At the pre-trial conference, each party shall notify the other party and the court of any exhibits attached to the opposing parties pre-trial statement to which there is an objection as to admissibility. The court may rule on the objections presented, or may allow the issue to be addressed by the master. The court shall enter an order following the pre-trial conference setting forth any rulings by the court, stipulations or agreements of the parties, or other directions or information which will be helpful to the master, if the case is not settled.

(c) If a party fails to comply with any requirement of this rule, the court, upon motion of a party or on its own motion, may make an appropriate order under any available rule or statute governing sanctions.

Comment: In general, the court's objective in setting the discovery schedule will be to have the case ready for trial (including the completion of the pre-trial conference) at the end of a two-year separation.

Comment: Practitioners must read the Introductory Comment, above, for the court's views on the purpose and acceptable content of pre-trial statements.

L1920.51(a) Masters Proceedings

(1) The court may appoint a master to receive evidence, make findings of fact, and recommend to the court a

disposition of all issues referred to the master. Masters may be appointed, in the court's discretion, in cases of divorce, equitable distribution, alimony, claims for counsel fees, expert fees, other litigation expenses, special relief for exclusive possession, and in any other type of matter authorized by law or rule of court. The issues to be determined by the master will be framed by the court's pre-trial order; accordingly, except with leave of court, there will not be a pre-trial conference before the master.

(2) The court may appoint as a master any attorney licensed to practice law in the Commonwealth of Pennsylvania, having 10 years experience as a lawyer, including significant trial experience, or who has 10 years combined experience as a lawyer with trial experience and as a judge, district justice, master or as a comparable judicial officer, and who possesses, in the court's opinion, appropriate knowledge of the legal subjects at issue, and an appropriate judicial temperament. A master appointed by the Court pursuant to this rule is not precluded from practicing family law in Butler County.

(3) Masters shall be compensated by the parties to the litigation based on a fee schedule published by the court from time to time by general administrative order. If, pursuant to Pa.R.C.P. No. 1920.51(a)(3), a party moves for appointment of a master, the moving party shall deposit a sum with the prothonotary to cover the master's initial fee. The amount of deposit shall be set from time to time by general administrative order. Pursuant to Pa.R.C.P. No. 1920.51(a)(2)(I), the master may direct the parties to deposit further amounts with the Prothonotary.

(4) A party filing a motion to compel discovery, a motion for sanctions, a motion to limit discovery or for a protective order, a motion in limine, or a motion to stay the master's hearing **must** address such application to the court. Other applications, by mutual consent, may be presented to the master; however, absent mutual consent all other applications shall be presented to the court.

(5) Once a master is appointed, any document subsequently filed with the court shall be served upon the master by the filing party. In addition, the prothonotary shall serve the master with copies of any orders issued.¹⁰

Comment: The current rule contemplates liberal use of masters, but only after the discovery process is concluded and judicial conciliation has failed to bring about a settlement. The master's focus will be on trying the case, not resolving discovery issues or providing conciliation services. Significantly, there is included for the first time within the local rules, express authority to utilize masters in certain special relief situations, such as applications for exclusive possession of the residence. Consistent with the concept of statewide practice, geographical limitations on the appointment of masters is eliminated. The court's focus in selecting masters will be to find practitioners with significant relevant knowledge and experience, as well as appropriate judicial temperament, to assist the court in managing its caseload. The parties may suggest to the court a mutually agreeable individual to serve as master. If the court agrees that the parties nominee meets the court's criteria for appointment, the court currently anticipates that it will typically accede to the parties recommendation. The parties may make private arrangements for compensation of a master in an amount or on terms different from those described in the general administrative order establishing said fees; however, such special arrangements will not be enforced by the court above and beyond the master's fees described in the

administrative order, unless a stipulation bearing the signatures of both parties and all counsel to the litigation is filed of record.

L1920.55-1

Unless the court orders otherwise, all divorce proceeding shall be referred to a master in accordance with Pa.R.C.P. No. 1920.55-2 except that the stenographic record which is (still) to be filed along with the master's report shall not be transcribed, unless exceptions to the Master's Report and Recommendation are filed. In such event, the party filing the exceptions shall simultaneously direct the court reporter to transcribe all those portions of the record which the excepting party in good faith believes are required for the proper disposition of the exceptions. Such direction shall be in writing, with a copy filed with the exceptions and served on the opposing party. The non-excepting party shall within 10 days make designation to the court reporter of any additional parts of the record which he/she in good faith believes are necessary to the proper disposition of the issue, in writing, with copies to the Court and the opposing party. Each party shall make timely arrangements for payment of the court reporter's transcription fees for those portions of the record designated for transcription by him/her, subject to reallocation of transcription fees by the court.*

In appropriate circumstances, either party or the master may request that the court order the case to proceed under Pa.R.C.P. No. 1920.55-3.¹¹

Comment: The manifest purpose of the rule is to reduce the cost of master's proceeding by avoiding costly transcription fees when it is possible to do so. When cross-exceptions are filed, each party will be deemed to be the excepting party with respect to his/her exceptions, for purposes of this rule. The court will only consider the exhibits introduced at the master's hearing and the transcribed portions of the testimony in disposing of the exceptions. Therefore, it is incumbent on the parties to correctly specify those portions of the record which are pertinent to the disposition of the issues on exceptions. Parties contemplating an appeal to Superior Court may want to have the entire record transcribed, particularly when the exceptions involve general issues such as failure to properly assess or weigh the various equitable distribution criteria. However, even in those cases, arguments not asserted in the trial court are waived on appeal. Indeed, the Rules of Appellate Procedure only require the parties to reproduce those parts of the record applicable to the issues on appeal. We therefore conclude that the new procedure described in this rule, for partial transcription of the record, within the control of the parties, will adequately provide for proper appellate review. The possibility of reallocation of transcription fees, along with other available remedies, will enable the court to enforce the requirement that "good faith" accompany the designation of which portions of the record need to be transcribed for "the proper disposition of the issue."

[Pa.B. Doc. No. 07-234. Filed for public inspection February 16, 2007, 9:00 a.m.]

¹¹ The intent of this portion of the rule is to permit, by court approval, Pa.R.C.P. No. 1920.55-3 proceeding in cases with limited assets, in forma pauperis litigants, or other circumstances which merit consideration for streamlined proceedings without a record. In addition, the language of the rule does permit the court to hear those rare, novel or inordinately complex cases which the court should hear itself, in the interest of judicial economy.

¹⁰ "Any document" is an all-inclusive term.

CARBON COUNTY

**Revision of Rule of Orphans Court Procedure
14.2—Adjudication of Incapacity and Appointment
of a Guardian of the Person and/or Estate
of an Incapacitated Person; No. 07-9026**

Amended Administrative Order 7-2007

And Now, this 1st day of February, 2007, pursuant to 18 Pa.C.S.A. § 6111.1(f), it is hereby

Ordered and Decreed that effective March 1, 2007, the Carbon County Court of Common Pleas hereby *Amends* Local Rule of Orphans Court Procedure Carbon Co. O.C.R. No. 14.2 governing the Adjudication of Incapacity and Appointment of a Guardian of the Person and/or Estate of an Incapacitated Person.

The Carbon County District Court Administrator is *Ordered and Directed* to do the following:

1. File seven (7) certified copies of this Administrative Order with the Administrative Office of Pennsylvania Courts.
2. File two (2) certified copies and one (1) diskette with the Legislative Reference Bureau for publication in the *Pennsylvania Bulletin*.

3. File one (1) certified copy with the Pennsylvania Orphans Procedural Rules Committee.

4. Forward one (1) copy for publication in the *Carbon County Law Journal*.

5. Forward one (1) copy to the Carbon County Law Library.

6. Keep continuously available for public inspection a copy of the Order in the Register of Wills/Orphans Court Office.

By the Court

ROGER N. NANOVIC,
President Judge

RULE 14.2. ADJUDICATION OF INCAPACITY AND APPOINTMENT OF A GUARDIAN OF THE PERSON AND/OR ESTATE OF AN INCAPACITATED PERSON.

Concurrent to the filing of a petition to adjudicate an incapacity, the moving party/attorney shall complete the individual information on a Notification of Mental Health Commitment Form SP-4-131 and file it with the Orphan's Court Division.

[Pa.B. Doc. No. 07-235. Filed for public inspection February 16, 2007, 9:00 a.m.]

DELAWARE COUNTY

Fees of Clerk of Orphans' Court Division; No. 84-2007

Order

And Now, to Wit, this 31st day of January, 2007, in accordance with the provisions of Act 18 of April 21, 1994, upon the determination of the Clerk of the Orphans' Court that these fees are fair and reasonable, the following Bill of Costs is established to become effective on March 19, 2007, to be chargeable to the parties and to the Estates before this Court for settlement for all services of the Clerk of the Orphans' Court Division of the Court of Common Pleas of Delaware County, in the transaction of the business of this Court.

By the Court

EDWARD J. ZETUSKY, Jr.,
President Judge

Accounts of Executors and Administrators, of Trustees, Guardians of Minors and Incapacitated Persons, filing, advertising and adjudication costs:

In estates not exceeding in value \$5,000	\$116.00
Over \$5,000 and not exceeding \$10,000	\$149.00
Over \$10,000 and not exceeding \$25,000	\$198.00
Over \$25,000 and not exceeding \$50,000	\$231.00
Over \$50,000 and not exceeding \$100,000	\$281.00
Over \$100,000 and not exceeding \$250,000	\$400.00
Over \$250,000 and not exceeding \$500,000	\$500.00
Over \$500,000 and not exceeding \$750,000	\$600.00
Over \$750,000 and not exceeding \$1,000,000	\$800.00
Each succeeding \$500,000 or fraction thereof \$350 additional	
In addition to the above fees for filing, there will be a fee for recording, per page	\$3.00
Accounts, readvertising	\$90.00
Accounts, certified copy of, per page (in addition to \$20.00 for certificate)	\$3.00
Accounts, without Adjudication, filing of	\$150.00
Adjudication, certified copy of, per page (in addition to \$20.00 for certificate)	\$3.00
Adoption, report of intention to adopt	\$25.00
Counseling surcharge	\$75.00
Adoption, petition for, and order, per child	\$90.00
Certification of Adoption	\$20.00
Report of intermediary	\$50.00
Foreign adoptions, filing of	\$90.00
Petition and Order for Involuntary and Voluntary relinquishment	\$50.00
Order and Motion for Appointment of Counsel re: Adoption	\$25.00

Order to Vacate	\$25.00
Leave to Petition for Petition Re: Adoption	\$50.00
Petition for Release of Non-identifying information	\$100.00
Petition for Releases of Identifying information	\$200.00
Petition to Confirm Consent	\$50.00
Allowance, petition for and order	\$50.00
Answer, filing of	\$40.00
Appearance bond on attachment	\$20.00
Appeal to Supreme or Superior Court, certificate of record and bond	\$150.00
Assignment, filing of	\$20.00
Attachment, petition and writ	\$50.00
Auditor, order to	\$25.00
Auditor's report, filing	\$25.00
Award of real estate, certified copy	\$20.00
Birth record, certified copy	\$15.00
Delayed petition for (Act of 1941) and certified copy	\$25.00
Certified copy (Act of 1941)	\$15.00
Bond, refunding, filing of	\$20.00
Certificate and Seal	\$10.00
Citation	\$15.00
Citation, petition for and order (including citation)	\$65.00
Claim, filing of	\$30.00
Declaratory Judgment, petition for	\$50.00
Decree, certified copy of, per page (in addition to \$20.00 for certificate)	\$3.00
Deed, execution of	\$75.00
Deed of Trust, filing of (in addition to \$3.00 for recording per page)	\$40.00
Discharge of executor or administrator, petition for	\$50.00
Disclaimer	\$30.00
Election to take under or against will, filing of	\$40.00
Exceptions (filing of) or objections	\$40.00
Exemplification of record per page	\$3.00
Exemplification Certificate (under Act of Congress)	\$50.00
Family Settlement	\$150.00
Financial Statement, filing of and fiduciary qualification	\$25.00
Guardian, filing petition for, and bond (for a minor)	\$50.00
Inventory, filing, per page	\$20.00
+3.00 each additional page	
Proof of deposit	\$10.00
Guardian, petition for discharge, with account annexed	\$50.00
Incapacitated person, filing petition for citation and bond (including citation and Emergency petitions)	\$65.00
Emergency Guardianship, Filing of Extension Petition	\$50.00
Inventory, filing, per page	\$20.00
+3.00 each additional page	
Annual Reports	\$25.00
Short Certificate	\$10.00
Informal Settlement, notice of filing of,	\$150.00
Injunction, order in nature of and bond filing	\$25.00
Interrogatories	\$25.00
Joinder, filing of	\$20.00
Marriage License	\$60.00
Consent of parent or guardian	\$20.00
Decree of Court, filing (including affidavit)	\$20.00
Application for marriage license, certified copy of Application for and dup. cert. of marriage lic., certified copy	\$25.00
Application for and dup.cert. of marriage lic., exemp. copy of	\$30.00
Interpreter's Affidavit	\$20.00
Marriage Clearance Certificate	\$50.00
Non-resident Affidavit of Marriage outside of Commonwealth of Pa.	\$30.00
Replacement License Fee	\$30.00
Search Re: Divorce	\$40.00
Special Services: By Order of Court Only	
Application of Marriage License (outside office)(mileage IRS rate)	\$125.00
Waiver	\$25.00
Minor's certificate and oath	\$20.00
Money paid into court:	
Commission 2% of every dollar under \$1000.	
Commission 1% of every dollar exceeding \$1000.	
Mortgage, filing petition for leave, etc. including one description and bond	\$50.00
Each additional description	\$15.00

Opinion, filing of.....	\$30.00
Oral depositions, notice of taking.....	\$30.00
Order to continue.....	\$25.00
Order to pay, petition for and order.....	\$50.00
Orphans' Court Computerization Fee.....	\$15.00
Power of Attorney (first 4 pages).....	\$40.00
Each additional page.....	\$3.00
Petition, filing of, for additional security or waiver of additional security.....	\$50.00
Praecepte.....	\$25.00
Presumed decedent, filing petition for and decree.....	\$50.00
Purchase money, filing petition for and bond.....	\$50.00
Receipt, filing.....	\$10.00
Redating short certificates.....	\$8.00
Release, filing of, per name.....	\$10.00
Report of guardian and Trustee Ad Litem.....	\$25.00
Rule, petition for, and order (same as citations).....	\$65.00
Renunciation.....	\$15.00
Sale of Real Estate, filing petition and bond and Decree.....	\$50.00
Each additional description.....	\$10.00
Satisfaction of Award (if not in accord with Adjudication).....	\$20.00
Schedule of Distribution, filing.....	\$40.00
Search and certificate.....	\$40.00
Small Estates, distribution, filing petition for estates less than \$25,000.....	\$50.00
Special Short Certificate.....	\$10.00
State Judicial Computer System Fee.....	\$10.00
Stipulation, filing of.....	\$25.00
Subpoena.....	\$10.00
Trustee, filing petition for, and bond.....	\$50.00
Trustee Short Certificate.....	\$10.00
Family Exemption, filing claim for and recording (personal estate).....	\$30.00
Real estate, one description.....	\$20.00
Each additional description.....	\$10.00
Waiver of fiduciary commission.....	\$20.00
Withdrawal of Petition.....	\$25.00

Instruments not specifically listed will be charged at a rate comparable to this schedule for a like instrument, as determined by the Clerk of Orphans' Court Division.

[Pa.B. Doc. No. 07-236. Filed for public inspection February 16, 2007, 9:00 a.m.]

DELAWARE COUNTY
Fees of Register of Wills; No. 83-2007

Order

And Now, To Wit, this 31st day of January, 2007, in accordance with the provisions of Act 69 of December 3, 1993, upon the determination of the Register of Wills that these fees are fair and reasonable, the following Bill of Costs is established to become effective on March 19, 2007, to be chargeable to the parties and to the Estates for probating of Wills and Testaments, and for all services of the Register of Wills of this County, in the transaction of the business of his office.

By the Court

EDWARD J. ZETUSKY, Jr.,
President Judge

Administration

*For granting Letters Testamentary, Letters of Administration and Letters of Administration C.T.A., including filing, probating and recording of Will one page

estate not exceeding \$250.....	\$23.00
Over \$250 and not exceeding \$ 1,000.....	\$39.00
Over \$1,000 and not exceeding \$5,000.....	\$55.00
Over \$5,000 and not exceeding \$10,000.....	\$83.00
Over \$10,000 and not exceeding \$25,000.....	\$138.00
Over \$25,000 and not exceeding \$50,000.....	\$165.00
Over \$50,000 and not exceeding \$100,000.....	\$198.00
Over \$100,000 and not exceeding \$200,000.....	\$237.00
Over \$200,000 and not exceeding \$300,000.....	\$275.00
Over \$300,000 and not exceeding \$ 400,000.....	\$330.00
Over \$400,000 and not exceeding \$500,000.....	\$400.00

Over \$500,000 and not exceeding \$600,000	\$500.00
Over \$600,000 and not exceeding \$700,000	\$600.00
Over \$700,000 and not exceeding \$800,000	\$700.00
Over \$800,000 and not exceeding \$900,000	\$800.00
Over \$900,000 and not exceeding \$1,000,000	\$900.00
Each succeeding \$100,000 or fraction thereof \$125 additional	
For each additional page of Will	\$3.00
* No probate accepted without death certificate	
Affidavit, filing of, in relation to debts, etc.	
In estates of non-resident decedents	\$25.00
Short certificate, non-resident decedent	\$10.00
Affidavit	\$15.00
Answer, filing of	\$40.00
Appeal, filing of	\$50.00
Bond—Non-resident Executor's or Administrator's filing	\$20.00
Caveat—filing and recording	\$100.00
Bond, filing	\$20.00
Withdrawal	\$20.00
Certificate, short	\$10.00
Redating short certificate	\$8.00
Certificate, special short	\$10.00
Certification under Act of Congress (Exemplification Cert.)	\$50.00
Each additional page	\$3.00
Certified copy of Will, Inventory and appraisement or account per page	
(In addition to \$20.00 for certificate)	\$3.00
Certifying record to Orphans' Court on appeal	\$50.00
Citation, Petition for and order (including Citation)	\$65.00
*Commission to take testimony of Executor or Administrator	\$60.00
*Commission to take oath of witnesses	\$60.00
Commission from Registers for witnesses, execution of	\$30.00
Filing and Recording exemplified copies of Will, or of Letters of Administration, etc.,	
whether recorded or not	\$50.00
Each page	\$3.00
Hearing, to schedule	\$100.00
Inheritance Tax Certification	\$30.00
Inheritance Tax Return Fee	\$20.00
Supplemental Filing	\$15.00
Inventory, filing	\$20.00
Each additional page or fraction of page	\$3.00
Miscellaneous Estate—No letters granted, including statement of debts and deductions	\$55.00
Name Search (per name)	\$25.00
Non-appearing witness affidavit	\$15.00
Order	\$25.00
Petition and Order—including Letter Petitions	\$50.00
Register of Wills Automation fee	\$15.00
Renunciation, filing	\$15.00
State judicial computer system fee	\$10.00
Subpoena (Register of Wills)	\$10.00
Supplemental Letters Testamentary	\$90.00
Special Services: By Order of Court Only.	
Probate of Will (outside office) (mileage IRS rate)	\$125.00
Affidavit of witness (mileage IRS rate)	\$125.00
*Refers to Commissions sent to other counties	

Instruments not specifically listed will be charged at a rate comparable to this schedule for a like instrument, as determined by the Register of Wills

[Pa.B. Doc. No. 07-237. Filed for public inspection February 16, 2007, 9:00 a.m.]

LACKAWANNA COUNTY

**Repeal and Adoption of Rules of Civil Procedure;
No. 94 CV 102**

Order

And Now, this 19th day of January, 2007, it is hereby *Ordered* and *Decreed* that the following Lackawanna County Rule of Civil Procedure is amended as follows:

1. Lacka. Co. R.C.P. 1301(a) is amended as reflected in the attached rule;

2. Pursuant to Pa.R.Civ.P. 239(c), the following Local Rule shall be disseminated and published as follows:

(a) Seven certified copies of the Local Rule shall be filed with the Administrative Office of the Pennsylvania Courts;

(b) Two certified copies of the Local Rule and a computer diskette containing the text of the Local Rule in MS-DOS, ASCII, Microsoft Word or WordPerfect format and labeled with the court's name and address and computer file name shall be distributed to the Legislative Reference Bureau for publication in the *Pennsylvania Bulletin*;

(c) One certified copy of the Local Rule and a computer diskette containing the text of the Local Rule in MS-DOS, ASCII, Microsoft Word or WordPerfect format and labeled with the court's name and address and computer file name shall be filed with the Civil Procedural Rules Committee which shall then forward a copy to the Administrative Office of the Pennsylvania Courts (AOPC) for publication on the AOPC web site;

(d) The Local Rule shall be kept continuously available for public inspection and copying in the Office of the Clerk of Judicial Records, Civil Division and upon request and payment of reasonable costs of reproduction and/or mailing the Clerk of Judicial Records shall furnish to any person a copy of the requested Local Rule(s);

(e) A computer diskette containing text of the following Local Rule in either MS-DOS, ACSII, Microsoft Word or WordPerfect format and labeled with the court's name and address and computer file name shall be distributed to the Lackawanna Bar Association;

(f) The Local Rule shall be published on the web site of the Lackawanna Bar Association (www.lackawanna.bar.com) and the web site of the Administrative Office of the Pennsylvania Courts (<http://ujsportal.pacourts.us/>);

(g) The following amendment to Local Rule 1301(2) shall become effective thirty (30) days after the date of its publication in the *Pennsylvania Bulletin* as per Pa.R.Civ.P. 239(d).

By the Court

CHESTER T. HARHUT,
President Judge

Rule 1301. Arbitration

(a) All civil actions brought in the Court of Common Pleas of Lackawanna County in which the amount in controversy is [**\$30,000.00**] **\$50,000.00** or less shall first be submitted to arbitration and heard by a panel of three arbitrators selected from members of the bar of this court in accordance with the provisions of this rule, with the exception of:

(1) cases involving title to real estate; and

(2) cases which have been consolidated for trial with cases in which the amount in controversy exceeds [**\$30,000.00**] **\$50,000.00**.

[Pa.B. Doc. No. 07-238. Filed for public inspection February 16, 2007, 9:00 a.m.]

MONTGOMERY COUNTY

**Amendments to Local Rules of Civil Procedure
Governing Custody Mediation Orientation Program**

Order

And Now, this 22nd day of January, 2007, the Court approves and adopts the following Amendments to the Montgomery County Local Rules of Civil Procedure Governing Custody Mediation Orientation Program. These Amendments shall become effective thirty days after publication in the *Pennsylvania Bulletin*.

The Court Administrator is directed to publish this Order once in the *Montgomery County Law Reporter* and in *The Legal Intelligencer*. In further conformity with Pa.R.C.P. 239, seven (7) certified copies of the within Order shall be filed by the Court Administrator with the Administrative Office of Pennsylvania Courts. Two (2) certified copies shall be distributed to the Legislative Reference Bureau for publication in the *Pennsylvania Bulletin*. One (1) certified copy shall be filed with the Domestic Relations Procedural Rules Committee. One (1) copy shall be filed with the Prothonotary, one (1) copy with the Clerk of Courts, and (1) copy with the Court Administrator of Montgomery County, one (1) copy with the Law Library of Montgomery County and one (1) copy with each Judge of this Court.

By the Court

RICHARD J. HODGSON,
President Judge

Rule *1940.3. Order for Orientation Session and Mediation. Selection of Mediator.

(a) Except as provided in (c) below, in an action for custody, partial custody or visitation, the parties shall attend a custody mediation orientation session prior to the scheduled Custody Conciliation Conference.

(b) ...

(c) ...

Rule *1940.4. Minimum Qualifications to be a Mediator Under Local Rule 1940.3.

(a) ...

(b) ...

(c) Custody mediators must maintain a Montgomery County office address for Court assignment purposes pursuant to these Rules.

[Pa.B. Doc. No. 07-239. Filed for public inspection February 16, 2007, 9:00 a.m.]

MONTGOMERY COUNTY

Bail Money Applied to Fines, Costs and Restitution; AD 15-07**Order**

And Now, this 18th day of January, 2007, this Court's Administrative Order No. AD 302-2006, dated October 20, 2006, regarding "Bail Money Applied to Fines, Costs and Restitution" is hereby *Vacated*.

By the Court

RICHARD J. HODGSON,
President Judge

[Pa.B. Doc. No. 07-240. Filed for public inspection February 16, 2007, 9:00 a.m.]

WARREN AND FOREST COUNTIES

Local Rule of Juvenile Procedure; Dependency Matters; Rule 1167; No. 8 of 2007 Miscellaneous**Order**

And Now, this 30th day of January, 2007, the Court approves and adopts the following Warren/Forest Local Rule of Juvenile Procedure—Dependency Matters—Rule 1167—Service of Court Orders and Notices. The Rule shall become effective thirty days after publication in the *Pennsylvania Bulletin*.

The Court Administrator of the 37th Judicial District is directed to:

1. File seven (7) certified copies of this Order with the Administrative Office of Pennsylvania Courts.
2. File two (2) certified copies and one disk copy with the Legislative Reference Bureau for publication in the *Pennsylvania Bulletin*.
3. File one (1) certified copy with the Pennsylvania Civil Procedural Rules Committee.

4. File one (1) copy with the Prothonotaries of the Court of the 37th Judicial District.

By the Court

WILLIAM F. MORGAN,
President Judge

Rule L1167. Service of Court Orders and Notices

All Orders and Court Notices in juvenile dependency matters which are filed with the Clerk of Courts, shall be served promptly by Forest-Warren Human Services (Children and Youth) in accordance with the requirements and methods set forth in Rule 1167 of the Pennsylvania Rules of Juvenile Court Procedure.

[Pa.B. Doc. No. 07-241. Filed for public inspection February 16, 2007, 9:00 a.m.]

**DISCIPLINARY BOARD OF
THE SUPREME COURT****Notice of Hearing**

A Petition for Reinstatement to the active practice of law has been filed by M. Abraham Ahmad and will be the subject of a hearing on March 28, 2007 before a hearing committee designated by the Board. Anyone wishing to be heard in reference to this matter should contact the District I Office of the Disciplinary Board of the Supreme Court of Pennsylvania, 16th Floor, Seven Penn Center, 1635 Market Street, Philadelphia, PA 19103, (215) 560-6296, on or before March 16, 2007. In accordance with Rule 217(f), Pa.R.D.E., since this formerly admitted attorney resides outside of the Commonwealth of Pennsylvania, this notice is published in the *Pennsylvania Bulletin*.

ELAINE M. BIXLER,
Secretary

*The Disciplinary Board of the
Supreme Court of Pennsylvania*

[Pa.B. Doc. No. 07-242. Filed for public inspection February 16, 2007, 9:00 a.m.]

RULES AND REGULATIONS

Title 25—ENVIRONMENTAL PROTECTION

SUSQUEHANNA RIVER BASIN COMMISSION

[25 PA. CODE CHS. 803—808]

Review and Approval of Projects; Special Regulations and Standards; Hearings and Enforcement Actions

Summary. This document contains amendments to the Susquehanna River Basin Commission (Commission) project review regulations currently published at 18 CFR Parts 803—805. The regulations provide the procedural and substantive rules for Commission review and approval of water resources projects and the procedures governing hearings and enforcement actions. These amendments include additional due process safeguards, add new standards for projects, improve organizational structure, incorporate recently adopted policies and clarify language. The amendments were first proposed on July 7, 2006 in the Federal Register, Vol. 71, No. 130, p. 38692. Comments received on the proposed rule making are summarized with accompanying responses in the “Supplementary Information” section below. Changes were made to the proposed rules in the final rule making in response to these comments, including the “removal and reservation” of Parts 803—805 and the substitution therefore in this final rule making action of Parts 806—808, respectively.

Dates. These rules shall be effective January 1, 2007.

Addresses. Susquehanna River Basin Commission, 1721 N. Front Street, Harrisburg, PA 17102-2391.

For Further Information Contact. Richard A. Cairo, General Counsel, (717) 238-0423; fax (717) 238-2436; e-mail rcairo@srbc.net. Also, for further information on the final rule making action, visit the Commission's website at www.srbc.net.

Supplementary Information:

Background

The Commission proposed rules amending its “Regulations and Procedures for the Review of Projects” presently found at 18 CFR Parts 803—805, which were published on July 7, 2006, in the FR, Vol. 71, No. 130, p. 38692. Those rules establish: (1) The scope and procedures for review and approval of projects under Section 3.10 of the Susquehanna River Basin Compact, Pub. L. 91-575; 83 Stat. 1509 et seq. (the compact); (2) special standards under Section 3.4(2) of the compact governing water withdrawals and consumptive use of water; and (3) procedures for hearings and enforcement actions. The Commission received numerous comments on the proposed rule making action, which are summarized below with an accompanying response to each. The SRBC made a number of adjustments and changes to the proposed rules in this final rule making action in response to those comments. One change that should be noted is the removal and reservation of 18 CFR Parts 803—805, and the substitution therefore in this final rule making action of Parts 806—808 respectively. The contents that appeared in Parts 803—805 of the proposed rule making now appear in Parts 806—808 respectively; hence, this is

not an enlargement of the purposes of the proposed rule making, but simply an editorial change in response to a comment that Commission received pointing to the possible confusion of retaining the same numbering system for the revised regulations. Comments received on the proposed rule making referred to the numbering system as published, namely Parts 803—805, and comments and responses set forth below follow that same construction, even though now superseded by Parts 806—808, respectively.

General Comments

Comment: Revisions will strengthen and streamline Commission project review regulations.

Response: The Commission agrees that the revisions will strengthen and streamline its regulatory program.

Comment: Commission proposed regulations should more strongly emphasize the importance of economic development in its statement of purposes and in the criteria on which an approval will be granted or denied. SRBC should attempt to more carefully balance the economic benefits of a project versus other interests such as the environment. Tools should be developed for analyzing the “harms” of a project versus its “benefits.” If there are only minor environmental impacts and great economic benefits, projects should be approved.

Response: The Commission believes that there are already sufficient references to the purposes of economic development in both the Susquehanna River Basin Compact (the “compact”) and the project review regulations. The Commission, in its review process, does take into consideration the economic development aspects of a project and works with project sponsors to help them use water resources in a way that will enhance economic growth while avoiding conflicts with other users.

Comment: The Commission should explore the use of free market tools such as credits and trading for compliance with its regulations.

Response: The Commission considers that tools such as credits and trading for compliance with regulations are probably more applicable to water quality regulations than to water quantity regulations of the type administered by the Commission. Nevertheless, an element of free market tools is already incorporated in the proposed regulation Section 803.22 (“Standards for consumptive uses of water”), in that project sponsors are allowed a wide choice of mitigation methods, including the free market acquisition of water for flow augmentation.

Comment: In several instances, the Commission is writing authority into the regulations that does not exist under the compact. For example, Article 11 of the compact pertaining to protected areas is the only section that mentions any authority for approval of withdrawals. Also, there is no compact authority for other items in the regulations such as cease and desist orders and the issuance of subpoenas. Many other examples are cited.

Response: This comment reads the terms of the compact far too narrowly and fails to consider other broad grants of power given to the Commission to manage the river basin's water resources. For example, Section 3.5(4) of the compact states that the Commission “shall assume jurisdiction in any matter affecting water resources whenever it determines *** that the effectuation of the comprehensive plan or the implementation of the compact so

requires.” Also, Section 3.4(9) states that the Commission “may have and exercise all powers necessary or convenient to carry out its express powers and other powers which reasonably may be implied therefrom.” Finally, Section 3.10(2) of the compact makes it clear that the Commission’s power to approve projects is not limited.

Comment: The Commission has seemingly unlimited authority to arbitrarily impose enforcement action and prescribe remedies, and is not responsible or accountable to its basin-constituent population or economic interests.

Response: Like any other government agency, the Commission does not operate without limits imposed by the compact, the Constitution, and laws of the United States. Also, the Commission is directly responsible to its member jurisdictions, each of which is represented on the Commission.

Comment: The proposed regulations should have been presented in a redline/black-line format that shows changes along side of current regulations. Old regulation sections from which regulations were moved or deleted should have been “reserved” instead of reused with new regulatory material because existing policies that refer to these same sections will no longer be accurate and could lead to confusion among those persons reviewing those policies.

Response: These revised regulations represent a complex overhaul of the current Commission regulations that involved the wholesale reorganization of the existing sections, the extensive revision of existing sections, and the addition of whole new sections. Such changes cannot be effectively placed in redline/black-line, side-by-side format without creating even more confusion for a reviewer attempting to review the disjointed mixture of moving text, additions, and deletions. It was therefore decided that the proposed revisions would be presented as an entirely new package of regulations and that the major changes would be described section by section in the preamble of the proposed rulemaking action. Most policies were incorporated into the body of the regulations, which will provide clarity for the regulated community and others. References to sections of the regulations that are no longer accurate will be revised accordingly. Also, with regard to “reserving” old sections of the regulations, the Commission has decided that, as part of its final rulemaking action, it will “remove and reserve” Parts 803—805 and replace those Parts respectively with new Parts 806—808. This is being done in accordance with Federal Register guidelines. All references in this Comment and Response document will reference section numbers as originally proposed (that is, Parts 803—805).

Comment: The new policies, procedures, and regulations implemented by the Commission over the last six years have already imposed significant administrative burdens on the regulated community. Some in the regulated community are now concerned that these new regulations will impose even more burdens that will adversely affect the economic vitality of the basin and drive investors to basins with a friendlier regulatory environment.

Response: The Commission acknowledges that compliance with Commission regulations does place certain short-term administrative and financial obligations upon the regulated community. However, the long-term benefits of Commission management and protection of a critical resource must also be considered. Project sponsors and other water users receive certain protections related to their water use that extend far beyond the protections

afforded by the common law. Furthermore, the incorporation of policies and overall refinement of the regulations are intended to foster sustainable use of the resource over the term of an approval, even through times of drought. As such, some of the rigor complained about affords protection to existing uses, including economic uses, and allows for responsible economic development in the basin.

Comment: The Commission should establish a more integrated project approval process that directly considers the impacts of a project in terms of both water quantity and quality, and facilitates implementation of statewide water quality programs and mandates, including the Chesapeake Bay Tributary Strategies program, the anti-degradation program and the TMDL program.

Response: The member jurisdictions continue to maintain primary jurisdiction for regulating water quality pursuant to federal regulations under the Clean Water Act. To avoid duplication, the Commission focuses its review on water quantity while considering the impacts of a project on water quality, primarily through integrated, extensive coordination with agencies of its member jurisdictions.

Comment: The Commission should encourage “smart growth” communities that cluster development and have less impact on the environment. SRBC, by increasing regulatory thresholds, eliminating transferability of approvals, shortening amortization times and generally creating uncertainty about future water rights, would seem to promote sprawl by encouraging large lot development with individual wells to avoid SRBC regulation.

Response: The Commission rejects the notion that this set of revised regulations will somehow discourage clustered development and create uncertainty about future water rights. If anything, these strengthened regulations improve the Commission’s ability to effectively manage the water resources of the basin, and will reinforce certainty about future water supplies by assuring users that they are drawing on reliable sources of water that will not be subject to conflict or interference with other users. It also acknowledges that land use decisions are made at the local level in all of its member jurisdictions.

Comments by Section, Part 803

Section 803.1. Scope

Comment: Decisions made by the Commission should reference the section of the comprehensive plan that is relied upon.

Response: Docket approvals presently do reference the project’s compliance with the terms of the comprehensive plan, but a reference to a single section of the comprehensive plan would be too limiting in most cases.

Section 803.2. Purposes

Comment: The reference to economic development should be strengthened by stating that it is a purpose of the regulations to promote economic development and financial investment. It was further suggested that the purposes section should acknowledge the water-related dependency of many large and small commercial, industrial, and mining industries in the basin. Finally, the words “and control” should be deleted from Section 803.2(a)(2).

Response: Again, the Commission feels that the existing reference to economic development in this section is sufficient. The Commission also promotes economic stability and certainty by protecting the sources of water that all such activities depend on for their use and develop-

ment. The Commission protects more than just the environment; the Commission heads off conflicts between users and helps users maintain reliable sources of water. The word "control" comes directly from the purposes section of the Susquehanna River Basin Compact and cannot be removed or deleted.

Section 803.3. Definitions

Comment: Revise the "groundwater" definition to indicate that "groundwater" includes that water contained in quarries, pits and underground mines not originating directly from surface water inflow (runoff)." Also add that the term groundwater "includes water derived from a spring by pumping or other means of drainage which reduces or eliminates the surface flow."

Response: The definition has been modified to include "or other means of drainage." The Commission does not consider the addition of the other suggested wording to be necessary.

Comment: The last sentence in the "groundwater" definition is confusing and, when read in conjunction with the "surface water" definition, may exclude ground or surface water that is intended to be included.

Response: Agreed. Additional language contained in the current definition has been reinserted to clarify the definition.

Comment: The "surface water" definition uses the term "surface of the earth," while the "groundwater" definition uses the term "surface of the ground."

Response: Agreed. The term has been changed to "surface of the ground."

Comment: There is a need to define the term "undertake" to make clear what constitutes the commencement of a project requiring approval under Section 803.4, and, to insure that mere site preparation such as clearing and grubbing are not included under the definition, a definition of "construction" should also be included.

Response: Agreed. New definitions have been included for the term "undertake" and for the term "construction." The definition of construction insures that mere site preparation activity will not be included under the definition of "undertake". Combined, these definitions clarify what activity is subject to prior review and approval.

Comment: Revise the "project" definition because it is confusing and ambiguous.

Response: This definition utilizes wording taken directly from the Susquehanna River Basin Compact.

Comment: Revise the "pre-compact consumptive use" definition by adding the following words after the date "January 23, 1971": "established on the basis of credible documentation."

Response: The Commission does not consider the suggested language to be necessary. All such determinations are already made on the basis of credible documentation evaluated by Commission staff.

Comment: Revise the "water resources" definition to remove the term "and related natural resources" because it is unclear what these "related natural resources" are.

Response: This definition utilizes wording taken directly from the Susquehanna River Basin Compact.

Comment: Restore the use of the words "for use" in the "withdrawal" definition.

Response: The Commission agrees to restore the words "for use in the basin."

Section 803.4. Projects Requiring Review and Approval

Comment: The proposal to require a new review and approval by the Commission after a change of ownership of a project will substantially complicate and hinder the transfer of projects and therefore reduce the attractiveness of investments in projects in the basin. Frequent corporate changes, reorganizations, and mergers are common in the energy industry today. Requiring a new docket application for each such event would be administratively unwieldy, reduce predictability, and will add unnecessary risk for anyone willing to sponsor a project.

Comment: Requiring approvals upon change of ownership of a project may also discourage water companies from taking over smaller, inadequate systems due to the uncertainties created regarding the new quantities of water that will be available under a reissued approval. Furthermore, there does not appear to be a need to require that full project reviews be performed when there is a change of ownership of a project unless there is a change in conditions that really warrants such a full review.

Comment: The Commission should consider some way of preliminarily evaluating whether there has been such a change before requiring submission of a new application by transferees or simply reopening the docket under its reopening authority. Also, the Commission may want to focus on the ability of a transferee to comply with the existing approval. Yet another suggestion is for the Commission to require the submission of a notice of a change of ownership prior to the transfer, together with a transfer fee. This would enable the Commission to stay fully informed about which entities hold approvals, facilitate enforcement of any limitations or conditions, and offset the Commission's processing and administrative costs.

Response: The Commission has added new paragraph (b) that lists categories of projects that are exempt from the requirement for Commission approval upon a change of ownership. These exemptions were originally contained in the "change of ownership" definition and have been relocated to this section. The Commission has also added new paragraph (c) that allows projects not otherwise exempt under paragraph (b), to be undertaken by a new project sponsor (the transferee) upon a change of ownership pending action by the Commission on an application submitted by such new project sponsor requesting review and approval of the project. Both paragraphs (b) and (c) relate to projects that did not require Commission approval prior to January 1, 2007.

Comment: New owners should be required to seek approval of their water consumption and have full accountability for compliance with the terms for approval.

Response: Subject to the exceptions noted in our response above, the Commission agrees.

Comment: The Commission should not end the grandfathering of consumptive uses existing prior to January 23, 1971. The Commission has not provided a good reason to end this practice that has been a part of the Commission's regulations since their inception, and which project sponsors have come to rely on.

Comment: The intention of grandfathering is to protect the expectations of the person, but not the project. The proposed limitation on grandfathering does not affect the reasonable expectations of any person who is the current owner. Ending grandfathering assures fair implementation of the regulations. Exemptions provided to ag and family transfers should be continued indefinitely.

Response: The rationale for gradually retiring grandfathered benefits upon the transfer of ownership of a project is that, with few exceptions, such portions of the basin's water resources should not be allowed to continue indefinitely into the future unmanaged. Under the compact, the Commission is responsible for the comprehensive management of all of the basin's resources. While it was reasonable to allow those who possess grandfathered benefits to continue their use of them, the unfettered transfer of them to subsequent purchasers effectively creates a situation of prior appropriation.

Comment: The Federal reservations to the Susquehanna River Basin Compact specifically prohibit the Commission from charging for pre-compact uses of water under Section 3.9 of the compact. Section 3.9 only allows the Commission to charge for use of its facilities or its services. Waters consumptively used are not a product of the Commission facilities or services, but are produced by the streams and rivers owned by the individual states. There is no basis for charging these projects a fee. Finally, grandfathered amounts encourage water conservation.

Response: The fees paid by consumptive users are not made under the authority of Section 3.9 of the compact and are therefore not subject to the federal reservations regarding charges under Section 3.9 of the compact. Instead, these fees are just one of several means of compliance with the consumptive use regulation that a project sponsor can employ. The Commission places the proceeds of such charges into a special water management fund where they are used to purchase storage for release during low flow and to implement other measures to mitigate the effects of consumptive water use. Project sponsors are free to propose other means of mitigation.

Comment: Section 803.4(a)(4) requiring approval of any consumptive use that adversely affects purposes outlined in Section 803.2 is overly broad and too vague to effectuate compliance because it provides no quantitative or qualitative benchmarks.

Response: Agreed that this paragraph may be overly broad in scope. This paragraph has therefore been stricken.

Comment: In (a) Consumptive use of water, and (b) Withdrawals, change the reference to Section 803.12 to Section 803.13.

Response: Agreed. This cross-reference was incorrect and has been changed.

Comment: The proposal to regulate combined surface and groundwater withdrawals of 100,000 gpd or greater brings more withdrawals under review and approval, and better enables the Commission to ensure that substantial withdrawals do not compromise basin water resources.

Response: The Commission strongly agrees.

Comment: Combining groundwater and surface water to reach the withdrawal threshold of 100,000 gpd opens the regulatory process to include both when only one may be increased. Approval thresholds should remain separate.

Response: The Commission strongly believes that the hydrologic link between surface and groundwater justifies combining surface and groundwater withdrawals under one regulation that can consider and manage their mutual impacts. This conforms to the comprehensive management principles set forth in the compact.

Comment: The combined surface and groundwater requirement will force applicants to file two applications and pay two application fees.

Response: The proposed regulation does not have the effect referenced in the comment. If finally adopted, the Commission intends to institute a new application system for withdrawals and intends to modify its fee schedule to accommodate combined withdrawals.

Comment: The Commission should exempt the first 20,000 gallons per day (gpd) of an into-basin diversion as it has exempted the first 20,000 gpd of an out-of-basin diversion.

Response: The Commission does not agree that into-basin diversions should also be exempted up to 20,000 gpd. Regardless of quantity, the Commission wishes to insure that only water of good quality or properly treated water is being diverted into the Susquehanna River Basin. Rather than grant a blank exemption, the Commission will consider the possibility of a future "administrative agreement" or other informal arrangement with member states to accept their review and approval of a discharge into the basin (diversion) as an approval by the Commission.

Comment: Diversions should only be approved when the applicant demonstrates the clear need and a lack of alternatives.

Response: The Commission feels that the new regulation, which incorporates the Commission's out-of-basin diversion policy, adequately covers these criteria with respect to out-of-basin diversions.

Comment: There are no substantive criteria in 803.4(g) to establish a threshold as to when "other projects" may be required to submit an application.

Response: This paragraph is in conformance with Section 3.10(3) of the compact that grants the Commission and the member jurisdictions the broad authority to identify other projects that require Commission approval.

Section 803.5. Projects That May Require Review and Approval

Comment: With respect to (a), terms used such as "affect interstate water quality or interstate waters" and "significant effect" are too vague and do not sufficiently establish a quantitative standard. There is no requirement to identify which part of the comprehensive plan is adversely affected and therefore there is no way for an applicant to determine this.

Response: This is language that simply restates and is consistent with the language of the compact, Section 3.10. A project sponsor whose project affects the comprehensive plan would be informed about which part of the plan is so affected when it is notified in writing by the Executive Director under Section 803.4 (g).

Comment: With respect to (b), there should be a "pre-determination notice" procedure that would afford a project sponsor the opportunity to supplement information, discussion, and technical interaction before a determination is made by the Executive Director.

Response: If the Executive Director is called upon to make a determination, he/she will notify the project sponsor to submit such information prior to a determination. This will be part of the due process automatically afforded a project sponsor and there is no need to provide for it separately in the regulation.

Section 803.6. Transferability of Project Approvals

Comment: Support expressed for limited classes of transfers.

Comment: The proposed language should be eliminated for the same reasons given under the comments submitted on Section 803.4. regarding "change of ownership" and the existing rule regarding transfers should be retained. Essentially, restrictions on the transfer of Commission approvals create the same burdens on the regulated community as described in the comments on Section 803.4 above.

Response: This section has been extensively revised to now generally permit the transfer of project approvals. All transfers would require advance notification and certification to comply with all terms and conditions of the transferred approval. Transfers qualifying under new paragraph (b) can be made automatically without further Commission action. Transfers qualifying under new paragraph (c) can be made conditionally with a subsequent application to the Commission within 90 days from the transfer requesting review and approval of previously unapproved aspect of the project. Transfers qualifying under new paragraph (d) can also be made conditionally with a subsequent application to the Commission within 90 days from the transfer requesting review and approval of the entire project.

Section 803.7. Concurrent Project Review by Member Jurisdictions

Comment: Insert the words "to avoid delays" after the words "to avoid duplication of work." All reviews should be carried on in parallel with other agencies so as to avoid any delays in the review process.

Response: The suggested language is seen as unnecessary since it is the express purpose of the section.

Comment: Substitute the words "appropriate administrative agreements" or "informal arrangements" for "agreements of understanding" and "agreements" to be consistent with Section 804.3.

Response: Agreed.

Section 803.8. Waiver/Modification

Comment: The "modify" portion of this section gives the Commission too much discretion to actually change the requirements of a regulation that has already been promulgated. Therefore, the references to "modification" and "modify" in this section should be deleted.

Response: This section has been a part of the Commission's regulations since the first omnibus rulemaking package was adopted in 1995. It is generally used to relieve project sponsors of unnecessary requirements, rather than to place additional requirements upon a project sponsor. The Commission expects that this type of use of the "waiver" section will continue, although it reserves the right to use such discretion in appropriate circumstances.

Section 803.12. Constant-Rate Aquifer Testing

Comment: There should be an introductory paragraph that includes a statement of purpose.

Response: The Commission has added additional wording that explains the purpose of constant-rate aquifer testing.

Comment: This section should state that constant-rate aquifer testing plans shall be prepared by a qualified and licensed professional geologist.

Response: The Commission defers to state law on this matter. Geologists are not formally licensed in New York or Maryland.

Comment: This section should state that constant-rate aquifer testing plans shall follow published Commission guidelines which shall be consistent with current industrial standards.

Comment: Once testing is complete, the Commission should not be able to require additional testing or monitoring unless the purposes of the first testing have not been met. The specific circumstances requiring additional testing should be set forth.

Response: These comments are addressed in the Commission's revised Aquifer Testing Guidance. Testing is conducted to provide a sound scientific basis for the Commission's decision regarding a project. Additional testing and monitoring is required to confirm assumptions in the interpretation of data or to verify system performance.

Comment: Paragraph (d) allows the Commission to impose arbitrary demands for additional testing.

Response: As is the case with every governmental agency, the Commission may not constitutionally impose arbitrary requirements.

Comment: This section deserves support.

Response: Agreed.

Section 803.13. Submission of Application

Comment: Add a new subsection that describes the deadlines to which the Commission would be obliged with respect to: (1) Administrative completeness; (2) technical reviews of applications; (3) review of supplemental submissions required by the Commission; and (4) actions to be taken by the Commission.

Response: The Commission feels that it would be more appropriate to address this comment in a set of accompanying guidelines rather than in the regulation itself.

Comment: In paragraph (b), how will a transferee of a project know that it is to comply with all of the requirements to certify an intention to comply and assume all associated obligations?

Response: This provision has been relocated to Sec. 806.6. The Commission will make available appropriate notification and certification forms to assist transferees in complying with the requirements.

Comment: In paragraph (c), the Commission should impose a time limit on itself to determine the completeness of an application.

Response: The provision has been deleted.

Section 803.14. Contents of Application

Comment: Applications by project sponsors should demonstrate the consistency of projects with locally adopted comprehensive plans and with state water plans.

Response: The notice of application procedure, which covers notification to local municipalities and county planning agencies, provides an ample opportunity for those entities to submit comments to the Commission on the consistency of the projects with local plans. The Commission coordinates with state agencies on each project application, providing the states with an opportunity to comment on the consistency of the projects with any of their water plans.

Comment: Some items that are now required to be provided in project applications are made discretionary on the part of the Commission in the new regulations. Many of these items provide information relevant to whether a

proposed project impacts water resources of the basin. These should continue to be mandated.

Response: The regulation has been restructured to mandate certain information that is uniformly applicable to all projects. The informational requirements listed as discretionary are also important, but not all are necessary for all projects. The Commission believes some discretion is needed to tailor informational needs on a case-by-case basis.

Comment: Applications should not be deemed incomplete if they lack a plan for avoiding or mitigating consumptive use because large volume consumptive use may be a legitimate purpose. Instead preface with statement "As may be appropriate, depending upon the nature of the project, plans for avoiding * * * (etc)".

Response: Mitigation is one of the fundamental purposes of the consumptive use regulation. It is essential that a project sponsor develop a plan for mitigating its consumptive use. Development of a plan does not in any way imply that the use is not legitimate.

Comment: Two additional subsections should be added to allow the applicant to provide information regarding: (1) The benefits of the project; and (2) plans to mitigate adverse impacts of potential adverse effects.

Response: The project sponsor may, as it chooses, submit this information to the Commission. There is no need to make it a required submission.

Comment: Add a new item (xi) Evidence of compliance with all registration requirements of the Commission and the appropriate member jurisdictions.

Response: Agreed.

Comment: In (a)(2)(i), the project location should be determined by gps accurate to 10 meters.

Response: Agreed.

Comment: Paragraph (a)(2)(v) would seem to allow a requirement for a constant-rate aquifer test even if the application is for surface water, and it is the surface water application that causes the combined request to exceed 100,000 gpd.

Response: Commission staff will take into account such situations and, as appropriate, recommend a waiver of the constant-rate aquifer test.

Comment: With respect to paragraph (a)(3)(ii), is a PNDI being required?

Response: The Commission currently conducts a review for threatened or endangered species and their habitats. Under the new regulations, the project sponsor will submit this information with the application.

Comment: With respect to (b)(1)(ii), under what authority can the Commission require information on the ability of a project sponsor to fund a project?

Response: This is a necessary and convenient power under Section 3.4 (8) to reasonably ascertain the financial ability of the project sponsor to carry out a project in a manner to be approved by the Commission, including any conditions that the Commission may impose. This authority is only exercised in very limited situations.

Comment: With respect to (b)(1)(iii), relating to the identification of alternatives, what is a reasonable alternative? Will there be any guidance in this regard?

Response: Reasonable in this context refers to alternatives that may be appropriate for a particular situation. Commission staff will provide guidance and consultation as needed.

Comment: With respect to (b)(1)(iv), will the Commission maintain an inventory of anticipated uses?

Response: It is not necessary for the Commission to maintain such an inventory. Existing and anticipated uses should be identifiable by project sponsors or their consultants in each situation. For example, if the project is proposed for an area that has experienced rapid growth, anticipated uses should be evident, or reasonably discernable.

Comment: With respect to paragraph (3), it is much too open ended, allowing the Commission to ask for anything it deems necessary without limit.

Response: Again, as in any action it takes as a government agency, the Commission must act reasonably. Under constitutional law principles, there must be a rational relationship between what regulatory actions the Commission takes and a legitimate regulatory objective.

Comment: The regulations should continue the requirement for submission of comprehensive information about potential impacts of withdrawals and availability of alternatives, rather than allow its submission to be discretionary on the part of the Commission.

Response: Again, the regulation has been restructured to mandate certain information that is uniformly applicable to all projects. The informational requirements listed as discretionary are also important, but not all are necessary for all projects. The Commission believes some discretion is needed to tailor informational needs on a case-by-case basis.

Comment: There should be compatibility with regional and state Act 220 plans.

Response: The Commission routinely coordinates its approvals with its member jurisdictions. The project sponsor is required to give notice to the municipality and county planning agency of its application for approval, thereby providing an opportunity for local and regional interests to comment on the compatibility of projects.

Section 803.16. Completeness of Application

Comment: Add a statement providing that the Commission will provide the project sponsor with either a formal notice of administrative completeness, or a deficiency notice within a prescribed time.

Response: The Commission currently provides deficiency notices, when appropriate, as reviews are undertaken.

Section 803.21. General Standards

Comment: Omit the sentence containing the subjective terms "detrimental" and "proper."

Response: The wording comes directly from the compact.

Comment: The words "modify and approve as modified" should be rephrased to "With the applicant's consent, the Commission may modify * * *" Only the applicant should have the right to modify a project, not the Commission.

Response: Again, the wording comes directly from the compact. Also, this sentence is not meant to imply that the Commission would unilaterally modify a project without prior notice. It may condition its approval on the project sponsor making a modification or incorporating a condition that would help meet a Commission regulatory objective, but the Commission would not unilaterally modify a project without prior notice and an opportunity to be heard.

Comment: Add a new subsection that requires that Commission staff provide a draft docket to project sponsors at least 10 days in advance of Commission action on that docket. If the staff is recommending modifications, they should be required to provide the reasons for the recommended modifications in writing with quantitative analysis.

Response: The Commission strives to provide project sponsors with a draft docket as far in advance of final Commission action as possible. However, due to fluctuations in the number and complexity of dockets before the Commission at any particular meeting, a guarantee of ten (10) days advance review is not possible in all cases.

Comment: The Commission should not suspend review or revoke approval due to the disapproval of another government agency, especially when what some other agency is deciding has little or nothing to do with the water resources of the project. Furthermore, this provision seems to limit the Commission's power to preempt municipal regulations that, at least under Pennsylvania Law, illegally attempts to regulate water withdrawals. Instead of suspending review, the Commission should proceed expeditiously with its review and approval process and simply condition its approval on the applicant obtaining and retaining all other applicable approvals.

Response: The Commission will not suspend its review or approval of a project in response to the illegal exercise of authority by another governmental jurisdiction. However, it makes sense to coordinate Commission review and approval actions with other governmental jurisdictions. By the same token, it makes little sense for the Commission to expend staff resources on the review of projects that have been rejected by other governmental jurisdictions and cannot, therefore, be implemented.

Comment: This section should be supported because it allows the Commission to streamline its decision making with other government entities involved in project review.

Response: Agreed. See response to prior comment.

Comment: Should include language acknowledging the importance of economic interests of the applicant, community, region, etc.

Response: See above responses regarding purposes of the regulations.

Section 803.22. Standards for Consumptive Uses of Water

Comment: Eliminating the Q7-10 trigger flow for providing makeup during periods of low flow leaves too much discretion to SRBC and leaves no guidance to project sponsors to determine risk and costs.

Response: The elimination of the Q7-10 trigger flow criterion effectively changes little because few consumptive use projects approved by the Commission are now tied to this criterion. Most project sponsors opt for payment of the consumptive use fee as a means of compliance rather than release storage or shut down during low flow periods. When the Commission does set a low flow criterion, it does so on a case-by-case basis using modern assessment techniques that allow the Commission to more accurately assess the particular needs of the affected stream. The Commission establishes pass by flow requirements the same way. In cases involving a consumptive use as well as a withdrawal, the established pass by flow serves as the low flow criterion for a project. In the rare event that a flow criterion is set for a particular project, it will be done only after the project sponsor is given the opportunity at a public hearing to submit information and make relevant arguments regard-

ing the establishment of a flow criterion for its project. The criterion will not be established arbitrarily and without notice and opportunity for response.

Comment: "Sole Discretion" language too open ended and must incorporate reasonableness.

Response: See responses above to allegation that the Commission may act arbitrarily under these proposed regulations.

Comment: Support expressed for the approval by rule procedures as a means of streamlining the approval process.

Response: The Commission agrees.

Comment: Section 803.22 (b)(4) is inconsistent with the other alternatives provided under (b).

Response: Agreed. It has been made a separate item.

Comment: With respect to (b)(1)(ii), an explanation should be included as to why a project may be required to reduce its withdrawal to an amount greater than its consumptive use.

Response: Agreed. The words "or greater than" have been removed.

Comment: Eliminate mitigation requirement.

Response: Mitigation of consumptive use is a fundamental purpose of the consumptive use regulation and an element of the regulation that comes directly from the Commission's comprehensive plan. Eliminating mitigation requirements essentially would ignore the provisions of the comprehensive plan.

Comment: On the approval by rule provision, the Commission should provide for a 30- to 60-day notification instead of 90 days.

Response: The Commission feels that the 90-day notification is appropriate for qualified projects.

Section 803.23. Standards for Water Withdrawals

Comment: SRBC withdrawal regulations relating to the protection of existing users should make clear that inefficient existing sources of water may not necessarily be protected.

Response: The Commission does not wish to imply that it will protect existing users under all circumstances, thus in effect granting a prior appropriation of water, which is prohibited under the compact.

Comment: Section 803.23(b)—Add the word "significant" before the words adverse impacts.

Response: Agreed. This will remove the implication that a de minimis adverse impact will form the basis for some limitation or condition.

Comment: Section 803.23(b)(2)—Add "Commission may consider and balance."

Response: As it has always done, the Commission will carefully weigh the necessity of any requirement or limitation that it imposes versus the benefit to be achieved.

Comment: Section 803.23(b), that allows the Commission to deny, limit or condition an approval to insure no adverse impact, incorrectly suggests that lowering of groundwater levels and stream flow levels is an adverse impact. These may be perfectly legitimate occurrences in connection with use of an aquifer.

Response: The Commission has added "significant" before the words "adverse impact" to remove the implica-

tion that a de minimis adverse impact will form the basis for some limitation or condition.

Comment: In Section 803.23(b), the Commission should not accord protection status to intermittent streams, as such protection would unduly restrict the use and potential of aquifers that can be used as groundwater reservoirs to provide economically important water supplies.

Response: The Commission believes that headwaters must be carefully managed to insure a proper balance of sustainable development, responsible use, and conservation. Intermittent streams are not afforded special protection; however, Commission staff does evaluate for potential adverse impacts. The withdrawal of large quantities of groundwater from small headwater basins can dewater springs and wetlands, and reduce the groundwater contribution (base flow) to headwater streams. This can change the previous intermittent reaches to ephemeral reaches and the uppermost perennial reaches to intermittent reaches. While the loss of perennial stream length is generally a small fraction of the entire stream, it often represents the most pristine portion of the watershed with respect to water quality and habitat.

Comment: The Commission needs to define the term "low flow." The most logical definition is the Q7-10 low flow. To protect stream flows at any higher level would unduly restrict the use and potential of aquifers that can be used as reservoirs for economically important activities.

Response: The Commission sets low flow criteria on a case-by-case basis using modern assessment techniques to accurately assess the particular needs of the affected stream. The Commission will carefully weigh any limitation it imposes versus the benefit to be achieved.

Comment: The Commission should provide its regulatory requirements concerning the establishment of passby standards in Section 803.23. The current practice of setting a passby standard at 20 percent of average daily flow is not a fair, reasonable and appropriate approach to balancing the need to allow a beneficial stream withdrawal with the need to protect the stream ecology.

Response: The Commission has incorporated passby standards in guidelines that it makes available to all applicants. The Commission sets a low flow criterion based on the particular needs of the stream, the best available science, and on a case-by-case basis. Instream needs are assessed using standard methodologies and can always be refined by local studies. Incorporating the standards in guidance enables the Commission to periodically update those standards as new science emerges.

Comment: The Commission should define terms such as "adverse impact, aquatic habitat and water quality degradation."

Response: The latter two items, as used in Section 803.23, are listed only as possible indicators of adverse impacts that the Commission may consider in each individual case or circumstance. It is not necessary or desirable to place specific weight or limiting criteria on factors that are merely indicators of possible adverse impacts. The term "adverse impacts" or "adverse effect" comes directly from the language of Section 3.10 of the Susquehanna River Basin Compact granting authority to the Commission to review and approve projects that may cause an adverse effect.

Comment: In 803.23(b)(3), make it clear that the applicant shall have the right to propose mitigation measures to offset potential adverse impacts of the proposed project.

Response: The Commission encourages a project sponsor to propose mitigation for any potential adverse impacts in its application(s). Further, the Commission carries on an active dialogue with project sponsors during the review process, and the project sponsor is free at that time to propose any reasonable form of mitigation.

Comment: A decision to deny, modify or conditionally approve a withdrawal project should be accompanied by a technical evaluation that is provided to the project sponsor in a timely manner to allow sponsor to rebut the conclusions or revise its application to address concerns raised by the Commission.

Response: As stated above, the Commission carries on an active dialogue with the project sponsor during the review process that allows for an exchange of information on staff conclusions and concerns, and how such concerns may be resolved.

Comment: The Commission should consider a new MOU with DEP Mining to avoid the "double jeopardy" concern.

Response: The proposed Section 803.7 provides for administrative agreements or other cooperative arrangements with agencies of the member jurisdictions. The Commission anticipates that existing agreements will be reconsidered following adoption of the new regulations.

Section 803.24. Standards for Diversions

Comment: This section should be supported or even strengthened to explicitly state that an applicant for a diversion must demonstrate "by clear and convincing evidence" a need for the diversion.

Response: The Commission believes that the language proposed ensures that the project sponsor will be required to adequately demonstrate a need for the diversion without the formal inclusion of an evidentiary standard that may be subject to further construction or interpretation.

Section 803.25. Water Conservation Standards

Comment: AWWA standards should be used for customer meter testing under Section 803.25(a)(2). Is the definition for "flow control device" correct?

Response: The water conservation standards were taken directly from the current regulations. The Commission intends to revisit this section in the future and will evaluate the published standards at that time.

Section 803.30. Monitoring

Comment: The Commission should accept testing and monitoring done in accordance with member state standards when the state has a parallel or equally stringent procedure.

Response: The water conservation standards were taken directly from the current regulations. The Commission intends to revisit this section in the future and will evaluate the published standards at that time.

Comment: The Commission should consider whether PWS source meters should be certified annually, rather than every five years, with a possible exception for agriculture.

Response: The regulations set the minimum standard for all projects. The Commission can specify certification more frequently than once every five (5) years for source meters of public water suppliers if warranted, or as required in other permits.

Comment: In Section 803.30 (b)(2)(ii), a monitoring loss should be reported within five days of such loss, regardless of the length of time the loss continues.

Response: Agreed.

Comment: The Commission should continue to mandate that project sponsors monitor the water quality impacts of their withdrawals to help the Commission fulfill the compact purposes of "stream quality control" and the "abatement of pollution."

Response: The requirement to collect water quality data was burdensome for the project sponsor, burdensome for Commission staff to review and maintain, and it is generally not used by Commission programs because similar data are available from other sources, particularly from its member jurisdictions, each of which administers a comprehensive water quality program. The Commission reserves the right on any given application to require water quality sampling, if water quality is an issue.

Section 803.31. Duration of Approvals and Renewals

Comment: The Commission should not be reducing the duration of approvals from 25 years to 15 years. Many water resources projects involve large investments of money and many years of planning that are not well accommodated by an approval of 15 years. Instead, the Commission should rely on its authority to reopen a docket if there is a potential problem. The Commission should not have deleted the language that appears in the existing regulations allowing the Commission "to modify this duration in consideration of such factors as the time needed to amortize a project investment, the time needed to secure project financing, the potential risks of interference with an existing project, and other equitable factors."

Response: The Commission has found that both projects and the water resources that serve them are subject to many changes over 25 years and, therefore, it is appropriate to review these applications on a more frequent basis. The Commission agrees to reinsert the deleted language allowing the Commission to modify the standard duration, when appropriate, in consideration of the factors enumerated in this comment.

Comment: The time for commencement of a project after approval should take into account that some large projects require longer permitting periods and longer construction times. Opponents sometimes attempt to delay projects using administrative appeals and other devices that can prevent a large project from commencement.

Response: The Commission agrees that there may be circumstances in which a longer time frame is needed for undertaking a project. The Commission is inserting language that will allow adjustments to this time limit on a case-by-case basis.

Comment: The submission of an application one year in advance for the renewal of an approval is too long and unneeded.

Response: The time was set to afford both the project sponsor and Commission staff sufficient time to evaluate changes to the project and changes to the resource, and is reasonable considering current review times. Having said that, the Commission is nonetheless willing to modify the period to 6 months. As modified, a project sponsor who submits a complete application 6 months in advance, is given the benefit of having an existing approval automatically extended until such time as the Commission renders

a decision on the new application. This eliminates the risk of having an approval expire before the Commission has an opportunity to act.

Comment: In (a), the reduction of the duration of approvals to 15 years is appropriate. In fact, 10 years would be more appropriate.

Response: The Commission agrees that the reduction of the term to 15 years is appropriate so that commitment of water to a particular use can be reviewed more frequently and any changes in conditions can be addressed sooner.

Comment: In (c), there should be a notification to the state agency with jurisdiction over the project, at the time a waiver is applied for.

Response: The Commission routinely coordinates with member jurisdictions on such project-related matters.

Comment: How will the Commission fund the increased workload resulting from shorter duration periods?

Response: The Commission has no special plans for funding any increase in workload resulting from a shorter approval term. The member jurisdictions who approve the Commission's budget will need to consider any such increased workload associated with the completion of the Commission's responsibilities under the compact.

Comment: With respect to paragraph (d), abandonment should have to be proven by the Commission and not inferred. Notice should be provided to the project sponsor.

Response: Under general legal principles, any inference of abandonment acted upon by the Commission will have to be supported by substantial evidence and appropriate notice and opportunity to be heard. There is no need for the wording suggested by this comment.

Comment: Application fees should be adjusted downward to account for shorter durations.

Response: The main purpose of shortening the term of approvals is not to realize more revenues from project review fees. In fact, these fees cover no more than half the cost of conducting a review. Project reviews conducted on a more frequent basis will actually involve increased costs that will more than offset any increased revenues from application fees.

Section 803.32. Reopening/Modification

Comment: In (a), the word "significant" should be substituted for the word "substantial" before the words "adverse impact."

Response: Agreed.

Comment: In (c), the Commission should retain the discretion to require a project sponsor to provide a temporary source of potable water at the project sponsor's expense, if interference should occur during a pumping test of a source under development.

Response: Agreed.

Comment: The language of 803.32(b) is too strong in that it does not spell out how to remedy situations where a project sponsor fails to comply with a term or condition of its docket approval.

Response: The remedy will be worked out administratively between the Commission and the project sponsor without providing for a specific remedy in the regulation.

Section 803.33. Interest on Fees

Comment: Rate should be established and equally imposed.

Response: Interest rates change as they are affected by market forces and therefore should not be set permanently by regulation. Whatever rate is established will be uniformly imposed.

Section 803.34. Emergencies

Comment: In (b), at the end of the paragraph, delete the word "information" before the colon. Also, in (b)(2), delete the word "information" following the word "application."

Response: Agreed.

Comment: In (b)(1), replace "an emergency" with "a completed emergency" before the words "application form."

Response: Agreed.

Comment: In (b)(2)(x), because of the immediate inclusion of an application fee may delay submittal of an emergency application, provision should be made in the regulation for reduction, waiver, or later submittal of an "appropriate" fee.

Response: Agreed; however, this is a change that can be made in the SRBC Project Fee Schedule, rather than these regulations.

Comments by Section, Part 804

Section 804.2. Time Limits

Comment: Registration language strongly supported.

Response: Agreed.

Section 804.3. Administrative Agreements

Comment: Add the following: "In conjunction with such agreements or arrangements, the Commission will require submission of all necessary registration forms to the member jurisdiction as part of a complete application for renewal of an existing project or new or expanded agricultural project or as a condition of approval of any other new or expanded project."

Response: Although not using this suggested language, the Commission has revised this section and renamed it "Administrative coordination" to address this comment.

Comments by Section, Part 805

Section 805.1. Public Hearings

Comment: Participants to a hearing should be limited to interested parties.

Response: Who is able to participate in a hearing will depend on the circumstances and will be controlled by a decision of the presiding officer.

Comment: Notice of hearings should continue to be posted at Commission offices.

Response: Agreed.

Comment: Why does the Commission need three days notice?

Response: This is not mandated by the regulation but is more in the form of a request to participants. Three days allows the Commission to assemble a list of participants and establish an order of call for those wishing to provide testimony.

Section 805.2 Administrative Appeals

Comment: Administrative hearings should be held in the state where the project or controversy is located. Also, the Commission should appoint an "impartial" hearing

officer who shall not be a member of the Commission or an officer of the Commission. The Commission should absorb all hearing costs.

Response: Wherever practicable, the Commission will conduct such hearings in the general vicinity where the project or controversy is located. The Commission will also take steps to insure the impartiality of the hearing officer. Such steps do not require, however, that the Commission automatically disqualify members of the Commission or officers of the Commission. Hearing officers only make findings of fact and law that serve as recommendations to the Commission. The ultimate decision in any matter rests with the Commission. With respect to costs, they should be distributed equitably and not assigned automatically to any single party. The Commission has included an in forma pauperis procedure in Section 805.3 for parties who genuinely cannot pay hearing costs and have acted in good faith.

Comment: Parties should have at least 60 days to file an administrative appeal, rather than the 30 days given in proposed Section 805.2. Sometimes there is delay in a party learning of a Commission decision, effectively reducing the time for appeals.

Response: The Commission feels that 30 days strikes the appropriate balance for having its action open for appeal.

Section 805.3. Hearing on Administrative Appeal

Comment: Cost of expert consultants should be paid by the Commission.

Response: Again, the presiding officer should be able to weigh the equities of assigning costs for a hearing without being bound by a specific rule, some of which may be assigned to the Commission.

Section 805.10. Scope of Subpart

Comment: Regulated entities should be legally obligated to meet the terms and conditions for their approvals and SRBC must have the authority to ensure that they do.

Response: The Commission strongly agrees and that is why the compliance and enforcement provisions of these regulations have been strengthened.

Section 805.12. Investigative Powers

Comment: The Commission does not have authority from the compact to provide for warrantless searches.

Response: Agreed. This provision will be stricken. The Commission will acquire an administrative search warrant whenever it is legally required to do so.

Comment: Strongly supported as necessary for the Commission to effectively enforce its regulations.

Response: The Commission strongly agrees.

Section 805.14 Orders

Comment: The Commission does not have authority from the compact to issue orders.

Response: As noted in the Commission's response to the general comments, the Commission strongly disagrees with this contention. The Susquehanna River Basin Compact, P. L. 91-575 provides broad and sweeping powers to the Commission to carry out its purposes, including under Section 3.4 the power to have and exercise all powers necessary or convenient to carry out its express powers and other powers which reasonably may be implied

therefrom. Also, that same section empowers the Commission to adopt, amend, and repeal rules and regulations to implement the compact.

Comment: Strongly supported as necessary for the Commission to effectively enforce its regulations.

Response: The Commission strongly agrees.

Final Rule

List of Subjects in 18 CFR Parts 803, 804, 805, 806, 807 and 808

Administrative practice and procedure, Water resources.

Accordingly, for the reasons set forth in the preamble, under the authority of Secs. 3.4, 3.5 (5), 3.8, 3.10, and 15.2, Pub. L. 91-575, 84 Stat. 1509 et seq., Chapter VIII of the Code of Federal Regulations is amended as follows: Chapters 803—805. [Reserved] and Chapters 806—808 are amended.

PAUL O. SWARTZ,
Executive Director

Fiscal Note: 73-3. No fiscal impact; (8) recommends adoption.

Editor's Note: The numbering of this final rulemaking has been changed from the proposed version at 36 Pa.B. 3547 (July 8, 2006). Chapters 803—805 have been rescinded and replaced with Chapters 806—808 as follows:

- § 803.101. (Reserved).
- § 804.1. (Reserved).
- § 805.1. (Reserved).
- § 806.1. Added
- § 807.1. Added
- § 808.1. Added

Annex A

TITLE 25. ENVIRONMENTAL PROTECTION

PART IV. SUSQUEHANNA RIVER BASIN

CHAPTER 803. (RESERVED)

CHAPTER 804. (RESERVED)

CHAPTER 805. (RESERVED)

CHAPTER 806. REVIEW AND APPROVAL OF PROJECTS

§ 806.1. Incorporation by reference.

The regulations and procedures for review of projects as set forth in 18 CFR Part 806 (2007) (relating to review and approval of projects) are incorporated by reference and made part of this title.

CHAPTER 807. WATER WITHDRAWAL REGISTRATION

§ 807.1. Incorporation by reference.

The regulations and procedures for special regulations and standards as set forth in 18 CFR Part 807 (2007) (relating to water withdrawal registration) are incorporated by reference and made part of this title.

CHAPTER 808. HEARINGS AND ENFORCEMENT ACTIONS

§ 808.1. Incorporation by reference.

The regulations and procedures for hearings/enforcement actions as set forth in 18 CFR Part 808 (2007) (relating to hearings and enforcement actions) are incorporated by reference and made part of this title.

[Pa.B. Doc. No. 07-243. Filed for public inspection February 16, 2007, 9:00 a.m.]

PROPOSED RULEMAKING

DELAWARE RIVER BASIN COMMISSION

[25 PA. CODE CH. 901]

Public Hearing Regarding Proposed Amendments to the Comprehensive Plan and Water Code Relating to a Flexible Flow Management Plan for Operation of the New York City Delaware Basin Reservoirs

The Delaware River Basin Commission (Commission) will hold a public hearing and accept written comment on a proposal to amend the agency's Comprehensive Plan and Water Code to establish a Flexible Flow Management Program (FFMP) for the New York City Delaware Basin Reservoirs (City Delaware Reservoirs) for multiple objectives, including, among others: (a) water supply and drought mitigation; (b) management of the reservoir tailwater fisheries and other habitat needs; and (c) spill mitigation. The current reservoir releases program, which was established by Resolution No. 2004-3 in April of 2004, will expire on May 31, 2007. The current spill mitigation program, established by Resolution No. 2006-18, also will expire on May 31, 2007. The Commission will also accept comment on alternative reservoir management strategies that may be adopted in the event that consensus on the proposed FFMP is not reached. The alternative reservoir releases options to be considered are: (1) extending the current reservoir releases program; or (2) reinstating a previous drought operating plan. Either option would be considered in combination with a seasonal spill mitigation program or an annual spill mitigation program for the three reservoirs. The releases program adopted in the event consensus is not reached on the FFMP would continue in effect until any expiration date contained in the program adopted or unless and until replaced by another program that has been approved by the Commission following a notice and comment rulemaking process. In accordance with Section 3.3 of the Delaware River Basin Compact, any program affecting the diversions, compensating releases, rights, conditions, and obligations of the 1954 Supreme Court Decree in the matter of *New Jersey v. New York*, 347 U.S. 995, 74 S. Ct. 842 also requires the unanimous consent of the decree parties, which include the states of Delaware, New Jersey and New York, the Commonwealth of Pennsylvania, and the City of New York.

Dates

Two public hearings on the proposal will be conducted at 2:30 p.m. and 6:30 p.m. respectively on Tuesday, March 27, 2007, at the Lake Wallenpaupack Environmental Learning Center in Hawley, PA. Written comments will be accepted through April 6, 2007. To allow sufficient time for consideration by the Commission, comments must be received, not merely postmarked, by that date. In addition, three informational meetings will be held on the proposal. The first will take place during the morning conference session of the Commission's regularly scheduled meeting on Wednesday, February 28, 2007, at the DRBC office building in West Trenton, NJ. The second will take place during a meeting of the Commission's Regulated Flow Advisory Committee (RFAC), which will take place at 10 a.m. on Tuesday, March 6, 2007, at the Commission's office building in West Trenton, NJ. The

third informational meeting will take place at 1 p.m. on Tuesday, March 27, 2007, immediately prior to the first public hearing on the proposal, scheduled for that date at the Lake Wallenpaupack Environmental Learning Center in Hawley, PA. Driving directions to the Commission's office building, located at 25 State Police Drive in West Trenton, NJ, are available on the DRBC website at www.drbc.net. Please do not rely upon MapQuest or other Internet mapping services for directions to the Commission, as they do not provide accurate directions to this location. Directions to the Lake Wallenpaupack Environmental Learning Center are available at www.pplweb.com/lake+wallenpaupack/contacts+and+directions/get+directions.htm and also will be posted on the Commission's website, www.drbc.net, by February 20, 2007. Written comments must include the name, address and affiliation of the commenter. Comments may be submitted by email to paula.schmitt@drbc.state.nj.us; by United States Mail to: Commission Secretary, DRBC, P. O. Box 7360, West Trenton, NJ 08628-0360; and by fax to Attn: Commission Secretary at (609) 883-9522. In all cases, the subject line, "Comment on Flexible Flow Management Plan for City Delaware Reservoirs" should be included.

Supplementary Information

The flow management objectives considered by the Supreme Court Decree of 1954—water supply and drought—were far narrower than the diverse objectives that have emerged in the decades since. Today, the finite waters of the Delaware and the limited storage available in the basin are being managed for multiple purposes, including among others, water supply, drought mitigation, flood mitigation, and habitat protection in the tailwaters fishery, the mainstem and the estuary. In accordance with the Delaware River Basin Compact, a statute concurrently enacted in 1961 by the United States Government and the four basin states—Delaware, New Jersey, New York and Pennsylvania—the Commission may modify diversions, releases, rights, conditions and obligations established by the decree, provided that the decree parties unanimously consent to such modifications. The Commission and decree parties have made use of this authority to provide flexibility to respond to fluctuating hydrologic conditions and evolving priorities throughout the Commission's history. In 1983, in accordance with an agreement among the parties known as the "Good Faith Agreement," a reservoir release regime was established on a permanent basis to supplement the provisions of the decree for the limited purpose of protecting and enhancing the tailwaters fishery. Since the adoption of this regime in the form of a docket (similar to a permit) issued to the New York State Department of Environmental Conservation—Docket D-77-20 CP (Revised)—the "fishery management program" as the plan is sometimes called, has been modified repeatedly by the Commission with the unanimous consent of the decree parties. Resolution No. 2004-3, approving Docket D-77-20 CP (Revision 7), established the three-year interim program that is set to expire on May 31, 2007. A series of temporary spill mitigation programs also have been established, the latest in the form of Docket D-77-20 CP (Revision 9), approved by DRBC Resolution No. 2006-18 in September 2006.

Unlike the experimental programs instituted by the Commission in the past, the FFMP is intended to provide a comprehensive framework for addressing multiple flow management objectives, including water supply, drought mitigation, protection of the tailwaters fishery, a diverse

array of habitat protection needs in the mainstem, estuary and bay, flood mitigation, recreational goals and salinity repulsion. Some of the flow needs identified by the parties have not yet been defined sufficiently for the development of detailed plans. These include protection of the dwarf wedgemussel, a federal and state-listed endangered species present in the mainstem, oyster production in Delaware Bay, and protection of warm-water and migratory fisheries in the lower basin. Incremental and periodic adjustments are expected to be made to the FFMP for these purposes, based upon ongoing monitoring, scientific investigation and periodic re-evaluation of program elements.

A central feature of the reservoir release programs implemented to date for management of the tailwaters fishery has been the use of reservoir storage "banks" to be used for narrowly defined purposes under specific hydrologic and temperature conditions and at specified times of the year. These are applied in conjunction with a set of fixed seasonal flow targets. The system requires complex daily flow and temperature modeling as a component of determining the releases, and as a result, the program is difficult and costly to administer. The current approach also lacks the seasonal fluctuations characteristic of a natural flow regime. The FFMP would largely eliminate the use of banks and would base releases instead on reservoir storage levels, resulting in larger releases when water is abundant and smaller releases when storage is at or below normal. The result would more closely approximate a natural flow regime. In addition, the FFMP would provide for more gradual transitions (or "ramping") from higher to lower releases and vice versa than the current regime. The FFMP would include a spill mitigation component similar to but potentially more aggressive than the temporary programs implemented in the past. The storage represented by snowpack water content would continue to be considered.

Hydrologic modeling and habitat assessments are being undertaken to evaluate the sustainable benefits of the FFMP for the tailwaters fishery and for spill mitigation. In addition, an evaluation is being made of the potential benefits and costs of increasing storage in one or more of the City Delaware Reservoirs that may improve the capacity of the system to meet the full range of flow objectives.

If consensus among the decree parties and Commissioners cannot be reached on details of the FFMP in time to approve and initiate implementation of the plan by June 1, 2007, the parties intend to continue to work at refining and improving the FFMP until such a consensus can be reached. The Commission will conduct a separate notice and comment rulemaking process on the proposed program at that time. Under those circumstances, for an interim period, the parties will consider extending the current fisheries management program or reinstating a previous regime. In either case, the releases program will be considered in combination with a spill mitigation plan.

The proposed FFMP in its entirety will be posted on the website of the Commission, www.drbc.net, on Tuesday, February 20, 2007.

Further Information, Contacts

The text of the proposed FFMP in its entirety will be posted on the website of the Delaware River Basin Commission, www.drbc.net, on Tuesday, February 20, 2007 and will remain posted through May 10, 2007. Contact Pamela M. Bush, Esquire, Commission Secretary

and Asst. General Counsel at (609) 883-9500 Ext. 203 with questions about the proposed rule change or the rulemaking process.

PAMELA M. BUSH,
Secretary

[Pa.B. Doc. No. 07-244. Filed for public inspection February 16, 2007, 9:00 a.m.]

DEPARTMENT OF CORRECTIONS

[37 PA. CODE CH. 97]

State Intermediate Punishment

The Department of Corrections (Department) proposes to amend Chapter 97 (relating to State intermediate punishment) to read as set forth in Annex A.

Statutory Authority

The Department is acting under the authority of 42 Pa.C.S. § 9906 (relating to written guidelines and regulations).

Purpose and Background

The Commonwealth's first State Intermediate Punishment Program was established by 42 Pa.C.S. Chapter 99 (relating to State intermediate punishment). The State Intermediate Punishment Program is intended to reduce recidivism by providing intense drug and alcohol treatment to certain defendants who have been convicted of drug-related offenses. A drug-related offense is a crime that was motivated by the defendant's consumption of or addiction to alcohol or other drugs.

Chapter 99 of 42 Pa.C.S. permits certain defendants who have been convicted of drug-related offenses to be committed to the Department for an assessment of their addiction and other treatment needs. Defendants who are subject to a sentence that includes an enhancement for the use of a deadly weapon or who have been convicted of a personal injury crime and certain other sexual crimes cannot be sentenced to State intermediate punishment. If, after assessment, the Department determines that the defendant is likely to benefit from a drug offender treatment program (DOTP) and is appropriate for placement in a program, the Department will develop an individualized DOTP for the defendant. The judge may sentence the defendant to participate in a DOTP with the agreement of the defendant and the attorney for the Commonwealth.

A DOTP will be 24 months in duration and consist of at least four components. The defendant shall serve a minimum of 7 months incarceration in a State correctional institution, during which the defendant shall receive a minimum of 4 months treatment in an institutional therapeutic community. The defendant then will receive a minimum of 2 months treatment in a community-based therapeutic community and a minimum of 6 months treatment through an outpatient addiction treatment facility. The balance of the 24-month program consists of supervised reintegration into the community. Under 42 Pa.C.S. Chapter 99, the Department can transfer the defendant from less restrictive to more restrictive settings for medical, disciplinary or administrative reasons and to suspend or expel the defendant from the program. The Department intends to expel defendants

who are not meaningfully participating in their individualized DOTP. A defendant who is expelled from the program will be resentenced by the court.

Under 42 Pa.C.S. Chapter 99, the Department was required to develop written State intermediate punishment guidelines. The guidelines were not subject to the Regulatory Review Act (71 P.S. §§ 745.1—745.15) and were published at 35 Pa.B. 3053 (May 21, 2005). The guidelines are effective for 2 years following publication and must be replaced by regulations promulgated consistently with the Regulatory Review Act within the 2-year period. (See 42 Pa.C.S. § 9906) (relating to written guidelines and regulations).)

The proposed rulemaking affects individuals who are found guilty of drug-related offenses after the date on which the proposed rulemaking becomes effective. Therefore, the proposed rulemaking does not affect an identifiable “regulated community.” Nevertheless, the Department engaged in several meetings with members of the judiciary, prosecutors and defense counsel to assist them in becoming familiar with State intermediate punishment. Department staff also participated in a number of sentencing proceedings conducted by means of videoconference under the guidelines which this proposed rulemaking will replace. The draft regulations draw upon knowledge accumulated from these various efforts.

Summary of Proposed Amendments

Section 97.101 (relating to authority and purpose) sets forth the statute requiring issuance of State intermediate punishment regulations and the overall purpose of the regulations.

Section 97.102 (relating to definitions) contains the definitions that are used in 42 Pa.C.S. Chapter 99 and the regulations.

Section 97.103 (relating to commitment for assessment) describes the process by which a defendant may be committed to the Department for an evaluation to determine whether he would benefit from a DOTP and is appropriate for placement in a DOTP. The section also governs the facility to which a defendant is to be delivered for an evaluation and the documentation that must accompany the defendant.

Section 97.104 (relating to assessment of addiction and other treatment needs) describes the process the Department will use to conduct evaluations. The section addresses the qualifications of persons who will perform assessments and the manner in which the assessment results will be communicated to the court, the defendant, the attorney for the Commonwealth and the Pennsylvania Sentencing Commission. Section 97.104 also addresses a county's obligation to return an inmate to the county following the assessment.

Section 97.105 (relating to DOTP Selection Committee) identifies the persons who will constitute the Department's Program Selection Committee. The Program Selection Committee identifies the specific defendants who will be recommended for participation in State intermediate punishment.

Section 97.106 (relating to participant selection criteria) describes the participant selection criteria the Program Selection Committee will use to identify specific defendants who will be recommended for participation in State intermediate punishment. The criteria include the information provided by the sentencing court, the results of the defendant's assessment of addiction and other treatment needs, the length of the sentence that typically

would be imposed for the crime under the Sentencing Guidelines, the defendant's motivation to address drug or alcohol use or addiction and the availability of the Department's programming resources.

The components of a DOTP are described in § 97.107 (relating to DOTP). A DOTP is 24 months in duration and includes a minimum of 7 months in a State correctional institution. At least 4 of the 7 months must include placement in an institutional therapeutic community. A DOTP participant must also complete a minimum of 2 months treatment in a community-based therapeutic community and at least 6 months of treatment in an out-patient addiction treatment program. The minimum treatment periods may be extended if the DOTP participant is not making sufficient progress in the treatment program. The Department also retains the ability to transfer a participant from a less restrictive to a more restrictive treatment setting. The participant can be removed from the DOTP if he does not make sufficient progress to be able to meet the minimum program time components.

Section 97.108 (relating to confinement in a State correctional institution) allows a defendant to be sentenced to State intermediate punishment by means of videoconferencing or teleconferencing. These options save the expense of transporting the defendant to the county only to return him to the Department.

Section 97.109 (relating to program advancement and regression) addresses a defendant's progression to less restrictive treatment settings and regression to more restrictive treatment settings. The section identifies the Department official responsible for making the determination and identifies the considerations that govern a defendant's progression and regression among more and less restrictive treatment settings.

Sections 97.110—97.112 (relating to community-based therapeutic community; outpatient addiction treatment facility; and supervised reintegration into the community) describe in greater detail the process used to determine a defendant's progression and regression among more or less restrictive treatment settings. Section 97.110 also describes the reporting obligations of the treatment staff of a community-based therapeutic community. Section 97.111 provides a similar description of the reporting obligations of the treatment staff of an outpatient addiction treatment facility.

Sections 97.113—97.116 discuss various sanctions that can be imposed on a defendant participating in a DOTP. Section 97.113 (relating to treatment sanctions) sets forth sanctions to be imposed on a defendant who tests positive for the use of alcohol or other drugs while incarcerated in a State correctional institution, community-based therapeutic community, outpatient addiction treatment facility or during supervised reintegration into society. This section encourages a defendant who believes he is in danger of relapsing to seek the opportunity to receive treatment in a more restrictive treatment setting. This provision is intended to encourage individuals to take an active and responsible role in their treatment. Section 97.114 (relating to disciplinary sanctions) discusses sanctions that can be imposed if a defendant violates a Department's disciplinary rule. Sections 97.115 and 97.116 (relating to suspension from a DOTP; and expulsion from a DOTP) set forth the criteria the Department will use to determine whether a defendant will be suspended or expelled from a DOTP.

Section 97.117 (relating to consent to disclosure of information) sets forth a form to be used for a defendant

to consent to the disclosure of information pertaining to participation in a DOTP. Consent is a necessary component of State intermediate punishment because of the need to share information among the sentencing court, prosecution, defense and the various persons who will be providing treatment to the defendant.

Section 97.118 (relating to applicability) clarifies that the regulations will be prospective only and will apply to individuals sentenced to State intermediate punishment on or after publication of the final-form rulemaking in the *Pennsylvania Bulletin*. Individuals sentenced prior to publication will continue to be subject to the Department's State intermediate punishment guidelines.

Fiscal Impact

The proposed rulemaking is not expected to have significant negative fiscal impact upon the Commonwealth, its political subdivisions or the general public. The regulations are expected to decrease the Department's costs over time. The costs for the State intermediate punishment program differ from other State correctional programming due to the length of a State intermediate punishment sentence and the more intensive and costly programming being provided. The larger the number of State intermediate punishment inmates the larger the cost savings for the Department because the Department can reduce staffing as its inmate population begins to decline. The cost for 1 to 399 inmates in State intermediate punishment is \$773 per inmate stay. From 400 to 799 inmates, the Department could close housing units and save \$15,881 per inmate stay. Over 800 inmates may allow the closing of a small institution and save \$27,824 per inmate stay. The current year has no costs because the Department will be absorbing the small numbers in current programming.

Paperwork Requirements

The Department does not expect the new requirements to have significant effect on the paperwork requirements of political subdivisions or the public. The information the Department is requiring counties to provide when a defendant is committed for an assessment for State intermediate punishment is substantially similar to that which counties currently must provide to the Department. The proposed rulemaking is necessary as the information must be provided prior to sentencing because of the need to assess the defendant's use of or addiction to alcohol or other drugs and to evaluate the defendant for potential sentencing to a DOTP.

Contact Person

Interested persons are invited to submit in writing comments, suggestions or objections regarding the proposed rulemaking to Randall N. Sears, Deputy Chief Counsel, Office of Chief Counsel, 55 Utley Drive, Camp Hill, PA 17011. Written comments must be received within 30 days of the publication of this proposed rulemaking in the *Pennsylvania Bulletin*. Written comments received by the Department may be made available to the public.

Regulatory Review

Under section 5(a) of the Regulatory Review Act (71 P. S. § 745.5(a)), on January 31, 2007, the Department submitted a copy of this proposed rulemaking and a copy of a Regulatory Analysis Form to the Independent Regulatory Review Commission (IRRC) and to the Chairpersons of the House and Senate Judiciary Committees. A copy of this material is available to the public upon request.

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

Effective Date

The proposed rulemaking will take effect upon final-form publication in the *Pennsylvania Bulletin*.

JEFFREY A. BEARD, Ph.D.,
Secretary

Fiscal Note: 19-9. (1) General Fund;

(2) Implementing Year 2006-07 is	\$0*
(3) 1st Succeeding Year 2007-08 is	\$1,594,274
2nd Succeeding Year 2008-09 is	\$4,375,118
3rd Succeeding Year 2009-10 is	\$3,248,007
4th Succeeding Year 2010-11 is	\$0
5th Succeeding Year 2011-12 is	\$0

State Correctional Institutions

(4) 2005-06 Program—	\$1,086,505,000
2004-05 Program—	\$1,055,589,000
2003-04 Program—	\$1,028,246,000

(7) State Correctional Institutions; (8) recommends adoption.

* Implementing year shows no costs because they will be absorbed in the current budget.

Annex A

TITLE 37. LAW

PART III. AGENCIES AND OFFICES

Subpart B. DEPARTMENT OF CORRECTIONS

CHAPTER 97. STATE INTERMEDIATE PUNISHMENT DRUG OFFENDER TREATMENT PROGRAM

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

§ 97.101. Authority and purpose.

(a) This chapter is published under the act and establishes the DOTP administered by the Department. This chapter is intended to inform judges, prosecutors, defense counsel, defendants and the general public about the DOTP.

(b) The DOTP is a form of State intermediate punishment that provides a sentencing alternative for a person who commits a drug-related offense as defined in the act. The DOTP offers a sentencing alternative that punishes a person who commits a drug-related offense, but also provides treatment that offers the opportunity for the person to address their drug or alcohol addiction or abuse.

§ 97.102. Definitions.

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

Act—42 Pa.C.S. Chapter 99 (relating to State intermediate punishment) establishing the DOTP.

Commission—The Pennsylvania Commission on Sentencing.

Community-based therapeutic community—A long-term residential addiction treatment program licensed by the Department of Health to provide addiction treatment services using a therapeutic community model, determined by the Department to be qualified to provide addiction treatment to eligible offenders and accredited as a therapeutic community for the treatment of drug and alcohol abuse and addiction by the Commission on Accreditation of Rehabilitation Facilities or another Nationally recognized accreditation organization for community-based therapeutic communities for drug and alcohol treatment.

Community corrections center—A residential program that is supervised and operated by the Department for inmates with prerelease status or who are on parole.

Court—The trial judge exercising sentencing jurisdiction over an eligible offender under this chapter or the president judge if the original trial judge is no longer serving as a judge of the sentencing court.

DOTP—Drug Offender Treatment Program—An individualized treatment program established by the Department consisting primarily of drug and alcohol addiction treatment and lasting for 24 months and including a period of at least 7 months in a State correctional institution, a minimum of 4 months of which shall be in an institutional therapeutic community; a period of treatment in a community-based therapeutic community of at least 2 months; at least 6 months treatment through an outpatient addiction treatment program; and a period of supervised reintegration into the community.

Defendant—An individual charged with a drug-related offense.

Department—The Department of Corrections of the Commonwealth.

Drug-related offense—A criminal offense for which the defendant is convicted and that the court determines was motivated by the defendant's consumption of or addiction to alcohol or a controlled substance, counterfeit, designer drug, drug, immediate precursor or marijuana, as those terms are defined in The Controlled Substance, Drug, Device and Cosmetic Act (35 P. S. §§ 780-101—780-143).

Eligible offender—

(i) A defendant designated by the sentencing court as a person convicted of a drug-related offense who:

(A) Has undergone an assessment performed by the Department which assessment has concluded that the defendant is in need of drug and alcohol addiction treatment and would benefit from commitment to a DOTP and that placement in a DOTP would be appropriate.

(B) Does not demonstrate a history of present or past violent behavior.

(C) Would be placed in the custody of the Department if not sentenced to State intermediate punishment.

(D) Provides written consent permitting the release of information pertaining to the defendant's participation in a DOTP.

(ii) The term does not include a defendant who is subject to a sentence the calculation of which includes an enhancement for the use of a deadly weapon, as defined pursuant to law or the sentencing guidelines promulgated by the Commission, or a defendant who has been convicted of a personal injury crime as defined in section 103 of the Crime Victims Act (18 P. S. § 11.103), or an attempt or conspiracy to commit such a crime or who has

been convicted of violating 18 Pa.C.S. § 4302, § 5901, § 6312, § 6318, § 6320 or Chapter 76, Subchapter C.

Expulsion—The permanent removal of a participant from a DOTP.

Group home—A residential program that is contracted out by the Department to a private service provider for inmates with prerelease status or who are on parole.

Individualized drug offender treatment plan—An individualized addiction treatment plan within the framework of the DOTP.

Institutional therapeutic community—A residential drug treatment program in a State correctional institution, accredited as a therapeutic community for treatment of drug and alcohol abuse and addiction by the American Correctional Association or other Nationally recognized accreditation organization for therapeutic community drug and alcohol addiction treatment.

Outpatient addiction treatment facility—An addiction treatment facility licensed by the Department of Health and designated by the Department as qualified to provide addiction treatment to criminal justice offenders.

Participant—An eligible offender actually sentenced to State intermediate punishment under 42 Pa.C.S. § 9721(a)(7) (relating to sentencing generally).

RAP sheet—A record of arrest and prosecution.

Transitional residence—A residence investigated and approved by the Department as appropriate for housing a participant in a DOTP.

§ 97.103. Commitment for assessment.

(a) Prior to imposing sentence, the court may, upon motion of the Commonwealth and agreement of the defendant, commit a defendant to the custody of the Department for the purpose of evaluating whether the defendant would benefit from a DOTP and whether placement in a DOTP is appropriate. The court is encouraged to order a presentence investigation at or prior to the time the inmate is committed for evaluation.

(b) The committing county shall deliver a defendant committed to the custody of the Department for purposes of an evaluation to the institution the Department has designated for reception of inmates from that county. The defendant shall be housed in a State correctional institution while undergoing the evaluation. The documents set forth in this subsection shall be delivered to the Department simultaneously with the defendant's arrival. The Department may refuse to accept for evaluation a defendant who is delivered to the Department by the county without the following documents:

(1) A certified copy of the order committing the defendant to the Department's custody for purposes of an evaluation.

(2) A summary of the offense for which the inmate has been convicted, including the criminal complaint and police report summarizing the facts of the crime, if available or a copy of the affidavit of probable cause accompanying the arrest warrant.

(3) A record of the defendant's adjustment in the county correctional facility, including, but not limited to, misconducts and escape history.

(4) Any current medical or psychological condition requiring treatment, including, but not limited to suicide attempts.

(5) Any medical admission testing performed by the county and the results of those tests, including, but not limited to, hepatitis, HIV/AIDS, tuberculosis or other infectious disease testing.

(6) A notice of current or previously administered medications.

(7) A 48-hour supply of current medications.

(c) Within 7 days of delivery of the defendant to the Department for an evaluation, the committing county shall provide the Department with the following:

(1) A summary of the disposition of all arrests noted on the defendant's RAP Sheet.

(2) Any available information regarding the defendant's history of drug or alcohol abuse or addiction, including any evaluation performed using Court Reporting Network instruments or other evaluation techniques deemed appropriate by the court under 75 Pa.C.S. § 3816 (relating to requirements for driving under influence offenders) or any other provision of law.

(3) A presentence investigation when available or if a presentence investigation cannot be completed, the official version of the crime for which the offender was convicted or a copy of the guilty plea transcript or a copy of the preliminary hearing transcript.

(4) A copy of the guideline sentence form issued by the Commission.

(5) Other information the court deems relevant to assist the Department with its assessment of the defendant.

§ 97.104. Assessment of addiction and other treatment needs.

(a) The Department will conduct a risk assessment and assess the addiction and other treatment needs of a defendant committed to its custody for purposes of an evaluation. The assessment of addiction will be conducted using a Nationally recognized assessment instrument or an instrument that has been normed and validated on the Department's inmate population by a recognized expert in those matters. The instrument will be administered by persons skilled in the treatment of drug and alcohol addiction and trained to conduct assessments. The assessment will be reviewed and approved by a supervisor with at least 3 years of experience providing drug and alcohol counseling services.

(b) The Department will provide a report of its assessment to the court, the defendant, the attorney for the Commonwealth and the Commission within 60 days of the commitment of the defendant to the Department for purposes of evaluation. If the Department determines that the defendant will benefit from a DOTP and placement in a DOTP is appropriate, the report will include a proposed DOTP detailing the type of treatment proposed for the defendant. If the Department determines that the defendant will not benefit from a DOTP or that placement in a DOTP is inappropriate, the report will set forth the reasons for the Department's determination.

(c) The Department will encourage resolution of as many unresolved charges against the defendant as possible prior to commitment for an evaluation. Resolution of unresolved charges, including arrests that appear on a defendant's RAP sheet for which a disposition is not noted, assists the Department in completing an evaluation in a timely fashion. The Department will reconsider its report if the defendant has been deemed inappropriate for a DOTP because of unresolved charges or because the

disposition of all arrests on the defendant's RAP sheet is not known and the committing county provides the Department with the resolution of the charges or disposition of the arrests.

(d) The act provides that the court may not modify or alter the terms of the Department's proposed DOTP without the agreement of the Department and attorney for the Commonwealth. A request for modification of the terms of a proposed DOTP shall be sent to the Deputy Superintendent for the Diagnostic and Classification Center at the State Correctional Institution at Camp Hill for male inmates and the Deputy Superintendent for Centralized Services at the State Correctional Institution at Muncy for female inmates.

(e) The sheriff shall return to the committing county a defendant whom the Department determines will not benefit from a DOTP or is inappropriate for placement in a DOTP within 60 days of the Department's determination.

§ 97.105. DOTP Selection Committee.

(a) The Participant Selection Committee shall consist of the Diagnostic and Classification Center Director, or a designee, the Deputy Superintendent responsible for the Diagnostic and Classification Center, or a designee, and the Chief of the Department's Central Office Treatment Division, or a designee.

(b) The Participant Selection Committee shall apply the participant selection criteria to determine whether a defendant will benefit from a DOTP and whether placement in a DOTP is appropriate.

§ 97.106. Participant selection criteria.

(a) An eligible offender, as that term is defined in the act, may be selected to be a participant in a DOTP. The Participant Selection Committee will consider information relevant to determining which defendants are most likely to benefit from a DOTP by becoming productive, law-abiding members of society by addressing their abuse of or addiction to alcohol or other drugs. Selection criteria will include the following:

(1) Information furnished to the Department by the sentencing court.

(2) The results of the assessment of addiction and other treatment needs conducted by the Department.

(3) The length of the sentence that would be typically imposed under the standard range of the sentencing guidelines promulgated by the Commission.

(4) The eligible offender's motivation to participate meaningfully in a DOTP.

(5) Whether the eligible offender has provided to the Department written consent permitting the release of information pertaining to his participation in a DOTP.

(6) The eligible offender's criminal history.

(7) The eligible offender's escape or parole absconder history.

(8) The eligible offender's institutional adjustment during current and prior incarcerations.

(9) The availability of the Department's programming resources.

(b) No eligible offender has a right to placement in a DOTP. A DOTP is intended to assist defendants to become productive, law-abiding members of society and is not intended to be a means for a defendant simply to serve a shorter sentence. The goal of the Participant Selection

Committee will be to select those defendants it believes will most likely benefit from a DOTP by becoming productive, law-abiding members of society while allowing the Department to use its available programming resources efficiently and effectively. The number of participants selected for a DOTP will be that number that the Participant Selection Committee believes will neither under use nor overtax the available programming resources.

§ 97.107. DOTP.

(a) A DOTP developed for a defendant shall be designed to address the defendant's individually assessed drug and alcohol abuse and addiction needs and other issues essential to the defendant's successful reintegration into the community, including education and employment issues.

(b) A DOTP developed for a defendant shall be 24 months in duration and include the following:

(1) A period of confinement in a State correctional institution of at least 7 months, including the assessment period prior to the imposition of sentence and at least 4 months during which the defendant shall be placed in an institutional therapeutic community.

(2) A period of treatment in a community-based therapeutic community of at least 2 months.

(3) A period of at least 6 months treatment through an outpatient addiction treatment facility.

(4) A period of supervised reintegration into the community for the balance of the DOTP.

§ 97.108. Confinement in a State correctional institution.

(a) The Department will accommodate requests to conduct sentencing proceedings for persons committed to its custody by means of videoconferencing subject to equipment and staff availability. A defendant who is not sentenced by means of videoconferencing, but is sentenced to a DOTP following an evaluation and recommendation by the Department shall be delivered to the institution the Department has designated for reception of inmates from the committing county. The defendant will be considered to be a participant upon receipt by the Department.

(b) The participant will be required to begin his individual DOTP while housed in a State correctional institution and may be required to begin additional programming intended to address other treatment needs identified during incarceration.

§ 97.109. Program advancement and regression.

(a) An individual DOTP contemplates that a participant will progress through treatment provided in progressively less restrictive treatment settings. The Department anticipates that some participants who have progressed to a less restrictive treatment setting will benefit from an additional period of treatment or confinement in a more restrictive setting or location. Consistent with the minimum time requirements in the act, the Department may transfer a participant to a State correctional institution, an institutional therapeutic community, a community-based therapeutic community, an outpatient addiction treatment program or an approved transitional residence. The Department may transfer a participant between less restrictive and more restrictive settings based upon the participant's progress or regression in treatment or for medical, disciplinary or other administrative reasons.

(b) The Chief of the Department's Central Office Treatment Division, or a designee, will determine whether a participant will be transferred to a different setting or location. The Department's goal will be to take the action that it believes will maximize the use of programming resources by continuing to treat those participants it believes will most likely complete and benefit from a DOTP by becoming productive, law-abiding members of society while allowing the Department to use its available programming resources efficiently and effectively.

§ 97.110. Community-based therapeutic community.

(a) A participant who successfully completes the institutional therapeutic community portion of the DOTP and any required additional programming will be placed in a community based therapeutic community. Placement in a community based therapeutic community will not necessarily be made immediately upon successful completion of the institutional therapeutic community and any additional required programming, but will be made in sufficient time to permit the participant to complete the remaining portions of his DOTP.

(b) The participant will be required to continue engaging in his individual DOTP while housed in a community-based therapeutic community and may be required to participate in additional programming intended to address other treatment needs identified during incarceration.

(c) The treatment staff of the community-based therapeutic community shall provide the Department with an informational report concerning the participant's progress toward completion of the community-based treatment portion of his DOTP at the conclusion of the participant's first 2 months in the community-based therapeutic community.

(1) The report must include a recommendation whether the participant has progressed sufficiently to begin the outpatient addiction treatment portion of his DOTP, if the participant should continue in the community-based treatment community, be returned to the institutional therapeutic community or to a State correctional institution or be expelled from the DOTP.

(2) The report must include specific reasons supporting the recommendation and a suggested plan for addressing any treatment deficiencies noted.

(3) The report must be transmitted to the Chief of the Department's Central Office Treatment Division, or a designee.

(d) The Department will not be limited to approving or disapproving the recommendation of the community-based therapeutic treatment community treatment staff and may select alternatives not recommended by the treatment staff.

(e) The Department may require the treatment staff of the community-based therapeutic community to submit reports in addition to the report required by subsection (c).

§ 97.111. Outpatient addiction treatment facility.

(a) A participant who successfully completes the community-based therapeutic community and any additional required programming will be assigned to an outpatient addiction treatment facility. Assignment to an outpatient addiction treatment facility will not necessarily be made immediately upon successful completion of the community-based therapeutic community and any additional required programming, but will be made in

sufficient time to permit the participant to complete the remaining portions of his DOTP. A participant may reside in a community corrections center, group home or an approved transitional residence while assigned to an outpatient addiction treatment facility program, but will not be permitted to begin residing in a group home or an approved transitional residence until the Department has completed its investigation, review and approval of the residence.

(b) A participant will be required to continue his individual DOTP while assigned to an outpatient addiction treatment facility program and may be required to participate in additional programming intended to address other treatment needs identified during incarceration.

(c) The treatment staff of the outpatient addiction treatment facility shall provide the Department with an informational report concerning the participant's progress toward completion of the outpatient addiction treatment portion of his DOTP at the conclusion of the participant's first 6 months of treatment with the outpatient addiction treatment facility.

(1) The report must include a recommendation whether the participant has progressed sufficiently to begin supervised reintegration into the community, if the participant should continue treatment with the outpatient addiction treatment facility, be returned to a community-based treatment community, institutional therapeutic community or to a State correctional institution or be expelled from the DOTP.

(2) The report must include specific reasons supporting the recommendation and a suggested plan for addressing any treatment deficiencies noted.

(3) The report shall be transmitted to the Chief of the Department's Central Office Treatment Division or a designee.

(d) The Department will not be limited to approving or disapproving the recommendation of the outpatient addiction treatment facility treatment staff and may select alternatives not recommended by the treatment staff.

(e) The Department may require the treatment staff of the outpatient addition treatment program to submit reports in addition to the report required by subsection (c).

§ 97.112. Supervised reintegration into the community.

(a) A participant who successfully completes treatment through an outpatient addiction treatment facility and any additional required programming will begin supervised reintegration into the community for the remaining portion of his DOTP. The participant may continue to or be permitted to begin to reside in a community corrections center, group home or an approved transitional residence during the period of supervised reintegration into the community, but will not be permitted to begin residing in an approved transitional residence until the Department has completed its investigation, review and approval of the residence.

(b) A participant residing in an approved transitional residence will be supervised by the Department during the remainder of his DOTP. The participant will be required to comply with any conditions imposed by the Department while residing in an approved transitional residence including abstaining from the use of alcohol or other drugs, submitting urine, hair or other samples the Department requests to monitor the participant's use of

alcohol or other drugs and engaging in additional treatment or programming required by the Department.

(c) A participant will continue to be subject to the treatment and disciplinary sanctions in §§ 97.113 and 97.114 (relating to treatment sanctions; and disciplinary sanctions) while residing in an approved transitional residence.

(d) The Department will notify the sentencing court, the attorney for the Commonwealth and the Commission when the participant successfully completes the DOTP.

§ 97.113. Treatment sanctions.

(a) A participant who tests positive for the use of alcohol or other drugs shall receive a hearing according to the procedures in the Department's inmate disciplinary policy. If the hearing examiner determines that the participant used alcohol or other drugs, the participant shall be subject to the following sanctions:

(1) A participant housed in a State correctional institution or institutional therapeutic community shall be expelled from the DOTP and housed as the Department deems appropriate pending further action by the sentencing court.

(2) A participant receiving treatment through a community-based therapeutic community, outpatient addiction treatment facility or while during supervised reintegration to society shall be evaluated by the Department. The participant shall be housed as the Department deems appropriate pending completion of the evaluation. Following the evaluation, the participant may be placed in the treatment setting deemed appropriate by the Chief of the Department's Central Office Treatment Division, or a designee, or suspended or expelled from the DOTP.

(b) Subject to the time limitations in the act, a participant who requests assistance because he believes he is in danger of relapsing will be given the opportunity to receive treatment in a more restrictive treatment setting as deemed appropriate by the Chief of the Department's Central Office Treatment Division, or a designee.

§ 97.114. Disciplinary sanctions.

(a) A participant who is alleged to have violated the Department's disciplinary rules, shall receive a hearing according to the procedures in the Department's inmate disciplinary policy.

(b) If the hearing examiner determines that the participant committed a Class 1 or Class 2 misconduct, the Chief of the Department's Central Office Treatment Division, or a designee, will determine whether the participant will be suspended or expelled from the DOTP, sanctioned according to the Department's inmate disciplinary policy or be subject to other sanctions deemed appropriate.

§ 97.115. Suspension from a DOTP.

(a) A participant who violates the conditions of his DOTP, other than by testing positive for the use of alcohol or other drugs or by committing a violation of the Department's disciplinary rules, may be suspended from participation in a DOTP.

(b) The Department's goal in determining whether to suspend a participant from a DOTP will be to take the action it believes will maximize the efficient and effective use of programming resources by continuing to treat those participants it believes will most likely complete and benefit from a DOTP by becoming productive, law-abiding members of society if permitted to participate in continued treatment after a period of suspension.

(c) The Chief of the Department's Central Office Treatment Division, or a designee, will be responsible for determining whether to suspend a participant from a DOTP. The determination whether to suspend a participant from a DOTP may be based upon any information deemed appropriate by the Chief of the Department's Central Office Treatment Division, or a designee.

(d) A participant who is suspended from participation in a DOTP will be housed in the setting deemed appropriate by the Chief of the Department's Central Office Treatment Division, or a designee, and shall comply with the Department's rules and any conditions imposed during the period of suspension.

§ 97.116. Expulsion from a DOTP.

(a) In addition to the provisions of §§ 97.113 and 97.114 (relating to treatment sanctions; and disciplinary actions), a participant who violates the conditions of his DOTP or who is not constructively participating in his DOTP or who will be unable to complete his DOTP within the period remaining on his 24 months sentence may be expelled from participation in a DOTP.

(b) The Department's goal in determining whether to expel a participant from a DOTP will be to take the action it believes will maximize the efficient and effective use of programming resources by continuing to treat those participants it believes will most likely complete and benefit from a DOTP by becoming productive, law-abiding members of society if permitted to participate in continued treatment after being subject to sanctions or a period of suspension, or both.

(c) The Chief of the Department's Central Office Treatment Division, or a designee, will be responsible for determining whether to expel a participant from a DOTP. The determination whether to expel a participant from a DOTP may be based upon any information deemed appropriate by the Chief of the Department's Central Office Treatment Division, or a designee.

(d) The Department will promptly notify the sentencing court, the participant, the attorney for the Commonwealth and the Commission of the expulsion of a participant from a DOTP and of the reason for the expulsion. The inmate will be housed in a State correctional institution or county prison pending action by the court.

§ 97.117. Consent to disclosure of information.

The consent to disclosure of information shall be in the following form:

CONSENT

I, the undersigned, hereby give my consent for the Commonwealth of Pennsylvania Department of Corrections, its officers, employees, volunteers, contractors and agents to release and disclose to any court, attorney for the Commonwealth, the Pennsylvania Commission on Sentencing and to my attorney information pertaining to my evaluation for and participation in a drug offender treatment program. This consent to release and disclosure includes medical and dental information, mental health treatment information, drug and alcohol treatment information, criminal history records information and any other

information contained in records maintained by the Department of Corrections, its officers, employees, volunteers, contractors and agents. This consent to release and disclosure extends to records pertaining to any period during which I am or was committed to the custody of the Department of Corrections and shall not expire.

Disclosure of medical/dental information may pertain to all aspects of my treatment and hospitalization, including psychological and psychiatric information and drug and/or alcohol information.

Disclosure of mental health records pertains to treatment, hospitalization, and/or outpatient care provided to me for the period listed above. I understand that my record may contain information regarding all aspects of my mental health treatment and hospitalization, including psychological and psychiatric information, drug and/or alcohol information.

In authorizing this disclosure, I expressly waive any and all rights I may have to the confidential maintenance of these records, including any such rights that exist under local, state, and federal statutory and/or constitutional law, rule or order, including those contained in the Pennsylvania Mental Health Procedures Act of 1976 and the Pennsylvania Drug and Alcohol Abuse Control Act of 1972.

I understand that I have no obligation to authorize disclosure of any information from my record and that I may revoke this consent, except to the extent that action has already been taken, at any time by notifying in writing the Medical Records Technician, Health Care Administrator, or Facility Manager. I also understand that revocation of this consent will result in my being expelled from the drug offender treatment program and that I will be resentenced by the court.

I understand that these records are the property of the Department of Corrections and that my authorization for their release does not require the Department of Corrections to release these records.

Furthermore, I will indemnify and hold harmless the Pennsylvania Department of Corrections, and its officers, employees, volunteers, contractors and agents, for any losses, costs, damages, or expenses incurred because of releasing information in accordance with this authorization.

Signature Date

Witness Signature Date

§ 97.118. Applicability.

This chapter applies to defendants sentenced to State intermediate punishment on or after _____ (Editor's Note: The blank refers to the effective date of adoption of this proposed rulemaking.).

[Pa.B. Doc. No. 07-245. Filed for public inspection February 16, 2007, 9:00 a.m.]

NOTICES

DEPARTMENT OF BANKING

Action on Applications

The Department of Banking, under the authority contained in the act of November 30, 1965 (P. L. 847, No. 356), known as the "Banking Code of 1965;" the act of December 14, 1967 (P. L. 746, No. 345), known as the "Savings Association Code of 1967;" the act of May 15, 1933 (P. L. 565, No. 111), known as the "Department of Banking Code;" and the act of December 9, 2002 (P. L. 1572, No. 207), known as the "Credit Union Code," has taken the following action on applications received for the week ending February 6, 2007.

BANKING INSTITUTIONS

Branch Applications

<i>Date</i>	<i>Name of Bank</i>	<i>Location</i>	<i>Action</i>
2-1-07	Fulton Bank Lancaster Lancaster County	515 Hershey Avenue and Wabank Road Lancaster Lancaster County	Filed

Articles of Amendment

<i>Date</i>	<i>Name of Bank</i>	<i>Purpose</i>	<i>Action</i>
2-1-07	Royal Bank America Narberth Montgomery County	Article Fifth of the Articles of Incorporation amended and revised in its entirety to provide for the issuance of preferred stock.	Approved and Effective

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.

VICTORIA A. REIDER
Acting Secretary

[Pa.B. Doc. No. 07-246. Filed for public inspection February 16, 2007, 9:00 a.m.]

DEPARTMENT OF CONSERVATION AND NATURAL RESOURCES

Conservation and Natural Resources Advisory Council Meeting

The Conservation and Natural Resources Advisory Council to the Department of Conservation and Natural Resources will hold a meeting on Wednesday, February 28, 2007, at 10 a.m. in Room 105, Lobby Level, Rachel Carson State Office Building, 400 Market Street, Harrisburg, PA.

Questions concerning this meeting or agenda items can be directed to Kurt Leitholf at (717) 705-0031.

Persons in need of accommodations as provided for in the Americans With Disabilities Act of 1990 should contact Joan Dupes directly at (717) 705-0031 or through the Pennsylvania AT&T Relay Service at (800) 654-5984 (TDD) to discuss how the Department may accommodate thier needs.

MICHAEL DIBERARDINIS,
Secretary

[Pa.B. Doc. No. 07-247. Filed for public inspection February 16, 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>
PA0040614	HRP Management, LLC c/o The Herrick 2 Ridgedale Avenue Cedar Knolls, NJ	City of Bethlehem Lehigh County	Monocacy Creek O2C	Y

<i>NPDES No. (Type)</i>	<i>Facility Name & Address</i>	<i>County & Municipality</i>	<i>Stream Name (Watershed #)</i>	<i>EPA Waived Y/N ?</i>
PAS 802210 (Stormwater)	Pocono Mountains Municipal Airport P. O. Box 115 Mount Pocono, PA 18344	Coolbaugh Township Monroe County	Red Run 02A	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>
PA0084395 (IW)	Department of Corrections— State Correctional at Camp Hill 2500 Lisburne Road Camp Hill, PA 17011	Cumberland County Lower Allen Township	Cedar Run 7E	Y
PA0087076	Hershey Entertainment & Resort Company, Inc. 300 Park Boulevard P. O. Box 860 Hershey, PA 17033	Dauphin County Derry Township	Spring Creek 7-D	Y
PA0029947 (SEW)	Southern Huntingdon County School District—Spring Farm Elementary School R. R. 2, Box 1124 Three Springs, PA 17264-9730	Huntingdon County Clay Township	UNT Spring Creek 12-C	Y
PA0029938 (SEW)	Southern Huntingdon County School District—High School/Middle School R. R. 2, Box 1124 Three Springs, PA 17264-9730	Huntingdon County Cromwell Township	Aughwick Creek 12-C	Y
PA0082392 (SEW)	Derry Township Municipal Authority—Southwest STP 670 Clearwater Road Hershey, PA 17033-2453	Dauphin County Londonderry Township	Swatara Creek 7-D	Y
PA0088137 (IW)	Reading Area Water Authority 815 Washington Street Reading, PA 19601-3658	Berks County Maidencreek Township	3B	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>
PA0111848 IW	Safety Light Corp. 4150A Old Berwick Road Bloomsburg, PA 17815	South Centre Township Columbia County	Susquehanna River 5D	Y
PA0228524	Duncan Township P. O. Box 908 Wellsboro, PA 16901	Tioga Duncan Township	UNT to Wilson Creek 9A	Y
PA0228311	Brady Township 1986 Elimsport Road Montgomery, PA 17752	Lycoming Brady Township	Black Hole Creek 10C	Y
PA0110761 IW	Shamokin Dam Borough 210 West Eight Avenue P. O. Box 273 Shamokin Dam, PA 17876-0273	Snyder County Shamokin Dam Borough	UNT of Susquehanna River 6A	Y

Northwest Region: Oil and Gas Management Program Manager, 230 Chestnut Street, Meadville, PA 16335-3481, (814) 332-6860.

<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>
PA0112623 (Ind)	J. J. Bucher Producing Corp. Pearsall Lease 2568 Bells Run Road Shinglehouse, PA 16748-3030	Potter County Shinglehouse Borough	Oswayo Creek 16-C	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.

PA0244210, Industrial Waste, SIC 2841, **Crystal, Inc.—PMC**, 601 West Eight Street, Lansdale, PA 19446. This proposed facility is located in Lansdale Borough, **Montgomery County**.

Description of Proposed Activity: This proposed action is for the renewal and an amendment of an NPDES permit for the discharge of stormwater from an industrial facility.

The receiving stream, a UNT (Pa. Stream Code 02889) to the West Branch Neshaminy Creek, is in the State Water Plan Watershed 2F and is classified for WWF and MF. The nearest downstream public water intake is located on Neshaminy Creek.

The proposed effluent limits for Outfalls 001—004 are based on a stormwater event.

<i>Parameters</i>	<i>Mass (lb/day)</i>		<i>Concentration (mg/l)</i>		<i>Instantaneous Maximum (mg/l)</i>
	<i>Average Monthly</i>	<i>Maximum Daily</i>	<i>Average Monthly</i>	<i>Maximum Daily</i>	
CBOD ₅					Monitor and Report
COD					Monitor and Report
Oil and Grease					30
pH					Monitor and Report
Total Suspended Solids					Monitor and Report
Total Phosphorus					Monitor and Report
Total Kjeldahl Nitrogen					Monitor and Report
Iron, Total					Monitor and Report
Surfactants (MBAS)					Monitor and Report

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

1. Stormwater Conditions.

PA0024121, Sewage, SIC 4952, **Little Washington Wastewater Company**, 762 West Lancaster Avenue, Bryn Mawr, PA 19010. This proposed facility is located in Upper Providence Township, **Delaware County**.

Description of Proposed Activity: Renewal of an NPDES permit to discharge treated sewage from Media Borough STP.

The receiving stream, Ridley Creek, is in the State Water Plan Watershed 3G and is classified for TSF, aquatic life, water supply and recreation. There is no downstream public water supply intake below the point of discharge.

The proposed effluent limits for Outfall 001 are based on a design flow of 1.8 mgd.

<i>Parameters</i>	<i>Average Monthly (mg/l)</i>	<i>Average Weekly (mg/l)</i>	<i>Instantaneous Maximum (mg/l)</i>
CBOD ₅			
(5-1 to 10-31)	15	25	30
(11-1 to 4-30)	25	40	50
Total Suspended Solids	30	45	60
NH ₃ as N			
(5-1 to 10-31)	2.0		4.0
(11-1 to 4-30)	6.0		12.0
Fecal Coliform	# 200/100 ml		# 1,000/100 ml
Dissolved Oxygen			5.0 (Inst. Min.)
Total Residual Chlorine	0.3		1.0
pH		6.0 to 9.0 Standard Units at all times	

The proposed monitoring requirements for Outfalls 002 and 003 are based on an average flow of stormwater runoff.

<i>Parameters</i>	<i>Maximum Daily (mg/l)</i>
CBOD ₅	Monitor and Report
COD	Monitor and Report
Oil and Grease	Monitor and Report

<i>Parameters</i>	<i>Maximum Daily (mg/l)</i>
pH (Standard)	Monitor and Report
Total Suspended Solids	Monitor and Report
Total Kjeldahl Nitrogen	Monitor and Report
Fecal Coliform (# Col/100 ml)	Monitor and Report
Total Phosphorus	Monitor and Report
Iron (Dissolved)	Monitor and Report

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

1. Operator Notification.
2. Average Weekly Definition.
3. Remedial Measures if Unsatisfactory Effluent.
4. No Stormwater.
5. Acquire Necessary Property Rights.
6. Change in Ownership.
7. Chlorine Minimization.
8. Proper Sludge Disposal.
9. TMDL/WLA Analysis.
10. WETT at Renewal.
11. Operator Certification.
12. I-Max Limitations.
13. Stormwater Condition.
14. Laboratory Certification.
15. Fecal Coliform I-Max Reporting.

PA0050482, Sewage, **Freedoms Foundation at Valley Forge**, 1601 Valley Forge Road, Valley Forge, PA 19482-0706. This existing facility is located in Schuylkill Township, **Chester County**.

Description of Proposed Activity: Renewal of NPDES permit to discharge treated sewage effluent from Freedoms Foundation STP.

The receiving stream, Jug Hollow, is in the State Water Plan Watershed 3F and is classified for HQ waters, aquatic life, water supply and recreation. The nearest downstream public water supply intake for PA America Water Company Norristown District is located on the Schuylkill River and is approximately 7.2 miles below the point of discharge.

The proposed effluent limits for Outfall 001 are based on a design flow of 0.0189 mgd.

<i>Parameters</i>	<i>Mass (lb/day)</i>		<i>Concentration (mg/l)</i>		
	<i>Average Monthly</i>	<i>Maximum Daily</i>	<i>Average Monthly</i>	<i>Maximum Daily</i>	<i>Instantaneous Maximum (mg/l)</i>
CBOD ₅			25		50
Total Suspended Solids			30		60
Ammonia as N					
(5-1 to 10-31)			1.0		2.0
(11-1 to 4-30)			3.0		6.0
Fecal Coliform (#col/100 ml)			200		1,000
Dissolved Oxygen			6.0, I-min.		
pH (Std. Units)			6.0, I-min.		9.0
Total Residual Chlorine			0.5		1.2

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

1. Notification of Designation of Responsible Operator.
2. Abandon STP when Public Sewers become Available.
3. Remedial Measures if Public Nuisance.
4. No Stormwater to Sanitary Sewers.
5. Necessary Property Rights.
6. Small Stream Discharge.
7. Change in Ownership.
8. Chlorine Minimization.
9. Proper Sludge Handling.
10. Instantaneous Maximum Limitations.
11. Fecal Coliform Reporting.
12. Operator Training Plan.
13. Laboratory Certification.
14. Operations and Maintenance Plan.
15. Compliance Schedule for Treatment Plant Upgrades.

The EPA waiver is in effect.

PA0013081, Industrial Waste, SIC 2126, **Kimberly Clark of PA, LLC**, Front Street and Avenue of the States, Chester, PA 19013. This proposed facility is located in City of Chester, **Delaware County**.

Description of Proposed Activity: renewal of an NPDES permit to discharge industrial wastewater from Kimberly Clark PA Paper Manufacturing Facility.

The receiving stream, Delaware River Estuary Zone 4 and Chester Creek, is in the State Water Plan Watershed 3G and is classified for WWF, aquatic life, water supply and recreation. There is no public water supply intake downstream of the point of discharge.

The proposed effluent limits for Outfall 001 are based on a design flow of 7.5 mgd.

<i>Parameters</i>	<i>Concentration (mg/l)</i>	
	<i>Maximum Daily</i>	<i>Instantaneous Maximum (mg/l)</i>
Total Suspended Solids (Raw intake water)	Monitor and Report	
Total Suspended Solids (Effluent)	Monitor and Report	
Free Available Chlorine	0.2	0.5
Total Residual Oxidant	Monitor and Report	
Temperature		110°F
pH	6.0 to 9.0 Standard Units all the times	

The proposed effluent limits for Outfall 006 are based on a design flow of 0.25 mgd.

<i>Parameters</i>	<i>Concentration (mg/l)</i>	
	<i>Maximum Daily</i>	<i>Instantaneous Maximum (mg/l)</i>
Free Available Chlorine	0.2	0.5
Total Residual Oxidant	Monitor and Report	Monitor and Report
Temperature		110°F
pH	6.0 to 9.0 Standard Units all the times	

The proposed monitoring requirements for Outfalls 008, 012, 013, 016, 018, 050 and 051 are based on an average flow of stormwater runoff.

<i>Parameters</i>	<i>Instantaneous Maximum (mg/l)</i>
CBOD ₅	Monitor and Report
COD	Monitor and Report
Oil and Grease	Monitor and Report
pH	Monitor and Report
Total Suspended Solids	Monitor and Report
Total Kjeldahl Nitrogen	Monitor and Report
Total Phosphorus	Monitor and Report
Iron (Dissolved)	Monitor and Report

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

1. Remedial Measures if Unsatisfactory Effluent.
2. Right to Modify.
3. Thermal Requirements.
4. Thermal Mixing Zone.
5. Approved Chemical Additives.
6. Condition for Chemical Additive Use.
7. Change of Ownership.
8. Proper Sludge Disposal.
9. TMDL/WLA Analysis.
10. Stormwater Requirement.
11. Intake Temperature Monitoring.
12. No Solids Discharge from the Travel Screen Cleaning.
13. Change in Discharge Frequency.
14. PCBs Requirements.

PA0029441, Sewage, SIC 4952, **Bucks County Water & Sewer Authority**, 1275 Almshouse Road, Warrington, PA 18976. This existing facility is located in Upper Dublin Township, **Montgomery County**.

Description of Proposed Activity: Issuance of a NPDES renewal permit for discharge of treated sewage effluent and stormwater to a UNT to Sandy Run. Permitted flow is increased from 1.0 mgd average annual flow to 1.1 mgd. The basis for the limits include consideration of the Wissahickon Total Maximum Daily Load dated October 2003 for the parameters CBOD₅, NH₃-N, Orthophosphate as P, Total Phosphorus, Dissolved Oxygen and (Nitrite + Nitrate) as Nitrogen.

The copper limits are based on a site-specific criterion for copper, which was developed by means of the Water Effect Ratio (WER) process in accordance with the Environmental Protection Agency's WER Guidance. The final recommended WER for Total Recoverable Copper is 2.47.

The receiving stream, a UNT to Sandy Run, is in the State Water Plan Watershed 3F and is classified for trout stocking, aquatic life, water supply and recreation. The nearest downstream public water supply intake for Philadelphia Water Department is located on the Schuylkill River and is approximately 13.5 miles below the point of discharge.

The proposed effluent limits for Outfall 001 are based on a design flow of 1.1 mgd.

<i>Parameters</i>	<i>Average Monthly (mg/l)</i>	<i>Average Weekly (mg/l)</i>	<i>Maximum Daily (mg/l)</i>	<i>Instantaneous Maximum (mg/l)</i>
CBOD ₅				
(5-1 to 10-31)	13	19		26
(11-1 to 4-30)	25	37		50
Total Suspended Solids	30	45		60
NH ₃ -N				
(5-1 to 10-31)	2.2			4.4
(11-1 to 4-30)	6.6			13.2
(NO ₂ + NO ₃)-N	Monitor			Monitor
pH (Std. Units)	6.0, I-min.			9.0
Fecal Coliform (# col/100 ml)	200			
Total Residual Chlorine	0.09			0.3
Dissolved Oxygen:				
(Issuance through Year 3)	5.0, I-min.			
(Year 4 through Expiration)	7.0, I-min.			
Orthophosphate as P:				
(Issuance through Year 3)	Monitor			Monitor
(Year 4 through Expiration 4-1 to 7-31)	1.4			2.8
Total Phosphorus as P:				
(Issuance through Year 3)	Monitor			Monitor
(Year 4 through Expiration)	2.0			4.0
Copper, Total				
(Issuance through Year 3)	Monitor		Monitor	
(Year 4 through Expiration)	0.056		0.087	

The proposed effluent limits for Stormwater Outfall 002 are based on a design flow of an average storm event.

<i>Parameters</i>	<i>Average Annual (mg/l)</i>	<i>Average Semi-Annual (mg/l)</i>	<i>Maximum Daily (mg/l)</i>	<i>Instantaneous Maximum (mg/l)</i>
CBOD ₅	Monitor		Monitor	
COD	Monitor		Monitor	
Oil and Grease	Monitor		Monitor	
pH	Monitor		Monitor	
Total Suspended Solids	Monitor		Monitor	
Total Kjeldahl Nitrogen	Monitor		Monitor	
Total Phosphorus	Monitor		Monitor	
Iron, Dissolved	Monitor		Monitor	
Fecal Coliform (# col/100 ml)	Monitor		Monitor	

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

1. Notification of Designation of Responsible Operator.
2. Definition of Average Weekly.
3. Remedial Measures if Public Nuisance.
4. No Stormwater to Sanitary Sewers.
5. Necessary Easements.
6. Small Stream Discharge.
7. Change in Ownership.
8. Specification of Test Method.
9. Proper Sludge Handling.
10. Chlorine Minimization.
11. TMDL Data Submission.
12. Whole Effluent Toxicity Testing with Renewal.
13. Instantaneous Maximum Limitations.
14. Stormwater Requirements.
15. SSO Language.

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 0085332, Sewage, **Delta Borough**, 2008 Bunkerhill Avenue, Delta, PA 17314. This facility is located in Delta Borough, **York County**.

Description of activity: The application is for renewal and an amendment of an NPDES permit for an existing discharge of treated sewage.

The receiving stream, Scott Creek, is in Watershed 7-I, and classified for TSF, water supply, recreation and fish consumption. The nearest downstream public water supply intake for Baltimore City is located on the Susquehanna River, approximately 20 miles downstream. The discharge is not expected to affect the water supply.

The proposed Interim effluent limits for Outfall 001 for a design flow of 0.24 mgd are:

Parameter	Average		Instantaneous Maximum (mg/l)
	Monthly (mg/l)	Weekly (mg/l)	
CBOD ₅	25	40	50
Total Suspended Solids	30	45	60
NH ₃ -N			
(5-1 to 10-31)	2.23		4.46
(11-1 to 4-30)	6.69		13.38
Total Residual Chlorine	0.22		0.72
Total Phosphorus	2.0		4.0
Total Phosphorus		Monitor	
Total Nitrogen		Monitor	
TKN		Monitor	
NO ₂ + NO ₃ -N		Monitor	
Dissolved Oxygen		Minimum of 5.0 at all times	
pH		From 6.0 to 9.0 inclusive	
Fecal Coliform			
(5-1 to 9-30)		200/100 ml as a geometric average	
(10-1 to 4-30)		2,000/100 ml as a geometric average	

The proposed Final effluent limits for Outfall 001 for a design flow of 0.48 mgd are:

Parameter	Average		Instantaneous Maximum (mg/l)
	Monthly (mg/l)	Weekly (mg/l)	
CBOD ₅	25	40	50
Total Suspended Solids	30	45	60
NH ₃ -N			
(5-1 to 10-31)	1.78		3.56
(11-1 to 4-30)	5.34		10.68
Total Residual Chlorine	0.19		0.64
Total Phosphorus	2.0		4.0
Total Phosphorus		365 lbs per year annual	
Total Nitrogen		7,306 lbs per year annual	
TKN		Monitor	
NO ₂ + NO ₃ -N		Monitor	
Dissolved Oxygen		Minimum of 5.0 at all times	
pH		From 6.0 to 9.0 inclusive	
Fecal Coliform			
(5-1 to 9-30)		200/100 ml as a geometric average	
(10-1 to 4-30)		2,000/100 ml as a geometric average	

Schedule for compliance with Chesapeake Bay Strategy.

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

The EPA waiver is not in effect.

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

PA0002879, Industrial Waste, SIC, 3312, **Union Electric Steel Corporation**, P. O. Box 465, Carnegie, PA 15106. This application is for renewal of an NPDES permit to discharge treated sewage, water, noncontact cooling water and stormwater from Harmon Creek Plant in Smith Township, **Washington County**.

The following effluent limitations are proposed for discharge to the receiving waters, UNT to Burgetts Fork, classified as a WWF with existing and/or potential uses for aquatic life, water supply and recreation. The first existing/proposed downstream potable water supply is Midland Borough Municipal Authority, located at Midland, Beaver County, 44 miles below the discharge point.

Outfall 001: existing discharge, design flow of 0.0044 mgd.

Parameter	Mass (lb/day)		Concentration (mg/l)		
	Average	Maximum	Average	Maximum	Instantaneous
	Monthly	Daily	Monthly	Daily	Maximum
Flow (mgd)	Monitor and Report				
Total Residual Chlorine			0.5		1.25

NOTICES

<i>Parameter</i>	<i>Mass (lb/day)</i>		<i>Concentration (mg/l)</i>		
	<i>Average Monthly</i>	<i>Maximum Daily</i>	<i>Average Monthly</i>	<i>Maximum Daily</i>	<i>Instantaneous Maximum</i>
Temperature (°F)					
1st month through 36th month				110	
37th month through expiration					
January 1 to 31				45.7	
February 1 to 29				46.2	
March 1 to 31				60.9	
April 1 to 15				68.5	
April 16 to 30				74.5	
May 1 to 15				74.8	
May 16 to 31				90.1	
June 1 to 15				93.8	
June 16 to 30				97.8	
July 1 to 31				94.2	
August 1 to 31				93.4	
September 1 to 15				89.1	
September 16 to 30				83.1	
October 1 to 15				77.1	
October 16 to 31				71.1	
November 1 to 15				63.7	
November 16 to 30				54.5	
December 1 to 31				46.3	
Dissolved Iron				7.0	
Bromide			Monitor and Report		
Sulfates			Monitor and Report		
Iron, Total			Monitor and Report		
Magnesium			Monitor and Report		
pH	not less than 6.0 nor greater than 9.0				

Internal Monitoring Point 102: existing discharge, design flow of 0.015 mgd.

<i>Parameter</i>	<i>Mass (lb/day)</i>		<i>Concentration (mg/l)</i>		
	<i>Average Monthly</i>	<i>Maximum Daily</i>	<i>Average Monthly</i>	<i>Maximum Daily</i>	<i>Instantaneous Maximum</i>
Flow	0.0035				
CBOD ₅			25		50
TSS			30		60
Ammonia Nitrogen					
(5-1 to 10-31)			2.5		5.0
(11-1 to 4-30) (1st month through 36th month)			7.5		15
(11-1 to 4) (37th month through expiration)			6.0		12
Total Residual Chlorine			1.4		3.3
Dissolved Oxygen			5.0 mg/l minimum		
Fecal Coliform					
(5-1 to 9-30)	200/100 ml (as a monthly geometric mean)				
(10-1 to 4-30)	2,000/100 ml (as a monthly geometric mean)				
pH	not less than 6.0 nor greater than 9.0				

Outfall 002: existing discharge.

<i>Parameter</i>	<i>Mass (lb/day)</i>		<i>Concentration (mg/l)</i>		
	<i>Average Monthly</i>	<i>Maximum Daily</i>	<i>Average Monthly</i>	<i>Maximum Daily</i>	<i>Instantaneous Maximum</i>
Iron, Total			Monitor and Report		
Magnesium			Monitor and Report		

Discharges from Internal Monitoring Point 102.

Outfall 003: existing discharge.

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

Internal Monitoring Point 103: existing discharge.

Parameter	Mass (lb/day)		Concentration (mg/l)		
	Average Monthly	Maximum Daily	Average Monthly	Maximum Daily	Instantaneous Maximum
Flow (mgd)	Monitor and Report		Monitor and Report		
Fluoride			Monitor and Report		
Magnesium			Monitor and Report		
pH	not less than 6.0 nor greater than 9.0				

Outfalls 004 and 005: new stormwater discharges.

Parameter	Mass (lb/day)		Concentration (mg/l)		
	Average Monthly	Maximum Daily	Average Monthly	Maximum Daily	Instantaneous Maximum
Flow (mgd)	Monitor and Report		Monitor and Report		
Iron, Total			Monitor and Report		
Total Suspended Solids			Monitor and Report		
Total Aluminum			Monitor and Report		
pH	not less than 6.0 nor greater than 9.0				

The EPA waiver is in effect.

PA0094510, Industrial Waste, SIC, 3316, **United States Steel Corporation, Mon Valley Works**, 13th Street and Braddock Avenue, Braddock, PA 15104. This application is for renewal of an NPDES permit to discharge treated process water, cooling water and stormwater from the Edgar Thomson Plant in North Braddock Borough, **Allegheny County**.

The following effluent limitations are proposed for discharge to the receiving waters, Monongahela River, classified as a WWF with existing and/or potential uses for aquatic life, water supply and recreation. The first existing/proposed downstream potable water supply is PA American Water Company—Becks Run Intake, located at 410 Cooke Lane, Pittsburgh, PA 15234, 4.4 miles below the discharge point.

Outfall 005: existing discharge, average flow of 196 mgd. (Final Limits)

Parameter	Mass (lb/day)		Concentration (mg/l)		
	Average Monthly	Maximum Daily	Average Monthly	Maximum Daily	Instantaneous Maximum
Flow (mgd)	Monitor and Report		Monitor and Report		
Temperature (°F)			110		
Total Residual Chlorine			0.3		
Suspended Solids			Monitor and Report		
Oil and Grease			Monitor and Report		
COD			Monitor and Report		
Nitrate + Nitrite - Nitrogen			Monitor and Report		
Iron			Monitor and Report		
Lead			Monitor and Report		
Manganese			Monitor and Report		
Zinc			0.15		
pH	not less than 6.0 nor greater than 9.0				

Outfall 106: existing discharge, average flow of 0.94 mgd.

Parameter	Mass (lb/day)		Concentration (mg/l)		
	Average Monthly	Maximum Daily	Average Monthly	Maximum Daily	Instantaneous Maximum
Flow (mgd)	Monitor and Report		Monitor and Report		
Suspended Solids	344	744	30	70	88
Oil and Grease	115	214	10	30	
Lead	1.72	5.16	0.15	0.45	0.56
Zinc	1.70	5.11	0.1	0.3	0.38

NOTICES

Parameter	Mass (lb/day)		Concentration (mg/l)		
	Average Monthly	Maximum Daily	Average Monthly	Maximum Daily	Instantaneous Maximum
Naphthalene		0.59		0.085	0.11
Tetrachloroethylene		0.89		0.13	
pH			not less than 6.0 nor greater than 9.0		

Outfall 006: existing discharge, average flow of 25.2 mgd. (Final Limits)

Parameter	Mass (lb/day)		Concentration (mg/l)		
	Average Monthly	Maximum Daily	Average Monthly	Maximum Daily	Instantaneous Maximum
Flow (mgd)	Monitor and Report				
Temperature (°F)				110	
Total Residual Chlorine			0.5		1.25
Suspended Solids			Monitor and Report		
COD			Monitor and Report		
Nitrate + Nitrite - Nitrogen			Monitor and Report		
Aluminum			2.1		5.3
Iron			Monitor and Report		
Lead			Monitor and Report		
Manganese			Monitor and Report		
Zinc			Monitor and Report		
Titanium			Monitor and Report		
pH			not less than 6.0 nor greater than 9.0		

Outfall 008: existing discharge, average flow of 1.28 mgd.

Parameter	Mass (lb/day)		Concentration (mg/l)		
	Average Monthly	Maximum Daily	Average Monthly	Maximum Daily	Instantaneous Maximum
Flow	Monitor and Report				
Temperature (°F)				110	
Total Residual Chlorine			0.5		1.25
Suspended Solids			Monitor and Report		
Oil and Grease			Monitor and Report		
COD			Monitor and Report		
Nitrate + Nitrite - Nitrogen			Monitor and Report		
Iron			Monitor and Report		
Lead			Monitor and Report		
Manganese			Monitor and Report		
Zinc			Monitor and Report		
pH			not less than 6.0 nor greater than 9.0		

Outfall 109: existing discharge.

Parameter	Mass (lb/day)		Concentration (mg/l)		
	Average Monthly	Maximum Daily	Average Monthly	Maximum Daily	Instantaneous Maximum
Flow (mgd)	Monitor and Report				
Suspended Solids	347	1,037	25	70	88
Oil and Grease	3.1	9.0	10	30	
Lead	2.3	6.8	0.30	0.9	1.13
Zinc	3.4	10.1	0.45	1.35	1.69
pH			not less than 6.0 nor greater than 9.0		

Outfall 209: existing discharge.

Parameter	Mass (lb/day)		Concentration (mg/l)		
	Average Monthly	Maximum Daily	Average Monthly	Maximum Daily	Instantaneous Maximum
Flow (mgd)	Monitor and Report				
Suspended Solids	29	81	25	70	88
Oil and Grease	12	35	10	30	
Lead	0.35	1.05	0.30	0.90	1.13

Parameter	Mass (lb/day)		Concentration (mg/l)		
	Average Monthly	Maximum Daily	Average Monthly	Maximum Daily	Instantaneous Maximum
Zinc	0.52	1.57	0.45	1.35	1.69
pH	not less than 6.0 nor greater than 9.0				

Outfall 309: existing discharge.

Parameter	Mass (lb/day)		Concentration (mg/l)		
	Average Monthly	Maximum Daily	Average Monthly	Maximum Daily	Instantaneous Maximum
Flow (mgd)	Monitor and Report				
Suspended Solids	29	81	25	70	88
Oil and Grease	12	35	10	30	
Lead	0.35	1.05	0.30	0.90	1.13
Zinc	0.52	1.57	0.45	1.35	1.69
pH	not less than 6.0 nor greater than 9.0				

Outfall 409: existing discharge.

Parameter	Mass (lb/day)		Concentration (mg/l)		
	Average Monthly	Maximum Daily	Average Monthly	Maximum Daily	Instantaneous Maximum
Flow (mgd)	Monitor and Report				
Suspended Solids	29	81	25	70	88
Oil and Grease	12	35	10	30	
Lead	0.35	1.05	0.30	0.90	1.13
Zinc	0.52	1.57	0.45	1.35	1.69
pH	not less than 6.0 nor greater than 9.0				

Outfall 009: existing discharge, average flow of 6.04 mgd.

Parameter	Mass (lb/day)		Concentration (mg/l)		
	Average Monthly	Maximum Daily	Average Monthly	Maximum Daily	Instantaneous Maximum
Flow (mgd)	Monitor and Report				
Temperature				110	
Total Residual Chlorine				0.5	1.25
Zinc				0.711	1.78
Suspended Solids	Monitor and Report				
COD	Monitor and Report				
Nitrate + Nitrite + Nitrogen	Monitor and Report				
Iron	Monitor and Report				
Lead	Monitor and Report				
Manganese	Monitor and Report				
pH	not less than 6.0 nor greater than 9.0				

The EPA waiver is not in effect.

PA0216453, Industrial Waste, SIC, 3325, **McConway and Torley Corporation**, 109 48th Street, Pittsburgh, PA 15201. This application is for renewal of an NPDES permit to discharge untreated noncontact cooling water and stormwater runoff from the Pittsburgh facility in the City of Pittsburgh, **Allegheny County**.

The following effluent limitations are proposed for discharge to the receiving waters, Allegheny River, classified as a WWF with existing and/or potential uses for aquatic life, water supply and recreation. The first existing/proposed downstream potable water supply is West View Water Authority, located on the Ohio River, approximately 8 miles below the discharge point.

Outfall 003: existing discharge, design flow of 0.6 mgd.

Parameter	Mass (lb/day)		Concentration (mg/l)		
	Average Monthly	Maximum Daily	Average Monthly	Maximum Daily	Instantaneous Maximum
Flow (mgd)	Monitor and Report				
Temperature (°F)					100
pH	not less than 6.0 nor greater than 9.0				

Outfall 001: existing stormwater discharge.

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

Outfall 002: existing stormwater discharge.

Parameter	Mass (lb/day)		Concentration (mg/l)		
	Average Monthly	Maximum Daily	Average Monthly	Maximum Daily	Instantaneous Maximum
Total Suspended Solids					Monitor and Report
Iron, Total					Monitor and Report
Zinc, Total					Monitor and Report

Outfall 004: existing stormwater discharge.

Parameter	Mass (lb/day)		Concentration (mg/l)		
	Average Monthly	Maximum Daily	Average Monthly	Maximum Daily	Instantaneous Maximum
Total Suspended Solids					Monitor and Report
Iron, Total					Monitor and Report
Zinc, Total					Monitor and Report
Chemical Oxygen Demand					Monitor and Report
Copper, Total					Monitor and Report
Manganese					Monitor and Report

Other Conditions: Chemical additives, floating solids, solids disposal, no net addition stormwater conditions.

The EPA waiver is in effect.

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

PA0021792, Amendment No. 1, Sewage. Municipal Authority of the Borough of Edinboro, 124 Meadville Street, Edinboro, PA 16412. This facility is located in Edinboro Borough, **Erie County**.

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

For the purpose of evaluating effluent requirements for TDS, NO₂-NO₃, fluoride, phenolics, sulfate and chloride, the existing/proposed downstream potable water supply, considered during the evaluation is the Franklin General Authority intake on French Creek located at Franklin, is approximately 48 miles below point of discharge.

The receiving stream, the Conneauttee Creek, is in Watershed 16A and classified for TSF, aquatic life, water supply and recreation.

This amendment serves to remove the final, water quality based copper limits in the permit. The Department of Environmental Protection has determined this decision is consistent with Federal antibacksliding provisions.

The EPA waiver is not in effect.

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

Description of Proposed Activity: New discharge of treated sewage.

For the purpose of evaluating effluent requirements for TDS, NO₂-NO₃, fluoride, phenolics, sulfate and chloride, the existing/proposed downstream potable water supply, considered during the evaluation is the Emlenton Water Company located on the Allegheny River and is approximately 53 miles below point of discharge.

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

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

Parameters	Loadings		Concentrations		
	Average Monthly (lb/day)	Average Weekly (lb/day)	Average Monthly (mg/l)	Average Weekly (mg/l)	Instantaneous Maximum (mg/l)
Flow (mgd)	XX	XX			
CBOD ₅	32	48	22	33	44
Total Suspended Solids	44	66	30	45	60

Parameters	Loadings		Concentrations		Instantaneous Maximum (mg/l)
	Average Monthly (lb/day)	Average Weekly (lb/day)	Average Monthly (mg/l)	Average Weekly (mg/l)	
Fecal Coliform (5-1 to 9-30) (10-1 to 4-30)			200/100 ml as a geometric average		
Total Residual Chlorine			2,000/100 ml as a geometric average		
NH ₃ -N			Not Detectable		
(5-1 to 10-31)	11.7		8		16
(11-1 to 4-30)	35		24		48
Phosphorus	2.9		2		4
Dissolved Oxygen			Minimum 3		
Copper	0.21		0.147		0.294
pH			6.0 to 9.0 standard units at all times		

XX—Monitor and report on monthly DMRs.

The EPA waiver is not in effect.

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

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

WQM Permit No. 0494403-A2, Sewerage, **Turnpike Commission**, P. O. Box 67676, Harrisburg, PA 17106. This existing facility is located in Big Beaver Borough, **Beaver County**.

Description of Proposed Action/Activity: Application for permit amendment for revisions to sanitary and industrial wastewater systems.

WQM Permit No. 6374406-A6, Sewerage, **Canonsburg-Houston Joint Authority**, 68 East Pike Street, Canonsburg, PA 15317. This existing facility is located in Canonsburg Borough, **Washington County**.

Description of Proposed Action/Activity: Application for interceptor upgrade.

WQM Permit No. WQG016139, Sewerage, **Gary Schmidt**, 26 Bridge Street, Pittsburgh, PA 15223. This proposed facility is located in Indiana Township, **Allegheny County**.

Description of Proposed Action/Activity: Application for the construction and operation of a single-residence sewage treatment plant.

WQM Permit No. WQG016140, Sewerage, **Department of Veterans Affairs, National Cemetery Administration**, 811 Vermont Avenue NW, Room 235, Washington, DC 20005. This proposed facility is located in Cecil Township, **Washington County**.

Description of Proposed Action/Activity: Application for the construction and operation of a sewage treatment facility to serve the National Cemetery of the Alleghenies.

WQM Permit No. WQG016141, Sewerage, **Frederick J. McFadden, III**, 105 Maple Springs Court, Ebensburg, PA 15931. This proposed facility is located in Allegheny Township, **Cambria County**.

Description of Proposed Action/Activity: Application 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. 6286201, Industrial Waste Amendment No. 2, **Waste Treatment Corporation**, 1 Harmer Street, Warren, PA 16365. This proposed facility is located in City of Warren, **Warren County**.

Description of Proposed Action/Activity: This project is to modify their waste treatment system by adding a rapid sand filtration unit to their effluent stream.

WQM Permit No. 2507401, Sewerage, **McKean Township Sewer Authority**, 9231 Edinboro Road, McKean, PA 16426. This proposed facility is located in McKean Township, **Erie County**.

Description of Proposed Action/Activity: This project is for a pump station and conveyance system to serve the Georgetown Heights Subdivision.

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

V. NPDES Applications for 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.

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

<i>NPDES Permit No.</i>	<i>Applicant Name & Address</i>	<i>County</i>	<i>Municipality</i>	<i>Receiving Water/Use</i>
PAI023507004	Gary Dell'Alba K-MAR Properties 2432 Emerick Blvd. Bethlehem, PA 18020	Lackawanna	Covington Township	Tributary to Six Springs Creek HQ-CWF

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

<i>NPDES Permit No.</i>	<i>Applicant Name & Address</i>	<i>County</i>	<i>Municipality</i>	<i>Receiving Water/Use</i>
PAS10S056R(3)	Sanofi Pasteur Inc. Discovery Drive Swiftwater, PA 18370	Monroe	Pocono Township	Swiftwater Creek HQ-CWF
PAI024507001	DEPG Bartonsville Associates, LP Plymouth Corp. Center 625 Ridge Pike Suite. A-107 Conshohocken, PA 19428	Monroe	Stroud Township	Pocono Creek HQ-CWF

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

<i>NPDES Permit No.</i>	<i>Applicant Name & Address</i>	<i>County</i>	<i>Municipality</i>	<i>Receiving Water/Use</i>
PAI033807001	Plain 'N Fancy Kitchens, Inc. Route 501 and Oak Street Schaefferstown, PA 17088-0519	Lebanon	Heidelberg Township	UNT to Hammer Creek HQ-CWF

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

Centre County Conservation District: 414 Holmes Avenue, Suite 4, Bellefonte, PA 16823, (814) 355-6817.

<i>NPDES Permit No.</i>	<i>Applicant Name & Address</i>	<i>County</i>	<i>Municipality</i>	<i>Receiving Water/Use</i>
PAI041407001	Millheim Borough Council Millheim Wastewater Treatment System P. O. Box 421 Millheim, PA 16854	Centre	Penn Township	Elk Creek and Susquehanna River Basin EV
PAI041407002	Ed Poprik State College Area School District 131 West Nittany Avenue State College, PA 16801	Centre	State College Borough	UNT to Thompson Run HQ-CWF

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

Elk Conservation District: 300 Center Street, P. O. Box 448, Ridgway, PA 15853, (814) 776-5373.

<i>NPDES Permit No.</i>	<i>Applicant Name & Address</i>	<i>County</i>	<i>Municipality</i>	<i>Receiving Water/Use</i>
PAI062407001	United States Army Corps of Engineers Baltimore District	Elk	Benezette Township	UNT Porcupine Hollow HQ-CWF

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

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

PUBLIC WATER SUPPLY (PWS) PERMIT

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

Persons wishing to comment on a permit application are invited to submit a statement to the office listed before the application within 30 days of this public notice. Comments received within the 30-day comment period will be considered in the formulation of the final determinations regarding the application. Comments should include the name, address and telephone number of the writer and a concise statement to inform the Department

of Environmental Protection (Department) of the exact basis of a comment and the relevant facts upon which it is based. A public hearing may be held after consideration of comments received during the 30-day public comment period.

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

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

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

SAFE DRINKING WATER

Applications Received Under the Pennsylvania Safe Drinking Water Act

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

Application No. 4807501, Public Water Supply.
 Applicant **Pennsylvania American Water Company (PAWC)**
 Pen Argyl and Roseto Boroughs; and Plainfield, Washington and Upper Mount Bethel Townships in **Northampton County**
 Responsible Official David Kaufman
 PAWC
 800 West Hersheypark Drive
 Hershey, PA 17033
 Type of Facility PWS
 Consulting Engineer Karl Shellenberger, P. E.
 Buchart-Horn, Inc.
 1200 West College Avenue
 State College, PA 16801
 Application Received Date 1/10/07
 Description of Action PAWC proposes the construction of the PAWC Blue Mountain/Bangor Interconnect Project which includes the construction of approximately 7,400 LF of new distribution mains, a new underground booster pumping station, new raw water pumps at the Oxford Reservoir, and approximately 800 LF of new transmission main piping from the Bangor Plant to the Lower Handelong Reservoir.

Application No. 4507501, Public Water Supply.
 Applicant **Pennsylvania American Water Company (PAWC)**

Stroud Township
Monroe County
 Responsible Official David Kaufman
 PAWC
 800 West Hersheypark Drive
 Hershey, PA 17033
 Type of Facility PWS
 Consulting Engineer Edward J. DiMond, P. E.
 Buchart-Horn, Inc.
 4A Eves Road, Suite 114
 Marlton, NJ 08053
 Application Received Date 1/24/07
 Description of Action Applicant proposes the construction of a new source of supply, known as the Blue Mountain Lake Well No. 3 and related appurtenances.

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

Permit No. 3807502, Public Water Supply.
 Applicant **KB's Cookies**
 Municipality Bethel Township
 County **Lebanon**
 Responsible Official Kristen S. Ramirez, Owner
 100 Chestnut Hill Road
 Fredericksburg, PA 17026
 Type of Facility Public Water Supply
 Consulting Engineer Charles A. Kehew II, P. E.
 James A. Holley & Associates, Inc.
 18 South George Street
 York, PA 17401
 Application Received: 1/29/2007
 Description of Action Installation of nitrate treatment.

Permit No. 3807503, Public Water Supply.
 Applicant **Dutchman's Country Market, Inc. d/b/a Dutch-Way Farm Market**
 Municipality Heidelberg Township
 County **Lebanon**
 Responsible Official Richard D. High, President
 P. O. Box 409
 Schaefferstown, PA 17088
 Type of Facility Public Water Supply
 Consulting Engineer Charles A. Kehew II, P. E.
 James R. Holley & Assoc., Inc.
 18 South George Street
 York, PA 17401
 Application Received: 1/31/2007
 Description of Action Installation of nitrate treatment.

MINOR AMENDMENT

Applications Received Under the Pennsylvania Safe Drinking Water Act

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

Application Minor Amendment.

Applicant	Aqua Pennsylvania Inc. (Pine Beach) Paupack Township Wayne County
Responsible Official	Steve E. Clark Operations Manager Waymart Division
Type of Facility	Public Water System
Consulting Engineer	Brennan T. Kelly, P. E. Aqua Pennsylvania Inc. Palmyra Professional Complex HCR Box 6040 Hawley, PA 18428
Application Received Date	December 18, 2006
Description of Action	Improvements to the Pine Beach well house by relocating the below grade structure and equipment to above grade.

Application Minor Amendment.

Applicant	Easton Suburban Water Authority City of Easton Northampton County
Responsible Official	Roy White, General Manager ESWA 3700 Hartley Avenue Easton, PA 18045
Type of Facility	PWS
Consulting Engineer	James Elliott, P. E. Gannett Fleming, Inc. P. O. Box 67100 Harrisburg, PA 17106
Application Received Date	1/17/07
Description of Action	Applicant requests transfer of City of Easton's PWS Permits 3480050 issued 7/1/05; Minor Amendment issued 1/19/06; and Minor Amendment 10/12/05 to the ESWA.

LAND RECYCLING AND ENVIRONMENTAL REMEDIATION

UNDER ACT 2, 1995

PREAMBLE 1

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

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

dard, the Site-Specific Standard or who intend to remediate a site as a special industrial area must file a Notice of Intent to Remediate with the Department. A Notice of Intent to Remediate filed with the Department provides a brief description of the location of the site, a list of known or suspected contaminants at the site, the proposed remediation measures for the site and a description of the intended future use of the site. A person who demonstrates attainment of one, a combination of the cleanup standards or who receives approval of a special industrial area remediation identified under the act will be relieved of further liability for the remediation of the site for any contamination identified in reports submitted to and approved by the Department. Furthermore, the person shall not be subject to citizen suits or other contribution actions brought by responsible persons not participating in the remediation.

Under sections 304(n)(1)(ii) and 305(c)(2) of the act, there is a 30-day public and municipal comment period for sites proposed for remediation using a Site-Specific Standard, in whole or in part, and for sites remediated as a special industrial area. This period begins when a summary of the Notice of Intent to Remediate is published in a newspaper of general circulation in the area of the site. For the sites identified, proposed for remediation to a Site-Specific Standard or as a special industrial area, the municipality within which the site is located may request to be involved in the development of the remediation and reuse plans for the site if the request is made within 30 days of the date specified. During this comment period, the municipality may request that the person identified as the remediator of the site develop and implement a public involvement plan. Requests to be involved and comments should be directed to the remediator of the site.

For further information concerning the content of a Notice of Intent to Remediate, contact the environmental cleanup program manager in the Department regional office before which the notice appears. If information concerning this acknowledgment is required in an alternative form, contact the community relations coordinator at the appropriate regional office. TDD users may telephone the Department through the AT&T Relay Service at (800) 654-5984.

The Department has received the following Notices of Intent to Remediate:

Southeast Region: Environmental Cleanup Program Manager, 2 East Main Street, Norristown, PA 19401.

Westtown Township Police Barracks, Westtown Township, **Chester County**. Mark Hawkins, Brickhouse Env., 515 S. Franklin Street, West Chester, PA 19382 behalf of Robert Layman, Westtown Township, 1039 Wilmington Pike, West Chester, PA 19382 has submitted a Notice of Intent to Remediate. Soil at the site has been impacted by release of No. 2 fuel oil. The intended future use is unknown at this time as the property is being prepared for the market. It is likely that the future use will be commercial or residential.

Sunoco Inc. Old Pennell Rd., Aston Township, **Delaware County**. Jennifer Huha, GES, Inc. 440 Creamery Way Suted 500, Exton, PA 19341 on behalf of Anthony Morelli, 3460 Pennell Road, Media, PA 19063, Lloyd Yarnell, 3461 Pennell Road, Media, PA 19063, Bruce Snyder, 5000 Pennell Road, Media, PA 19063, Glenn Gualtieri, 102 Old Pennell Road, Media, PA 19063, Dean Fountain, 460 Old Pennell Road, Media, PA 19063, Hope McGowan, 100 Old Pennell Road, Media, PA 19063, Gary

Link, 105A Old Pennell Road, Media, PA 19063, Walter Rupnicki, 115A Old Pennell Road, Media, PA 19063 has submitted a Notice of Intent to Remediate Groundwater at the site has been impacted by release of unleaded gasoline. The future use will remain the same.

Hedley St., Philadelphia Republic. City of Philadelphia, **Philadelphia County.** Walter H. Hungarter, III, RT Env. Svc., Inc., 215 West Church Road, Suite 301, King of Prussia, PA 19406 on behalf of Dean DiValerio, Republic Svc. of PA, LLC, 414 E. Baltimore Pike, Media, PA 19063 has submitted a Notice of Intent to Remediate. Soil at the site has been impacted by release inorganics. The future use of the site will remain the same.

Route 322 and Skelp Level Road, James Arthur, Env. Standards, Inc., P. O. Box 810, Valley Forge Road, Valley Forge, PA 19482 on behalf of Lara Herzig, PECO Energy Co., 2301 Market Street, Philadelphia, PA 19101 has submitted a Notice of Intent to Remediate. Soil at the site has been impacted with No. 2 fuel oil. The future use of the site will remain the same. A summary of the Notice of Intent to Remediate was reported to have been published in the *Daily New Local*.

OPERATE WASTE PROCESSING OR DISPOSAL AREA OR SITE

Application received, under the Solid Waste Management Act (35 P. S. §§ 6018.101—6018.1003), the Municipal Waste Planning, Recycling and Waste Reduction Act (53 P. S. §§ 4000.101—4000.1904) and regulations to operate Solid Waste Processing or Disposal Area or Site.

Southwest Region: Regional Solid Waste Manager, 400 Waterfront Drive, Pittsburgh, PA 15222-4745, (412) 442-4000.

Permit ID No. 100281. Greenridge Reclamation, LLC, R. D. 1, Box 717, East Huntingdon Landfill Road, Scottdale, PA 15683. Greenridge Reclamation, R. D. 1, East Huntingdon Landfill Road, Scottdale, PA 15683. Application for the permit renewal of a municipal waste landfill in East Huntingdon Township, **Westmoreland County** was received in the Regional Office on February 1, 2007.

AIR QUALITY

PLAN APPROVAL AND OPERATING PERMIT APPLICATIONS

NEW SOURCES AND MODIFICATIONS

The Department of Environmental Protection (Department) has developed an "integrated" plan approval, State operating permit and Title V operating permit program. This integrated approach is designed to make the permitting process more efficient for the Department, the regulated community and the public. This approach allows the owner or operator of a facility to complete and submit all the permitting documents relevant to its application one time, affords an opportunity for public input and provides for sequential issuance of the necessary permits.

The Department has received applications for plan approvals and/or operating permits from the following facilities.

Copies of the applications, subsequently prepared draft permits, review summaries and other support materials are available for review in the regional office identified in this notice. Persons interested in reviewing the application files should contact the appropriate regional office to schedule an appointment.

Persons wishing to receive a copy of a proposed plan approval or operating permit must indicate their interest to the Department regional office within 30 days of the date of this notice and must file protests or comments on a proposed plan approval or operating permit within 30 days of the Department providing a copy of the proposed document to that person or within 30 days of its publication in the *Pennsylvania Bulletin*, whichever comes first. Interested persons may also request that a hearing be held concerning the proposed plan approval and operating permit. Comments or protests filed with the Department regional offices must include a concise statement of the objections to the issuance of the Plan approval or operating permit and relevant facts which serve as the basis for the objections. If the Department schedules a hearing, a notice will be published in the *Pennsylvania Bulletin* at least 30 days prior the date of the hearing.

Persons with a disability who wish to comment and require an auxiliary aid, service or other accommodation to participate should contact the regional office identified before the application. TDD users should contact the Department through the Pennsylvania AT&T Relay Service at (800) 654-5984.

Final plan approvals and operating permits will contain terms and conditions to ensure that the source is constructed and operating in compliance with applicable requirements in 25 Pa. Code Chapters 121—143, the Federal Clean Air Act (act) and regulations adopted under the act.

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.

48-309-128: Todd Heller, Inc. (799 Smith Lane, Northampton, PA 18067) for construction of a glass bead furnace and associated air cleaning device at their facility in Northampton Borough, **Northampton County**.

35-318-093: MACTac (P. O. Box 1106, Scranton, PA 18501) for replacement of a coater line at their facility at 802 East Corey Street, Moosic Borough, **Lackawanna County**.

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

31-05011D: U. S. Silica Co. (P. O. Box 187, Berkeley Springs, WV 25411-0187) for adding chutes, a tank and modifying conveying to the rail load out system to load additional rail cars from the low iron sand process at the Mapleton Depot Plant, Brady Township, **Huntingdon County**.

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

47-309-001A: United States Gypsum Co. (125 South Franklin Street, Chicago, IL 60606) for construction of synthetic gypsum railcar and truck unloading operations at 60 PPL Road in Derry Township **Montour County**.

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

65-00858B: Commonwealth Renewable Energy, Inc. (777 Technology Drive, Mt. Pleasant, PA 15666) for construction of an ethanol facility in East Huntingdon Township, **Westmoreland County**.

Northwest Region: Air Quality Program, 230 Chestnut Street, Meadville, PA 16335-3481, George Monasky, New Source Review Chief, (814) 332-6940.

24-083K: Carbone of America (215 Stackpole Street, St. Marys, PA 15857) for collection of dust emissions from the new pulverizer to an existing dust collector in the City of St. Marys, **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.

09-0039C: BMCA Quakertown Inc. d/b/a GAF Material (60 Pacific Drive, Quakertown, PA 18951) for installation of a thermal oxidizer, which replace existing carbon filter as a control located at 60 Pacific Drive, Quakertown, Quakertown Borough, **Bucks County**. This facility is a Major for VOC. There is no emissions increase. Emissions from these sources are 18 tons of VOC. The Plan approval will contain recordkeeping and operating restriction designed to keep the facility operating within the allowable emissions and all applicable air quality requirements.

15-0013B: Huhtamaki Flexibles, Inc. (2400 Continental Boulevard, Malvern, PA 19355) for installation of a thermal oxidizer, which replaces existing old thermal oxidizer as a control and also install a new rotogravure press at 2400 Continental Boulevard, Malvern, Tredyffrin Township, **Chester County**. This facility is a Major for VOC. The facility will continue to operate under plant-wide applicability limit of 94.7 tpy. There is no emissions increase. The Plan approval will contain recordkeeping and operating restriction designed to keep the facility operating within the allowable emissions and all applicable air quality requirements.

46-0027B: Johnson and Johnson Pharmaceutical Research and Development, LLC (Welsh and McKean Roads, Springhouse, PA 19477) for installation of three boilers at their manufacturing/pharmaceutical research and development facility at Welsh and McKean Roads, Lower Gwynedd Township, **Montgomery County**. The installation of three boilers will result in the emissions of: 5.92 tpy of NOx, 6.17 tpy of CO, 7.62 tpy of SOx, 0.59 tpy of VOC, 0.26 tpy of HAPs and 1.87 tpy of PM10. The Plan Approval and Operating Permit will contain additional recordkeeping and operating restrictions designed to keep the facility operating within all applicable air quality requirements.

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

06-05090C: Chiyoda America, Inc. (P. O. Box 470, Thousand Oaks Boulevard, Morgantown, PA 19543) for modification of a decorative printing operation in

Caernarvon Township, **Berks County**. The modification involves the operation of several sources and operations without controls for short periods of time. The permit will limit the amount and types of operations that will be permitted during these periods. The emissions from these sources and operations during these periods are estimated to be of minor significance. The facility will still be required to limit their VOC emissions to less than 50 tpy. The permit will include monitoring, work practices, recordkeeping and reporting requirements designed to keep the operating within all applicable air quality requirements.

28-05041A: Jerr-Dan Corp.—State Line Wrecker Plant (1080 Hykes Road, Greencastle, PA 17225) for construction of two coating booths, and three natural gas fired curing ovens of combined 7.5 mmBtu/hr rated heat input, in Antrim Township, **Franklin County**. The estimated annual emissions from this Plan Approval is approximately 10 tons of VOC. The Plan Approval will include restrictions and work practice requirements. This Plan Approval will be incorporated into the facility's synthetic minor operating permit application No. 28-05041 in accordance with 25 Pa. Code § 127.450. The permit will contain work practice and restrictions, monitoring, recordkeeping and reporting requirements designed to keep the facility operating within all applicable air quality requirements.

34-03008A: Excel Homes, LLC (R. R. 2, Box 683, Liverpool, PA 17045-9518) for operation of their existing modular home manufacturing facility in Susquehanna Township, **Juniata County**. VOC emissions are expected to be 7.3 tpy. The Plan Approval will include monitoring, recordkeeping and work practice standards designed to keep the facility operating within all applicable air quality requirements.

36-05093C: Martin Limestone, Inc. (P. O. Box 550, Blue Ball, PA 17506) for installation of a replacement recycled asphalt paving system at the company's Denver asphalt plant in East Cocalico Township, **Lancaster County**. This action will not impact emissions from the facility and all existing permit requirements will remain in effect. The asphalt plant is subject to 40 CFR Part 60, Subpart I—Standards of Performance for Hot Mix Asphalt Facilities.

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

63-00909: GE Ionics, Inc. (P. O. Box 560, 30 Curry Avenue, Canonsburg, PA 15317) for minor permit modification for an increase of 4.0 tons NOx and 2.4 tons PM10 per year resulting from the installation of a new plasma cutting table on or about February 9, 2007, at their Ionics Canonsburg Plant in Canonsburg Borough, **Washington County**.

Department of Public Health, Air Management Services: 321 University Avenue, Philadelphia, PA 19104, Edward Braun, Chief, (215) 685-9476.

AMS 06170: Sunoco, Inc.—R&M (3144 Passyunk Avenue, Philadelphia, PA 19145) for reduction of the frequency of some monitoring requirements in Plan Approval No. 98005, issued March 23, 1998, for a Sewer Odor Treatment Unit (Biofilter) at 3200 South 26th Street in the City of Philadelphia, **Philadelphia County**. Emissions are not expected to increase as a result of this change. The plan approval will contain operating, testing, monitoring, recordkeeping and reporting requirements to ensure operation within all applicable requirements.

AMS 07002: Sun Chemical Corp. (3301 Hunting Park Avenue, Philadelphia, PA 19132) for construction and operation of a Paste Ink production line that includes one paste ink mixer, two paste ink mills and paste ink tub washer in the City of Philadelphia, **Philadelphia County**. There will be a potential emission increase of 6.87 tons of VOCs for the facility. 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.

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

46-00047: Mueller Streamline Co. (287 Wissahickon Avenue, North Wales, PA 19454) for renewal of the Title V Operating Permit in Upper Gwynedd Township, **Montgomery County**, PA. The initial permit was issued on December 31, 2001. Mueller Streamline Company is a manufacturing plant, which operates two batch vapor degreasers (solvent used: Methylene chloride CAS No. 75-09-20), numerous tube straightener units and various combustion units. The vapor degreasers are regulated by 40 CFR 63, Subpart T (National Emission Standards for Halogenated Solvent Cleaning). As a result of the potential levels of VOCs emitted, the facility is a major stationary source as defined in Title I, Part D of the Clean Air Act Amendments. No changes have taken place at this facility that were not previously permitted. The renewal contains all applicable requirements including monitoring, recordkeeping and reporting. The sources at this facility are not subject to Compliance Assurance Monitoring under 40 CFR Part 64.

15-00031: Henry Co. (336 Cold Stream Road, Kimberton, PA 19442) for renewal of the Title V Operating Permit in East Pikeland Township, **Chester County**. The initial permit was issued on October 25, 2001. The facility manufactures protective asphalt coatings and operates numerous mixing tanks, storage tanks and various process piping. The facility is major for VOCs emissions. No changes have taken place at this facility that were not previously permitted. The renewal contains all applicable requirements including monitoring, recordkeeping and reporting. The sources at this facility are not subject to Compliance Assurance Monitoring under 40 CFR Part 64.

Northwest Region: Air Quality Program, 230 Chestnut Street, Meadville, PA 16335-3481, Matthew Williams, Facilities Permitting Chief, (814) 332-6940.

62-00032: Ellwood National Forge—ENF (1, Front Street, Irvine, PA 16329-1801) for re-issuance of a Title V Permit to operate iron and steel forging products manufacturing in Brokenstraw Township, **Warren County**. The facility's major emission sources include union iron boiler, natural gas space heaters, package heat boilers (2-muira), vacuum degreaser boiler, 45T electric arc furnace, ens annealing furnaces (4), enf heat treat (19), enf heat treat (10), shot blasts (2), crankshaft file and grind process, vacuum degreaser, teeming, scrap handling, slag handling, plant roadways and enc crankshaft degreasing. Previously this facility was synthetic minor in status. At present facility has taken no restriction on production capacity or number of hours. Thus the facility is becoming Title V. The facility is subject to the Compliance Assur-

ance Monitoring Rule found in 40 CFR Part 64. Appropriate permit conditions to address the applicable CAM requirements have been included in the permit.

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

Southeast Region: Air Quality Program, 2 East Main Street, Norristown, PA 19428, Edward Jurdones Brown, Facilities Permitting Chief, (484) 250-5920.

15-00034: Sanofi-Aventis U. S., Inc. (9 Great Valley Parkway, Malvern, PA 19355), for a non-Title V, State-only, Synthetic Minor Operating Permit in East Whiteland Township, **Chester County**. Sanofi-aventis, U. S., Inc. is a pharmaceutical research and development facility. The facility is a major source of NOx and will take appropriate operating and emission restrictions to maintain a minor status below 25 tpy. Monitoring, recordkeeping and reporting requirements have been added to the permit to address applicable limitations.

46-00232: Bostik, Inc. (1740 County Line Road, Huntingdon Valley, PA 19006) for a non-Title V facility, State-only, Synthetic Minor Operating Permit in Upper Moreland Township, **Montgomery County**. Bostik, Inc. is a manufacturer of caulking, adhesives and sealants. The main sources of emissions are the facility's cleaning operations and seven mixers, used to make product. The facility also has numerous combustion sources that result in very little emissions. The Department of Environmental Protection has determined these to be insignificant sources. The facility also has various storage tanks that result in less than 1 pound of emissions a year. The facility has a potential to emit more than 25 tons a year of VOCs. However, the facility has adopted an emission limit of 24.9 tpy for VOCs for the entire facility. The facility has a potential to emit of 6.13 tpy for HAPs, 0.62 tpy for PM, and 1.32 tpy for NOx. Emissions of SOx and CO from the facility are expected to be insignificant. The permit will contain monitoring, recordkeeping, reporting and work practice standards designed to keep the facility operating within all applicable air quality requirements.

15-00067: Herr Foods, Inc. (273 Old Baltimore Pike, Nottingham, PA 19362) for a non-Title V facility, State-Only, Synthetic Minor Permit in West Nottingham Township, **Chester County**. Herr Foods Inc is a manufacturing-food preparations facility. The sources of emissions include boilers and product lines. The company took an emission limit of 24.9 tpy of NOx. Monitoring, recordkeeping and reporting requirements have been added to the permit to address applicable limitations.

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

48-00068: Pennsylvania Perlite Corp. (1428 Mauch Chunk Road, Bethlehem, PA 18018) for a perlite processing plant in the City of Bethlehem, **Northampton County**. The facility's main sources includes two natural gas fired furnaces. The facility has the potential to emit PM, VOCs, HAPs, NOx, SOx and CO below the major emission thresholds. The proposed State-only Operating Permit contains applicable requirements for emissions limitations, monitoring, recordkeeping, reporting and work practice standards designed to ensure facility compliance with Federal and State air pollution regulations.

64-00011: Wayco Sand and Gravel, Inc. (1428 Mauch Chunk Road, Bethlehem, PA 18018) for a sand and gravel processing plant in South Canaan Township, **Wayne**

County. The facility's main sources include one primary crusher, one twin roll crusher, two three-deck screens, conveyors and one diesel fired generator. The facility has the potential to emit PM, VOCs, HAPs, NOx, SOx and CO below the major emission thresholds. The proposed State-only Operating Permit contains applicable requirements for emissions limitations, monitoring, recordkeeping, reporting and work practice standards designed to ensure facility compliance with Federal and State air pollution regulations.

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

06-03132: Ernst Cabinet Works, Inc. (51 Primerose Street, Hamburg, PA 19526) for operation of a wooden furniture manufacturing facility in Hamburg Borough, **Berks County.** The facility is not subject to Title V (State-only operating permit). The facility will include surface coating operations controlled by dry filters. The permit will have monitoring, work practices, recordkeeping and reporting requirements designed to keep the facility operating within all applicable air quality requirements.

36-05064: Homette Corp.—Skyline Homes (465 North Reading Road, Ephrata, PA 17522) for operation of their modular home manufacturing facility in the Ephrata Borough, **Lancaster County.** This is a renewal of their State-only Operating Permit issued in 2002.

36-05065: Homette Corp.—Skyline Homes (99 Horseshoe Road, Leola, PA 17540) for operation of their modular home manufacturing facility in the Ephrata Borough, **Lancaster County.** This is a renewal of their State-only Operating Permit issued in 2002.

67-05073: New York Wire Co. (P. O. Box 1749, York, PA 17405) for operation of their textile facility in Mount Wolf Borough, **York County.** The facility has the potential to emit 50 tons VOC per year. The State-only operating permit will include emission restrictions, work practice standards and testing, monitoring, recordkeeping and reporting requirements designed to keep the facility operating within all applicable air quality requirements. Vinyl Plastisol Coating & Curing Line Nos. 9 and 10 are subject to 40 CFR Part 60, Subpart VVV—Standards of Performance for Polymeric Coating of Supporting Substrates Facilities. This is a renewal of the State-only operating permit.

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

14-00036: Gensimore Trucking, Inc.—Happy Valley Blended Products, LLC (P. O. Box 5210, Pleasant Gap, PA 16823) for operation of a bulk cement blending facility in Spring Township, **Centre County.**

The facility incorporates two cement blending lines, a .14 million Btu per hour anthracite coal-fired furnace, a .05 million Btu per hour natural gas-fired furnace and two propane-fired space heaters (.08 and .125 million Btu per hour). The PM emissions including PM10 from the two blending lines are controlled by two fabric collectors.

The air contaminant emissions from the facility are not expected to exceed 11.78 tons of PM including PM10, 1.42 tons of SOx, .27 ton of NOx, .05 ton of CO and .02 ton of total hydrocarbons per year.

The Department of Environmental Protection proposes to incorporate into the operating permit to be issued conditions requiring compliance with all applicable regu-

latory requirements pertaining to air contamination sources and the emission of air contaminants as well as conditions previously contained in Operating Permit 14-309-044, issued on March 5, 2002.

The conditions previously contained in Operating Permit 14-309-044 include:

1. A condition prohibiting a blending line from operating if the associated fabric collector is in a bag shake cycle.

2. A condition requiring each fabric collector to be equipped with instrumentation to monitor the pressure differential across the collector.

3. A condition requiring extra fabric collector bags to be kept on site.

4. A condition prohibiting the loading of any trucks other than tank trucks at the tank truck loading stations incorporated in the two blending lines.

5. Conditions restricting the first blending line (P101) to the unloading of no more than one railcar and one truck simultaneously and the second blending line (P102) to the unloading of no more than two trucks simultaneously.

49-00026: SemMaterials, LP (Fourth and Duke Streets, Northumberland, PA 17857) for operation of an asphalt storage and truck loading facility in Point Township, **Northumberland County.**

The facility incorporates 38 storage tanks, four asphalt mix tanks, four truck loading racks, a clay silo, a rubber grinder, two solvent parts washers, two small natural gas/No. 2 fuel oil-fired boilers and two natural gas-fired space heaters.

Two of the asphalt mix tanks are equipped with a mist eliminator, and the clay silo is equipped with a fabric collector, for air contaminant emission control.

The air contaminant emissions from the facility are not expected to exceed 38.3 tons of VOCs, 20.3 tons of PM10, 19.3 tons of SOx, 5.5 tons of NOx, 3.1 tons of CO and 4.0 tons of HAP per year.

The facility is not a major (Title V) facility for any air contaminant.

The Department of Environmental Protection proposes to incorporate into the operating permit to be issued conditions requiring compliance with all applicable regulatory requirements pertaining to air contamination sources and the emission of air contaminants as well as conditions to ensure that the plan approval exempt status of various air contamination sources at the facility, as determined by the Department of Environmental Protection subsequent to the submission of "Request for Determination of Requirement for Plan Approval/Operating Permit forms by the permittee on February 27, 2001, June 5, 2001, and April 23, 2002, is maintained.

The conditions intended to ensure maintenance of plan approval exempt status include:

1. A condition limiting the VOC emissions from Tank 34 to less than 10 tons in any 12-consecutive month period.

2. A condition limiting the VOC emissions from Tank 37 to less than 10 tons in any 12-consecutive month period.

3. A condition limiting the combined VOC emissions from Tanks 33 and 36 to less than 2.7 tons in any 12-consecutive month period.

4. A condition limiting the combined emissions of VOC from Tanks 35 and 39 to less than 2.7 tons in any 12-consecutive month period.

5. A condition limiting the VOC emissions from Tank 38 to less than 2.7 tons in any 12-consecutive month period.

6. A condition limiting the combined VOC emissions from the four asphalt mix tanks to less than 10 tons in any 12-consecutive month period.

7. A condition limiting the combined VOC emissions from Loading Racks 1—3 to less than 10 tons in any 12-consecutive month period.

8. A condition limiting the VOC emissions from Loading Rack 4 to less than 10 tons in any 12-consecutive month period.

The Department additionally proposes to incorporate the following conditions into the operating permit to be issued:

9. A condition limiting the total combined VOC emissions from all air contamination sources at the facility to less than 50 tons in any 12-consecutive month period.

10. A condition requiring all No. 2 fuel oil fired at the facility to be virgin No. 2 fuel oil to which no reclaimed or waste oil or other waste materials have been added.

11. Conditions restricting the fuel used in the boilers and space heaters to No. 2 fuel oil and natural gas.

12. Conditions requiring asphalt mix tanks M1 and M2 to be equipped with a mist eliminator and prohibiting the addition of clay to asphalt mix tanks M3 and M4.

13. A condition prohibiting the use of halogenated solvents in the two solvent parts washers.

14. Conditions requiring the maintenance, and periodic submission, of records of No. 2 fuel oil sulfur content and material identity and monthly throughput for each storage tank, asphalt mix tank and truck loading rack.

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

11-00353: Ebensburg Power Co. (2840 New Germany Road, Ebensburg, PA 15931) for remining and screening the existing refuse, transporting the screened refuse by truck to the Ebensburg Power Plant where it will be burned as fuel, transporting the boiler ash from the power plant back to the Revloc Refuse Reclamation Site, alternately layering the ash with the oversize material, covering the entire regarded pile with clay until the final contours are reached, and finally, reseeding the entire site. This permit is for their Revloc Waste Coal Site in Cambria Township, **Cambria County**. This is a State-only Operating Permit Renewal.

Northwest Region: Air Quality Program, 230 Chestnut Street, Meadville, PA 16335-3481, Matthew Williams, New Source Review Chief, (814) 332-6940.

25-00891: Corry Contract, Inc. (21 Maple Avenue, Corry, PA 16407) for re-issuance of a Synthetic Minor Permit to operate an office furniture manufacturing facility in the City of Corry, **Erie County**. The facility's major emission sources include miscellaneous natural gas usage, boiler, third floor paint booth (5), three touch-up booths, batch oven touch up, cure oven, pyrolysis oven, five paint booths in plant II, plant II curing oven and degreaser unit. The facility has taken a restriction on VOC emission from the facility not more than 49.9 tpy to maintain the status of synthetic minor.

COAL AND NONCOAL MINING ACTIVITY APPLICATIONS

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

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

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

Where any of the mining activities listed will have discharges of wastewater to streams, the Department will incorporate NPDES permits into the mining activity permits issued in response to these applications. NPDES permits will contain, at a minimum, technology-based effluent limitations as identified in this notice for the respective coal and noncoal applications. In addition, more restrictive effluent limitations, restrictions on discharge volume or restrictions on the extent of mining which may occur will be incorporated into a mining activity permit, when necessary, for compliance with water quality standards (in accordance with 25 Pa. Code Chapters 93 and 95). Persons or agencies who have requested review of NPDES permit requirements for a particular mining activity within the previously mentioned public comment period will be provided with a 30-day period to review and submit comments on the requirements.

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

Coal Applications Received

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

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

* The parameter is applicable at all times.

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

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

Permit No. 03851601 and NPDES Permit No. PA0214540. TJS Mining, Inc. (2340 Smith Road, Shelocta, PA 15774). To renew the permit for the Dutch Run Prep Plant in Plumcreek Township, **Armstrong County** and related NPDES permit. No additional discharges. Application received: January 5, 2007.

Permit No. 56061301 and NPDES Permit No. NA. RoxCOAL, Inc. (P. O. Box 149, Friedens, PA 15541). To operate the Kimberly Run Mine in Somerset Township, **Somerset County** a new underground mine and related NPDES permit. Surface Acres Proposed 66.7, Underground Acres Proposed 2,638.0, Subsidence Control Plan Acres Proposed 842.7. Receiving stream: Kimberly Run, classified for the following use: CWF. Application received: December 22, 2006.

Permit No. 56971301 and NPDES Permit No. PA0214973, RoxCOAL, Inc. (P. O. Box 149, Friedens, PA 15541). To renew the permit for the Geronimo Mine in Jenner and Quemahoning Townships, **Somerset County** and related NPDES permit. No additional discharges. Application received: December 21, 2006.

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

11070102. PA0262293. C.M.T. Energy, Inc. (108 South Twigg Street, Box 23, Smokerun, PA 16681). Commencement, operation and restoration of a bituminous surface-auger mine in Chest Township, **Cambria County**, affecting 15.2 acres. Receiving streams: unnamed streams No. 1—4 to Chest Creek classified for the following use: CWF. There are no potable water supply intakes within 10 miles downstream. Application received: January 19, 2007.

Greensburg District Mining Office: Armbrust Professional Center, 8205 Route 819, Greensburg, PA 15601, (724) 925-5500.

26070102 and NPDES Permit No. PA0251046. Amerikohl Mining, Inc. (1384 SR 711, Stahlstown, PA 15687). Application for commencement, operation and reclamation to a bituminous surface mine, located in

Springfield Township, **Fayette County**, affecting 214.1 acres. Receiving streams: UNTs to Indian Creek and Laurel Run, classified for the following use: CWF. The potable water supplies with intakes within 10 miles downstream from the point of discharge: Indiana Creek Valley Water Authority and Municipal Authority of Westmoreland County. Application received: January 26, 2007.

Knox District Mining Office: P. O. Box 669, 310 Best Avenue, Knox, PA 16232-0669, (814) 797-1191.

33070101 and NPDES Permit No. PA0258253. P. and N. Coal Co., Inc. (P. O. Box 332, Punxsutawney, PA 15767). Commencement, operation and restoration of a bituminous surface strip operation in Oliver Township, **Jefferson County** affecting 53.6 acres. Receiving streams: UNT to Hadden Run and Little Elk Run, classified for the following use: CWF. There are no potable surface water supply intakes within 10 miles downstream. Application to include a land use change from forestland to pastureland on lands of George & Patti LaCroix. Application received: January 25, 2007.

Moshannon District Mining Office: 186 Enterprise Drive, Philipsburg, PA 16866, (814) 342-8200.

17070102 and NPDES No. PA0256480. AMFIRE Mining Company, LLC (One Energy Place, Latrobe, PA 15650). Commencement, operation and restoration of a bituminous surface mine in Girard Township, **Clearfield County**, affecting 95.5 acres. Receiving streams: Bald Hill Run and UNTs to Bald Hill Run, classified for the following use: CWF. There are no potable water supply intakes within 10 miles downstream. Application received: January 17, 2007.

17000109 and NPDES No. PA0242985. Kenneth K. Rishel & Sons (1229 Turnpike Avenue, Clearfield, PA 16830). Revision of an existing bituminous surface mine to add acres to the permit in Lawrence Township, **Clearfield County**, affecting 25.0 acres. Receiving streams: UNT No. 2 to Orr's Run to the West Branch of the Susquehanna River, classified for the following use: CWF. There are no potable water supply intakes within 10 miles downstream. Application received: February 1, 2007.

17040107 and NPDES No. PA0243817. AMFIRE Mining Company, LLC (One Energy Place, Latrobe, PA 15650). Revision of an existing bituminous surface mine to add additional acres and a road variance in Girard Township, **Clearfield County**, affecting 147.5 acres. Receiving streams: UNTs to Deer Creek and Deer Creek. There are no potable water supply intakes within 19 miles downstream. Application received: January 11, 2007.

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

49910201R3. Rosini Enterprises, Inc. (P. O. Box 568, Shamokin, PA 17872), renewal of an anthracite coal refuse reprocessing operation in Coal Township, **Northumberland County** affecting 68.0 acres, receiving stream: none. Application received: January 25, 2007.

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

¹ The parameter is applicable at all times.

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

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

52970301C3 and NPDES Permit No. PA0223751. G.F. Edwards, Inc. (Box 174, Elmhurst, PA 18416). Renewal of NPDES Permit for discharge of treated mine drainage from a quarry operation in Greene Township, **Pike County** affecting 105.56 acres, receiving stream: Wallenpaupack Creek, classified for the following use: CWF. Application received: January 19, 2007.

7874SM2A1C6 and NPDES Permit No. PA0612880. Eastern Industries, Inc. (4401 Camp Meeting Road, Suite 200, Center Valley, PA 18034). Renewal and correction of NPDES Permit for discharge of treated mine drainage in North Whitehall Township, **Lehigh County**, receiving stream: Coplay Creek, classified for the following use: CWF. Application received: January 25, 2007.

45900303C2 and NPDES Permit No. PA0595279. Middle Smithfield Materials, Inc. (P. O. Box 674, Bushkill, PA 18324). Renewal of NPDES Permit for discharge of treated mine drainage from a quarry operation in Middle Smithfield Township, **Monroe County**, receiving stream: Suise Creek, classified for the following use: CWF. Application received: January 30, 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

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:

noted before the application. Comments should contain the name, address and telephone number of the person commenting, identification of the certification request to which the comments or objections are addressed and a concise statement of comments, objections or suggestions including the relevant facts upon which they are based.

The Department may conduct a fact-finding hearing or an informal conference in response to comments if deemed necessary. Individuals will be notified, in writing, of the time and place of a scheduled hearing or conference concerning the certification request to which the comment, objection or suggestion relates. Maps, drawings and other data pertinent to the certification request are available for inspection between 8 a.m. and 4 p.m. on each working day at the regional office noted before the application.

Persons with a disability who wish to attend a hearing and require an auxiliary aid, service or other accommodation to participate in the proceedings should contact the specified program. TDD users should contact the Department through the Pennsylvania AT&T Relay Service at (800) 654-5984.

Applications received under the Dam Safety and Encroachments Act (32 P. S. §§ 693.1—693.27) and section 302 of the Flood Plain Management Act (32 P. S. § 679.302) and requests for certification under section 401(a) of the Federal Water Pollution Control Act (33 U.S.C.A. § 1341(a)).

WATER OBSTRUCTIONS AND ENCROACHMENTS

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

E09-907. County Line Storage, Inc., 13131 R. Townsend Road, Philadelphia, PA 19154, Warminster Township, **Bucks County**, ACOE Philadelphia District.

To construct and maintain the following water obstructions and encroachments associated with a proposed public storage facility:

1) To relocate approximately 338 linear feet of a UNT of Southampton Creek (TSF-MF) around a proposed public storage facility, by enclosing the stream within 325 linear feet of various pipe segments. The stream enclosure will consist of Headwall No. 6, 8 LF of 36" Pipe, manhole No. 5, 44 LF of 36" Pipe, manhole No. 4, 189 LF of 36" Pipe, manhole No. 3, 63 LF of 36" Pipe, manhole No. 2, 7 LF of 36" Pipe, Endwall No. 1 and associated stilling basin.

2) To place fill within approximately a 320 linear-foot reach of abandoned channel

3) To place fill within 0.10 acre of adjacent wetland (PFO).

The applicant proposes to construct 0.18 acre of onsite wetland replacement to compensate for wetland losses associated with this project. The wetland replacement will enlarge an existing wetland area with minor grading and the diversion of water from the stream enclosure at manhole No. 3, routed through 78 LF of 15" Pipe, to an outfall adjacent to the proposed wetland.

The project is located along County Line Road approximately 700 feet southeast of the intersection of County Line Road and Centennial Road (Hatboro, PA USGS Quadrangle N: 9.1 inches, W: 10.9 inches).

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

E40-666. Robert and Helen Roderick, R. R. 1, Box 301A, Harveys Lake, PA 18618, in Harveys Lake Borough, **Luzerne County**, United States Army Corps of Engineers, Baltimore District.

To modify and maintain an existing pile-supported boathouse and dock in Harveys Lake (HQ-CWF) with work consisting of a 60 SF addition to the boathouse and a 184 SF addition to the dock structure. The total surface area of the modified pile-supported structure will be approximately 1,345 SF and it will extend out 44.8 feet from the shoreline. The project is located on the eastern side of the lake between pole Nos. 39 and 40. (Harveys Lake, PA Quadrangle N: 20.9 inches; W: 4.1 inches).

E13-157. John and Kimberly Ciavarella, P. O. Box 93, Lake Harmony, PA 18624, in Penn Forest Township, **Carbon County**, United States Army Corps of Engineers, Philadelphia District.

To authorize the "after-the-fact" placement of fill in 0.15 acre of wetlands within the mud run watershed (HQ-CWF). The project is located on the east side of Bishop Circle approximately 100 feet south of Tennyson Circle within the Towamensing Trails residential subdivision. (Pocono Mountain, PA Quadrangle N: 21.8 inches; W: 10.8 inches).

E35-401. North Pocono School District, 701 Church Street, Moscow, PA 18444, in Covington Township, **Lackawanna County**, United States Army Corps of Engineers, Baltimore District.

To construct and maintain the following water obstruction and encroachments associated with the New North Pocono High School Project: 1. (Crossing A) To construct and maintain a road crossing of a tributary to Roaring Brook (HQ-CWF), consisting of a 52-foot long, 4-foot by 8-foot concrete box culvert with concrete wingwalls; 2. (Crossing B) To construct and maintain a road crossing of a tributary to Roaring Brook (HQ-CWF), consisting of a 53-foot long, 30-inch diameter corrugated metal aluminized type 2 pipe with a riprap apron and a concrete headwall and endwall; 3. (Crossing C) To construct and maintain a road crossing of a tributary to Roaring Brook (HQ-CWF) and 0.023 acre of adjacent EV wetlands consisting of a 53-foot long, 30-inch diameter corrugated metal aluminized type 2 pipe with a riprap apron and a concrete headwall and endwall; 4. (Crossing D) To construct and maintain a road crossing of a tributary to Roaring Brook (HQ-CWF), consisting of a 66-foot long, 36-inch diameter corrugated metal aluminized type 2 pipe with a riprap apron and a concrete headwall and endwall;

5. (Crossing E) To construct and maintain a road crossing of 0.0197 acre of EV wetlands within the Roaring Brook Watershed; 6. (Crossing F) To construct and maintain a road crossing of a tributary Roaring Brook (HQ-CWF), consisting of a 73-foot long, 18-inch diameter reinforced concrete pipe; and 7. (Crossing G) To construct and maintain a road crossing of a tributary Roaring Brook (HQ-CWF), consisting of a 74-foot long, 15-inch smooth-lined corrugated plastic pipe with a riprap apron. The project is located on the east side of SR 0435 and SR 0502 intersection.

E45-499. DEPG Stroud Associates, 625 Ridge Pike, Suite A-107, Conshohocken, PA 19428 in Stroud Township, **Monroe County**, United States Army Corps of Engineers, Philadelphia District.

To place fill in approximately 0.48 acre of wetland for the purpose of constructing a commercial shopping center including a number of structures, parking lots, entrance ways and stormwater system. The project is located on SR 0611 approximately 0.5 mile east of the Bartonsville exit from I-80 (Saylorsburg, PA Quadrangle N: 22.5 inches; W: 1.7 inches).

E45-498. J.P. Ertle Development, LTD, R. R. 2, Box 30 Silver Spring Boulevard, Kunkletown, PA 18058-99604 in Stroud and Hamilton Townships, **Monroe County**, United States Army Corps of Engineers, Philadelphia District.

To construct and maintain a channel change having a length of 485 feet in a tributary to Pocono Creek (HQ-CWF) that is associated with the construction of a retail shopping center known as the Shoppes at Crossroads. The project is located at the intersection of SR 0611 and SR 0033, near the Bartonsville exit on I-80 (Mount Pocono, PA Quadrangle N: 0.2 inches; W: 2.1 inches)

E45-500. Raymond Johns, 45 Furber Avenue, Linden, NJ 07036, in Tobyhanna Township, **Monroe County**, United States Army Corps of Engineers, Philadelphia District.

To place fill in approximately 0.003 acre of PEM wetlands for the purpose of constructing a single-family dwelling on Lots 7 and 8, Block A-100, Section 3 of Arrowhead Lakes residential community. The project is located along Lake Shore Drive on the northwestern side of Arrowhead Lake (Thornhurst, PA Quadrangle N: 5.4 inches; W: 10.6 inches).

E48-378. Bath Supply Company, Inc., 457 Race Street, Bath, PA 18014 in Bath Borough, **Northampton County**, United States Army Corps of Engineers, Philadelphia District.

To construct and maintain an 8-inch diameter stormwater outfall structure in the floodway of Monocacy Creek (HQ-CWF). The work is associated with a warehouse addition to the existing Bath Supply Company plumbing supply business located west of the intersection of Union Street and Barber Street (Catasauqua, PA Quadrangle N: 18.2 inches; W: 2.9 inches).

E48-379. Slate Hills Enterprises, Inc., 6 Mount Bethel Plaza, Mount Bethel, PA 18343, in Plainfield Township, **Northampton County**, United States Army Corps of Engineers, Philadelphia District.

To place fill in an abandoned 5-acre water-filled, slate quarry in order to eliminate a safety hazard. The project is located in the Greenwalk Creek watershed and is located on the east side of Bangor Junction Road (Bangor, PA Quadrangle N: 22.7 inches; W: 16.0 inches).

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

E06-617: Birdsboro Municipal Authority, 202 East Main Street, Birdsboro, PA 19508, ACOE Philadelphia District.

To construct and maintain a 1,205.0-foot long, 5.0-foot wide dike with 3 to 1 side slopes in the floodplain of Hay Creek (CWF, MF) and the Schuylkill River (WWF), a 24.0-inch DIP outfall pipe with a riprap apron and a concrete endwall through the existing Schuylkill River Dike, and to install a 12.0-inch HDPE pipe for the purpose of enclosing a drainage ditch (Birdsboro, Quadrangle: Latitude: 40° 16' 07" Longitude: 75° 48' 15", N: 3.5 inches, W: 7.6 inches) located off of Amorcast Road in the Borough of Birdsboro, **Berks County**.

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

E49-293. Moran Industries, 202 E. Seventh Street, Watsonstown, PA 17777. Warehouse Construction in Floodway, in Watsonstown Borough, **Northumberland County**, ACOE Baltimore District (Milton, PA Quadrangle Latitude 41° 5' 27.9"; Longitude 76° 51' 57.2").

The applicant proposes to 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 application also proposes to construct, operate and maintain 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 Mathew 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 Mathew Street from the intersection with Eighth Street in the Borough of Watsonstown, Northumberland County.

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

E32-479. Department of Transportation, Engineering District 10-0, 2550 Oakland Avenue, Indiana, PA 15701. To construct numerous culverts in the Conemaugh River in East and West Wheatfield Townships, **Indiana County**, Pittsburgh ACOE District. (beginning from Bolivar, PA Quadrangle, N: 7.08 inches and W: 1.02 inches and Latitude 40° 27' 12"—Longitude 79° 8' 38"; and ending New Florence, PA Quadrangle, N: 6.87 inches and W: 3.64 inches and Latitude 40° 26' 58"—Longitude 79° 2' 58"). The applicant proposes to construct and maintain: a 250 ft. long 36 inch diameter culvert, a 290 ft. long 30 inch diameter culvert, a 236 ft. long 36 inch diameter culvert, and a 360 ft. long 36 inch diameter culvert in UNTs to the Conemaugh River; a 84 ft. long 24 inch diameter culvert, and a 272 ft. long 36 inch diameter culvert in UNTs to Blacklick Creek; a 260 ft. long 30 inch diameter culvert in a UNT to the West Branch Richards Run; a 128 ft. long 24 inch diameter culvert in a UNT to the East Branch Richards Run; a 184 ft. long 30 inch diameter culvert in a UNT to Ramsey Run; a 139 ft. long 42 inch diameter extension to an existing 197 ft. long 3 ft. by 3 ft. box culvert in a UNT to Blacklick Creek; a 135 ft. long 42 inch diameter extension to an existing 130 ft. long 4 ft. by 3 ft. box culvert in a UNT to the West Branch of

Richards Run; 810 ft. of stream relocation to a UNT of Blacklick Creek; and 170 ft. of stream relocation in a UNT of West Branch Richards Run. In addition 0.38 acre of wetlands will be filled and maintained; 340 ft. of existing culverted stream channel will be opened in a UNT to Blacklick Creek; 170 ft. of existing culverted stream will be opened in a UNT to West Branch Richards Run; and construction and maintenance of road associated stormwater outfalls. All streams are 25 Pa. Code Chapter 93 CWF and all drainage areas are less than 37 acres. Replacement wetlands have already been constructed at the AMD and Art Demonstration Project in Vintondale. Stream mitigation includes completed stream bank and crossing fencing at various farms. This project is associated with the larger, phased SR 0022 relocation and improvement work with this section (Section 494) starting approximately 5 miles east of Blairsville and extending east 4.5 miles located in West Wheatfield and East Wheatfield Townships.

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

E10-426, Robert Ferree, Bottled Lightning, LP, 4848 Route 8, Allison Park, PA 15101. Brush Creek Commons Project, in Cranberry Township, **Butler County**, ACOE Pittsburgh District (Mars, PA Quadrangle N: 40° 40' 32"; W: 80° 06' 04").

To place and maintain fill at a depth up to 6-feet within the regulated floodway along the left bank of a tributary to Brush Creek (WWF) for a length of approximately 380 feet for the construction of an office building, parking lots, and the like. The site is west of Emeryville Drive and east of the Turnpike I-76, approximately 630 feet north of the Allegheny County line.

An area of 0.08 acre wetland was filled during prior construction and will be mitigated onsite as part of this project.

E42-327, Catalyst Energy, Inc., 800 Cranberry Woods Drive, Suite 290, Cranberry Township, PA 16066. Moody Lot 65 Wells 60 and 63 Gathering Lines, in Lafayette Township, **McKean County**, ACOE Pittsburgh District (Lewis Run, PA Quadrangle N: 41, 51', 20.35"; W: 78, 37', 49.6").

To install by means of directional drilling and maintain 2-inch diameter natural gas pipelines across Railroad Run (EV) and a tributary to Railroad Run (EV) serving as gathering lines from gas wells being drilled on the Moody Lot 65 parcel approximately 750 feet southwest of the intersection of Big Shanty Road and Droney Road.

DAM SAFETY

Central Office: Bureau of Waterways Engineering, 400 Market Street, Floor 3, P. O. Box 8554, Harrisburg, PA 17105-8554.

D63-089D. Eighty-Four Mining Company, 1525 Pleasant Grove Road, Claysville, PA 15323. To modify, operate and maintain the existing slurry impoundment at the Mine No. 84 site. Work includes increasing the maximum dam height and operating pool elevation at the Pond No. 6 facility, extending the impoundments service life for continued mining operations. (Hackett, PA Quadrangle N: 4.3 inches; W: 9.0 inches) in Somerset Township, **Washington County**.

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

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

<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>
PA00556511	Barry and Kristen Eves 47 Bishop Road Pottstown, PA 19465	Chester County East Coventry Township	UNT to Pigeon Creek Watershed 3D	Y

II. New or Expanded Facility Permits, Renewal of Major Permits and EPA Nonwaived 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>
PA0012203 Renewal	Allen Organ Company 150 Locust Street Macungie, PA 18062-0036	Lehigh County Macungie Borough	Swabia Creek 02C	Y

<i>NPDES No. (Type)</i>	<i>Facility Name & Address</i>	<i>County & Municipality</i>	<i>Stream Name (Watershed #)</i>	<i>EPA Waived Y/N ?</i>
PA-0063479 Renewal	P & S Development Co. 2268 South 12th Street Allentown, PA 18103	Salem Township Wayne County	01C UNT to West Branch Wallenpaupack Creek	Y
PA0043362 (Minor Sewage)	Union Lake Hotel t/a Camp Equinunk/Blue Ridge P. O. Box 808 East Hampton, NY 11937	Wayne County Manchester Township	UNT of Little Equinunk Creek 1-A	Y
PA-0061069 (Minor Industrial Waste)	Schott North America, Inc. 400 York Avenue Duryea, PA 18642-2036	Duryea Borough Luzerne County	Lackawanna River 5A	Y

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

NPDES Permit No. PA0083186, Sewage, **HMS Host, Pennsylvania Turnpike/Travel Plazas, Sideling Hill Service Plaza**, P. O. Box 8, Middletown, PA 17057. This proposed facility is located in Taylor Township, **Fulton County**.

Description of Proposed Action/Activity: Authorization to discharge to a dry swale to Lick Branch Wooden Bridge Creek in Watershed 12-C.

NPDES Permit No. PA0083607 Amendment No. 1, Sewage, **Union Township**, 3111 SR 72, Jonestown, PA 17038. This proposed facility is located in Union Township, **Lebanon County**.

Description of Proposed Action/Activity: Authorization to discharge to Forge Creek in Watershed 7-D.

NPDES Permit No. PA0084816, Industrial Waste, **Sunoco Pipeline, LP, Montello Pump Station**, 525 Fritztown Road, Sinking Spring, PA 19608. This proposed facility is located in Spring Township, **Berks County**.

Description of Proposed Action/Activity: Authorization to discharge to the Cacoosing Creek in Watershed 3-C.

NPDES Permit No. PA0246972, CAFO, **Weiler Farms Partnership, Weiler Farm No. 3**, 350 East Mill Avenue, Myerstown, PA 17067. This proposed facility is located in Union Township, **Lebanon County**.

Description of Size and Scope of Proposed Operation/Activity: Authorization to operate an 817-AEU swine operation located in Watershed 7-D.

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

Amplified Final Public Notice for NPDES Permit No. PA0101656, Industrial Waste, **Dominion Transmission, Inc.—Big Run Division V Wastewater Treatment Plant**, 654 Carson Hill Road, Luthersburg, PA 15848.

This notice reflects changes from the notice published at 36 Pa. B. 6431 (October 21, 2006).

The discharge from the treatment facility was renamed Internal Outfall 101 and the discharge from the groundwater collection system was added as Internal Outfall 201. The combined discharges from Internal Outfalls 101 and 201 are now referred to as Outfall 001.

The new water quality based effluent limits for cadmium contained in the draft permit were replaced with monitoring.

The nondetectable limit for acrylamide monomer was replaced with numerical limits calculated based on the CRL criterion for this parameter. A special condition specifying a test method that may be used to demonstrate compliance with these limits was also added.

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. 1500422, Sewerage, Amendment and Renewal, **West Bradford Township**, 1385 Campus Drive, Downingtown, PA 19335. This proposed facility is located in West Bradford Township, **Chester County**.

Description of Action/Activity: Additions of spray zones 6—8 to existing permit.

WQM Permit No. 0905411, Transfer, **Telford Borough Authority**, 122 Penn Avenue, Telford, PA 18969. This proposed facility is located in Telford Borough, **Bucks and Montgomery Counties**.

Description of Action/Activity: a 8" and 10" gravity sewer and associated appurtenances to allow the transfer of flow from 641 EDU's to the Pennridge Wastewater Treatment Facility from the Telford Borough Authority.

WQM Permit No. 0906410, Sewerage, **Wrightstown Township**, 738 Penns Park Road, Wrightstown, PA 18940. This proposed facility is located in Wrightstown Township, **Bucks County**.

Description of Action/Activity: The proposed Chapman Corners Subdivision a 46 single-family homes wastewater treatment will be accomplished using a MBR and will discharge to a UNT of Neshaminy Creek.

WQM Permit No. 4606408, Sewerage, **Borough of Royersford**, 300 Main Street, Royersford, PA 19468. This proposed facility is located in Upper Providence Township, **Montgomery County**.

Description of Action/Activity: Construction and operation of a sewage treatment plant.

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

WQM Permit No. 5406403, Cressona Borough Authority, 55 South Sillyman Street, Cressona, PA 17929. This proposed facility is located in Cressona Borough, **Schuylkill County**.

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

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

WQM Permit No. 0606407, Sewerage, Bethel Township Municipal Authority, P. O. Box 24, Bethel, PA 19507. This proposed facility is located in Bethel Township, **Berks County**.

Description of Proposed Action/Activity: Permit approval for the construction/operation of sewerage facilities consisting of a new 0.205 mgd extended aeration wastewater treatment plant with denitrification and a new sanitary sewer system with two new pump stations with a design peak instantaneous flow rate capacity of 0.3075 mgd.

WQM Permit No. 4406401, Sewerage, Lewistown Borough, Two East Third Street, Lewistown, PA 17044-1799. This proposed facility is located in Lewistown Borough, **Mifflin County**.

Description of Proposed Action/Activity: Permit approval for the construction of sewerage facilities consisting of gravity sewer to direct flow to the proposed pump station; a submersible duplex chopper pump station; force main from the pump station beneath Kishacoquillas Creek to an existing manhole.

WQM Permit No. 0606409, Sewerage, Township of Tilden, 874 Hex Highway, Hamburg, PA 19528. This proposed facility is located in Tilden Township, **Berks County**.

Description of Proposed Action/Activity: Permit approves the construction and operation of sewerage facilities consisting of sanitary sewage collection system to include approximately 2,400 feet of 8-inch diameter sewers, submersible pump stations and 6,000 feet of 6-inch diameter force main, 1,700 feet of 4-inch diameter force main. Emergency generators are provided for each pump station.

WQM Permit No. 0607201, CAFO, Michael Werner, Joe Jurgielewicz & Son, Ltd., P. O. Box 257, Shartlesville, PA 19554. This proposed facility is located in Tilden Township, **Berks County**.

Description of Proposed Action/Activity: Permit approval for auxiliary manure and residual waste impoundments at their home farm.

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

WQM Permit No. 1171402-A3, Sewerage, Portage Area Sewer Authority, 606 Cambria Street, Portage, PA 15946. This existing facility is located in Portage Township, **Cambria County**.

Description of Proposed Action/Activity: Permit amendment issuance to replace existing Portage Sewage Treatment Plant.

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

WQM Permit No. WQG018519, Sewerage, Mary M. and William C. Anderson, 248 Daugherty Run Road, Warren, PA 16365. This proposed facility is located in Conewango Township, **Warren County**.

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

WQM Permit No. WQG018514, Sewerage, Sam Colosimo Jr., 204 Constance Drive, McKees Rocks, PA 15136. This proposed facility is located in Harmony Township, **Forest County**.

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

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

WQM Permit No. 3306201, Industrial Waste, Dominion Transmission, Inc., P. O. Box 2450, Clarksburg, WV 26302-2450. This proposed facility is located in Henderson Township, **Jefferson County**.

Description of Proposed Action/Activity: Modification and operation of an existing oil and gas wastewater treatment facility.

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.

NPDES Permit No.	Applicant Name & Address	County	Municipality	Receiving Water/Use
PAI024804042	Wagner Enterprises, Ltd. P. O. Box 3154 Easton, PA 18043	Northampton	Bethlehem City	Saucon Creek HQ-CWF
PAI024806002	Ean Sussick & Sons Construction, Inc. 724 South Delps Road Bath, PA 18014	Northampton	Plainfield Township	Bushkill 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>
PAI063706002	Frank Kempf Turnpike Commission P. O. Box 67676 Harrisburg, PA 17106	Lawrence	Little Beaver Township New Beaver Borough Big Beaver Borough	Jordan Run UNT Jordan Run Honey Creek UNT Honey Creek Beaver Dam Run UNT Beaver Dam Run UNT North Fork Little Beaver All HQ-CWF

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

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

List of NPDES and/or Other General Permit Types

PAG-1	General Permit for Discharges From Stripper Oil Well Facilities
PAG-2	General Permit for Discharges of Stormwater Associated With Construction Activities (PAR)
PAG-3	General Permit for Discharges of Stormwater From Industrial Activities
PAG-4	General Permit for Discharges From Small Flow Treatment Facilities
PAG-5	General Permit for Discharges From Gasoline Contaminated Groundwater Remediation Systems
PAG-6	General Permit for Wet Weather Overflow Discharges From Combined Sewer Systems (CSO)
PAG-7	General Permit for Beneficial Use of Exceptional Quality Sewage Sludge by Land Application
PAG-8	General Permit for Beneficial Use of NonExceptional Quality Sewage Sludge by Land Application to Agricultural Land, Forest, a Public Contact Site or a Land Reclamation Site
PAG-8 (SSN)	Site Suitability Notice for Land Application Under Approved PAG-8 General Permit Coverage
PAG-9	General Permit for Beneficial Use of Residential Septage by Land Application to Agricultural Land, Forest, or a Land Reclamation Site
PAG-9 (SSN)	Site Suitability Notice for Land Application Under Approved PAG-9 General Permit Coverage
PAG-10	General Permit for Discharge Resulting from Hydrostatic Testing of Tanks and Pipelines
PAG-11	(To Be Announced)
PAG-12	Concentrated Animal Feeding Operations (CAFOs)
PAG-13	Stormwater Discharges from Municipal Separate Storm Sewer Systems (MS4)

General Permit Type—PAG-01

Facility Location:

<i>Municipality & County</i>	<i>Approval No.</i>	<i>Applicant Name & Address</i>	<i>Receiving Water/Use</i>	<i>Contact Office & Phone No.</i>
Brokenstraw Township Warren County	6295001	Gas and Oil Management Associates, Inc. 601 Rouse Avenue Youngsville, PA 16371	Brokenstraw Creek CWF	Northwest Regional Office Oil and Gas Management 230 Chestnut Street Meadville, PA 16335 (814) 332-6860

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>
Archbald Borough Lackawanna County	PAG2003507003	David Stafursky 502 Main Street Archbald, PA 18403	Charles Creek CWF	Lackawanna Co. Cons. Dist. (570) 281-9495
Kingston Township Luzerne County	PAG2004006049	Frank Nockley 3 Genoa Lane Shavertown, PA 18708	Tributary to Toby Creek CWF	Luzerne Co. Cons. Dist. (570) 674-7991
City of Scranton Lackawanna County	PAG2003506029	Karl Pfeiffenberger 222 Mulberry Street P. O. Box 431 Scranton, PA 18501-0431	Lackawanna River CWF	Lackawanna Co. Cons. Dist. (570) 281-9495

<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>
Mahoning Township Carbon County	PAG2001306008	Thomas Beltz 179 Airport Road Lehighton, PA 18235	Mahoning Creek CWF	Carbon Co. Cons. Dist. (610) 377-4894
East Penn Township West Penn Township Carbon County	PAG2001306009	Bill Teel, Jr. 390 Forest Inn Road Lehighton, PA 18235	Lizard Creek TSF	Carbon Co. Cons. Dist. (610) 377-4894
Mount Pleasant Township Adams County	PAG2000106027	Randy Baker, Pres. Happy Ramblers Motorcycle Club 4340 Hanover Road Hanover, PA 17331	Conewago Creek WWF	Adams County Conservation District 670 Old Harrisburg Road Suite 201 Gettysburg, PA 17325 (717) 334-0636
Menallen Township Adams County	PAG2000106040	David Rice Rice Fruit Company, Inc. P. O. Box 66 Gardners, PA 17324	UNT to Oppossum Creek TSF	Adams County Conservation District 670 Old Harrisburg Road Suite 201 Gettysburg, PA 17325 (717) 334-0636
South Lebanon Township Lebanon County	PAG2003806038	Cornwall—Lebanon School District 105 East Evergreen Road Lebanon, PA 17042	Quittapahilla Creek TSF	Lebanon County Conservation District 2120 Cornwall Road Suite 5 Lebanon, PA 17042 (717) 272-3908 Ext. 4
Union Township Lebanon County	PAG2003806026	Alan Love Love's Travel Stop and Country Store 10601 N. Pennsylvania P. O. Box 26210 Oklahoma City, OK 73126	Forge Creek WWF	Lebanon County Conservation District 2120 Cornwall Road Suite 5 Lebanon, PA 17042 (717) 272-3908 Ext. 4
Swatara Township Lebanon County	PAG2003806037	Jeffrey Werner 897 N. Lancaster Street Jonestown, PA 17038	UNT to Swatara Creek WWF	Lebanon County Conservation District 2120 Cornwall Road Suite 5 Lebanon, PA 17042 (717) 272-3908 Ext. 4
Hamilton Township Franklin County	PAG2002807001	Dominion Transmission 445 Sest Main Street Clarksburg WV 26301	UNT Conococheague Creek CWF	Franklin County Conservation District 100 Sunset Boulevard West Chambersburg, PA 17201 (717) 264-8074 Ext. 5
Antrim Township Franklin County	PAG2002806085	Antrim Township Government Center P. O. Box 130 Greencastle PA 17225	UNT to Conococheague Creek CWF	Franklin County Conservation District 100 Sunset Boulevard West Chambersburg, PA 17201 (717) 264-8074 Ext. 5
Washington Township Franklin County	PAG2002806051	Glen Oaks 100 Colonial Way West Chester, PA 19382	Antietam Creek WWF	Franklin County Conservation District 100 Sunset Boulevard West Chambersburg, PA 17201 (717) 264-8074 Ext. 5

NOTICES

825

<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>
Hamilton Township Franklin County	PAG2002809076	Ross & Steinberger Subdivision 50 N. Schoolhouse Road Thomasville, PA 17364	Dennis Creek CWF	Franklin County Conservation District 100 Sunset Boulevard West Chambersburg, PA 17201 (717) 264-8074 Ext. 5
Washington Township Franklin County	PAG2002906001	Martin's Hill 290 Seaks Run Road Glen Rock, PA 17327	Antietam Creek CWF	Franklin County Conservation District 100 Sunset Boulevard West Chambersburg, PA 17201 (717) 264-8074 Ext. 5
Greene Township Franklin County	PAG2002805094	Beacon of Greene Estates Robert Miller 24 Buckingham Way Freehold, NJ 07728	Conococheague Creek CWF	Franklin County Conservation District 100 Sunset Boulevard West Chambersburg, PA 17201 (717) 264-8074 Ext. 5
Washington Township Franklin County	PAG2002806048	Johnny Knepper Estates R. Lee Royer 10764 Buchanan Trail E Waynesboro, PA 17268	West Branch of Antietam Creek CWF	Franklin County Conservation District 100 Sunset Boulevard West Chambersburg, PA 17201 (717) 264-8074 Ext. 5
Guilford Township Franklin County	PAG20028060561	CSX Intermodal 301 W. Bay Street 54 800 Jacksonville, FL 32202	Conococheague Creek CWF	Franklin County Conservation District 100 Sunset Boulevard West Chambersburg, PA 17201 (717) 264-8074 Ext. 5
Quincy Township Franklin County	PAG2002806025	Mentzer Meadows Phase 2 Paul Gunder 9938 Mentzer Gap Road Waynesboro, PA 17268	UNT to Antietam Creek WWF	Franklin County Conservation District 100 Sunset Boulevard West Chambersburg, PA 17201 (717) 264-8074 Ext. 5
East Lampeter Township Lancaster County	PAG2003606057	Ben Stoltzfus 2603 Lincoln Highway Ronks, PA 17572	UNT to Mill Creek WWF	Lancaster County Conservation District 1383 Arcadia Rd Room 200 Lancaster, PA 17601 (717) 299-5361 Ext. 5
Manchester Township York County	PAG2006706067	2645 Blackthorne Court Keith Hamberger 1732 W. King Street York, PA 17404	Codorus Creek WWF	York County Conservation District 118 Pleasant Acres Road York, PA 17402 (717) 840-7430
Lower Swatara Township Dauphin County	PAG2002206066	Lawrence P. Wasser Phoenix Contact 586 Fulling Mill Road Middletown, PA 17057	Swatara Creek WWF	Dauphin County Conservation District 1451 Peters Mountain Road Dauphin, PA 17018
Swatara Township Dauphin County	PAG2002206060	Federal Express Corporation Steven Fluharty 4310 Williamsburg Road Unit 8 Hurlock, MD 21643	Laurel Run	Dauphin County Conservation District 1451 Peters Mountain Road Dauphin, PA 17018

<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>
Swatara Township Dauphin County	PAG2002206051	Feldman Mall Properties, Inc. 1-83 and Paxton Street Harrisburg, PA 17111	UNT to Spring Creek WWF	Dauphin County Conservation District 1451 Peters Mountain Road Dauphin, PA 17018
Bedford Township Bedford County	PAG2000506013	Bedford Township Municipal Authority P. O. Box 371 Bedford, PA 15522	UNT to Dunning Creek WWF	Bedford County Conservation District 702 West Pitt Street Suite 3 Fairlawn Court Bedford, PA 15522
Exeter Township Berks County	PAG2000606043	James Clouser 301 Wegman Road Reading, PA 19606	UNT to Owatin Creek WWF	Berks County Conservation District 1238 County Welfare Road Suite 200 Leesport, PA 19533-9710 (610) 372-4657 Ext. 201
South Lebanon Township Lebanon County	PAG2003806025	Cliff Weaver Landmark Builders, Inc. 1656 West Main Street Ephrata, PA 17522	Quittapahilla Creek TSF	Lebanon County Conservation District 2120 Cornwall Road Suite 5 Lebanon, PA 17042 (717) 272-3908 Ext. 4
East Hanover Township Lebanon County	PAG2003806022	Gary Marks Generation Enterprises 1594 Colonial Drive Lebanon, PA 17046	Swatara Creek WWF	Lebanon County Conservation District 2120 Cornwall Road Suite 5 Lebanon, PA 17042 (717) 272-3908 Ext. 4
North Annville Township Lebanon County	PAG2003806027	John and Lucinda Yutzy 170 Clear Spring Road Annville, PA 17003	UNT Quittapahilla Creek TSF	Lebanon County Conservation District 2120 Cornwall Road Suite 5 Lebanon, PA 17042 (717) 272-3908 Ext. 4
West Manchester Township York County	PAG2006706105	Penntown Properties 118 Carlisle Street Beechwood Center Hanover, PA 17331	Honey Run TSF	York County Conservation District 118 Pleasant Acres Road York, PA 17402 (717) 840-7430
Newberry Township York County	PAG2006706078	JAGMEG, LP Subdivision Michael Garman 95 Haldeman Avenue New Cumberland, PA 17070	Fishing Creek TSF	York County Conservation District 118 Pleasant Acres Road York, PA 17402 (717) 840-7430
Penn Township York County	PAG2006706101	Grandview Plaza Paul Burkentine Penn State Inv. Prop. 330 Dubbs Church Road Hanover, PA 17331	Furnace Creek WWF	York County Conservation District 118 Pleasant Acres Road York, PA 17402 (717) 840-7430
Fermanagh Township Juniata County	PAG2033406003	Groninger Farms, LLP P. O. Box 36 Mexico, PA 17056	Horning Run CWF	Juniata CCD R. R. 5, Box 35 Stoney Creek Drive Mifflintown, PA 17059

<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>
North Middleton Township Cumberland County	PAG2002105039(1)	Clubhouse at Lehmans Crossing Al Hughes 1300 Market Street Lemoyne, PA 17043	Conodoguinet Creek WWF	Cumberland County Conservation District 43 Brookwood Ave. Carlisle, PA 17013 (717) 240-7812
West Hanover Township Dauphin County	PAG2002205010(1)	Andrew S. Williams Lexington Partners 303 N. Progress Avenue Harrisburg, PA 17110	Beaver Creek WWF	Dauphin County Conservation District 1451 Peters Mountain Road Dauphin, PA 17018
Conewago Township Dauphin County and Mount Joy Township Lancaster County	PAG2002206073	Fred Kay P & K, LLC 132 Walnut Valley Court Wrightsville, PA 17368	Brills Creek TSF and Conewago Creek TSF	Dauphin County Conservation District 1451 Peters Mountain Road Dauphin, PA 17018
South Hanover Township Dauphin County	PAG2002206049	David Carll Milton Hershey School 1201 Homestead Lane Hershey, PA 17033	Swatara Creek WWF	Dauphin County Conservation District 1451 Peters Mountain Road Dauphin, PA 17018
Carroll Township Perry County	PAG2035006006	Edward L. Stoner 629 Losh Road Shermans Dale, PA 17090	Shermans Creek WWF	Evan Ticehurst Perry County Conservation District 31 West Main Street P. O. Box 36 New Bloomfield, PA 17068 (717) 582-5119
Millerstown Borough Perry County	PAG2035007001	Ed Burn Greenwood School District 405 East Sunburry Street Millerstown, PA 17062	Juniata River WWF	Evan Ticehurst Perry County Conservation District 31 West Main Street P. O. Box 36 New Bloomfield, PA 17068 (717) 582-5119
Penn Township Wheatfield Township Perry County	PAG2035006007	Micheal Gillespie Department of Transportation Engineering District 8-0 2140 Herr Street Harrisburg, PA 17103-1699	Shermans Creek WWF	Evan Ticehurst Perry County Conservation District 31 West Main Street P. O. Box 36 New Bloomfield, PA 17068 (717) 582-5119
Muhlenberg Township Berks County	PAG2000606093	Teresa Haught Muhlenberg School District 801 Bellevue Avenue Laureldale, PA 19605	Laurel Run WWF-CWF	Berks County Conservation District 1238 County Welfare Road Suite 200 Leesport, PA 19533-9710 (610) 372-4657 Ext. 201

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

<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>
Centre County Potter Township	PAG2001406026	Valley Business Associates Sinking Creek Subdivision P. O. Box 901 State College, PA 16804	Sinking Creek CWF	Centre County Conservation District 414 Holmes Avenue Suite 4 Bellefonte, PA 16823 (814) 355-6817
Lycoming County Penn Township	PAG2004107001	Slavatore Nicosia, Jr. 180 Walker Drive Spring Mills, PA 16875 David Wells Williams Gas Pipeline—Transco 2800 Post Oak Boulevard Houston, TX 77056	Gregs Run CWF	Lycoming County Conservation District 542 County Farm Road Suite 202 Montoursville, PA 17754 (570) 433-3003

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

<i>Facility Location and Municipality</i>	<i>Permit No.</i>	<i>Applicant Name & Address</i>	<i>Receiving Water/Use</i>	<i>Contact Office & Phone No.</i>
Somerset County Conemaugh Township	PAG2005606011	DL Development Group, LLC 129 Norlin Drive Davidsville, PA 15928	Stonycreek River CWF	Somerset County CD (814) 445-4652
Washington County Peters Township	PAG2006307003	Peters Creek United Presbyterian Church 250 Brookwood Road Venetia, PA 15367	UNT to Brush Run WWF	Washington County CD (724) 228-6774
Washington County City of Washington	PAG2006307009	Redevelopment Authority of the County of Washington 100 West Beau Street Suite 603 Washington, PA 15301 <i>Co-permittee:</i> Lone Pine Construction 83 Lusk Road Bentleyville, PA 15314	Catfish Creek WWF	Washington County CD (724) 228-6774
Clarion County Toby Township	PAG2061606009	Brian Allen Department of Transportation 2550 Oakland Avenue Indiana, PA 15701	UNT Cherry Run CWF UNT Wildcat Run CWF	Department of Environmental Protection—NWRO (814) 332-6984
Venango County Barkeyville Borough	PAG2006106006	Glenn O. Hawbaker, Inc. Grove City Asphalt Plant Barkeyville Industrial Park Harrisville, PA 16038	Slippery Rock Creek CWF	Venango Conservation District (814) 676-2832

General Permit Type—PAG-3

<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>
Upper Macungie Township Lehigh County	PAR232206	BASF Construction Chemicals, LLC 23700 Chagrin Boulevard Allentown, PA 18106	Lehigh River	DEP—NERO Water Mgmt. Program 2 Public Square Wilkes-Barre, PA 18711-2511 (570) 826-2511

<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>
Lancaster County East Hempfield Township	PAR123553	Kellogg USA, Inc. 2050 State Road Box 3006 Lancaster, PA 17604	Swarr Run TSF	DEP—SCRO 909 Elmerton Avenue Harrisburg, PA 17110 (717) 705-4707
Lancaster County West Hempfield Township	PAR123514	Land O Lakes/Purina Feed, LLC 3029 Hempland Road Lancaster, PA 17601-1309	UNT West Branch Little Conestoga Creek TSF	DEP—SCRO 909 Elmerton Avenue Harrisburg, PA 17110 (717) 705-4707
Bedford County Bedford Township	PAR113552	JLG Industries, Inc. (Sunnyside Facility) 1 JLG Drive McConnellsburg, PA 17233	Raystown Branch Juniata River TSF	DEP—SCRO 909 Elmerton Avenue Harrisburg, PA 17110 (717) 705-4707
Fulton County Ayr Township	PAR113553	JLG Industries, Inc. (Service Plus Mid-Atlantic and Military Support Center) 1 JLG Drive McConnellsburg, PA 17233	UNT of Big Cove Creek CWF	DEP—SCRO 909 Elmerton Avenue Harrisburg, PA 17110 (717) 705-4707
Town of Bloomsburg Columbia County	PAR204819	Kawneer Company, Inc. P. O. Box 380 Bloomsburg, PA 17815	Neals Run CWF	Northcentral Regional Office Water Management Program 208 West Third Street Suite 101 Williamsport, PA 17701 (570) 327-3664
Port Vue and Liberty Boroughs Allegheny County	PAR606107	ELG Metals, Inc. 369 River Road McKeesport, PA 15132	Dutch Run and Youghiogheny River	Southwest Regional Office: Water Management Program Manager 400 Waterfront Drive Pittsburgh, PA 15222-4745 (412) 442-4000
City of Erie Erie County	PAR208353	Accuride Corporation 129 Marc Drive Cuyahoga Falls, OH 44223	Erie municipal sewers to Presque Isle Bay and Outer Erie Harbor—Lake Erie	DEP NWRO Water Management 230 Chestnut Street Meadville, PA 16335-3481 (814) 332-6942

General Permit Type—PAG-4

<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>
Upper Salford Township Montgomery County	PAG040061	Sterling and Amanda Fitzer 2144 Old Skippack Pike Harleysville, PA 19438	UNT to Vaughns Run Watershed 3-E	Southeast Regional Office 2 East Main Street Norristown, PA 19401
Limerick Township Montgomery County	PAG040064	Ralph W. Owens 208 Neiffer Road Schwenksville, PA 19473	Mine Run Watershed 3-E Perkiomen	Southeast Regional Office 2 East Main Street Norristown, PA 19401
Lehigh Township Northampton County	PAG042219	Jonathan Lee Alexander 986 Woodland Drive Walnutport, PA 18088	UNT to Bertsch Creek CWF	DEP—NERO Water Mgmt. Program 2 Public Square Wilkes-Barre, PA 18711-0790 (570) 826-2511

*Facility Location:
Municipality &
County*

<i>Permit No.</i>	<i>Applicant Name & Address</i>	<i>Receiving Water/Use</i>	<i>Contact Office & Phone No.</i>
PAG049313	Mary M. and William C. Anderson 248 Daugherty Run Road Warren, PA 16365	UNT Daugherty Run 16B	DEP NWRO Water Management 230 Chestnut Street Meadville, PA 16335-3481 (814) 332-6942
PAG049308	Sam Colosimo, Jr. 204 Constance Drive McKees Rocks, PA 15136	UNT to Allegheny River 16-F	DEP NWRO Water Management 230 Chestnut Street Meadville, PA 16335-3481 (814) 332-6942
PAG048434	David M. and Lisa A. Starr 9451 Donation Road Waterford, PA 16441	UNT to Walnut Creek 15-WC	DEP NWRO Water Management 230 Chestnut Street Meadville, PA 16335-3481 (814) 332-6942
PAG048461	Harry L. Evanoff 9324 Thelma Drive Erie, PA 16510	UNT to Four Mile Creek 15-FM	DEP NWRO Water Management 230 Chestnut Street Meadville, PA 16335-3481 (814) 332-6942
PAG048458	James A. Becker, Sr. 13096 Scott Road Waterford, PA 16441-9625	UNT to LeBoeuf Creek 16-A	DEP NWRO Water Management 230 Chestnut Street Meadville, PA 16335-3481 (814) 332-6942

General Permit Type—PAG-5

*Facility Location:
Municipality &
County*

<i>Permit No.</i>	<i>Applicant Name & Address</i>	<i>Receiving Water/Use</i>	<i>Contact Office & Phone No.</i>
PAG050075	American Auto Wash, Inc. 512 East King Road Malvern, PA 19355-3045	Ridley Creek by means of Storm Sewer	Southeast Regional Office 2 East Main Street Norristown, PA 19401
PAG056218	Former Balzert Automotive 313 Crestview Drive Pittsburgh, PA 15209	Girty's Run	Southwest Regional Office: Water Management Program Manager 400 Waterfront Drive Pittsburgh PA 15222-4745 (412) 442-4000
PAG058374	Erie Petroleum, Inc. Stateline BP 1502 Greengarden Road Erie, PA 16502	UNT to Twenty Mile Creek 15	DEP NWRO Water Management 230 Chestnut Street Meadville, PA 16335-3481 (814) 332-6942

General Permit Type—PAG-6

*Facility Location &
Municipality*

<i>Permit No.</i>	<i>Applicant Name & Address</i>	<i>Receiving Water/Use</i>	<i>Contact Office & Phone No.</i>
PAG066105	Borough of Rankin 320 Hawkins Avenue Rankin Borough, PA 15104	Monongahela River	Southwest Regional Office: Water Management Program Manager 400 Waterfront Drive Pittsburgh PA 15222-4745 (412) 442-4000

General Permit Type—PAG-8 (SSN)

<i>Facility Location & Municipality</i>	<i>Permit No.</i>	<i>Applicant Name & Address</i>	<i>Site Name & Location</i>	<i>Contact Office & Phone No.</i>
Greenwich Township Berks County	PAG-08-0002/0005/ 0011/0013/0017/ 0018/3522/3551	Jesse Baro, Inc. 4 Quarry Road Douglasville, PA 19518	Dietrich/Baver Farm Greenwich Township Berks County	DEP—SCRO 909 Elmerton Avenue Harrisburg, PA 17110-8200 (717) 705-4707
Fariview and Warrington Townships York County	PAG-08-3592	Upper Allen Township 100 Gettysburg Road Mechanicsburg, PA 17055	Traver Farm Fairview and Warrington Townships York County	DEP—SCRO 909 Elmerton Avenue Harrisburg, PA 17110-8200 (717) 705-4707

PUBLIC WATER SUPPLY (PWS) PERMITS

The Department of Environmental Protection has taken the following actions on applications received under the Pennsylvania Safe Drinking Water Act (35 P.S. §§ 721.1—721.17) for the construction, substantial modification or operation of a public water system.

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

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

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

SAFE DRINKING WATER

Actions taken under the Pennsylvania Safe Drinking Water Act

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

Permit No. 1506505, Public Water Supply.

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

County	Chester
Type of Facility	PWS
Consulting Engineer	Gannett Fleming, Inc. P. O. Box 67100 Harrisburg, PA 17106
Permit to Construct Issued	February 1, 2007

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

Permit No. 2450063 Operations Permit, Public Water Supply.

Applicant	Pennsylvania American Water Company (PAWC) 800 West Hersheypark Drive Hershey, PA 17033 Coolbaugh Township
-----------	--

County	Monroe County
Type of Facility	PWS
Consulting Engineer	William J. Malos, P. E. PAWC 100 Pennsylvania Avenue Wilkes-Barre, PA 18701
Permit to Operate Issued	1/23/07

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

Operations Permit issued to: **Aqua Pennsylvania, Inc.**, 3060030, Robeson Township, **Berks County** on 1/29/2007, for the operation of facilities approved under Construction Permit No. 0601511.

Operations Permit issued to: **The York Water Company**, 7670100, Jackson Township, **York County** on 2/2/2007, for the operation of facilities approved under Construction Permit No. 6706510.

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

Permit No. 4905501—Operation, Public Water Supply.

Applicant	Lower Mahanoy Township Municipal Authority
Township or Borough	Lower Mahanoy Township

County **Northumberland**
 Responsible Official **Joseph Villone**
 Lower Mahanoy Township
 Municipal Authority
 P. O. Box 235
 Dalmatia, PA 17017-0235

Type of Facility **Public Water Supply—Operation**
 Consulting Engineer **Edward Ellinger, P. E.**
 Herbert, Rowland and Grubic,
 Inc.
 369 East Park Drive
 Harrisburg, PA 17111-2730

Permit Issued Date **February 5, 2007**
 Description of Action **Operation of the recently
 constructed manganese
 greensand pressure filtration
 plant, including potassium
 permanganate and post-sodium
 hypochlorite feed systems.**

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

**Operations Permit issued to: Lower Indiana
 County Municipal Authority, 92 Main Street, Black
 Lick, PA 15716, (PWSID No. 5320028) Burrell Township,
 Indiana County on January 31, 2007, for the operation
 of facilities approved under Construction Permit No.
 3206502.**

Permit No. 8821-W-T3, Minor Amendment. Public
 Water Supply.

Applicant **Bay Valley Foods, LLL**
 1080 River Avenue
 Pittsburgh, PA 15212

Borough or Township **City of Pittsburgh**
 County **Allegheny**
 Type of Facility **Water system transfer**
 Consulting Engineer
 Permit to Operate **January 31, 2007**
 Issued

Permit No. 8821-W-A1-T3, Minor Amendment. Pub-
 lic Water Supply.

Applicant **Bay Valley Foods, LLL**
 1080 River Avenue
 Pittsburgh, PA 15212

Borough or Township **City of Pittsburgh**
 County **Allegheny**
 Type of Facility **Water system transfer**
 Consulting Engineer
 Permit to Operate **January 31, 2007**
 Issued

Permit No. 8382-W-T3, Minor Amendment. Public
 Water Supply.

Applicant **Bay Valley Foods, LLL**
 1080 River Avenue
 Pittsburgh, PA 15212

Borough or Township **City of Pittsburgh**
 County **Allegheny**
 Type of Facility **Water system transfer**
 Consulting Engineer
 Permit to Operate **January 31, 2007**
 Issued

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

Permit No. 1006502, Public Water Supply

Applicant **Cranberry Village Mobile
 Home Park**

Township or Borough **Cranberry Township**
 County **Butler County**
 Type of Facility **Public Water Supply**
 Permit to Construct **02/01/2007**
 Issued

**Operations Permit issued to: North Warren Mu-
 nicipal Authority, PWSID No. 6620028, Conewango
 Township, Warren County.** Permit Number A-626-MA4,
 issued February 1, 2007, for the operation of the trans-
 mission and distribution lines along SR 0062 (Warren-
 Jamestown Road) to Farm Colony Industrial Park, as
 approved under construction permit Number A-626-MA-4,
 dated August 18, 2000.

WATER ALLOCATIONS

**Actions taken on applications received under the
 act of June 24, 1939 (P. L. 842, No. 365) (35 P. S.
 §§ 631—641) relating to the acquisition of rights
 to divert waters of the Commonwealth.**

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

**WA4-739A, Water Allocations. Borough of Baden, 149
 State Street, Baden, PA 15005, Baden Borough, Beaver
 County.** The right to purchase 500,000 gallons of water
 per day, as a peak month, 30-day average, from the
 Borough of Ambridge Water Authority.

SEWAGE FACILITIES ACT PLAN APPROVAL

**Plan Approvals Granted Under Section 5 of the
 Pennsylvania Sewage Facilities Act, Act (35 P. S.
 § 750.5).**

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

Plan Location:

<i>Project Applicant</i>	<i>Project Applicant's Address</i>
Porter-Tower Joint Municipal Authority	860 West Grand Avenue Tower City, PA 17989

<i>Project Location (Municipality)</i>	<i>Project Location (County)</i>
Tower City Borough and Porter Township	Schuylkill

Plan Description: The approved plan provides for the Porter-Tower Joint Municipal Authority to repair and rehabilitate its sewer system located in Porter Township and Tower City Borough, Schuylkill County. The Department's review of the project and the information received has not identified any significant, adverse environmental impact resulting from this project.

LAND RECYCLING AND ENVIRONMENTAL REMEDIATION

UNDER ACT 2, 1995

PREAMBLE 2

The following plans and reports were submitted under the Land Recycling and Environmental Remediation Standards Act (35 P. S. §§ 6026.101—6026.908).

Provisions of Chapter 3 of the Land Recycling and Environmental Remediation Standards Act (act) require the Department of Environmental Protection (Department) to publish in the *Pennsylvania Bulletin* a notice of submission of plans and reports. A final report is submitted to document cleanup of a release of a regulated substance at a site to one of the act's remediation standards. A final report provides a description of the site investigation to characterize the nature and extent of contaminants in environmental media, the basis for selecting the environmental media of concern, documentation supporting the selection of residential or nonresidential exposure factors, a description of the remediation performed and summaries of sampling analytical results which demonstrate that remediation has attained the cleanup standard selected. Submission of plans and reports, other than the final report, shall also be published in the *Pennsylvania Bulletin*. These include the remedial investigation report, risk assessment report and cleanup plan for a site-specific standard remediation. A remedial investigation report includes conclusions from the site investigation, concentration of regulated substances in environmental media; benefits of refuse of the property and, in some circumstances, a fate and transport analysis. If required, a risk assessment report describes potential adverse effects caused by the presence of regulated substances. If required, a cleanup plan evaluates the abilities of potential remedies to achieve remedy requirements.

For further information concerning plans or reports, contact the Environmental Cleanup Program manager in the Department regional office after which the notice of receipt of plans or reports appears. If information concerning plans or reports is required in an alternative form, contact the Community Relations Coordinator at the appropriate regional office. TDD users may telephone the Department through the AT&T Relay Service at (800) 654-5984.

The Department has received the following plans and reports:

Northeast Region: Ronald S. Brezinski, Regional Environmental Cleanup Program Manager, 2 Public Square, Wilkes-Barre, PA 18711-0790.

Saucon Valley Condos, Hellertown Borough, **Northampton County**. Vincent M. Carbone, P. G., HDR Engineering, Inc., 609 Hamilton Mall, The Sovereign Building, Allentown, PA 18101-2111 has submitted a Final Report (on behalf of his client, Abraham Atiyeh, Brookside Commercial Construction Co., Inc., 1177 6th Street, Whitehall, PA 18052) concerning the remediation of soils

found to have been impacted by arsenic as a result of historic operations. The report was submitted to document attainment of the residential Statewide Health Standard for soils. The proposed future use of the site will be for residential housing. A public notice regarding the submission of the final report was published in *The Morning Call* on December 20, 2006.

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

Serta Mattress Company, East Hempfield Township, **Lancaster County**. GemChem, Inc., 53 North Cedar Street, Lititz, PA 17543, on behalf of Serta Mattress Company, 18 Prestige Lane, P. O. Box 4623, Lancaster, PA 17604-4623, submitted a Final Report concerning remediation of site soil contaminated with diesel fuel. The report is intended to document remediation of the site to the residential Statewide Health Standard.

Former Brownstown Restaurant, West Earl Township, **Lancaster County**. GemChem, Inc., 53 North Cedar Street, Lititz, PA 17543, on behalf of Ernie Capezzi, 23 Warwick Road, Lititz, PA 17543-8580, 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 residential Statewide Health Standard.

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

Former Pickelner Fuel Company, Inc., Loyalsock Township, **Lycoming County**. D & A Environmental, Inc., 120 N. Abington Road, Clarks Summit, PA 18411 on behalf of Pickelner Fuel Company, Inc., 210 Locust Street, Williamsport, PA 17701 has submitted a Remedial Investigation Report concerning remediation of site soil and groundwater contaminated with leaded and unleaded gasoline. The report is intended to document remediation of the site to meet the Site-Specific Standard.

Royal Galla Transport Rt. 15 Accident Site, Liberty Township, **Tioga County**, Environmental Solutions, 67 Frid Street, Unit 5, Hamilton, Ontario, L8P 4M3, Canada on behalf of Royal Galla Transport, 3615 Laird Drive, Mississauga, ON L5L 5Z8, Canada has submitted a Final Report concerning remediation of site soil contaminated with diesel fuel. The report was submitted within 90 days of the release and is intended to document remediation of the site to meet the Statewide Health Standard.

LAND RECYCLING AND ENVIRONMENTAL REMEDIATION

UNDER ACT 2, 1995

PREAMBLE 3

The Department has taken action on the following plans and reports under the Land Recycling and Environmental Remediation Standards Act (35 P. S. §§ 6026.101—6026.908).

Provisions of 25 Pa. Code § 250.8, administration of the Land Recycling and Environmental Remediation Standards Act (act), require the Department of Environmental Protection (Department) to publish in the *Pennsylvania Bulletin* a notice of final actions on plans and reports. A final report is submitted to document cleanup of a release of a regulated substance at a site to one of the remediation standards of the act. A final report provides a description of the site investigation to characterize the nature and extent of contaminants in environmental

media, the basis of selecting the environmental media of concern, documentation supporting the selection of residential or nonresidential exposure factors, a description of the remediation performed and summaries of sampling methodology and analytical results which demonstrate that the remediation has attained the cleanup standard selected. Plans and reports required by provisions of the act for compliance with selection of remediation to a site-specific standard, in addition to a final report, include a remedial investigation report, risk assessment report and cleanup plan. A remedial investigation report includes conclusions from the site investigation, concentration of regulated substances in environmental media, benefits of refuse of the property and, in some circumstances, a fate and transport analysis. If required, a risk assessment report describes potential adverse effects caused by the presence of regulated substances. If required, a cleanup plan evaluates the abilities of potential remedies to achieve remedy requirements. A work plan for conducting a baseline remedial investigation is required by provisions of the act for compliance with selection of a special industrial area remediation. The baseline remedial investigation, based on the work plan, is compiled into the baseline environmental report to establish a reference point to show existing contamination, describe proposed remediation to be done and include a description of existing or potential public benefits of the use or reuse of the property. The Department may approve or disapprove plans and reports submitted. This notice provides the Department's decision and, if relevant, the basis for disapproval.

For further information concerning the plans and reports, contact the Environmental Cleanup Program manager in the Department regional office before which the notice of the plan or report appears. If information concerning a final report is required in an alternative form, contact the Community Relations Coordinator at the appropriate regional office. TDD users may telephone the Department through the AT&T Relay Service at (800) 654-5984.

The Department has received the following plans and reports:

Northeast Region: Ronald S. Brezinski, Regional Environmental Cleanup Program Manager, 2 Public Square, Wilkes-Barre, PA 18711-0790.

Sunoco, Inc. Plymouth Pump Station, Jackson Township, **Luzerne County**. Lisa Strobridge, Project Manager, Aquaterra Technologies, Inc., P. O. Box 744, West Chester, PA 19381 has submitted a combined Remedial Investigation/Risk Assessment Report and Cleanup Plan (on behalf of her client Sunoco, Inc. (R&M), P. O. Box 1135, Post Road and Blueball Avenue, Marcus Hook, PA 19061) regarding the remediation of soils and groundwater found to have been contaminated with gasoline due to an accidental pipe line release. The combined reports propose that the final report will demonstrate attainment of the residential Statewide Health Standard and the Site-Specific Standard and were approved on January 30, 2007.

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

Swartz Estate, Camp Hill Borough, **Cumberland County**. CQS, Inc., 1061 North Mountain Road, Harrisburg, PA 17110, on behalf of Robert Pozner, Executor, Swartz Estate, 454 Stevens Avenue, Ridgeway, NJ 17450, resubmitted a Final Report concerning the remediation of site soils and groundwater contaminated with No. 2

heating oil. The final report demonstrated attainment of the residential Statewide Health Standard, and was approved by the Department on January 29, 2007.

Sindall Trucking Services, Inc., New Holland Borough, **Lancaster County**. Alternative Environmental Solutions, Inc., 930 Pointview Avenue, Suite B, Ephrata, PA 17522, on behalf of Sindall Trucking Services, Inc., 461 Diller Avenue, P. O. Box 165, New Holland, PA 17557, submitted a Final Report concerning the remediation of site soils and groundwater contaminated with waste oil from a removed underground storage tank. The final report demonstrated attainment of the Statewide Health Standard, and was approved by the Department on January 30, 2007.

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

County Squire Court Mobile Home Park, Woodward Township, **Lycoming County**. Pete Rummings, 21 Harbour Close, New Haven, CT 06519 has submitted a Final Report concerning remediation of site soil contaminated with fuel oil. The Final Report demonstrated attainment of the Statewide Health Standard and was approved by the Department on January 30, 2007.

SEDA-COG Joint Rail Authority Newberry Yard-South Site, City of Williamsport, **Lycoming County**. Marshall Miller & Assoc., 3913 Hartzdale Drive, Suite 1306, Camp Hill, PA 17011 on behalf of SEDA-COG Joint Rail Authority, 201 Furnace Road, Lewisburg, PA 17837 has submitted a combined Remedial Investigation and Final Report concerning remediation of site groundwater contaminated with a separate phase liquid (SPL). The Remedial Investigation/Final Report demonstrated attainment of the Statewide Health Standard and was approved by the Department on February 1, 2007

DETERMINATION OF APPLICABILITY FOR RESIDUAL WASTE GENERAL PERMITS

Determination of Applicability for General Permit Approved 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.

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. WMGR098D001. Donsco, Inc., P. O. Box 2100, Wrightsville, PA 17368. General Permit Number WMGR098D001 for the beneficial use of waste foundry sand and sand system dusts as a construction material, a soil additive or a soil amendment. Central Office approved the determination of applicability on January 31, 2007.

Persons interested in reviewing the general permit may contact Ronald C. Hassinger, Chief, General Permits and Beneficial Use Section, Division of Municipal and Residual Waste, Bureau of Land Recycling and Waste Management, P. O. Box 8472, Harrisburg, PA 17105-8472, (717) 787-7381. TDD users may contact the Department through the Pennsylvania Relay Service, (800) 654-5984.

**OPERATE WASTE PROCESSING OR DISPOSAL
AREA OR SITE**

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.

Northeast Region: Regional Solid Waste Manager, 2 Public Square, Wilkes-Barre, PA 18711-0790.

Permit No. 101628. Natural Soil Products, P. O. Box 283, Tremont, PA 17981. A permit modification authorizing a Permit Renewal, extending the permit term until April 15, 2017; a Permit Reissuance to change the permittee to Tully Environmental, Inc.; and other minor modifications for this municipal waste composting facility located in Frailey Township, **Schuylkill County**. The permit was issued by the Regional Office on February 2, 2007.

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

Permit ID No. 100620. Allied Waste Systems of Pennsylvania, LLC, 11 Boggs Road, P. O. Box 47, Imperial, PA 15126. Operation of a municipal waste landfill in Findlay Township, **Allegheny County**. Permit reissuance from BFI Waste Systems of North America, Inc. to Allied Waste Systems of Pennsylvania, LLC issued in the Regional Office on February 1, 2007.

**HAZARDOUS WASTE TREATMENT, STORAGE AND
DISPOSAL FACILITIES**

Draft permits issued, revised or withdrawn under the Solid Waste Management Act (35 P. S. §§ 6018.101—6018.1003) and Regulations to Operate a Hazardous Waste Treatment, Storage or Disposal Facility.

Southcentral Region: Regional Solid Waste Manager, 909 Elmerton Avenue, Harrisburg, PA 17110.

PA6213820503. Letterkenny Army Depot, 1 Overcash Avenue, Chambersburg, PA Letterkenny, Greene and Hamilton Townships, **Franklin County**. This permit application is for the open burning and open detonation of waste military munitions at Letterkenny Army Depot. The Department has completed its review of the permit application and has issued a draft permit on February 2, 2007. As required by 25 Pa. Code § 270a.80(d)(2), the Department is providing public notice of this action.

Persons wishing to comment on the draft permit are invited to submit a statement to the Southcentral Regional Office within 45 days from the date of this public notice. Comments received within this 45-day period will be considered in the formulation of the final determination regarding this application. Responses should include the name, address and telephone number of the writer; and a concise statement to inform the Regional Office of the exact basis of any comment and the relevant facts upon which it is based. A public hearing may be held if the Regional Office considers the public response significant.

Following the 45-day comment period and/or public hearing, the Department will make a final determination regarding the proposed permit action. Notice of this action will be published in the *Pennsylvania Bulletin* at which time this determination may be appealed to the Environmental Hearing Board.

AIR QUALITY

General Plan Approval and Operating Permit Usage Authorized under the Air Pollution Control Act (35 P. S. §§ 4001—4015) and 25 Pa. Code Chapter 127 to construct, modify, reactivate or operate air contamination sources and associated air cleaning devices.

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

40-323-016GP4: Trion Industries, Inc. (297 Laird Street, Wilkes-Barre, PA 18702) on January 31, 2007, to construct and operate two burn-off ovens and associated air cleaning devices in Wilkes-Barre, **Luzerne County**.

40-310-067GP3: Haines and Kibblehouse, Inc. (P. O. Box 196, 2052 Lucon Road, Skippack, PA 19474) on January 31, 2007, to construct and operate a portable stone crushing plant (Pegsons) and associated air cleaning device at the Lot 68 construction site in Hazle Township, **Luzerne County**.

40-310-068GP3: Haines and Kibblehouse, Inc. (P. O. Box 196, 2052 Lucon Road, Skippack, PA 19474) on January 31, 2007, to construct and operate a portable stone crushing plant (Nordberg) and associated air cleaning device at the Lot 68 construction site 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.

GP1-44-03012: Lewistown Hospital (400 Highland Avenue, Lewistown, PA 17044) on February 1, 2007, for Small Gas and No. 2 Oil Fired Combustion Units under GP1 in Derry Township, **Mifflin County**. This is a renewal of the General Permit.

GP7-28-03038: Regency Thermographers (725 Clayton Avenue, Waynesboro, PA 17268) on February 5, 2007, for Sheet-Fed Offset Lithographic Printing Press under GP7 in Waynesboro Borough, **Franklin County**.

GP7-67-03033E: The Sheridan Press (450 Fame Avenue, Hanover, PA 17331-9581) on February 5, 2007, for Sheet-Fed Offset Lithographic Printing Press under GP7 in Penn Township, **York County**.

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

GP3-14-09: Glenn O. Hawbaker, Inc. (711 East College Avenue, Bellefonte, PA 16823) on January 18, 2007, to relocate and operate a portable nonmetallic mineral processing plant Under the "General Plan Approval And/Or General Operating Permit for Portable Nonmetallic Mineral Processing Plants" (BAQ-PGPA/GP-3) at the Home Depot construction site in Patton Township, **Centre County**.

GP11-14-05: Glenn O. Hawbaker, Inc. (711 East College Avenue, Bellefonte, PA 16823) on January 18, 2007, to construct and operate a 425 horsepower diesel engine Under the "General Plan Approval And/Or General Operating Permit for Nonroad Engines" (BAQ-GPA/GP 11) at the Home Depot construction site in Patton Township, **Centre County**.

GP5-17-16: EOG Resources, Inc. (2039 South Sixth Street, Indiana, PA 15701) on January 23, 2007, to operate a 350 horsepower natural gas-fired reciprocating

internal combustion compressor engine equipped with a catalytic converter Under the "General Plan Approval and And/Or General Operating Permit for Natural Gas, Coal Bed Methane Or Gob Production Or Recovery Facilities" (BAQ-GPA/GP-5) at the Woytek Station in Bell Township, **Clearfield County**. This is a renewal.

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

GP5-03-00230: Dominion Peoples (1201 Pitt Street, Pittsburgh, PA 15221) on January 25, 2007, to operate two Caterpillar Model 3508 LE 633 Bhp Compressor Engines at the Belknap Compressor Station in Wayne Township, **Armstrong County**. This is a GP5 Renewal.

Plan Approvals Issued under the Air Pollution Control Act (35 P. S. §§ 4001—4015) and regulations in 25 Pa. Code Chapter 127, Subchapter B relating to construction, modification and reactivation of air contamination sources and associated air cleaning devices.

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

15-0123: Century Cabinetry (220 Phillips Road, Exton, PA 19341) on January 31, 2007, to operate a paint line/thermal oxidizer in Uwchlan Township, **Chester County**.

23-0093A: Bryn Hill Industries, Inc. (Price and Pine Streets, Holmes, PA 19043) on January 31, 2007, to operate existing molded urethane foam in Yeadon Borough, **Delaware County**.

46-0254: Campania International, Inc. (2452 Quakertown Road, Pennsburg, PA 18073) on January 31, 2007, to operate a spray booth in Upper Hanover Township, **Montgomery County**.

46-0254A: Campania International, Inc. (2452 Quakertown Road, Pennsburg, PA 18073) on January 31, 2007, to operate a concrete casting in Upper Hanover Township, **Montgomery County**.

46-0254B: Campania International, Inc. (2452 Quakertown Road, Pennsburg, PA 18073) on January 31, 2007, to operate a steel silo in Upper Hanover Township, **Montgomery County**.

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

45-310-044: Tarheel Quarry, LLC (P. O. Box 185, Pocono Lake, PA 18347) on January 5, 2007, to modify a stone crushing operation and associated air cleaning device at their facility in Tobyhanna Township, **Monroe County**.

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

41-399-027A: Smurfit-Stone Container Enterprises, Inc. (P. O. Box 3097, Williamsport, PA 17701) on January 2, 2007, to modify a paperboard/plastic film gluing operation in Porter Township, **Lycoming County**.

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

26-00563A: ST Paper LLC (1555 Glory Road, Green Bay, WI 54303) on January 26, 2007, to install a tissue

paper manufacturing plant at the industrial park of Uniontown, **Fayette County**. This plant will include a 90 mmBtu/hr natural gas fired package boiler, tissue machine with a burner, a Through Air Dried machine with a burner, a waste paper deinking/hydropulping system and a Venturi scrubber.

Department of Public Health, Air Management Services, 321 University Avenue, Philadelphia, PA 19104, Edward Braun, Chief, (215) 685-9476.

AMS 06021: Kinder Morgan Liquid Terminals, LLP (3300 North Delaware Avenue, Philadelphia, PA 19134) on February 2, 2007, to accept facility-wide HAP emission limits of 10 tons per rolling 12-month period for each individual HAP and 25 tons per rolling 12-month period combined HAPs in the City of Philadelphia, **Philadelphia County**. The plan approval will contain testing, monitoring and recordkeeping requirements to ensure operation within all applicable requirements.

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.

46-0222A: Bostik, Inc. (1740 County Line Road, Huntingdon Valley, PA 19006) on January 31, 2007, to operate a new adhesive mixing vessel in Upper Moreland Township, **Montgomery County**.

46-0248: Pottstown Borough Authority (100 East High Street, Pottstown, PA 19464) on January 31, 2007, to operate a thermal fluid dryer in Pottstown Borough, **Montgomery County**.

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

36-03080A: Rohrer's Quarry (P. O. Box 365, 70 Lititz Road, Lititz, PA 17543) on January 26, 2007, to replace two 6-foot by 16-foot Hewitt Robins triple-deck screens with two 6-foot by 20-foot Metso Minerals triple-deck screens in Warwick Township, **Lancaster County**. This plan approval was extended.

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

18-315-001B: First Quality Tissue, LLC (904 Woods Avenue, Lock Haven, PA 17745) on February 2, 2007, to operate two modified paper machines and a modified adhesive application operation on a temporary basis until June 2, 2007, in Castanea Township, **Clinton County**. The plan approval has been extended.

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

04-00681B: Joseph J. Brunner, Inc. (211 Brunner Road, Zelenople, PA 16063) on January 24, 2007, for utility flare, enclosed flare air stripper, LES E-VAP at Brunner Landfill in New Sewickley Township, **Beaver County**. This is plan approval was extended.

65-302-071: Koppers Industries, Inc. (436 Seventh Avenue, Pittsburgh, PA 15219) on January 30, 2007, two

boilers at the Monessen Coke Works Station in Monessen Township, **Westmoreland County**. This plan approval was extended.

04-00033B: Nova Chemicals, Inc. (400 Frankfort Road, Monaca, PA 15061) on February 2, 2007, to allow additional time for reactor installation and testing in Potter Township, **Beaver County**. This plan approval was extended.

32-00040B: Reliant Energy Seward, LLC (121 Champion Way, Canonsburg, PA 15317) on January 2, 2007, to allow additional time to submit the update for the Title V Renewal Application at the Seward Power Station located in East Wheatfield Township, **Indiana County**. This plan approval was extended.

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

Northcentral Region: Air Quality Program, 208 West Third Street, Williamsport, PA 17701, Muhammad Zaman, Facilities Permitting Chief, (570) 327-3637.

19-00001: Rieter Automotive North America Carpet (480 West Fifth Street, Bloomsburg, PA 17815) on January 23, 2007, to operate an automotive carpet manufacturing facility in the Town of Bloomsburg, **Columbia County**. This is a renewal.

55-00023: Kerrico Corp. (2254 Route 522, Selinsgrove, PA 17870) on January 30, 2007, to operate a cast polymer bathroom and kitchen vanity manufacturing facility in Penn Township, **Snyder County**.

Department of Public Health, Air Management Services: 321 University Avenue, Philadelphia, PA 19104, Thomas Huynh, Chief, (215) 685-9476.

V06-007: Trigen—Philadelphia Energy Corp.—Edison Station (908 Samson Street, Philadelphia, PA 19107) on January 29, 2007, to operate a steam and electric generating facility in the City of Philadelphia, **Philadelphia County**. The facility's air emission sources include two 283 mmBtu/hr No. 6 fuel oil-fired (No. 2 fuel oil ignition) boilers, two 335 mmBtu/hr 6 fuel oil-fired (No. 2 fuel oil ignition), 4 cyclone separators, 300 KW diesel emergency generator, and a cold cleaner degreasing station.

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.

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

15-00023: Quality Park Products (2 Tabas Lane, Exton, PA 19341-2753) on January 31, 2007, a renewal for an envelope assembling and printing facility previously permitted as a Title V facility and will now operate under a State-Only permit in West Whiteland Township, **Chester County**. The previous permit was issued on 6-12-2001. The proposed operating permit renewal includes 20 flexographic presses and seven offset presses, many of which were addressed through the Department's RFD process and no plan approval was required. The renewal contains all applicable requirements including monitoring, recordkeeping and reporting.

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

21-03003: Norfolk Southern Railway Co. (218 North Enola Road, Enola, PA 17025-2413) on January 30, 2007, for a natural minor operating permit renewal for Enola Diesel Shop in East Pennsboro Township, **Cumberland County**. This is a renewal of the State-only operating permit.

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

49-00027: Somerset Consolidated Industries, Inc. (Fifth and Ash Streets, Watsontown, PA 17777) on January 16, 2007, to operate an iron foundry (The Watsontown Foundry) in Delaware Township, **Northumberland County**.

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

63-00636: McGrew Welding and Fabricating, Inc. (30 South Washington Street, Donora, PA 15033) on January 27, 2007, to operate a surface coating operation, a conveyor system, barge unloading, coal storage piles, sand/gravel storage piles, paved/unpaved roads and material handling/truck unloading at their Donora Site in the borough of Donora, **Washington County**.

04-00222: A-Tops Corp. (1060 24th Street Ext., Beaver Falls, PA 15010-3668) on January 27, 2007, to operate an exfoliation furnace to expand raw vermiculite before it is air conveyed to a dropout chamber where the lighter material is separated from the grit by small cyclones at their facility in Beaver Falls, **Beaver County**.

65-00630: Mine Safety Appliances Co. (P. O. Box 428, Pittsburgh, PA 15230) on January 29, 2007, to operate a safety product manufacturing facility in Murysville Borough, **Westmoreland County**.

11-00515: J-LOK Corp. (134 Pfeister Avenue, P. O. Box 187, Cresson, PA 16630) on January 23, 2007, to manufacture mine bolt resin cartridges designed for underground mine roof bolting at the Mine Bolt Resin Capsule Manufacturing Facility in Cresson Township, **Cambria County**.

32-00206: Amfire Mining Co., LLC (One Energy Place, Latrobe, PA 15650) on February 2, 2007, to operate the Clymer Tipple coal preparation plant in Cherryhill Township, **Indiana County**.

Department of Public Health, Air Management Services, 321 University Avenue, Philadelphia, PA 19104, Edward Braun, Chief, (215) 685-9476.

N04-005: Bartash Printing, Inc. (5400 Grays Avenue, Philadelphia, PA 19143) on February 6, 2007, to operate a printing facility in the City of Philadelphia, **Philadelphia County**. The facility's air emission sources include five lithographic presses and one No. 2 oil fired emergency generator.

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.

01-05016: ISP Minerals, Inc. (P. O. Box O, Blue Ridge Summit, PA 17214-0914) on January 31, 2007, for their stone crushing and coloring facility in Hamiltonban Town-

ship, **Adams County**. This operating permit was administratively amended to incorporate Plan Approval 01-05016G. This is revision No. 1.

Northwest Region: Air Quality Program, 230 Chestnut Street, Meadville, PA 16335-3481, Matthew Williams, Facilities Permitting Chief, (814) 332-6940.

10-00023: Mercer Lime and Stone Co. (560 Branchton Road, Slippery Rock, PA 16057) on January 10, 2007, to modify the Title V Operating Permit for their lime products processing facility in Slippery Rock Township, **Butler County**. This modification is to incorporate synthetic minor emission limits for one date eligible source, so that the facility will fall under the Best Available Retrofit Technology applicability threshold. The combined NOx and SOx emissions from Source ID: 111—Rotary Kiln have been limited to no more than 249 tpy for each pollutant.

ACTIONS ON COAL AND NONCOAL MINING ACTIVITY APPLICATIONS

Actions on applications under the Surface Mining Conservation and Reclamation Act (52 P. S. §§ 1396.1—1396.19a); the Noncoal Surface Mining Conservation and Reclamation Act (52 P. S. §§ 3301—3326); The Clean Streams Law (35 P. S. §§ 691.1—691.1001); the Coal Refuse Disposal Control Act (52 P. S. §§ 30.51—30.66); and The Bituminous Mine Subsidence and Land Conservation Act (52 P. S. §§ 1406.1—1406.21). The final action on each application also constitutes action on the request for 401 Water Quality Certification and the NPDES permit application. Mining activity permits issued in response to the applications will also address the application permitting requirements of the following statutes: the Air Quality Control Act (35 P. S. §§ 4001—4015); the Dam Safety and Encroachments Act (32 P. S. §§ 693.1—693.27); and the Solid Waste Management Act (35 P. S. §§ 6018.101—6018.1003).

Coal Permits Actions

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

Permit No. 56773708 and NPDES Permit No. NA. Miller Springs Remediation Management, Inc., (2480 Fortune Spring Drive, Suite 300, Lexington, KY 40509-4168). To renew the permit for the Strayer coal Refuse Disposal Area in Conemaugh Township, **Somerset County** for reclamation/water treatment only. No additional discharges. Application received: August 8, 2006. Permit issued: January 30, 2007.

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

32010110. Alverda Enterprises, Inc. (P. O. Box 87, Alverda, PA 15710). Permit renewal for the continued operation and restoration of a bituminous surface mine in Pine Township, **Indiana County**, affecting 78.1 acres. Receiving streams: N/A. The permittee will use nondischarge alternatives for treated water classified for the following use: N/A. There are no potable water supply intakes within 10 miles downstream. Application received: October 12, 2006. Permit issued: January 30, 2007.

Moshannon District Mining Office: 186 Enterprise Drive, Philipsburg, PA 16866, (814) 342-8200.

17060105 and NPDES Permit No. PA0256374. Allegheny Enterprises, Inc., (P. O. Box 333, Curwensville, PA 16833). Commencement, operation and restoration of a bituminous surface mine in Brady Township, **Clearfield County**, affecting 22.5 acres. Receiving Stream: Stump Creek, classified for the following use: CWF. There are no potable water supply intakes within 10 miles downstream. Application received: May 16, 2006. Permit issued: January 22, 2007.

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

40041601. Stockton Anthracite, Inc., (P. O. Box 546, Hazleton, PA 18201). Commencement, operation and restoration of an anthracite coal preparation plant operation in Hazle Township, **Luzerne County** affecting 183.0 acres, receiving stream: none. Application received: March 1, 2004. Permit issued: January 31, 2007.

Noncoal Permits Actions

Greensburg District Mining Office: Armbrust Professional Center, 8205 Route 819, Greensburg, PA 15601, (724) 925-5500.

26062810. Fayette Coal and Coke, Inc., (2611 Memorial Boulevard, Connellsville, PA 15425). Permit for commencement, operation and reclamation to a small noncoal surface mine, located Georges Township, **Fayette County**, affecting 5.6 acres. Receiving stream: UNT to York Run, classified for the following use: WWF. Application received: December 20, 2006. Permit issued: February 2, 2007.

Knox District Mining Office: P. O. Box 669, 310 Best Avenue, Knox, PA 16232-0669, (814) 797-1191.

25060802. Fredrick W. Shrunk (11500 Damsite Road, North East, PA 16428). Commencement, operation and restoration of a small noncoal sand and gravel operation in North East Township, **Erie County** affecting 5.0 acres. Receiving streams: UNT to Twelve Mile Creek. Application received: October 10, 2006. Permit Issued: January 26, 2007.

33060805. Elmer A. Sprankle, Jr. (1495 Route 310, Reynoldsville, PA 15851). Commencement, operation and restoration of a small noncoal shale operation in McCalmont Township, **Jefferson County** affecting 5.0 acres. Receiving streams: UNT to Big Run. Application received: December 26, 2006. Permit issued: January 30, 2007.

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

28040301. Charles E. Brake, Inc., (P. O. Box 275, St. Thomas, PA 17252). Commencement, operation, and restoration of a quarry operation in St. Thomas Township, **Franklin County** affecting 10.59 acres, receiving stream: none. Application received: December 13, 2004. Permit issued: January 30, 2007.

58050840. Robert Cooley, (R. R. 2, Box 154, Kingsley, PA 18826). Commencement, operation and restoration of a quarry operation in Dimock Township, **Susquehanna County** affecting 5.0 acres, receiving stream: none. Application received: May 18, 2006. Permit issued: January 30, 2007.

580608057. Mary Rzepecki, (R. R. 7, Box 7243, Montrose, PA 18801). Commencement, operation, and restoration of a quarry operation in Bridgewater Township, **Susquehanna County** affecting 5.0 acres, receiving stream: none. Application received: July 20, 2006. Permit issued: January 30, 2007.

58060823. Litts and Sons Stone Co., Inc., (R. R. 3, Box 3310, Moscow, PA 18444). Commencement, operation, and restoration of a quarry operation in Oakland Township, **Susquehanna County** affecting 5.0 acres, receiving stream: none. Application received: March 30, 2006. Permit issued: January 31, 2007.

58060870. Litts and Sons Stone Co., Inc., (R. R. 3, Box 3310, Moscow, PA 18444). Commencement, operation, and restoration of a quarry operation in Oakland Township, **Susquehanna County** affecting 5.0 acres, receiving stream: none. Application received: October 11, 2006. Permit issued: January 31, 2007.

7175SM1C10 and NPDES Permit No. PA0613827. Penny Supply, Inc., (P. O. Box 3331, Harrisburg, PA 17105). Renewal of NPDES Permit for discharge of treated mine drainage from a quarry operation in South Hanover Township, **Dauphin County**, receiving stream: Swatara Creek. Application received: December 20, 2006. Renewal issued: February 1, 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.

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

28074104. David H. Martin Excavating, Inc., (4961 Cumberland Highway, Chambersburg, PA 17201-9655). Blasting activity permit issued for church development in Greene Township, **Franklin County**. Blasting activity permit end date is January 18, 2008. Permit issued: January 22, 2007.

21074013. Newville Construction Service, Inc., (408 Mohawk Road, Newville, PA 17241-9424). Blasting activity permit issued for residential development in South Middleton Township, **Cumberland County**. Blasting activity permit end date is January 30, 2008. Permit issued: January 24, 2007.

28074107. David H. Martin Excavating, Inc., (4961 Cumberland Highway, Chambersburg, PA 17201-9655). Blasting activity permit issued for cemetery development in Antrim Township, **Franklin County**. Blasting activity permit end date is January 24, 2012. Permit issued: January 25, 2007.

28074108. David H. Martin Excavating, Inc., (4961 Cumberland Highway, Chambersburg, PA 17201-9655). Blasting activity permit issued for cemetery development in Antrim Township, **Franklin County**. Blasting activity permit end date is January 24, 2012. Permit issued: January 25, 2007.

28074109. David H. Martin Excavating, Inc., (4961 Cumberland Highway, Chambersburg, PA 17201-9655). Blasting activity permit issued for cemetery development in Guilford Township, **Franklin County**. Blasting activity permit end date is January 24, 2012. Permit issued: January 25, 2007.

28074110. David H. Martin Excavating, Inc., (4961 Cumberland Highway, Chambersburg, PA 17201-9655). Blasting activity permit issued for cemetery development

in Greene Township, **Franklin County**. Blasting activity permit end date is January 24, 2012. Permit issued: January 25, 2007.

28074105. David H. Martin Excavating, Inc., (4961 Cumberland Highway, Chambersburg, PA 17201-9655). Blasting activity permit issued for cemetery development in Guilford Township, **Franklin County**. Blasting activity permit end date is January 24, 2012. Permit issued: January 25, 2007.

28074106. David H. Martin Excavating, Inc., (4961 Cumberland Highway, Chambersburg, PA 17201-9655). Blasting activity permit issued for cemetery development in Antrim Township, **Franklin County**. Blasting activity permit end date is January 24, 2012. Permit issued: January 25, 2007.

Greensburg District Mining Office: Armbrust Professional Center, 8205 Route 819, Greensburg, PA 15601, (724) 925-5500.

65074002. Demtech, Inc., (65 Bald Mountain Road, Dubois, WY 82513). Blasting activity permit for demolition of the Wendel Road bridge, located in Hempfield Township, **Westmoreland County**, with an expected duration of blasting for 2 days. Blasting activity permit issued: January 29, 2007.

Knox District Mining Office: P. O. Box 669, 310 Best Avenue, Knox, PA 16232-0669, (814) 797-1191.

62074001. Minard Run Oil Co. (609 South Avenue, P. O. Box 18, Bradford, PA 16701). Blasting activity permit for gas and oil exploration in Mead Township, **Warren County**. This blasting activity permit will expire on August 1, 2007. Application received: January 23, 2007. Permit issued: January 26, 2007.

62074002. Otter Exploration, Inc., (104 College Street, Hudson, OH 44236). Blasting activity permit for gas and oil exploration in Cherry Grove Township, **Warren County**. This blasting activity permit will expire on August 1, 2007. Application received: January 23, 2007. Permit issued: January 26, 2007.

62074003. Otter Exploration, Inc. (104 College Street, Hudson, OH 44236). Blasting activity permit for gas and oil exploration in Cherry Grove Township, **Warren County**. This blasting activity permit will expire on August 1, 2007. Application received: January 23, 2007. Permit issued: January 29, 2007.

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

15074102. Rock Work, Inc., (1257 DeKalb Pike, Blue Bell, PA 19422). Construction blasting for Vincent Meadows in East Vincent Township, **Chester County** with an expiration date of January 1, 2008. Permit issued: February 1, 2007.

35074101. Austin Powder Company, (25800 Science Park Drive, Cleveland, OH 44122). Construction blasting for Glenmaura in Moosic Borough, **Lackawanna County** with an expiration date of January 28, 2008. Permit issued: February 1, 2007.

36074109. TJ Angelozzi, Inc., (7845 Kabik Court, Woodbine, MD 21797). Construction blasting for Hawthorne Ridge in Lancaster Township, **Lancaster County** with an expiration date of January 26, 2008. Permit issued: February 1, 2007.

36074110. J. Roy's, Inc., (Box 125, Bowmansville, PA 17507). Construction blasting for Lancaster County Country Club Golf Course in Manheim Township, **Lancaster**

County with an expiration date of January 1, 2008. Permit issued: February 1, 2007.

45074103. Brubacher Excavating, Inc., (P. O. Box 528, Bowmansville, PA 17507). Construction blasting for Upper Deer Valley Road Project in Jackson Township, **Monroe County** with an expiration date of December 31, 2007. Permit issued: February 1, 2007.

45074104. Explosive Services, Inc., (7 Pine Street, Bethany, PA 18431). Construction blasting for Vigon International in Smithfield Township, **Monroe County** with an expiration date of January 29, 2008. Permit issued: February 1, 2007.

45074106. American Rock Mechanics, Inc., (7531 Chestnut Street, Zionsville, PA 18092). Construction blasting for Sanofi Pasteur Development in Pocono Township, **Monroe County** with an expiration date of January 30, 2008. Permit issued: February 1, 2007.

46074104. J. Roy's, Inc., (Box 125, Bowmansville, PA 17507). Construction blasting for North Penn Park View Warehouse in Lansdale Borough, **Montgomery County** with an expiration date of January 1, 2008. Permit issued: February 1, 2007.

46074105. Austin Powder Company, (25800 Science Park Drive, Cleveland, OH 44122). Construction blasting for Windlestrae Development in New Hanover Township, **Montgomery County** with an expiration date of January 26, 2008. Permit issued: February 1, 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.

E48-364. Wagner Enterprises, Ltd., P. O. Box 3154, Easton, PA 18043. City of Bethlehem, **Northampton County**, United States Army Corps of Engineers Philadelphia District.

To construct and maintain the following water obstructions and encroachments: 1) an 8-inch diameter sanitary sewer line in Saucon Creek; 2) a 48-inch diameter stormwater outfall structure and associated energy dissipator in the floodway of Saucon Creek; and 3) to remove an existing 30-inch diameter stormwater outfall structure and replace it with a 6-inch diameter and a 14-inch by 23-inch elliptical stormwater outfall pipe and associated energy dissipator in the floodway of Saucon Creek. The project is located on Fire Lane adjacent to Saucon Park (Hellertown, PA Quadrangle N: 18.4 inches; W: 13.6 inches).

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

E14-486. Dominion Transmission, Inc., 445 West Main Street, Clarksburg, WV 26301. Cove Point DTI Pipelines and Centre County Compressor Station, in Harris Township, Potter Township, Spring Township, Boggs Township, Snowshoe Township and Curtin Township of **Centre County**, ACOE Baltimore District (from Barrville, PA Quadrangle, Latitude 40° 43' 43.7", Longitude 77° 43' 35" to Snow Shoe NE, PA Quadrangle, Latitude 41° 10' 47.5"; Longitude 77° 49' 37.7").

To construct, operate and maintain: 1) 69 stream crossings and 71 wetland crossings while constructing 34 miles of new 24-inch diameter gas transmission pipeline, for the most part parallel to an existing Texas Eastern pipeline, located in; 2) a 4.23-acre wetland replacement area to compensate for 3.21 acres of permanently converted forested to emergent wetlands. The 4.23-acre

wetland replacement area will involve 2.96 acres of constructed wetlands and 1.27 acres of wetland enhancement identified as the Bald Eagle II mitigation site. The mitigation site is divided into two parcels on the same property. Field 1 is located west of the access road to the property (Bellefonte PA Quadrangle, Latitude 40° 55' 7.27"; Longitude 77° 51' 6.58") and Field 2 is located east of the access road (Bellefonte PA Quadrangle, Latitude

40° 55' 13.22"; Longitude 77° 50' 48.83"). Impacts from the construction of the wetland replacement area include a temporary stream and wetland crossing, and a permanent impact of 0.03 acre of palustrine emergent wetlands for the construction of a berm.

The following table summarizes the impacts by permit category for all stream and wetland crossings:

<i>Stream Crossing Type</i>	<i>Quantity</i>	<i>Waiver</i>	<i>GP-5</i>	<i>GP-8</i>	<i>Chapter 105</i>
Access Road	20	480 ft.	N/A	969 ft.	N/A
Pipeline	41	2,042 ft.	2,198 ft.	N/A	395 ft.
Groundbed	7	133 ft.	12 ft.	N/A	0
Mitigation Area	1			15 ft	
Total	69	3,050 ft.	2,210 ft	969 + 15 ft.	395 ft.

Wetland Crossing Type

Access Road	29	N/A	N/A	0.52 Ac.	0
Pipeline	37	N/A	1.34 Ac.	N/A	5.71 Ac.
Mitigation Area	5	N/A	0.1	N/A	0.03
Total	71		1.44 Ac.	0.52 Ac.	5.74 Ac.

The following two tables list detailed stream and wetland crossings that require a 25 Pa. Code Chapter 105 permit authorization for the construction of the pipeline because the waterways were classified as exceptional value in 25 Pa. Code Chapter 93 and did not meet the criteria established in a general permit or waiver of permit:

<i>Crossing ID</i>	<i>Type</i>	<i>Impact (acres)</i>	<i>Latitude</i>	<i>Longitude</i>	<i>EV Status</i>
<i>Pipeline</i>					
WPA-KLF-025	PEM	0.01	40° 44' 42.5"	77° 43' 14.7"	EV
WPA-KLF-026	PEM	0.01	40° 44' 43.1"	77° 43' 14.3"	EV
WPA-KLF-027	PEM/PFO	1.52	40° 45' 12.7"	77° 42' 53.8"	EV
WPA-KLF-028	PEM	0.02	40° 45' 21.8"	77° 42' 42.2"	EV
WPA-KLF-029	PEM/PFO	0.28	40° 45' 29.4"	77° 42' 38.4"	EV
WPA-KLF-030	PEM	0.07	40° 45' 28.9"	77° 42' 41.4"	EV
WPA-GTR-001	PEM	0.8	40° 46' 21.9"	77° 42' 25.2"	EV
WPA-GTR-003	PEM	0.14	40° 47' 03.8"	77° 41' 48.3"	EV
WPA-GTR-005	PEM	0.64	40° 47' 06.6"	77° 41' 46.4"	EV
WPA-NAY-029	PEM/PFO/POW	0.06	40° 57' 16.5"	77° 45' 51.8"	Other (>10Ac)
WPA-NAY-026	PEM	0.04	40° 57' 23.3"	77° 45' 53.9"	EV
WPA-NAY-027	PEM	<0.01	40° 57' 28.9"	77° 45' 54.8"	EV
WPA-NAY-028	PEM	<0.01	40° 57' 40.1"	77° 46' 03.3"	EV
WPA-NAY-031	PEM	0.07	40° 58' 03.2"	77° 46' 17.5"	EV
WPA-NAY-032	PEM	0.22	40° 59' 02.2"	77° 46' 41.8"	EV
WPA-AES-002	PEM/PFO	0.07	41° 02' 47.1"	77° 47' 49.2"	EV
WPA-GTR-004	PEM/PFO	1.06	41° 04' 34.0"	77° 47' 59.7"	EV
WPA-KLF-005	PSS/PEM	0.11	41° 06' 48.0"	77° 48' 43.7"	EV
WPA-KLF-008	PEM	0.01	41° 07' 28.4"	77° 48' 48.5"	EV
WPA-KLF-012	PEM	0.5	41° 08' 42.9"	77° 49' 16.3"	EV
WPA-KLF-014	PEM	0.08	41° 09' 02.4"	77° 49' 18.9"	EV
Total		5.71		=(PEM = 2.61) + (PFO=2.99) + (PSS=0.11)	

<i>Crossing ID</i>	<i>Stream</i>	<i>Chapter 93</i>	<i>DA (mi²)</i>	<i>Latitude</i>	<i>Longitude</i>	<i>Impact (ft.)</i>
<i>Pipeline</i>						
SPA-KLF-005	UNT Two Rock Run	EV	n/a	41° 08' 45.9"	77° 49' 17.2"	16
SPA-KLF-007	UNT West Branch Big Run	EV	n/a	41° 09' 52.7"	77° 49' 23.0"	264
SPA-KLF-008	UNT West Branch Big Run	EV	n/a	41° 10' 05.9"	77° 49' 26.5"	115
Total						395

The permanent impact to palustrine emergent wetlands is located at Field 2 of the Bald Eagle II property. The following table lists the individual encroachments necessary to complete construction of the wetland replacement area:

<i>Crossing ID</i>	<i>Type</i>	<i>Impact (Acres)</i>	<i>Latitude</i>	<i>Longitude</i>	<i>EV Status</i>
<i>Mitigation Area</i>					
WPA-BE-KF-002	PEM	0.007	40° 55' 12.6"	77° 50' 49.7"	Other
WPA-BE-KF-003	PEM	0.005	40° 55' 13.1"	77° 50' 48.8"	Other
WPA-BE-KF-004	PEM	0.006	40° 55' 13.6"	77° 50' 47.8"	Other
WPA-BE-KF-005	PEM	0.009	40° 55' 14.1"	77° 50' 46.2"	Other
Total		0.03			

The following stream crossings for access roads are eligible for a waiver in accordance with 25 Pa. Code § 105.12(a)(2) and are included in this permit:

<i>Crossing ID</i>	<i>Stream</i>	<i>Chapter 93</i>	<i>DA <100 Ac</i>	<i>Latitude</i>	<i>Longitude</i>	<i>Impact (ft.)</i>
SPA-NAY-099	UNT Bald Eagle Creek	CWF	0.13	40° 57' 46.2"	77° 46' 8.42"	155
SPA-NAY-100	UNT Bald Eagle Creek	CWF	0.02	40° 57' 52.0"	77° 46' 25.33"	87
SPA-NAY-089	UNT Council Run	CWF	0.15	41° 04' 40.4"	77° 48' 16.3"	58
SPA-NAY-090	Pool	CWF	0.02	41° 04' 59.4"	77° 48' 25.66"	117
SPA-NAY-094	UNT Wallace Run	CWF	0.05	41° 00' 52.9"	77° 52' 12.31"	63
Total						480

The following stream crossings for pipeline and ground bed activities are eligible for a waiver in accordance with 25 Pa. Code § 105.12(a)(2) and are included in this permit:

<i>Pipeline</i>						
SPA-KLF-019	UNT Sinking Creek	CWF	0.022	41° 45' 21.2"	77° 42' 42.5"	76
SPA-GTR-001	UNT Galbraith Gap Run	HQ-CWF	0.104	41° 46' 21.8"	77° 42' 62.2"	114
SPA-GTR-009	UNT Sinking Creek	CWF	0.109	40° 47' 08.6"	77° 41' 45.8"	138
SPA-VRS-009	UNT Bald Eagle Creek	CWF	0.053	40° 56' 10.4"	77° 45' 37.1"	75
SPA-NAY-060	UNT Bald Eagle Creek	CWF	0.043	40° 57' 22.8"	77° 45' 54.0"	53
SPA-NAY-056	UNT Bald Eagle Creek	CWF	0.045	40° 57' 28.5"	77° 45' 55.6"	62
SPA-NAY-058	UNT Bald Eagle Creek	CWF	0.015	40° 57' 46.6"	77° 46' 07.9"	169
SPA-NAY-057	UNT Bald Eagle Creek	CWF	0.017	40° 57' 48.0"	77° 46' 09.0"	189
SPA-NAY-061	UNT Bald Eagle Creek	CWF	0.013	40° 58' 03.4"	77° 46' 17.4"	75
SPA-NAY-062	UNT Bald Eagle Creek	CWF	0.026	40° 58' 04.8"	77° 46' 18.4"	439
SPA-NAY-064	UNT Bald Eagle Creek	CWF	0.009	40° 58' 27.3"	77° 46' 31.8"	76

Pipeline

SPA-NAY-065	UNT Bald Eagle Creek	CWF	0.022	40° 59' 01.9"	77° 46' 42.0"	2
SPA-NAY-066	UNT Bald Eagle Creek	CWF	0.023	40° 59' 3.12"	77° 46' 42.5"	80
SPA-AES-001	Antis Creek	CWF	0.136	40° 59' 35.3"	77° 47' 5.11"	62
SPA-GTR-005	UNT Council Run	CWF	0.056	41° 04' 09.4"	77° 47' 50.1"	76
SPA-GTR-004	UNT Council Run	CWF	0.053	41° 04' 33.0"	77° 47' 59.9"	45
SPA-GTR-006	UNT Council Run	CWF	0.007	41° 04' 35.8"	77° 48' 0.50"	122
SPA-VRS-002	UNT Council Run	CWF	0.001	41° 05' 42.5"	77° 48' 22.3"	112
SPA-KLF-004	UNT Eddy Lick Run	CWF	0.025	41° 07' 28.7"	77° 48' 48.5"	77
Total						2,042

Groundbeds

SPA-MTD-002	UNT Sinking Creek	CWF	0.068	40° 45' 33.7"	77° 42' 38.0"	15
SPA-MTD-003	UNT Sinking Creek	CWF	0.012	40° 45' 35.1"	77° 42' 36.2"	22
SPA-MTD-004	UNT Sinking Creek	CWF	0.001	40° 45' 35.7"	77° 42' 35.5"	14
SPA-MTD-004A	UNT Sinking Creek	CWF	0.001	40° 45' 35.8"	77° 42' 35.2"	20
SPA-AES-001	Antis Run	CWF	0.128	40° 59' 35.1"	77° 47' 07.7"	12
GWPA-MTD-001	Groundwater Seep	CWF	<0.001	40° 45' 33.7"	77° 42' 38.42"	50
Total						133

The following Utility Line stream crossings, including groundbeds, meet the conditions for use of a General Permit GP-5 and are included in this permit:

<i>Crossing ID</i>	<i>Stream</i>	<i>Chapter 93</i>	<i>Latitude</i>	<i>Longitude</i>	<i>Impact (Ft.)</i>
<i>Pipeline</i>					
SPA-KLF-017	Detweiler Run	HQ-CWF	40° 43' 43.7"	77° 43' 35.0"	91
SPA-KLF-018	Sinking Creek	CWF	40° 44' 43.2"	77° 43' 14.2"	109
SPA-KLF-020	Sinking Creek	CWF	40° 45' 21.2"	77° 42' 42.5"	76
SPA-KLF-022	Sinking Creek	CWF	40° 45' 21.2"	77° 42' 42.6"	166
SPA-WJW-001	UNT to GAP Run	CWF	40° 51' 33.2"	77° 42' 45.6"	75
SPA-VRS-010	UNT to Bald Eagle Creek	CWF	40° 56' 38.9"	77° 45' 43.1"	167
SPA-NAY-055	Bald Eagle Creek	TSF	40° 57' 11.6"	77° 45' 50.5"	50
SPA-NAY-059	UNT Bald Eagle Creek	CWF	40° 57' 40.7"	77° 46' 02.8"	334
SPA-AES-002	Little Marsh Creek	CWF	41° 00' 32.1"	77° 47' 11.0"	67
SPA-KDR-002	Marsh Creek	CWF	41° 02' 47.9"	77° 47' 49.23"	76
SPA-KDR-003	Marsh Creek	CWF	41° 02' 48.7"	77° 47' 49.3"	93
SPA-GTR-007	UNT to Council Run	CWF	41° 04' 4.2"	77° 47' 49.1"	157
SPA-VRS-001	UNT to Council Run	CWF	41° 05' 13.9"	77° 48' 03.1"	280
SPA-VRS-003	Council Run	CWF	41° 05' 51.6"	77° 48' 22.3"	112

NOTICES

<i>Crossing ID</i>	<i>Stream</i>	<i>Chapter 93</i>	<i>Latitude</i>	<i>Longitude</i>	<i>Impact (Ft.)</i>
SPA-VRS-004	Beech Creek	CWF	41° 05' 55.7"	77° 48' 24.1"	76
SPA-VRS-006	Backwater—Beech Creek	CWF	41° 05' 55.7"	77° 48' 24.1"	34
SPA-KLF-001	Beech Creek	CWF	41° 06' 11.7"	77° 48' 33.1"	76
SPA-KLF-002	Beech Creek	CWF	41° 06' 46.3"	77° 48' 42.3"	80
SPA-KLF-003	Eddy Lick Run	CWF	41° 06' 50.4"	77° 48' 43.6"	79
				Total	1,464
<i>Ground Beds</i>					
SPA-MTD-001	Laurel Run	CWF	41° 02' 50.1"	77° 47' 52.9"	12
				Total	12

The following is a list of all temporary wetland crossings for access roads that meet the criteria for use of a general permit GP-8 and are included in this permit:

<i>Crossing ID</i>	<i>Wetland Type</i>	<i>EV Status</i>	<i>Latitude</i>	<i>Longitude</i>	<i>Impact (ft.)</i>
<i>Access Roads</i>					
WPA-NAY-041	PFO	Other	40° 44' 44.0"	77° 43' 08.0"	0.02
WPA-NAY-040	PEM	EV	40° 57' 52.16"	77° 46' 25.66"	0.01
WPA-NAY-039	PEM/POW	EV	40° 03' 0.40"	77° 46' 26.2"	0.01
WPA-NAY-037	PEM	Other	40° 05' 6.40"	77° 50' 14.5"	0.01
WPA-NAY-038	PEM	Other	40° 04' 31.7"	77° 50' 18.6"	0.02
WPA-VRS-005	PEM	Other	41° 05' 29.2"	77° 48' 3.6"	0.01*
WPA-VRS-006	PFO/PEM	Other	41° 05' 47.8"	77° 48' 25.3"	0.01
WPA-VRS-007	PFO/PEM	Other	41° 05' 48.17"	77° 48' 25.2"	0.01
WPA-VRS-028	PEM	Other	41° 06' 27.3"	77° 48' 19.6"	0.02
WPA-VRS-027	PEM/POW	Other	41° 06' 52.0"	77° 47' 47.1"	0.01
WPA-VRS-026	PEM	Other	41° 06' 53.1"	77° 47' 48.9"	0.01
WPA-VRS-025	PEM	Other	41° 06' 55.5"	77° 47' 50.4"	0.02
WPA-VRS-024	PEM	Other	41° 07' 24.9"	77° 48' 17.5"	0.01
WPA-VRS-023	PEM/POW	Other	41° 07' 49.5"	77° 48' 15.8"	0.05
WPA-VRS-022	PEM/POW	EV	41° 07' 50.4"	77° 48' 15.0"	0.01
WPA-VRS-021	PEM/POW	Other	41° 08' 03.6"	77° 47' 47.5"	0.02
WPA-VRS-020	PEM	Other	41° 08' 20.8"	77° 47' 43.3"	0.03
WPA-VRS-019	PEM	Other	41° 08' 30.1"	77° 47' 37.1"	0.01
WPA-VRS-018	PEM	Other	41° 09' 03.7"	77° 48' 04.2"	0.01
WPA-VRS-017	PEM	Other	41° 09' 12.3"	77° 48' 59.7"	0.01*
WPA-VRS-016	PEM	Other	41° 09' 13.2"	77° 49' 01.1"	0.01
WPA-VRS-015	PEM	Other	41° 09' 13.5"	77° 49' 02.0"	0.01*
WPA-VRS-014	PEM	Other	41° 09' 12.8"	77° 49' 01.1"	0.01
WPA-VRS-013	PEM	Other	41° 09' 13.2"	77° 49' 01.8"	0.01
WPA-VRS-012	PEM	Other	41° 09' 13.0"	77° 49' 02.2"	0.01
WPA-VRS-011	PEM	Other	41° 09' 29.2"	77° 49' 01.3"	0.01
WPA-VRS-009	PEM	Other	41° 06' 31.1"	77° 48' 47.9"	0.01
WPA-VRS-008	PEM	Other	41° 06' 31.3"	77° 48' 48.4"	0.02
WPA-VRS-029	PEM	Other	41° 08' 20.5"	77° 48' 54.0"	0.12
Total					(* = impacts rounded up to the nearest 0.01) 0.52

The following is a list of all temporary road crossings for access roads that meet the criteria for use of a general permit GP-8 and are included in this permit:

<i>Crossing ID</i>	<i>Stream</i>	<i>Chapter 93</i>	<i>DA (sq. mi²)</i>	<i>Latitude</i>	<i>Longitude</i>	<i>Impact</i>
<i>Access Roads</i>						
SPA-NAY-102	UNT Standing Stone	HQ-CWF	2.44	40° 43' 21.1"	77° 42' 02.2"	55
SPA-NAY-095	UNT Little Marsh Creek	CWF	0.42	41° 01' 28.0"	77° 49' 12.4"	55
SPA-NAY-096	UNT Marsh Creek	CWF	0.27	41° 03' 0.11"	77° 47' 2.53"	50
SPA-NAY-098	UNT Marsh Creek	CWF	0.56	41° 02' 59.7"	77° 46' 25.5"	50
SPA-NAY-088	UNT Council Run	CWF	0.45	41° 04' 19.3"	77° 48' 7.59"	151
SPA-VRS-018	UNT Beech Creek	CWF	0.18	41° 06' 58.4"	77° 48' 38.7"	116
SPA-NAY-103	Sinking Creek	CWF	3.26	40° 45' 36.0"	77° 42' 31.6"	23
SPA-NAY-091	UNT Council Run	CWF	1.71	40° 05' 25.9"	77° 49' 07.8"	17
SPA-NAY-092	Council Run	CWF	3.38	40° 05' 26.6"	77° 49' 8.6"	50
SPA-NAY-093	Rock Run	EV	N/A	40° 03' 28.0"	77° 50' 16.6"	50
SPA-VRS-014	Council Run	CWF	4.19	41° 05' 46.7"	77° 48' 25.16"	67
SPA-VRS-015	Council Run	CWF	4.15	41° 05' 40.7"	77° 48' 27.17"	11
SPA-VRS-016	Two Rock Run	EV	N/A	41° 07' 50.4"	77° 48' 14.75"	52
SPA-VRS-017	UNT Two Rock Run	EV	N/A	41° 07' 52.3"	77° 48' 13.15"	148
SPA-VRS-019	UNT Two Rock Run	EV	N/A	41° 08' 28.3"	77° 48' 33.09"	72
SPA-BE-KF-001	UNT Bald Eagle Creek	CWF	N/A	41° 55' 7.17"	77° 50' 59.77"	2
Total						969

The following is a list of all wetland crossings for utility lines that meet the criteria for use of a general permit GP-5 are included in this permit:

<i>Crossing ID</i>	<i>Type</i>	<i>Impact (acres)</i>	<i>Latitude</i>	<i>Longitude</i>	<i>Type</i>
<i>Pipeline</i>					
WPA-GTR-006	PEM	0.62	40° 47' 16.5"	77° 41' 40.9"	Other
WPA-WJF-001	PEM	0.04	40° 52' 24.1"	77° 43' 1.8"	Other
WPA-WJW-002	PEM	0.22	40° 52' 27.8"	77° 43' 2.5"	Other
WPA-NAY-030	PEM	0**	40° 57' 20.1"	77° 45' 53.9"	Other
WPA-AES-003	PEM	0.01	41° 02' 50.2"	77° 47' 48.8"	Other
WPA-KLF-001	PEM	0.07	41° 07' 56.1"	77° 48' 59.6"	Other
WPA-KLF-002	PEM	0.07	41° 07' 0.00"	77° 48' 33.8"	Other
WPA-KLF-003	PEM/PSS	0.03	41° 06' 13.3"	77° 48' 34.9"	Other
WPA-KLF-006	PEM	0.01	41° 06' 49.8"	77° 48' 44.4"	Other
WPA-KLF-007	PSS	0.01	41° 06' 50.6"	77° 48' 43.0"	Other
WPA-KLF-009	PEM	0.01*	41° 07' 33.1"	77° 48' 49.8"	Other
WPA-KLF-010	PEM/PFO	0.14	41° 07' 33.5"	77° 48' 51.2"	Other
WPA-KLF-011	PEM/PFO	0.07	41° 07' 34.6"	77° 48' 49.1"	Other
WPA-KLF-013	PEM	0.02	41° 08' 47.3"	77° 49' 17.7"	Other
WPA-KLF-015	PEM	0.01*	41° 09' 11.0"	77° 49' 16.7"	Other
WPA-KLF-016	PEM	0.03	41° 09' 12.1"	77° 49' 16.9"	Other
WPA-BE-KF-001	PEM	0.10	40° 55' 6.99"	77° 51' 1.13"	Mitigation
Total					1.44

* = rounded to 0.01, ** = Direction drilling under wetland at Bald Eagle Crossing

Trench plugs or clay dikes shall be used at every waterway and wetland crossing to ensure the existing hydrology is not altered. This permit also will authorize construction, operation, maintenance and removal of temporary construction crossings, causeways, stream diversions and cofferdams. All temporary structures shall be constructed of clean rock that is free of fines; and upon completion of construction activities, all temporary structures shall be removed with disturbed areas being restored to original contours and elevations. If upon investigation the Department determines the gas transmission line approved by this permit is serving to degrade water quality, stream profile, meander pattern or channel geometries, then the permittee shall be required to implement all measures necessary to mitigate the degradation.

E17-416. Houtzdale Municipal Authority, 561 Kirk Street, Houtzdale, PA 16651-1209. Moshannon Creek and Henderson Area Water System Improvements, Bigler, Gulich and Woodward Townships and Brisbin and Houtzdale Borough, **Clearfield County**, ACOE Baltimore District (Tipton, PA Quadrangle N: 20.8 inches; W: 16.3 inches).

To construct, operate and maintain a surface water intake, monitoring weirs, raw water transmission lines and treated drinking water distribution lines to extend and supplement the Houtzdale Municipal Authority's existing public drinking water supplies. Construction of the surface water intake, raw water transmission lines and treated drinking water distribution lines will result in four stream and two wetland impacts that are as follows:

<i>Stream/Wetland</i>	<i>Structure</i>	<i>Stream Classification</i>	<i>Latitude</i>	<i>Longitude</i>
Moshannon Creek	Surface Intake	HQ-CWF	40° 44' 21"	78° 22' 5"
Moshannon Creek	Monitoring Weir	HQ-CWF	40° 44' 48"	78° 22' 20"
Moshannon Creek	Utility Line Crossing	TSF	40° 47' 17"	78° 20' 20"
Morgan Run	Utility Line Crossing	CWF	40° 51' 17"	78° 24' 32"
Moshannon Creek Wetland	Surface Intake	HQ-CWF	40° 44' 21"	78° 22' 5"
Moshannon Creek Wetland	Utility Line Crossing	TSF	40° 47' 17"	78° 20' 34"

All raw water transmission and treated drinking water distribution lines shall be installed beneath streambeds so there will be a minimum of 3-feet of cover between the top of the pipe and the lowest point in the streambed or concrete encased. Trench plugs or clay dikes shall be used at every waterway and wetland crossing to ensure the existing hydrology is not altered. Construction of the surface water intake and monitoring weir shall be conducted during stream low flow and in dry work conditions by dams and pumping or fluming stream flow around work area. Since Moshannon Creek is a WTS, no construction or future repair work of the surface intake and monitoring weir shall be done in or along the stream channel between October 1 and December 31 without the prior written approval of the Pennsylvania Fish and Boat Commission. The project is located along eastern right-of-way of SR 0153 approximately 1.2-miles east of Woodward Township Road T-650 and SR 0153. If upon investigation the Department determines the monitoring weir across Moshannon Creek is serving to degrade water quality, stream pattern, stream profile or stream geometry, permittee shall remove monitoring weir or design and implement measures that fully mitigates degradation.

E17-420. Mid-East Oil Company, P. O. Box 1378, Indiana, PA 15701. Bark Camp Run-South Road Crossing, in Huston Township, **Clearfield County**, ACOE Baltimore District (Penfield, PA Quadrangle Latitude: 41° 10' 44"; Longitude: 78° 34' 50").

To operate and maintain a private road crossing Bark Camp Run that will provide access for natural gas exploration and extraction. The road crossing shall be operated and maintained with a minimum of three corrugated plastic culvert pipes with the central culvert pipe having a minimum diameter of 60 inches and the pipes on either side having a minimum diameter of 36 inches. All rock used for maintenance on the road crossing and its approaches shall be clean, non-polluting rock free of fines. The project is located along the southern right-of-way of SR 0255 approximately 1.44 miles east of Bark Camp Run Road and SR 0255 intersection. This

permit was issued under Section 105.13(e) "Small Projects." This permit also includes 401 Water Quality Certification.

E17-427. Game Commission, Northcentral Regional Office, P. O. Box 5038, 1566 South Route 44 Highway, Jersey Shore, PA 17740-5038. Basin Run Portable Bridge Project, in Cooper Township, **Clearfield County**, ACOE Baltimore District (Frenchville, PA Quadrangle Latitude: 41° 02' 55"; Longitude: 78° 08' 01").

To construct, operate, maintain and remove, when deemed necessary, a single bridge across Basin Run that will provide public access to State Game Lands No. 100. The bridge shall be constructed and maintained with a minimum span of 80 feet and underclearance of 15 feet. The project is located along the eastern right-of-way of SR 1011 approximately 1.64 miles east of Cooper Township Road No. 730 and SR 1011 intersection. This permit was issued under Section 105.13(e) "Small Projects." This permit also includes 401 Water Quality Certification.

E18-413. David W. Nickle, 420 South Fairview Street, Lock Haven, PA 17745-3404. Nickle Home, in Bald Eagle Township, **Clinton County**, ACOE Baltimore District (Beech Creek, PA Quadrangle N: 6.5 inches; W: 5.25 inches).

To construct, operate and maintain a 45 foot by 34.5 foot L-shaped private home elevated 8.4 feet above the ground in the left 100-year floodway of Bald Eagle Creek by ventilated cement block walls and a 10 foot by 10 foot at-grade concrete pad between the southern garage door and the gravel driveway located 135 feet east of the intersection of Crystal Beech Road and Aungst Lane. This permit was issued under Section 105.13(e) "Small Projects."

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

E02-1226. Lincoln at North Shore, LP, 35 Highland Road, Bethel Park, PA 15102. To reissue and extend time on Permit No. E02-1226, in the City of Pittsburgh,

Allegheny County, Pittsburgh ACOE District. (East Pittsburgh, PA Quadrangle N: 13.4 inches; W: 16.5 inches and Latitude: 40° 26' 56"—Longitude: 79° 59' 57"). To reissue and extend the time on Permit No. E02-1226 that authorized the applicant to construct and maintain a gangway, walkway, steps, an observation deck and a 679.2 foot long by 109.0 foot wide (as measured from the low water mark) floating boat docking spaces for the tenants of the Lincoln at North Shore Apartments. The project is located just upstream from the Ninth Street Bridge in the City of Pittsburgh and will impact 679.2 feet of stream channel.

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

E10-421, Buffalo and Pittsburgh Railroad, Inc., 201 North Penn Street, P. O. Box 477, Punxsutawney, PA 15767. Chicora Bridge, in Donegal Township, **Butler County**, ACOE Pittsburgh District (East Butler, PA Quadrangle N: 40°, 56', 23"; W: 79°, 46', 06").

To operate and maintain an approximately 200-foot long, 72-inch diameter reinforced concrete pipe stream enclosure a tributary to Buffalo Creek and rock fill placed in a total of 0.47 acre of adjoining wetlands under Department Emergency Permit No. EP1006602, as amended, associated with reconstruction of the existing Buffalo and Pittsburgh Railroad line south of SR 68 approximately 1.25 mile southwest of Chicora. Project includes creation of 0.8 acre of replacement wetland immediately southwest of the structure and stream restoration activities along approximately 235 feet of a tributary adjacent to the railroad embankment.

E62-409, West PA Net, 20 Market Street Plaza, Warren, PA 16365. West PA Net Fiber Optic Crossing Allegheny River, in Glade Township and Meade Township, **Warren County**, ACOE Pittsburgh District (Clarendon, PA Quadrangle N: 20.2 inches; W: 4.0 inches).

The applicant proposes to install and maintain an aerial fiber optic cable crossing of the Allegheny River within the Federal Scenic River Corridor on existing electrical infrastructure approximately 0.5 mile east of the intersection of SR 6 and SR 59. The Allegheny River is a perennial stream classified as a WWF.

ENVIRONMENTAL ASSESSMENTS

Central Office: Bureau of Waterways Engineering, Rachel Carson State Office Building, Floor 3, 400 Market Street, Harrisburg, PA 17105.

D13-005EA, Borough of Lehigh, P. O. Box 29, Lehigh, PA 18235. Lehighon Borough **Carbon County**, ACOE Philadelphia District.

Project proposes to breach and remove Heilman Dam across Mahoning Creek (CWF) for the purpose of eliminating a threat to public safety and restoring the stream to a free flowing condition. The project will restore approximately 2,000 feet of stream channel. The dam is located approximately 900 feet south of the intersection of SR 443 and US 209 (Lehighon, PA Quadrangle, N: 13.5", W: 11.1").

DAM SAFETY

Central Office: Bureau of Waterways Engineering, 400 Market Street, Floor 3, P. O. Box 8554, Harrisburg, PA 17105-8554.

D45-289, Ski Shawnee, Inc., P. O. Box 339, Shawnee On Delaware, PA 18356. To construct and repair an existing deteriorated earth fill dam that impounds water for the purpose of snow making at the ski area. Work

includes dredging and removal of accumulated sediments for the existing 9.4 acre pond. (Bushkill, PA-NJ Quadrangle N: 7.2 inches; W: 11.4 inches) in Middle Smithfield Township, **Monroe County**.

SPECIAL NOTICES

Public Hearing Notice

The Commonwealth of Pennsylvania, Department of Environmental Protection (DEP), will conduct a Public Hearing to solicit comments on Grand Central Sanitary Landfill's Southern Expansion Application, I.D. No. 100265, located in Plainfield Township, **Northampton County**. The Public Hearing has been scheduled for Thursday, March 15, 2007, at 7 p.m. at the Wind Gap Middle School Auditorium.

A copy of the application may be viewed at the Department of Environmental Protection, Northeast Regional Office, 2 Public Square, Wilkes-Barre, PA 18711-0790. For further information, please contact Robert C. Wallace at (570) 826-2511. Also, a copy of this application has been provided to Plainfield Township, Lehigh Valley Planning Commission and the Northampton County Council.

Any person intending to participate in the hearing should submit a written Notice of Intent to William Tomayko, Program Manager, Northeast Regional Office, 2 Public Square, Wilkes-Barre, PA 18711-0790 on or before March 13, 2007. The written notice should include the person's name, address, telephone number and a brief statement as to the nature (oral or written) of his or her presentation. Persons unable to attend the hearing may submit a written statement/comments to William Tomayko on or before March 13, 2007.

Hazardous Sites Cleanup Under the Act of October 18, 1988

Public Notice of Proposed Consent Order and Agreement

Aristech Chemical Corporation, Beazer East, Inc., and Warren Messner Mays/Messner Site, North Fayette Township, Allegheny County

The Department of Environmental Protection (Department), under the authority of the Hazardous Sites Cleanup Act (HSCA) (35 P. S. §§ 6020.101—6020.1305), and other environmental statutes, has entered into a proposed Consent Order and Agreement (CO&A) with Aristech Chemical Corporation (Aristech); Beazer East, Inc. (Beazer); and Warren Messner (Messner).

The subject site (Site) is an approximately 4-acre parcel located between SRs 22 and 978 in the Imperial Industrial Park, in North Fayette Township, Allegheny County, PA. Messner is the current owner of the Site and has owned the Site at all relevant times. In the late 1970s and the early 1980s, the Mays Corporation, a Pennsylvania corporation, leased the Site from Messner and used the Site to transfer and store waste as part of the Mays Corporation's industrial and hazardous waste-hauling business.

In July 1999, under section 501(a) of HSCA (35 P. S. § 6020.501(a)), the Department conducted an Interim Response at the Site to remove and properly dispose of various waste at the Site, including styrene, acetone, ethylbenzene, naphthalene, benzoic acid, phthalic anhydride and other volatile and semi-volatile organics.

In March through April 2002, the Department further investigated the Site and found additional deposits of

benzoic acid and phthalic anhydride at subsurface levels of 3 to 4 feet. The Department determined that this waste was buried at sufficient depth that it could be safely left in place provided that certain restrictions on the use of the Site were observed.

Based on information generated during its investigation of the Site, its Interim Response, transporter records maintained by Mays Corporation, and the manufacture and waste history of other parties, the Department determined that waste at the Site containing benzoic acid and phthalic anhydride was generated at facilities formerly owned and operated by Beazer and the corporate predecessor-in-interest of Aristech.

The proposed CO&A absolves Aristech, Beazer and Messner of liability for costs incurred or response actions arising out of the release or threatened release of hazardous substances identified in the administrative record for the Site. This expressly includes costs expended by the Department at the Site during its 1999 Interim Response and its 2002 further investigation. The CO&A calls for Aristech, Beazer and Messner to pay to the Department a total of \$338,400.75, in separate payments of \$112,800.25 each. The CO&A additionally requires Messner to record with the Allegheny County Recorder of Deeds an acknowledgement of the disposal of hazardous substances and hazardous waste at the Site and a notice of property use restrictions.

Under section 1113 of HSCA (35 P. S. § 6020.1113), the Department is publishing notice of the proposed CO&A and will provide a 60-day period for public comment on the CO&A beginning with the date of this publication. Copies of the CO&A can be reviewed or obtained by contacting Terry Goodwald at the Department of Environ-

mental Protection, 400 Waterfront Drive, Pittsburgh, PA 15222 or by calling Terry Goodwald at (412) 442-4000. Persons may submit comments on the proposed CO&A during the 60-day public comment period only. Comments can be sent to Terry Goodwald at the address noted or may be delivered to him in person at the Department's Pittsburgh office.

The Department has reserved the right to withdraw its consent to the CO&A if comments submitted during the 60-day public comment period disclose facts or considerations which indicate, in the Department's judgment, that the CO&A is inappropriate or not in the public interest. A person adversely affected by the settlement may file an appeal to the Pennsylvania Environmental Hearing Board.

Notice of Certification to Perform Radon-Related Activities in Pennsylvania

In the month of January 2007, the Department of Environmental Protection of the Commonwealth of Pennsylvania, under the authority contained in the Radon Certification Act, act of July 9, 1987, P. L. 238, No. 43 (63 P. S. §§ 2001—2014) and regulations promulgated thereunder at 25 Pa. Code Chapter 240, has certified the persons listed as follows to perform radon-related activities in Pennsylvania. The period of certification is 2 years. (For a complete list of persons currently certified to perform radon-related activities in Pennsylvania and for information as to the specific testing devices that persons certified for testing or laboratory are certified to use, contact the Bureau of Radiation Protection, Radon Division, P. O. Box 8469, Harrisburg, PA 17105-8469, ((800) 23RADON).

<i>Name</i>	<i>Address</i>	<i>Type of Certification</i>
Michael Ashburn	629 Shearer Street Greensburg, PA 15601	Testing
William Astorino	3 Banyan Street Selinsgrove, PA 17870	Testing
Lionel Barnaby	2623 Terrwood Drive, West Macungie, PA 18062	Testing
Roger Burens Air Quality Control, Inc.	340 West DeKalb Pike #303 King of Prussia, PA 19406	Testing
Robert Feather Radon Testing Services, Inc.	96 Highland Parkway Levittown, PA 19056	Testing
Todd Giddings and Associates, Inc.	3049 Enterprise Drive State College, PA 16801	Mitigation
John Kerrigan RHIS, Inc.	100 Old Kennett Road Wilmington, DE 19807	Testing
David Koloskee	4021 West 12th Street Erie, PA 16505	Testing
Rob Lunny	2370 York Road A9-C Jamison, PA 18929	Testing
Paul Malmquist	4327 Point Pleasant Pike P. O. Box 410 Danboro, PA 18916	Testing
Ronald Mikolaichik	155 North Main Street Shavertown, PA 18708	Testing
Anne Niblett	3201 Addison Drive Wilmington, DE 19808	Testing

<i>Name</i>	<i>Address</i>	<i>Type of Certification</i>
Daniel Phillips	155 North Main Street Shavertown, PA 18708	Testing
Roger Priest	1362 Old Skippack Road Box 200 Salfordville, PA 18958	Testing
Brad Schreiner Anthracite Radon Mitigation	R. R. 7, Box 7229 Suite 102 Moscow, PA 18444	Testing
David Sperring	4826 Thoroughbred Loop Erie, PA 16506	Testing
David Teter	224 East Mifflin Street Orwigsburg, PA 17961	Testing
Thomas Trimmer	1160 Locust Grove Road Middletown, PA 17057	Testing
Todd Tuvell	4142 Ogletown-Stanton Road #217 Newark, DE 19713	Testing
John Whitehead	3304 Dougherty Lane McKeesport, PA 15133	Testing
Terry Wilver Pro-Tech Home and Business	1015 Green Street Milton, PA 17847	Mitigation
William Wright Anthracitic Radon Mitigation	R. R. 7, Box 7229 Suite 102 Moscow, PA 18444	Mitigation

[Pa.B. Doc. No. 07-248. Filed for public inspection February 16, 2007, 9:00 a.m.]

Coastal Resources Management Program; Approval of Routine Program Changes

At 36 Pa.B. 6599 (October 28, 2006), the Department of Environmental Protection (Department), as required by 15 CFR 923.84(b)(2) (relating to routine program changes), published notice that it was proposing several program changes to its Coastal Resources Management (CRM) Program and requested public comments be submitted to the National Oceanic and Atmospheric Administration's Office of Ocean and Coastal Resource Management (OCRM) on whether the changes constitute a Routine Program Change (RPC). An RPC is defined in Federal regulations (15 CFR 923.84) as, "Further detailing of a state's program that is the result of implementing provisions approved as part of the state's approval management program that does not result in (an amendment)." Essentially, RPCs are clarifications, minor revisions or improvements that do not substantially alter one or more of the following Coastal Zone Program areas: Uses Subject to Management; Special Management Areas; Boundaries; Authorities and Organization; and Coordination, Public Involvement and the National Interest. The Department determined that the program changes constituted RPCs in accordance with 15 CFR 923 (relating to coastal zone management program regulations) and requested OCRM concur with its determination. During the 3 week comment period, OCRM received public comments on the Department's proposal, which it responded to directly.

By letter dated January 9, 2007, OCRM informed the Department that it concurred with its determination and that it approved of the incorporation of the RPCs as enforceable policies and other enforceable elements of the CRM Program. Under 15 CFR Part 923.84(b)(4), the Department must provide notice of OCRM's determination in order to fulfill Federal Consistency requirements of the Federal Coastal Zone Management Act of 1972. This notice satisfies this Federal requirement. As of the date of this public notice, Federal consistency requirements apply to the approved RPCs listed as follows:

- Amendments to state regulations currently incorporated into the CRM Program's enforceable policies.
- The addition of interstate consistency.
- A boundary expansion in the Delaware Estuary Coastal Zone.
- Renaming and relocation of the CRM Program.
- Removal of Inventory of Geographical Areas of Particular Concern.
- A rewrite of CRM's Federal consistency procedures necessitated by the reauthorization of and amendments to the Federal Coastal Zone Management Act.

Detailed information on the specific changes to the CRM's enforceable policies, including a document titled "*RPC XII Proposed Routine Program Changes to Pennsylvania's Coastal Zone Management Program (RPC XII)*" is available on the Department's website at www.dep.state.pa.us.

pa.us/river/czmp.htm (select "Program Reference Documents," then "RPC XII Approved by OCRM," or "RPC XII Routine Program Changes," respectively).

KATHLEEN A. MCGINTY,
Secretary

[Pa.B. Doc. No. 07-249. Filed for public inspection February 16, 2007, 9:00 a.m.]

NOx Budget Trading Program New Source Set-Aside 2007 Proposed Allocations

The Department of Environmental Protection (Department) is providing notice and an opportunity for comment regarding the proposed nitrogen dioxide (NOx) allowance allocations from the new source set-aside for the 2007 control period May 1, 2007—September 30, 2007). The new source set-aside contains 2,542 allowances, 1,920 of which are available for new sources after allocation corrections. For each NOx budget unit, Table 1 lists the following: the allowances applied for under the "request"

column; the maximum potential number of allowances authorized by the regulation under the "maximum" column; and the final, pro-rata allocation under the "allocation" column. Each unit received approximately 38% of its requested 2007 NOx allowance allocation.

New source operators are advised that this allocation is for one control period only. To receive allocations from the new source set-aside for future control periods, source operators must submit new requests to the Department by January 1 each year.

Written Comments

Written comments on the proposed NOx allowance allocations from the new source set-aside for the 2007 control period should be sent to the attention of Jane Mahinske, Air Quality Program Specialist, Department of Environmental Protection, Bureau of Air Quality, Division of Air Resource Management, 400 Market Street, P. O. Box 8468, Harrisburg, PA 17105-8468. The Department must receive written comments by March 5, 2007. Questions concerning this notice should be directed to Jane Mahinske, Division of Air Resource Management at (717) 783-8949.

Table 1—2007 New Source Set-Aside Allocations

<i>Facility</i>	<i>ORIS</i>	<i>Point ID</i>	<i>Request</i>	<i>Maximum</i>	<i>Allocation</i>
AES Ironwood, LLC	55337	1	92	92	35
AES Ironwood, LLC	55337	2	92	92	35
Allegheny Energy 1	55196	1	41	42	16
Allegheny Energy 2	55196	2	41	42	16
Allegheny Energy 3	55710	1	37	38	15
Allegheny Energy 4	55710	2	37	38	15
Allegheny Energy 8	55377	8	50	52	20
Allegheny Energy 9	55377	9	50	52	20
Allegheny Energy 12	55654	12	49	51	20
Allegheny Energy 13	55654	13	49	51	20
Allegheny Hunlock 4	56397	4	39	39	15
Conectiv Bethlehem	55690	1	26	26	10
Conectiv Bethlehem	55690	2	26	26	10
Conectiv Bethlehem	55690	3	26	26	10
Conectiv Bethlehem	55690	5	26	26	10
Conectiv Bethlehem	55690	6	26	26	10
Conectiv Bethlehem	55690	7	26	26	10
Williams Gen. Hazelton	10870	2	39	39	15
Williams Gen. Hazelton	10870	3	39	39	15
Williams Gen. Hazelton	10870	4	39	39	15
Armstrong Energy LLC	55347	1	278	278	106
Armstrong Energy LLC	55347	2	278	278	106
Armstrong Energy LLC	55347	3	278	278	106
Armstrong Energy LLC	55347	4	278	278	106

NOTICES

851

<i>Facility</i>	<i>ORIS</i>	<i>Point ID</i>	<i>Request</i>	<i>Maximum</i>	<i>Allocation</i>
Fairless Energy, LLC	555298	1A	39	39	15
Fairless Energy, LLC	555298	1B	39	39	15
Fairless Energy, LLC	555298	2A	39	39	15
Fairless Energy, LLC	555298	2B	39	39	15
PPL (Lower Mount Bethel)	55667	1	49	49	19
PPL (Lower Mount Bethel)	55667	2	49	49	19
Merck & Co. (Turbine #3)	52149	40	35	35	13
Liberty Electric Power	55231	1	76	76	31
Liberty Electric Power	55231	2	76	76	31
Reliant Energy (Seward)	313	CFB1	697	697	267
Reliant Energy (Seward)	313	CFB2	697	697	267
Reliant (Hunterstown LLC)	31100	CT101	52	52	20
Reliant (Hunterstown LLC)	31100	CT201	52	52	20
Reliant (Hunterstown LLC)	31100	CT301	52	52	20
Duke Energy Armaugh	880071	31301	52	52	20
Duke Energy Entriiken	880072	31601	53	53	20
Ontelaunee Energy Center	55193	CT1	27	27	10
Ontelaunee Energy Center	55193	CT2	27	27	10
FPL Energy (Marcus Hook)	55801	CT1	54	54	21
FPL Energy (Marcus Hook)	55801	CT2	54	54	21
FPL Energy (Marcus Hook)	55801	CT3	54	54	21
FPL Energy (Marcus Hook)	55801	AB1	43	43	16
FPL Energy (Marcus Hook)	55801	AB2	43	43	16
FPL Energy (Marcus Hook)	55801	AB3	43	43	16
FPL Energy (Marcus Hook)	55801	AB4	43	43	16
Handsome Lake Energy	55233	EUZ1A	55	55	21
Handsome Lake Energy	55233	EUZ1B	55	55	21
Handsome Lake Energy	55233	EUZ2A	55	55	21
Handsome Lake Energy	55233	EUZ2B	55	55	21
Handsome Lake Energy	55233	EUZ3A	55	55	21
Handsome Lake Energy	55233	EUZ3B	55	55	21
Handsome Lake Energy	55233	EUZ4A	55	55	21
Handsome Lake Energy	55233	EUZ4B	55	55	21
Handsome Lake Energy	55233	EUZ5A	55	55	21
Handsome Lake Energy	55233	EUZ5B	55	55	21
		Totals:	4,996	5,020	1,920

KATHLEEN A. MCGINTY,
Secretary

[Pa.B. Doc. No. 07-250. Filed for public inspection February 16, 2007, 9:00 a.m.]

Proposed Revision to the State Implementation Plan for the Erie County 8-Hour Ozone Nonattainment Area; Public Hearing

Ground-level ozone concentrations above the Federal health-based standard are a serious human health threat and can also cause damage to crops, forests and wildlife. The Erie County 8-hour Ozone Nonattainment Area in this Commonwealth has met the health-based National ambient air quality standard for ozone based on 2003–2005 concentrations. Therefore, the Department of Environmental Protection (Department) plans to submit a request to the United States Environmental Protection Agency (EPA) to redesignate this nonattainment area to attainment of the eight-hour ozone National ambient air quality standard (NAAQS). The Department is seeking public comment on the 8-hour ozone redesignation request, the 2002 base year inventory and a State Implementation Plan revision setting forth a Maintenance Plan, which demonstrates that the area can maintain the health-based ozone standard for the next 10 years as required under section 175A(a) of the Federal Clean Air Act (42 U.S.C.A. § 7505a). The Maintenance Plan, once approved by the EPA, will also establish new motor vehicle emission budgets for purposes of transportation conformity.

This proposal is available on the Department's website at www.depweb.state.pa.us (choose "Air Topics") or through the contact persons listed.

The Department will hold a public hearing to receive comments on the proposals on Wednesday, March 21, 2007, at 1 p.m. in meeting Room 110 at the Tom Ridge Environmental Center at Presque Isle State Park, 301 Peninsula Drive, Suite 1, Erie, PA 16505. Persons wishing to present testimony at the hearing should contact Yvette House, P. O. Box 8468, Harrisburg, PA 17105, (717) 787-9495 or yhouse@state.pa.us to reserve a time. Persons who do not reserve a time will be able to testify as time allows. Witnesses should keep testimony to 10 minutes and should provide two written copies of their statement at the hearing.

Persons with a disability who wish to attend the hearing and require an auxiliary aid, service or other accommodation to participate in the proceeding should contact Yvette House at (717) 787-9495 or yhouse@state.pa.us. TDD users may contact the AT&T Relay Service at (800) 654-5984 to discuss how the Department can best accommodate their needs.

The Department must receive comments no later than March 23, 2007. Written comments should be sent to the attention of J. Wick Havens, Chief, Division of Air Resource Management, Bureau of Air Quality, P. O. Box 8468, Harrisburg, PA 17105-8468, jhavens@state.pa.us. Use "Erie County Ozone SIP" as the mail addressee or in the subject line.

KATHLEEN A. MCGINTY,
Secretary

[Pa.B. Doc. No. 07-251. Filed for public inspection February 16, 2007, 9:00 a.m.]

Upper/Middle Susquehanna Regional Water Resources Committee; Meeting Change

The February 21, 2007, meeting of the Upper/Middle Susquehanna Regional Water Resources Committee will

now convene at an alternate location than was previously advertised in the 36 Pa.B. 8001 (December 30, 2006). The meeting will begin at 10 a.m. at the Luzerne County Emergency Management Agency, 185 Water St., Wilkes-Barre, PA 18702.

Questions concerning the meeting can be directed to Rachel Delavan at (717) 772-5634 or rdelavan@state.pa.us. The agenda and meeting materials for the meeting 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) 783-6118 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. 07-252. Filed for public inspection February 16, 2007, 9:00 a.m.]

DEPARTMENT OF HEALTH

Application of Altoona Specialty Center for Exception

Under 28 Pa. Code § 51.33 (relating to requests for exceptions), the Department of Health (Department) gives notice that Altoona Specialty Center has requested an exception to the requirements of 28 Pa. Code § 559.2 (relating to director of nursing).

The request is on file with the Department. Persons may receive a copy of a request for exception by requesting a copy from the Department of Health, Division of Acute and Ambulatory Care, Room 532, Health and Welfare Building, Harrisburg, PA 17120, (717) 783-8980, fax (717) 772-2163, paexcept@health.state.pa.us.

Persons who wish to comment on an exception request may do so by sending a letter by mail, e-mail or facsimile to the Division and address listed previously.

Comments received by the Department within 10 days after the date of publication of this notice will be reviewed by the Department before it decides whether to approve or disapprove the request for exception.

Persons with a disability who wish to obtain a copy of a request and require an auxiliary aid service or other accommodation to do so should contact the Director, Division of Acute and Ambulatory Care at (717) 783-8980 or for speech and/or hearing impaired persons V/TT (717) 783-6514 or the Pennsylvania AT&T Relay Service at (800) 654-5984 (TT).

CALVIN B. JOHNSON, M. D., M.P.H.,
Secretary

[Pa.B. Doc. No. 07-253. Filed for public inspection February 16, 2007, 9:00 a.m.]

Application of Betz Ophthalmology Associates, ASC for Exception

Under 28 Pa. Code § 51.33 (relating to requests for exceptions), the Department of Health (Department) gives notice that Betz Ophthalmology Associates, ASC has requested an exception to the requirements of 28 Pa. Code § 553.31 (relating to administrative responsibilities).

The request is on file with the Department. Persons may receive a copy of a request for exception by requesting a copy from the Department of Health, Division of Acute and Ambulatory Care, Room 532, Health and Welfare Building, Harrisburg, PA 17120, (717) 783-8980, fax (717) 772-2163, paexcept@health.state.pa.us.

Persons who wish to comment on an exception request may do so by sending a letter by mail, e-mail or facsimile to the Division and address listed previously.

Comments received by the Department within 10 days after the date of publication of this notice will be reviewed by the Department before it decides whether to approve or disapprove the request for exception.

Persons with a disability who wish to obtain a copy of a request and require an auxiliary aid, service or other accommodation to do so should contact the Director, Division of Acute and Ambulatory Care at (717) 783-8980 or for speech and/or hearing impaired persons, V/TT (717) 783-6514 or the Pennsylvania AT&T Relay Service at (800) 654-5984 (TT).

CALVIN B. JOHNSON, M. D., M.P.H.,
Secretary

[Pa.B. Doc. No. 07-254. Filed for public inspection February 16, 2007, 9:00 a.m.]

Application of Clearfield Hospital for Exception

Under 28 Pa. Code § 51.33 (relating to requests for exceptions), the Department of Health (Department) gives notice that Clearfield 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 standards contained in this publication: 9.2.B.3 (relating to treatment room square footage).

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, (717) 772-2163, ra-paexcept@state.pa.us

Persons who wish to comment on an exception request may do so by sending a letter by mail, e-mail or facsimile to the Division and address listed previously.

Comments received by the Department within 10 days after the date of publication of this notice will be reviewed by the Department before it decides whether to approve or disapprove the request for exception.

Persons with a disability who wish to obtain a copy of a request and/or provide comments to the Department and require an auxiliary aid, service or other accommodation

to do so should contact the Director, Division of Acute and Ambulatory Care at (717) 783-8980, 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. 07-255. Filed for public inspection February 16, 2007, 9:00 a.m.]

Application of Mercy Jeannette Hospital for Exception

Under 28 Pa. Code § 51.33 (relating to requests for exceptions), the Department of Health (Department) gives notice that Mercy Jeannette Hospital has requested an exception to the requirements of 28 Pa. Code § 107.2 (relating to medical staff membership).

The request is on file with the Department. Persons may receive a copy of a request for exception by requesting a copy from the Department of Health, Division of Acute and Ambulatory Care, Room 532, Health and Welfare Building, Harrisburg, PA 17120, (717) 783-8980, fax (717) 772-2163, paexcept@health.state.pa.us.

Persons who wish to comment on an exception request may do so by sending a letter by mail, e-mail or facsimile to the Division and address listed previously.

Comments received by the Department within 10 days after the date of publication of this notice will be reviewed by the Department before it decides whether to approve or disapprove the request for exception.

Persons with a disability who wish to obtain a copy of a request and require an auxiliary aid, service or other accommodation to do so should contact the Director, Division of Acute and Ambulatory Care at (717) 783-8980 or for speech and/or hearing impaired persons, V/TT (717) 783-6514 or the Pennsylvania AT&T Relay Service at (800) 654-5984 (TT).

CALVIN B. JOHNSON, M. D., M.P.H.,
Secretary

[Pa.B. Doc. No. 07-256. Filed for public inspection February 16, 2007, 9:00 a.m.]

Application of Ohio Valley General Hospital for Exception

Under to 28 Pa. Code § 51.33 (relating to requests for exceptions), the Department of Health (Department) gives notice that Ohio Valley General 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: 7.3.A3 (relating to ICU square footage requirement).

The facility is also requesting exception to 28 Pa. Code § 51.23 (relating to PET scanning services).

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.

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. 07-257. Filed for public inspection February 16, 2007, 9:00 a.m.]

Application of PRISM Center for Spine and Pain Care for Exception

Under 28 Pa. Code § 51.33 (relating to requests for exceptions), the Department of Health (Department) gives notice that PRISM Center for Spine and Pain Care has requested an exception to the requirements of 28 Pa. Code § 551.3 (relating to definitions).

The request is on file with the Department. Persons may receive a copy of a request for exception by requesting a copy from Department of Health, Division of Acute and Ambulatory Care, Room 532, Health and Welfare Building, Harrisburg, PA 17120, (717) 783-8980, fax (717) 772-2163, paexcept@health.state.pa.us.

Persons who wish to comment on an exception request may do so by sending a letter by mail, e-mail or facsimile to the Division and address listed previously.

Comments received by the Department within 10 days after the date of publication of this notice will be reviewed by the Department before it decides whether to approve or disapprove the request for exception.

Persons with a disability who wish to obtain a copy of a request and require an auxiliary aid, service or other accommodation to do so should contact the Director, Division of Acute and Ambulatory Care at (717) 783-8980 or for speech and/or hearing impaired persons, V/TT (717) 783-6514 or the Pennsylvania AT&T Relay Service at (800) 654-5984 (TT).

CALVIN B. JOHNSON, M. D., M.P.H.,
Secretary

[Pa.B. Doc. No. 07-258. Filed for public inspection February 16, 2007, 9:00 a.m.]

Application of Regional Ambulatory Surgical Center for Exception

Under 28 Pa. Code § 51.33 (relating to requests for exceptions), the Department of Health (Department) gives notice that Regional Ambulatory Surgical Center has requested an exception to the requirements of 28 Pa. Code § 559.2 (relating to director of nursing).

The request is on file with the Department. Persons may receive a copy of a request for exception by requesting a copy from the Department of Health, Division of Acute and Ambulatory Care, Room 532, Health and Welfare Building, Harrisburg, PA 17120, (717) 783-8980, fax (717) 772-2163, paexcept@health.state.pa.us,

Persons who wish to comment on an exception request may do so by sending a letter by mail, e-mail or facsimile to the Division and address listed previously.

Comments received by the Department within 10 days after the date of publication of this notice will be reviewed by the Department before it decides whether to approve or disapprove the request for exception.

Persons with a disability who wish to obtain a copy of a request and require an auxiliary aid, service or other accommodation to do so should contact the Director, Division of Acute and Ambulatory Care at (717) 783-8980 or for speech and/or hearing impaired persons V/TT (717) 783-6514 or the Pennsylvania AT&T Relay Service at (800) 654-5984 (TT).

CALVIN B. JOHNSON, M. D., M.P.H.,
Secretary

[Pa.B. Doc. No. 07-259. Filed for public inspection February 16, 2007, 9:00 a.m.]

Application of The Surgery Center of Central Pa. for Exception

Under 28 Pa. Code § 51.33 (relating to requests for exceptions), the Department of Health (Department) gives notice that The Surgery Center of Central Pa. has requested an exception to the requirements of 28 Pa. Code § 553.31 (relating to administrative responsibilities).

The request is on file with the Department. Persons may receive a copy of a request for exception by requesting a copy from the Department of Health, Division of Acute and Ambulatory Care, Room 532, Health and Welfare Building, Harrisburg, PA 17120, (717) 783-8980, fax (717) 772-2163, paexcept@health.state.pa.us.

Persons who wish to comment on an exception request may do so by sending a letter by mail, e-mail or facsimile to the Division and address listed previously.

Comments received by the Department within 10 days after the date of publication of this notice will be reviewed by the Department before it decides whether to approve or disapprove the request for exception.

Persons with a disability who wish to obtain a copy of a request and require an auxiliary aid, service or other accommodation to do so should contact the Director, Division of Acute and Ambulatory Care at (717) 783-8980 or for speech and/or hearing impaired persons, V/TT (717) 783-6514 or the Pennsylvania AT&T Relay Service at (800) 654-5984 (TT).

CALVIN B. JOHNSON, M. D., M.P.H.,
Secretary

[Pa.B. Doc. No. 07-260. Filed for public inspection February 16, 2007, 9:00 a.m.]

Application of UPMC St. Margaret Harmar Outpatient Center for Exception

Under 28 Pa. Code § 51.33 (relating to requests for exceptions), the Department of Health (Department) gives notice that UPMC St. Margaret Harmar Outpatient Center has requested an exception to the requirements of 28 Pa. Code §§ 559.2 and 553.21 (relating to director of nursing; and administrative responsibilities).

The request is on file with the Department. Persons may receive a copy of a request for exception by requesting a copy from the Department of Health, Division of Acute and Ambulatory Care, Room 532, Health and Welfare Building, Harrisburg, PA 17120, (717) 783-8980, fax (717) 772-2163, paexcept@health.state.pa.us.

Persons who wish to comment on an exception request may do so by sending a letter by mail, e-mail or facsimile to the Division and address listed previously.

Comments received by the Department within 10 days after the date of publication of this notice will be reviewed by the Department before it decides whether to approve or disapprove the request for exception.

Persons with a disability who wish to obtain a copy of a request and require an auxiliary aid, service or other accommodation to do so should contact the Director, Division of Acute and Ambulatory Care at (717) 783-8980 or for speech and/or hearing impaired persons, V/TT (717) 783-6514 or the Pennsylvania AT&T Relay Service at (800) 654-5984 (TT).

CALVIN B. JOHNSON, M. D., M.P.H.,
Secretary

[Pa.B. Doc. No. 07-261. Filed for public inspection February 16, 2007, 9:00 a.m.]

Cervical Cancer Task Force Meeting

The Cervical Cancer Task Force will hold a public meeting on Tuesday, March 20, 2007, from 10 a.m. to 2 p.m. The meeting will be held at the Dixon University Center, Administration Building, Conference Room A, 2986 North Second Street, Harrisburg, PA 17110.

For additional information contact Barbara Caboot, Public Health Program Administrator, Breast and Cervical Cancer Section, Division of Cancer Prevention and Control, Department of Health, Room 1011, Health and Welfare Building, Harrisburg, PA, (717) 346-3981.

Persons with a disability and desire to attend the meeting and require an auxiliary aid, service or other accommodation to do so contact Barbara Caboot, Public

Health Program Administrator at (717) 346-3981 or for speech and/or hearing impaired persons, V/TT (717) 783-6514 or the Pennsylvania AT&T Relay Services at (800) 654-5984.

This meeting is subject to cancellation without notice.

CALVIN B. JOHNSON, M. D., M.P.H.,
Secretary

[Pa.B. Doc. No. 07-262. Filed for public inspection February 16, 2007, 9:00 a.m.]

Oral Health Promotion Program Mini-Grants; Availability of Title V Funds

The Bureau of Family Health is accepting mini-grant applications of up to \$3,000 to support initiatives that directly address the promotion of excellent oral health practices. Funds acquired through the Oral Health Promotion Program (Program) are to be used to provide dental varnish to improve the oral health of children and reduce tooth decay rates in young children across this Commonwealth.

Purpose

The Program will provide financial support to local communities for efforts to decrease the incidence of tooth decay in children by providing access to the application of a dental varnish from 1 year of age and up. Communities are encouraged to focus efforts on high-risk and minority populations and use funding to eliminate health disparities among these groups. Examples of activities can include the application of dental varnish, community outreach, education for families and the public on proper oral health practices and training for professionals regarding dental varnish.

Project funds must be used to reimburse purchases and activities occurring between July 1, 2006, and June 30, 2007. Copies of this application and its attachments are available on the Department of Health (Department) website at www.health.state.pa.us; search word: "Bureau of Family Health Mini-grants."

Requirements

Eligible applicants include Pennsylvania public and private organizations, foundations or community-based agencies as recognized by Federal Tax ID number. Individuals may not apply. Informal groups without Federal Tax ID numbers are encouraged to partner with a sponsor organization who may apply on behalf of the group. For-profit organizations may apply. However, no applicant may take a profit from these funds and certain funding restrictions apply to for-profit entities (see Application Attachment B). Applicants may not have received any other Department mini-grant during the same State fiscal year.

Applicants may include but are not limited to:

- * Day care centers/child care providers
- * Dental or Medical providers
- * Educational providers
- * Community groups/Civic clubs
- * Minority groups

Application Deadlines

It is anticipated that 14 awards of \$3,000 or less will be made for this fiscal year period. To apply for funding, a

complete application must be postmarked by or sent to the Department no later than 5 p.m. on March 26, 2007. Applications may be mailed or hand delivered. Applications may not be faxed. Late applications will not be accepted regardless of the reason.

Application Process

Please complete "2006-2007 APPLICATION," which is available on the Department's website at www.health.state.pa.us; search word: "Bureau of Family Health Mini-grants," and attach a clear and concise narrative of no more than five typewritten pages that includes the following information, labeled by section: The organization's mission and primary activities;

1. A description of need for the proposed activity and target audience.
2. A plan that describes how oral health will be addressed, how the efforts will be measured and evaluated, and the degree to which efforts will be long-lasting and/or ongoing.
3. A description of how funds will be expended.

An authorized official of the organization must sign and date the application. Submit an original and three complete copies of your application (including the narrative and any supporting attachments). Applications should be page-numbered and unbound. Incomplete applications will not be reviewed.

Award Determination

All funding decisions are contingent upon the availability of allocated Maternal and Child Health Services Block Grant funds and Department. Applications are scored by a three-member review panel using a rating scale with the following preestablished criteria:

1. The degree of need for the proposed activity, as justified by the applicant.
2. The extent to which the activity can demonstrate a change in awareness and actions.
3. The likelihood that the proposed activity will be of ongoing, systemic benefit to the community.

Notification of Award

All applicants will be notified of their award status within 6 weeks of the submission due date. This program reimburses applicants once after they have purchased the approved budget items.

Eligible Costs

Applicants may apply for funding reimbursement of multiple purchases or activities. However, the maximum cumulative award to any one applicant (as identified by Federal Tax ID number) is \$3,000 per fiscal year. In all cases, Department funds should be used as payer of last resort. Grant funds may not supplant existing funds. Grant funds may be used for reimbursement of one time purchases only. Grantee is the sole owner of the purchased property. The budget section of your application must include a budget narrative detailing by line item how project funds will be used and the degree to which competitive bids were secured for purchases. Price quotes, estimates, catalog samples, or any other proof of cost must be submitted for every purchase proposed.

Expenses eligible for reimbursement under this project include but are not limited to:

1. Equipment: fluoride varnish, and the like.
2. Education: training materials, books, workbooks, brochures, posters; translation of educational materials into different languages and for different populations, and the like.
3. Technology: computer equipment/software, videos, tapes, cds, DVDs, and the like.

Ineligible Costs

The following costs are not eligible for reimbursement under this program:

1. Administrative/Indirect costs (such as, costs not uniquely attributable in full to the programmatic activity).
2. New building construction or structural renovation of an existing space.
3. Capital expenses or equipment.
4. Staffing/personnel.

By applying for mini-grant funding, applicants acknowledge and affirm that they will abide by the previously-mentioned spending limitations and the provisions of the Maternal and Child Health Services Block Grant legislation (Application Attachment B), for all money awarded under that application.

Mini-grant Evaluation Procedures

All grantees will receive at least one onsite visit from a Department Maternal and Child Health (MCH) Consultant located within the applicant's health district. The results of the visit will be provided to the Oral Health Promotion Program Administrator in writing and used for project evaluative purposes. The Oral Health Promotion Program Administrator will facilitate initial contact between the grantee and MCH Consultant at the time project funds are awarded.

Summary Report and Invoice Procedures

Approved applicants will be reimbursed with one check for all approved expenses. To receive reimbursement of approved expenses, awardees must submit the following documentation, found in Attachment A, to the Bureau within 30 days following completion of funded activity or no later than July 28, 2007:

1. A summary report of funded activities, including evaluation results.
2. A continuation plan for the program or activities.
3. An invoice with expense documentation supporting line item amounts.

Applications should be submitted to Oral Health Promotion Program Administrator, Department of Health, Bureau of Family Health, Division of Child and Adult Health Services, Health and Welfare Building 7th Floor East Wing, 7th and Forster Streets, Harrisburg, PA 17120, (717) 772-2762.

Persons with a disability who require an alternative format of this Notice (for example, large print, audiotape,

Braille) should contact Carolyn S. Cass at the Pennsylvania Department of Health, Division of Child and Adult Health Services at (717) 772-2762 or for speech and/or hearing impaired persons, V/TT (717) 783-6514 or the Pennsylvania AT&T Relay Services at (800) 654-5984.

CALVIN B. JOHNSON, M. D., M.P.H.,
Secretary

[Pa.B. Doc. No. 07-263. Filed for public inspection February 16, 2007, 9:00 a.m.]

and/or hearing impaired persons, V/TT (717) 783-6514 or the Pennsylvania AT&T Relay Service at (800) 654-5984 (TT).

CALVIN B. JOHNSON, M. D., M.P.H.,
Secretary

[Pa.B. Doc. No. 07-264. Filed for public inspection February 16, 2007, 9:00 a.m.]

Request for Exception; Long-Term Care Nursing Facilities

The following long-term care nursing facility is seeking an exception to 28 Pa. Code § 201.3 (relating to definitions).

Guardian Elder Care Center
147 Old Newport Street
Nanticoke, PA 18634
Facility ID 191502

The following long-term care nursing facilities are seeking an exception to 28 Pa. Code § 201.18(e) (relating to management).

The Health Center at The Hill at Whitemarsh
660 Thomas Road
Lafayette Hill, PA 19444
FAC ID 17900201-01

New Eastwood Care and Rehabilitation Center
2125 Fairview Avenue
Easton, PA 18042
FAC ID 050102

The following long-term care nursing facility is seeking an exception to 28 Pa. Code § 205.6(a) (relating to function of the building).

Menno Haven, Inc.
2075 Scotland Avenue
Chambersburg, PA 17201
FAC ID 132202

These requests are on file with the Department of Health (Department). Persons may receive a copy of a request for exception by requesting a copy from the Division of Nursing Care Facilities, Room 526, Health and Welfare Building, Harrisburg, PA 17120, (717) 787-1816, fax (717) 772-2163, ra-paexcept@state.pa.us.

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 15 days after the date of publication of this notice will be reviewed by the Department before it decides whether to approve or disapprove the request for exception.

Persons with a disability who require an alternative format of this document or who desire to comment in an alternative format (for example, large print, audiotope, Braille), should contact the Division of Nursing Care Facilities at the address listed previously or for speech

WIC Program Public Meetings

The Department of Health (Department) announces three public meetings on the following dates at the location indicated to receive comments and suggestions about the Special Supplemental Nutrition Program for Women, Infants and Children (WIC).

Erie
Wednesday, April 11, 2007
10 a.m.—3 p.m.
John F. Kennedy Center
Conference Room
2021 East 20th Street
Erie, PA 16510

West Chester
10 a.m.—3 p.m.
Wednesday, April 18, 2007
Chester County Health Department
601 Westtown Road
Suite 190
West Chester, PA 19380-0990

Harrisburg
10 a.m.—3 p.m.
Tuesday, May 8, 2007
WIC State Agency Office
2150 Herr Street
1st Floor, Suite B
Harrisburg, PA 17103-1625

The Department invites comments on all aspects of the WIC Program's operations. General comments on other issues pertinent to the WIC Program are also requested. Persons wishing to give testimony at the public meetings are requested to pre-register with the Pennsylvania WIC Program Office by calling Bonnie Mellott, WIC Education/Outreach Coordinator, at (717) 783-1289. Those unable to attend are encouraged to submit comments to the Division of Women, Infants and Children (WIC), Department of Health, 7th and Forster Streets, Room 610, Health and Welfare Building, Harrisburg, PA 17120. Written comments will be accepted until May 31, 2007.

Written comments and those presented at the meetings will be used in developing the State Plan of Program Operation and Administration for the WIC Program for the 2008 Federal Fiscal Year, which runs October 1, 2007, to September 30, 2008. Additional information about the meetings or the state plan may be obtained by calling the State Office at (717) 783-1289.

Persons with a disability who require an alternative format of this Notice (for example, large print, audiotope, Braille) or wish to attend the meeting, preregister or provide comments and require an auxiliary aid service should contact Bonnie Mellott, WIC Education/Outreach Coordinator, at (717) 783-1289, or, for speech and/or

hearing impaired persons, V/TT (717) 783-6514 or the Pennsylvania AT&T Relay Services at (800) 654-5984.

These meetings are subject to cancellation without notice.

CALVIN B. JOHNSON, M. D., M.P.H.,
Secretary

[Pa.B. Doc. No. 07-265. Filed for public inspection February 16, 2007, 9:00 a.m.]

DEPARTMENT OF TRANSPORTATION

Application for Lease of Right-of-Way

The Department of Transportation (Department), under the authority contained in section 2002(c) of The Administrative Code of 1929 (71 P. S. § 512(c)) and 67 Pa. Code § 495.4 (relating to application procedure), gives notice that an application to lease highway right-of-way has been submitted to the Department by Cardello Associates, 701 North Point Drive, Pittsburgh, PA, seeking to lease highway right-of-way located between Ridge Avenue and relocated Reedsdale Street, in the City of Pittsburgh, Allegheny County, containing 15,395 ± square feet or 0.35 ± acre, for the purpose of vehicle parking.

Interested persons are invited to submit, within 30 days from the publication of this notice in the *Pennsylvania Bulletin*, written comments, suggestions and/or objections regarding the approval of this application to H. Daniel Cessna, P. E., District Executive, Engineering District 11-0, 45 Thoms Run Road, Bridgeville, PA 15017.

Questions regarding this application or the proposed use should be directed to Michael Sudar, District Property Manager, 45 Thoms Run Road, Bridgeville, PA 15017, (412) 429-4830.

ALLEN D. BIEHLER,
Secretary

[Pa.B. Doc. No. 07-266. Filed for public inspection February 16, 2007, 9:00 a.m.]

Application for Lease of Right-of-Way

The Department of Transportation (Department), under the authority contained in section 2002(c) of The Administrative Code of 1929 (71 P. S. § 512(c)) and 67 Pa. Code § 495.4 (relating to application procedure), gives notice that an application to lease highway right-of-way has been submitted to the Department by Cardello Associates, 701 Chateau Street, Pittsburgh, PA, seeking to lease highway right-of-way located beneath the West End Bridge between Ridge Avenue and Reedsdale Street, in the City of Pittsburgh, Allegheny County, containing 48,948 ± square feet or 1.12 ± acre, for the purpose of vehicle parking.

Interested persons are invited to submit, within 30 days from the publication of this notice in the *Pennsylvania Bulletin*, written comments, suggestions and/or objections regarding the approval of this application to H.

Daniel Cessna, P. E., District Executive, Engineering District 11-0, 45 Thoms Run Road, Bridgeville, PA 15017.

Questions regarding this application or the proposed use should be directed to Michael Sudar, District Property Manager, 45 Thoms Run Road, Bridgeville, PA 15017, (412) 429-4830.

ALLEN D. BIEHLER,
Secretary

[Pa.B. Doc. No. 07-267. Filed for public inspection February 16, 2007, 9:00 a.m.]

Application for Lease of Right-of-Way

The Department of Transportation (Department), under the authority contained in section 2002(c) of The Administrative Code of 1929 (71 P. S. § 512(c)) and 67 Pa. Code § 495.4 (relating to application procedure), gives notice that an application to lease highway right-of-way has been submitted to the Department by Tom LaFrankie, President of TAG Motors, Inc., seeking to lease highway right-of-way located on the corner of Long Run Road and Lincoln Way in White Oak, Allegheny County, containing 15,233 ± square feet or 0.3497 ± acre, for the purpose of storage, service and sales facility for cars.

Interested persons are invited to submit, within 30 days from the publication of this notice in the *Pennsylvania Bulletin*, written comments, suggestions and/or objections regarding the approval of this application to H. Daniel Cessna, P. E., District Executive, Engineering District 11-0, 45 Thoms Run Road, Bridgeville, PA 15017.

Questions regarding this application or the proposed use should be directed to Michael Sudar, District Property Manager, 45 Thoms Run Road, Bridgeville, PA 15017, (412) 429-4830.

ALLEN D. BIEHLER,
Secretary

[Pa.B. Doc. No. 07-268. Filed for public inspection February 16, 2007, 9:00 a.m.]

Application for Lease of Right-of-Way

The Department of Transportation (Department), under the authority contained in section 2002 (c) of The Administrative Code of 1929 (71 P. S. § 512 (c)) and 67 Pa. Code § 495.4 (relating to application procedure), gives notice that an application to lease highway right-of-way has been submitted to the Department by Carol Leone Incorporated, 551 Thorn Run Road, Coraopolis, Allegheny County, seeking to lease highway right-of-way located along the southerly side of SR 3087 (551 Thorn Run Road), Moon Township, Allegheny County containing 12,095 ± square feet or 0.278 ± acre adjacent to SR 3087, for the purpose of vehicle parking.

Interested persons are invited to submit, within 30 days from the publication of this notice in the *Pennsylvania Bulletin*, written comments, suggestions and/or objections regarding the approval of this application to H.

Daniel Cessna, P. E., District Executive, Engineering District 11-0, 45 Thoms Run Road, Bridgeville, PA 15017.

Questions regarding this application or the proposed use should be directed to Michael Sudar, District Property Manager, 45 Thoms Run Road, Bridgeville, PA 15017, (412) 429-4830.

ALLEN D. BIEHLER,
Secretary

[Pa.B. Doc. No. 07-269. Filed for public inspection February 16, 2007, 9:00 a.m.]

Application for Lease of Right-of-Way

The Department of Transportation (Department), under the authority contained in section 2002(c) of The Administrative Code of 1929 (71 P. S. § 512(c)) and 67 Pa. Code § 495.4 (relating to application procedure), gives notice that an application to lease highway right-of-way has been submitted to the Department by Barry Lhormer, President, North of Forbes, Inc., seeking to lease highway right-of-way located along South 23rd Street at its intersection with Carson Street and the Birmingham Bridge, in the City of Pittsburgh, Allegheny County, containing 10,150 ± square feet or 0.23 ± acre, for the purpose of vehicle parking.

Interested persons are invited to submit, within 30 days from the publication of this notice in the *Pennsylvania Bulletin*, written comments, suggestions and/or objections regarding the approval of this application to H. Daniel Cessna, P. E., District Executive, Engineering District 11-0, 45 Thoms Run Road, Bridgeville, PA 15017.

Questions regarding this application or the proposed use should be directed to Michael Sudar, District Property Manager, 45 Thoms Run Road, Bridgeville, PA 15017, (412) 429-4830.

ALLEN D. BIEHLER,
Secretary

[Pa.B. Doc. No. 07-270. Filed for public inspection February 16, 2007, 9:00 a.m.]

Application for Lease of Right-of-Way

The Department of Transportation (Department), under the authority contained in section 2002(c) of The Administrative Code of 1929 (71 P. S. § 512(c)) and 67 Pa. Code § 495.4 (relating to application procedure), gives notice that an application to lease highway right-of-way has been submitted to the Department by Plum Original, Inc., 1813 Golden Mile Highway, Pittsburgh, PA, seeking to lease highway right-of-way located on the westerly side of SR 0286, in Plum Borough, Allegheny County containing 5,672 ± square feet or 0.13 ± acre adjacent to SR 0286 for the purpose of vehicle parking.

Interested persons are invited to submit, within 30 days from the publication of this notice in the *Pennsylvania Bulletin*, written comments, suggestions and/or objections regarding the approval of this application to H. Daniel Cessna, P. E., District Executive, Engineering District 11-0, 45 Thoms Run Road, Bridgeville, PA 15017.

Questions regarding this application or the proposed use should be directed to Michael Sudar, District Property Manager, 45 Thoms Run Road, Bridgeville, PA 15017, (412) 429-4830.

ALLEN D. BIEHLER,
Secretary

[Pa.B. Doc. No. 07-271. Filed for public inspection February 16, 2007, 9:00 a.m.]

Application for Lease of Right-of-Way

The Department of Transportation (Department), under the authority contained in section 2002(c) of The Administrative Code of 1929 (71 P. S. § 512(c)) and 67 Pa. Code § 495.4 (relating to application procedure), gives notice that an application to lease highway right-of-way has been submitted to the Department by Protection Services, Inc., 204 South Main Street, East Pittsburgh, PA, seeking to lease highway right-of-way located beneath the Brad-dock Avenue Spur on the westerly side of Main Street, in the Borough of East Pittsburgh, Allegheny County containing 9,000 ± square feet or 0.21 ± acre adjacent to SR 2083, Spur 001, for the purpose of a storage area for equipment and material.

Interested persons are invited to submit, within 30 days from the publication of this notice in the *Pennsylvania Bulletin*, written comments, suggestions and/or objections regarding the approval of this application to H. Daniel Cessna, P. E., District Executive, Engineering District 11-0, 45 Thoms Run Road, Bridgeville, PA 15017.

Questions regarding this application or the proposed use should be directed to Michael Sudar, District Property Manager, 45 Thoms Run Road, Bridgeville, PA 15017, (412) 429-4830.

ALLEN D. BIEHLER,
Secretary

[Pa.B. Doc. No. 07-272. Filed for public inspection February 16, 2007, 9:00 a.m.]

Application for Lease of Right-of-Way

The Department of Transportation (Department), under the authority contained in section 2002(c) of The Administrative Code of 1929 (71 P. S. § 512(c)) and 67 Pa. Code § 495.4 (relating to application procedure), gives notice that an application to lease highway right-of-way has been submitted to the Department by John Miloser, d/b/a River Harbour, seeking to lease highway right-of-way located along Riverside Drive at the intersection of SR 51, Bridgewater Borough, Beaver County, containing 13,021 ± square feet or 0.30 ± acre, for the purpose of an office trailer and boat sales.

Interested persons are invited to submit, within 30 days from the publication of this notice in the *Pennsylvania Bulletin*, written comments, suggestions and/or objections regarding the approval of this application to H. Daniel Cessna, P. E., District Executive, Engineering District 11-0, 45 Thoms Run Road, Bridgeville, PA 15017.

Questions regarding this application or the proposed use should be directed to Michael Sudar, District Property Manager, 45 Thoms Run Road, Bridgeville, PA 15017, (412) 429-4830.

ALLEN D. BIEHLER,
Secretary

[Pa.B. Doc. No. 07-273. Filed for public inspection February 16, 2007, 9:00 a.m.]

Contemplated Sale of Land No Longer Needed for Transportation Purposes

The Department of Transportation (Department), under section 2003(e)(7) of The Administrative Code of 1929 (71 P. S. § 513(e)(7)), intends to sell certain land owned by the Department.

The following property is available for sale by the Department.

Parcel No. 49—City of Pittsburgh, Allegheny County. The parcel contains approximately 0.5756± acre or 25,073± square feet of land improved with a gravel parking area located in the 18th Ward, City of Pittsburgh, on the westerly side of Saw Mill Run Boulevard (adjacent to Tambellini Restaurant). The estimated fair market value of the parcel is \$30,700.

Interest public entities are invited to express their interest in purchasing this parcel within 30 calendar days from the date of publication of this notice to H. Daniel Cessna, P. E., District Executive, Department of Transportation, Engineering District 11-0, 45 Thoms Run Road, Bridgeville, PA, 15017.

ALLEN D. BIEHLER, P. E.,
Secretary

[Pa.B. Doc. No. 07-274. Filed for public inspection February 16, 2007, 9:00 a.m.]

**Finding
Allegheny County**

Under section 2002(b) of The Administrative Code of 1929 (71 P. S. § 512(b)), the Chief Engineer for Highway Administration makes the following written finding:

The Federal Highway Administration and the Department of Transportation (Department) are planning a

streetscape project; including lighting, street furniture, crosswalks, handicap ramps, sidewalks, landscaping, and the like, in the City of Bradford, McKean County.

Information describing the project together with the associated environmental analysis is contained in the Categorical Exclusion Evaluation/Section 2002 Evaluation that was prepared for this project.

The National Register listed Bradford Historic District and Rufus Barrett Stone House, and the National Register eligible Bradford Old City Hall and South Penn Oil Building are Section 2002/Section 4(f) resources. Impact to these properties will constitute a use of the Section 2002/Section 4(f) resources.

Based upon studies, there is no prudent and feasible alternative to the proposed action.

The environmental, economic, social and other effects of the proposed project as enumerated in section 2002 of The Administrative Code of 1929 have been considered. It has been concluded that there is no feasible and prudent alternative to the project as designed and all reasonable steps have been taken to minimize the effects.

M. G. PATEL, P. E.
Chief Engineer

[Pa.B. Doc. No. 07-275. Filed for public inspection February 16, 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 regulations. The agency must consider these comments in preparing the final-form regulation. The final-form regulation must be submitted within 2 years of the close of the public comment period or it will be deemed withdrawn.

<i>Reg No.</i>	<i>Agency/Title</i>	<i>Close of the Public Comment Period</i>	<i>IRRC Comments Issued</i>
125-49	Pennsylvania Gaming Control Board Accounting and Internal Controls; Slot Computer Systems; Commencement of Slot Operations 36 Pa.B. 7267 (December 2, 2006)	1/2/07	2/1/07
7-403	Environmental Quality Board Water Resources Planning 36 Pa.B. 7260 (December 2, 2006)	1/2/07	2/1/07

—

**Pennsylvania Gaming Control Board Regulation
#125-49 (IRRC #2581)**

**Accounting and Internal Controls; Slot Computer
Systems; Commencement of Slot Operations**

February 1, 2007

We submit for your consideration the following comments on the proposed rulemaking published in the December 2, 2006 *Pennsylvania Bulletin*. Our comments are based on criteria in Section 5.2 of the Regulatory Review Act (71 P.S. § 745.5b). Section 5.1(a) of the Regulatory Review Act (71 P.S. § 745.5a(a)) directs the Pennsylvania Gaming Control Board (Board) to respond to all comments received from us or any other source.

1. Determining whether the regulation is in the public interest.

The Pennsylvania Horse Race Development Act (Act) (4 Pa.C.S.A. §§ 1101—1904) allows the Board to promulgate temporary regulations until April 15, 2007. The temporary regulations are not subject to two statutes that guide agencies when promulgating regulations: the Commonwealth Documents Law (CDL) (45 P.S. §§ 1201—1208) and the Regulatory Review Act (RRA) (71 P.S. §§ 745.1—745.15). The Act requires all temporary regulations to be promulgated as permanent regulations by July 5, 2007. The conversion of temporary regulations to permanent regulations requires compliance with both the CDL and the RRA.

Section 5.2 of the RRA (71 P.S. § 745.5b) directs this Commission to determine whether a regulation is in the public interest. When making this determination, the Commission considers criteria such as economic or fiscal impact and reasonableness. Therefore, the Commission must analyze the text of the proposed rulemaking and the reasons for the new or amended language. The Commission also considers the information a promulgating agency is required to provide under § 745.5(a) in the regulatory analysis form (RAF).

The Preamble to this rulemaking states that the Board proposes to replace three chapters of its temporary regulations with permanent regulations. The explanation of the regulations in the Preamble and the information contained on the RAF is not sufficient to allow this Commission to determine if the regulation is in the public interest. While we commend the Board for involving the regulated community in the development of the temporary regulations, we note that a complete explanation of the need for each chapter and section was not provided in that process. Furthermore, the RAF does not contain a detailed fiscal impact and cost benefit analysis. Without this information, we cannot determine if this proposed regulation is in the public interest. In the Preamble and RAF submitted with the final-form rulemaking, the Board should provide the detailed information required under § 745.5(a) of the RRA.

2. Economic or fiscal impact; Clarity and lack of ambiguity; Reasonableness of the requirements.

Vague phrases

This regulation contains many vague phrases. Examples include: “in the manner the Board requires”; “as approved by the Board”; “in a manner to be prescribed by the Board”; and “as are authorized by the Board.” These phrases are problematic for two reasons.

First, a regulation has the full force and effect of law. It establishes binding norms on the regulated entity and the

agency that promulgated the regulation. The vague phrases in question would allow requirements to be imposed at the agency’s discretion without the opportunity for comment or review through the regulatory process. Therefore, without adequate notice as to what requirements the agency is imposing, it would be difficult if not impossible for regulated parties to discern what actions on their part would constitute compliance.

Second, many sections in which the vague phrases are found lack details that would allow the regulated community to comply with the regulation. These sections also fail to provide the criteria that the Board will use to evaluate a particular action or request. This lack of clarity would place the regulated community at a distinct disadvantage because the rules and expectations of the Board could change.

We urge the Board to evaluate all of the vague phrases we have identified in bold text in the Appendix. The Board should either delete the language or add the needed detail that would allow the regulated community to know what they are expected to do and how the Board will evaluate their actions.

Standards adopted by the Board

Several provisions require compliance with a Board action such as technical “standards adopted by the Board” or similar language. Related to our concerns above, these provisions do not give the regulated community the information needed to comply and the documents cannot be used to enforce standards contained in regulation. In addition, this approach would allow an agency or department to bypass the formal regulatory review process and the laws that govern the promulgation of regulations. These phrases are used in several places in the regulation including: Sections 465.10(b), 465.27(c)(1), 465.27(e)(2), 465.28(a)(1), 465.28(a)(2), 466.1(a), 466.1(b), 466.1(c), 467.2(a)(1), 467.2(a)(2), 467.2(a)(3) and 467.2(a)(4). These phrases should be amended to include in the regulation either the standards adopted by the Board or a cross-reference to the known and quantifiable standard adopted by the Board.

3. Section 465.2. Internal control systems and audit protocols.—Implementation procedures; Clarity.

Paragraph (b)(2) requires compliance with “applicable laws and regulations.” The final-form regulation should include specific cross-references to the laws and regulations that pertain to financial reporting. This phrase also appears in § 465.2(c).

Under Subsection (e), slot machine licensees are prohibited from commencing gaming operations until the Board approves a licensee’s system of internal controls. The procedures, time frames and criteria that will be used to review the internal controls are not included in the regulation. Consistent with Comment 2 above, the final-form regulation should include provisions that would allow a licensee to know how this review will be administered by the Board.

Paragraph (g)(2) allows the review period contained in Subsection (f) to be “tolled.” The final-form regulation should include provisions that explain how tolling works.

4. Section 465.3. Forms, records and documents.—Clarity.

Subsection (c) includes a reference to a “Bureau.” Since this term is not defined in a final regulation, it is not clear whether this term means the Board’s Bureau of Investigation and Enforcement, or another Bureau of the Board.

5. Section 465.6. Retention, storage and destruction of books, records and documents.—Clarity.

Paragraph (b)(1) states that electronic data “should” be stored in a particular format. The use of the word “should” does not establish a requirement. If the Board intends to enforce this provision, we recommend that the word “should” be changed to “must.”

6. Section 465.7. Complimentary services or items.—Clarity.

Subsection (d) states, in part, the following: “If a slot machine licensee provides complimentary cash and noncash gifts recorded at a value of \$10,000 or more to a person or the person’s guests within any 5-day period. . . .” We have three concerns. First, is the \$10,000 limit a sum of gifts given to a person and the person’s guests, or is the \$10,000 a limit for just one person? Second, what specific conditions would have to occur for an individual to be considered a person’s “guest”? Finally, does the 5-day period have to be consecutive? The final-form regulation should clarify this provision.

7. Section 465.9. Surveillance system; surveillance department control; surveillance department restrictions.—Implementation procedures; Clarity.

Subsection (a) prohibits a slot machine licensee from commencing gaming operations until the Board approves the licensee’s surveillance systems. The procedures, time frames and criteria that will be used to review the surveillance system are not included in the regulation. The final-form regulation should include provisions that would allow a licensee to know how this review will be administered by the Board.

8. Section 465.13. Firearms; possession within a licensed facility.—Statutory authority; Need; Implementation procedures; Clarity.

Subsection (a)

This subsection prohibits individuals from possessing “firearms or handguns” within a licensed facility without the express written approval of the Board. The regulation should define or cross-reference what are considered “firearms or handguns.”

Additionally, why did the Board prohibit firearms and handguns, but not other devices such as tasers, knives and mace?

Paragraph (a)(2)

Under this paragraph, local, State and Federal law enforcement agents may not possess a firearm on the gaming floor or restricted areas servicing the slot operations without first notifying the Board and the Pennsylvania State Police Gaming Enforcement Office. Notification is not required if exigent circumstances exist. What statutory authority does the Board have for regulating law enforcement officers and what is the need for it? If the Board justifies its authority, how would the Board enforce this provision?

Subsection (b)

This subsection prohibits a slot machine licensee from employing an off-duty law enforcement officer to provide security related services. The subject matter of this subsection would be more appropriate under § 465.14, relating to security department minimum staffing, or as its own section.

Subsection (c)

In order for an individual to obtain approval from the Board to possess a firearm or handgun in a licensed

facility, that individual must demonstrate that they have: received an adequate course of training in the use of a firearm or handgun; a valid license to possess a firearm or handgun; and a compelling need for the possession of a firearm or handgun in a licensed facility. We have three concerns. First, the procedures for filing a request with the Board are not contained in the regulation. We recommend that provisions be added to guide an individual through the approval process. Second, what is meant by an “adequate course of training”? Must the individual demonstrate that they have completed or passed that training? Third, under what circumstances would the Board grant approval to an individual to possess a firearm or handgun in a licensed facility?

9. Section 465.20. Personal check cashing.—Protection of the public health, safety and welfare; Clarity.

Paragraphs (b)(4) and (b)(5) require the slot machine licensee to “retain adequate documentation evidencing” signature verification or check verification performed in connection with the acceptance of a personal check. The quoted provision is vague. The final-form regulation should specify the type of documentation that must be retained.

Subsection (b)(6) allows a slot machine licensee to cash personal checks of patrons in the amount of \$2,500 per day. In the Preamble to the final-form regulation, the Board should explain how this limit adequately protects the welfare of patrons.

10. Section 465.21. Wire transfers.—Clarity.

As noted in the section above, the Board has imposed a limit on the amount of money that can be obtained by a patron through cashing of a personal check. Why didn’t the Board impose a limit on the amount of money a patron can obtain through wire transfers?

11. Section 465.30. Waiver of requirements.—Statutory authority; Implementation procedures.

This section states:

The Board may waive one or more of the requirements of this chapter or technical standards applicable to accounting and internal controls adopted by the Board upon a determination that the nonconforming control or procedure nonetheless meets the operational integrity requirements of the act, this subpart and technical standards adopted by the Board.

What is the Board’s statutory authority for granting a waiver from a substantive requirement of a regulation? Absent specific statutory authority, this section should be deleted in its entirety.

If the Board demonstrates it has statutory authority to grant waivers of substantive requirements, the procedures for requesting and considering a waiver must be included in the final-form regulation. In addition, the final-form regulation must address who can request such a waiver and what criteria the Board will apply to determine if a waiver will be granted.

12. Section 466.1. Slot computer systems generally.—Statutory authority; Implementation procedures.

Subsection (c) allows the Board to waive requirements of this section and technical standards applicable to slot computer systems. Similar to the concern raised above, we question the Board’s authority for granting a waiver.

We also recommend that the procedures and criteria surrounding the waiver process be included in the final-form regulation.

13. Reference to temporary regulations.—Clarity and lack of ambiguity.

The following sections of the regulation contain references to the Board's temporary regulations. The Board's temporary regulations will cease to exist as of July 5, 2007, unless they are promulgated as permanent regulations by that date. We recommend that the Board delete references to temporary regulations unless the pertinent temporary regulations have been promulgated as permanent regulations prior to the Board's submittal of this final-form regulation.

- § 465.1(c)(4) § 465.20(a)
- § 465.7(a) § 465.21(a)
- § 465.11(b)(1)(vi) § 465.22(a)
- § 465.11(b)(1)(viii) § 467.1(a)(2)(ii)
- § 465.11(b)(5)(x) § 467.1(a)(2)(iv)
- § 465.19 § 467.2(a)(7)

14. Undefined terms.—Clarity and lack of ambiguity.

The terms or phrases noted below are found throughout the regulation. Clarity would be improved if these terms were defined.

- player rating
- player rating system
- bill validator
- trolley
- drop team
- cash equivalents
- merchandise jackpot

15. Miscellaneous clarity.

The following terms or phrases appear throughout the regulation and should be deleted because they are vague:

- adequately
- timely
- reasonable
- reasonably
- appropriate
- appropriately
- competent
- qualified
- effective

Appendix

Section	
465.2(a)	An applicant for, or holder of, a slot machine license shall submit to the Board and the Department, in the manner the Board requires , a narrative description...at least 90 days before gaming operations are to commence, unless otherwise directed by the Board . A written system of internal controls must include:
465.2(a)(7)	Other items the Board may request in writing.
465.2(c)	The initial submission must also be accompanied by a report from an independent certified public accountant or, when appropriate , independent registered public accounting firm, licensed to practice in this Commonwealth. . . .
465.2(d)(2)(i)	Transactions or financial events which occur in the operation of a slot machine are executed in accordance with management's general and specific authorization, as approved by the Board .
465.2(d)(2)(v)	Access to assets is permitted only in accordance with management's general and specific authorization, as approved by the Board .
465.2(f)	If a slot machine licensee intends to make a change or amendment to its system of internal controls, it shall submit to the Board and the Department in the manner prescribed , a narrative description. . . .
465.3(d)(1)	Be in a form prescribed or authorized by the Board .
465.4(a)	A slot machine licensee shall, upon the request of the Board , file monthly, quarterly and annual reports. . . .
465.4(c)	In the event of a license termination, change in business entity or material change in ownership, the Board may require the filing of financial and statistical reports as it deems necessary , as of the date of occurrence of the event. The slot machine licensee will be notified in writing by the Board.
465.5(a)	A slot machine licensee shall, at its own expense, cause its annual financial statements to be audited in accordance with generally accepted auditing standards (when applicable , the Standards of the Public Company Accounting Oversight Board (United States)). . . .
465.5(d)	Two copies of the audited financial statements, together with any management letter or report prepared thereon by the slot machine licensee's independent certified public accountant or, when appropriate , independent registered public accounting firm. . . .
465.5(e)	The slot machine licensee shall require the independent certified public accountant or, when appropriate , independent registered public accounting firm auditing its financial statements. . . .
465.5(k)	. . . Each SARC shall be filed with the Board concurrently with the Federal filing in a manner to be prescribed by the Board .

Section	
465.5(l)	. . . Each CTRC shall be filed with the Board concurrently with the federal filing in a manner to be prescribed by the Board.
465.5(m)	Prior to commencing gaming operations, a slot machine licensee shall file with the Board, in a manner to be prescribed by the Board , a copy of its compliance program. . . .
465.8(b)	Restricted areas within the licensed facility shall be designated and approved by the Board for the repair and storage of slot machines. . . .
465.8(c)	Emergency exits from the gaming floor must be equipped with an audible alarm system, approved by the Board that produces a loud, distinguishable warning sound. . . .
465.8(f)	Slot machine licensees shall provide additional accommodations within the licensed facility as shall be requested by the Board, the Department or the Pennsylvania State Police to accommodate periodic audit, compliance or investigative reviews at the licensed facility.
465.9(c)(1)(vii)	Other areas designated by the Board.
465.9(c)(5)	. . . and elsewhere in the licensed facility as required by the Board. Each monitoring room must be equipped with or serviced by:
465.9(c)(5)(iii)	. . . A robbery, fire or emergency alarm must be perceptually distinguishable from nonemergency alarms in a manner approved by the Board.
465.9(e)(2)	The main bank, vault, satellite cages and other areas as required by the Board.
465.9(f)	. . . or shall be maintained in an electronic format the Board approves. . . .
465.9(h)	The Bureau shall be notified immediately, in a manner the Board, of any incident of equipment failure. . . .
465.9(i)	The Bureau shall be notified, in a manner approved by the Board, in advance of the following:
465.9(p)(2)	Maintained in a book with bound numbered pages that cannot be readily removed or maintained in an electronic format as the Board approves.
465.11(a)	. . . The proposed organizational structure of each slot machine licensee shall be approved by the Board in the absence of a conflict. . . .
465.11(a)(3)	The performance of all functions, duties and responsibilities in accordance with sound financial practices by competent, qualified personnel.
465.11(e)	Notwithstanding other provisions to the contrary, a slot machine licensee may, with the prior approval of the Board, designate and assign more than one person. . . .
465.13(a)	Individuals, including security department personnel, are prohibited from possessing any firearm or handgun within a licensed facility without the express written approval of the Board, in accordance with authorization procedures as the Board determines. . . .
465.14	. . . slot machine licensees shall be required to submit, for Board approval, a minimum staffing submission with regard to its security department. The minimum staffing submission must consider the size and layout of the licensed facility as well as the number and configuration of slot machines on the gaming floor and must at all times provide for adequate and effective security of the gaming floor and any restricted areas servicing the gaming operation. . . .
465.17(a)	. . . and other instruments as are authorized by the Board. . . .
465.17(c)	. . . All currency, gaming vouchers, coupons and Board-approved instruments inserted into the bill validator. . . .
465.17(e)(4)	. . . may not affect the security of the slot cash storage box, its contents or the bill validator, and shall be approved by the Board.
465.18(a)	Slot machine licensees shall place on file with the Board, in the manner prescribed by the Board, a schedule. . . .
465.18(b)	. . . Any deviation from the schedule setting forth the specific times at which slot cash storage boxes will be brought to or removed from the bill validators, change in the areas to be dropped or the transportation route to the count room shall be noticed to the Board in advance in a manner prescribed by the Board.
465.18(c)	...located immediately adjacent thereto, configured and secured in a manner approved by the Board, by a minimum of three employees. . . .
465.25(a)	A slot machine licensee shall file with the Board, in the manner prescribed by the Board, a schedule setting forth the specific times during which the contents of slot cash storage boxes are to be counted and recorded. Any deviation from the schedule shall be noticed to the Board in advance in a manner prescribed by the Board.

Section	
465.25(b)(2)	. . . The information is used by the counting equipment to either calculate the value internally or obtain the value directly from the gaming voucher system or coupon system in a secure manner as approved by the Board
465.25(i)	A coupon which has not already been canceled upon acceptance or during the count shall be canceled prior to the conclusion of the count, in a manner approved by the Board .
465.25(j)	. . . shall be filed in the manner prescribed by the Board .
465.27(c)(2)	The Board has approved the specific offer of the annuity jackpot.
465.31(b)	. . . A slot machine licensee may not commence gaming operations until its hours of operation are approved by the Board .
467.1(a)	An applicant for, or holder of a slot machine license, shall submit to the Board, in a manner the Board requires , a floor plan. . . .
467.1(a)(2)(xii)	Additional documentation requested by the Board .
467.2(a)(9)	The slot machine licensee has successfully completed a test period in accordance with the terms and conditions required by the Board .

**Environmental Quality Board Regulation #7-403
(IRRC #2585)**

Water Resources Planning

February 1, 2007

We submit for your consideration the following comments on the proposed rulemaking published in the December 2, 2006 *Pennsylvania Bulletin*. Our comments are based on criteria in Section 5.2 of the Regulatory Review Act (71 P. S. § 745.5b). Section 5.1(a) of the Regulatory Review Act (71 P. S. § 745.5a(a)) directs the Environmental Quality Board (EQB) to respond to all comments received from us or any other source.

1. Section 110.1. Definitions.—Consistency with statute; Clarity.

We have identified three issues with this section.

First, some of the definitions in this section restate verbatim the statutory definitions from Section 3102 of Title 27 Pa.C.S.A. Chapter 31 (relating to water resources planning) (Act) (27 Pa.C.S.A. § 3102) while others cross-reference defined terms in Section 3102 of the Act. The EQB should consistently use one method for defining terms in the regulation. It should either restate each statutory definition verbatim or provide a cross-reference to the statutory citation for each definition.

Second, the regulatory definition for “water conservation project or practice” is practically identical to the statutory definition for the term “water conservation practices and measures” in Section 3102 of the Act. The regulation should use the term “water conservation practices and measures” from the Act rather than new words for a term defined by the statute.

Finally, the definition of “Statewide Committee” should reference the specific section of Chapter 31 (27 Pa.C.S.A. § 3114), which establishes the Committee and requirements for its membership.

2. Section 110.3. General requirements.—Reasonableness; Clarity.

Subsection (b)(2) states that a person that submits information and claims it is confidential should provide justification for its confidential nature. We have three questions.

First, what criteria and process will the Department of Environmental Protection (Department) use to determine whether the justification is valid?

Second, if the Department determines the justification is insufficient, how will it notify the person of the basis for its determination? Will that person have an opportunity to offer additional information or appeal the Department’s determination?

Third, if the Department agrees that the information submitted should be confidential, what steps will it take to protect the confidentiality of the information? We recommend that the proposed regulation reference the statutory provisions for confidential information in Section 3119 of the Act.

3. Section 110.4. Inspection authorization.—Clarity.

This section requires registrants to provide records and grant access to the Department “upon request.” Under what circumstances will the Department make such a request? Will this request be in writing? The final-form regulation should include this information.

4. Section 110.5. Coordination with reports under other statutes.—Fiscal impact; Consistency with statute; Reasonableness; Need; Clarity.

The provisions of this section in the proposed regulation are not consistent with Section 3118(b)(4) of the Act (27 Pa.C.S.A. § 3118(b)(4)). For example, Section 110.5(b) of the proposed regulation requires persons to file “. . . joint reporting forms developed by the Department to facilitate the submission of information required under other statutes and regulations administered by the Department, compact basin commissions, and other Federal and state agencies. . . .”

On the other hand, Section 3118(b)(4) of the Act reads:

To avoid duplication, regulations implementing the periodic reporting requirements of this subsection shall provide that the requirements may be satisfied by the filing of discharge monitoring reports prepared under the Clean Streams Law, water supply reports prepared under the Safe Drinking Water Act, water withdrawal and use reports prepared and submitted pursuant to regulations adopted by the Delaware River Basin Commission and Susquehanna River Basin Commission, or other reports submitted under other applicable statutes and regulations. . . .

The statute directs that the regulation provide that reporting requirements may be satisfied via existing reports. The statute does not direct the Department to develop new “joint reporting forms.” If the Department already has access to this information via other required

reports, then there is no need to create new forms for persons to complete and file. The final-form regulation should identify the existing reports that will fulfill the reporting requirements.

Finally, Subsections (a) and (b) both contain the phrase “. . . required under other statutes and regulations administered by the Department, compact basin commissions, or by other Federal and state agencies.” It is not clear what “other statutes and regulations” are included in this reference. The final-form regulation should identify and cross-reference these other regulatory and statutory requirements.

5. Section 110.6. Effect of registration.—Clarity.

Subsection (a) appears to be a narrative statement describing the potential benefits of registration. Its need or purpose as a substantive rule or procedure for water suppliers or users is unclear. The language of this subsection is more appropriate for the narrative in the Preamble. Subsection (a) should be deleted in the final-form regulation. The letter “(b)” for the second subsection would also be deleted and the single sentence in Subsection (b) would be the only content in Section 110.6.

6. Section 110.201. Registration requirement.—Reasonableness; Clarity.

Commentators stated that Subsection (3), which requires an entity connected to a public water system and has a consumptive use of over 100,000 gallons per day to register and report its usage, is redundant and not needed because public water suppliers already report this usage. The EQB should state its reason for requiring this extra reporting or delete the provision from the final-form regulation.

7. Section 110.202. Submission of registrations.—Clarity.

This section states that registrations must be submitted by March 16, 2004, or 90 days following the initiation of a water withdrawal. The phrase “March 16, 2004 or” should be deleted.

8. Section 110.203. Content of registration.—Reasonableness; Clarity.

A commentator stated that the specific location of a public water supplier’s intakes should be considered confidential security information and protected from public disclosure. Has the EQB considered keeping this information confidential?

Also, another commentator asserted that Paragraph 2, which requires the reporting of each consumptive and non-consumptive use, is burdensome and has no value in water resource planning. Rather, the **total** consumptive and non-consumptive water use is the only relevant information. What is the EQB’s rationale for requiring reporting of each consumptive and non-consumptive use?

9. Section 110.302. Submission of reports.—Clarity.

This section states that reports shall be submitted to the Department on an annual basis “. . . or less frequently as may be prescribed by the Department. . . .” In what instance would a report be filed less frequently than on an annual basis? What are the criteria for determining the frequency of submittals? How will the registrant know if the Department changes the frequency for filing the report? This information should be clearly set forth in the final-form regulation. A similar concern applies to Section 110.603.

Also, because Subsection (2) uses the term “including,” the phrase “Other user” in Subsection (2)(viii) is not necessary. It should be deleted in the final-form regulation.

10. Section 110.305. User-specific contents of report.—Statutory authority; Reasonableness; Need; Clarity.

Commentators noted that this section is vague concerning the type of information that is to be included in the required reports. One commentator questioned the need for the “employment” information required in Sections 110.305(3)(i), (4)(i), (5)(i), (7)(iii) and (8)(iv). We agree that the descriptions of the “user-specific” information are vague and do not provide sufficient detail.

In addition, we question the statutory authority of the EQB to include these provisions in this regulation. Part of Section 3118(b)(1) of the Act (27 Pa.C.S.A § 3118(b)(1)) describes the reporting requirements:

. . . Such regulations shall require water users subject to the registration requirements of this section to monitor, maintain records and submit to the department periodic reports regarding the **source, location and amount** of withdrawals or uses or both from surface waters and groundwaters, including the **amount** of consumptive and nonconsumptive uses, the locations and **amounts** of any waters returned and discharged and the **amounts** of water transferred between public water supply agencies via interconnections. Such regulations shall not require submission of periodic reports more frequently than annually. . . . [Emphasis added.]

The specific language of the statute requires that these reports include the “source, location and amount of withdrawals or uses.” There is no mention of employment data, storage information, irrigation information or other details regarding the business using the water. In other words, the focus of the Act is location, source and amount of water being used. There is no mention of documenting other information. The EQB and Department should justify the need for this information and explain the statutory authority for requiring its submittal. If these data requirements are retained in the final-form regulation, this section should include specific details describing the type of data that must be included in the reports.

11. Section 110.402. Retention of records.—Clarity.

This section states that records must be maintained for five years. In what format must these records be maintained? Do they need to be maintained on paper or can they be retained electronically or by other media? This should be clearly stated in the final-form regulation.

12. Section 110.501. Metering and measuring requirement.—Consistency with statute; Reasonableness; Clarity.

We have four concerns with this section.

First, what alternative methods for determining usage are acceptable to the EQB? Section 3118(b)(1) of the Act (27 Pa.C.S.A § 3118(b)(1)) states “. . . With respect to withdrawal uses . . . involving a withdrawal of less than 50,000 gallons per day in a 30-day period, the regulations shall provide for the use of alternative methods to obtain a reasonable estimate or indirect calculation of such in lieu of direct metering or measurement.” To be consistent with the Act, the EQB should establish these alternative methods in the final-form regulation.

Second, the EQB should consider adding language to limit the 5% accuracy to withdrawals. A commentator

suggested that Subsection (a) be clarified to state that the accuracy of reporting is applicable only to withdrawals because consumptive use is too hard to quantify in power plant systems.

Third, Subsection (d) allows for exceptions to the 5% performance standards, but does not set forth the method for requesting these exceptions. These methods should be clearly stated in the final-form regulation.

Finally, Subsection (f) requires certain persons to measure or calculate their withdrawals "by a means acceptable to the Department." Will these "means" be different than the ones set forth throughout this regulation? If so, these alternate means should be set forth in the regulation. If the Department is going to consider suggestions for alternative "means" for measuring or calculating withdrawals, then the process for submitting these proposals and the criteria that the Department will use in determining whether they are "acceptable" should be set forth in this subsection.

13. Section 110.502. Recording frequency.—Reasonableness; Clarity.

A commentator stated that this section is unclear about how frequently a person must record withdrawals and uses if that person is both a large user (subject to Section 110.501(c)) and a user subject to the compact basin commission requirements (under Section 110.501(e)). The final-form regulation should clearly state the recording frequency for those users that fall into multiple categories under this section.

Also, this section states that both withdrawals and uses should be reported weekly. Commentators indicated that it is hard to quantify consumptive uses and a monthly estimate would be more appropriate. Has the EQB considered monthly reporting for consumptive users?

14. Section 11.503. Measuring requirement in critical water planning areas.—Statutory authority; Reasonableness; Clarity.

This section would allow the Department to require increases in the accuracy and frequency of reports filed by users that exceed 10,000 gallons per day in any 30-day period if the Department determines this is necessary in a critical water planning area. One commentator asserted

that Section 3118 of the Act does not give the EQB the statutory authority to impose additional reporting, documentation and quantification requirements in critical water areas. We have identified two issues.

First, the Act does not appear to envision the prospect of increasing the stringency of reporting requirements in certain areas or for certain users. In fact, the opposite is true. Section 3118(b)(2) of the Act reads:

The regulations may provide for the adjustment of or variations in registration, recordkeeping or periodic reporting requirements for identified classification of user or volume of withdrawal if such requirements are *not* necessary to obtain information required to adequately assess water uses, monitor demands and otherwise prepare accurate and complete regional and State water plans and, if applicable, critical area resource plans. [Emphasis added.]

The EQB should clearly state its authority to require extra reporting in critical water planning areas.

Second, Subsection (a) states that the Department "may" require persons in a "critical water planning area" to measure or calculate their water withdrawals with greater accuracy and greater frequency. However, it is unclear when and how the Department will decide "that more accurate data is required." Subsection (b) states that the Department will consider the "necessity" for the data and the "costs to registrants" in making the determination. If this section is retained, the process and criteria for this determination need to be described. Also, the regulation should state that the "written notice" will include an explanation of the basis for the Department's determination.

15. Forms—Clarity.

Some sections in the proposed regulation require the completion of a form or forms prescribed by the Department. Will these forms be available on the Department's website? If not, how will affected parties obtain copies?

ARTHUR COCCODRILLI,
Chairperson

[Pa.B. Doc. No. 07-276. Filed for public inspection February 16, 2007, 9:00 a.m.]

Notice of Filing of Final Rulemakings

The Independent Regulatory Review Commission (Commission) received the following regulations. They are scheduled to be considered on the date noted. The Commission's public meetings are held at 333 Market St., 14th Floor, Harrisburg at 10:30 a.m. To obtain a copy of the regulation, interested parties should first contact the promulgating agency. If a copy cannot be obtained from the promulgating agency, the Commission will provide a copy.

This schedule is tentative. Please contact the Commission at (717) 783-5417 or check its website at www.irrc.state.pa.us for updates.

<i>Final-Form Reg. No.</i>	<i>Agency/Title</i>	<i>Received</i>	<i>Public Meeting</i>
18-398	Department of Transportation Driver's License Examination	2/1/07	3/1/07
18-407	Department of Transportation Prequalification of Bidders	2/5/07	3/1/07

*Final-Form
Reg. No.*

16A-4919

Agency/Title

State Board of Medicine
Registration and Practice of Acupuncturists

Received

2/5/07

Public Meeting

3/1/07

ARTHUR COCCODRILLI,
Chairperson

[Pa.B. Doc. No. 07-277. Filed for public inspection February 16, 2007, 9:00 a.m.]

INSURANCE DEPARTMENT

Agency Contract Termination of Black, Davis & Shue Agency, Inc. under Act 143; Eastern Alliance Insurance Group; Doc. No. AT06-12-013

A prereview conference initiated by this office is scheduled for February 28, 2007, at 10 a.m. A date for a review shall be determined, if necessary, at the prereview telephone conference.

Motion preliminary to those at the review, protests, petitions to intervene or notice of intervention, if any must be filed on or before February 15, 2007, with the Hearings Administrator, Administrative Hearings Office, Capitol Associates Building, Room 200, 901 North Seventh Street, Harrisburg, PA 17102. Answer to petitions to intervene, if any, shall be filed on or before February 21, 2007.

M. DIANE KOKEN,
Insurance Commissioner

[Pa.B. Doc. No. 07-278. Filed for public inspection February 16, 2007, 9:00 a.m.]

Altoona Hospital; Prehearing

Appeal of Altoona Hospital under the Medical Care Availability and Reduction of Error (MCARE) Act (40 P. S. §§ 1303.101—1303.910); Doc. No. MM06-12-029

On or before February 13, 2007, the appellant shall file a concise statement setting forth the factual and/or legal basis for the disagreement with MCARE's October 6, 2006, determination. The statement may be in narrative form or in numbered paragraphs, but in either event shall not exceed two pages. A prehearing telephone conference initiated by this office is scheduled for March 7, 2007. Each party shall provide a telephone number to be used for the telephone conference to the Hearings Administrator on or before March 1, 2007. A hearing date shall be determined, if necessary, at the prehearing telephone conference.

Motions preliminary to those at hearing, protests, petitions to intervene or notices of intervention, if any, must be filed on or before February 20, 2007, with the Hearings Administrator, Administrative Hearings Office, Capitol Associates Building, Room 200, 901 North Sev-

enth Street, Harrisburg, PA 17102. Answer to petitions to intervene, if any shall be filed on or before February 27, 2007.

M. DIANE KOKEN,
Insurance Commissioner

[Pa.B. Doc. No. 07-279. Filed for public inspection February 16, 2007, 9:00 a.m.]

Application and Request for a Certificate of Authority

Homewood at Hanover PA, Inc. has applied for a continuing care provider certificate of authority to operate a facility located in Hanover, PA. The filing was received on February 5, 2007, and was made under the requirements set forth under the Continuing Care Provider Registration and Disclosure Act (40 P. S. §§ 3201—3225). Persons wishing to comment on the application are invited to submit a written statement to the Insurance Department (Department) within 30 days of publication of this notice in the *Pennsylvania Bulletin*. Written statements must include name, address and telephone number of the interested party, identification of the application to which the statement is addressed and a concise statement with sufficient detail to inform the Department of the exact basis of the statement. Written statements should be directed to Robert Brackbill, Company Licensing Division, Insurance Department, 1345 Strawberry Square, Harrisburg, PA 17120, fax (717) 787-8557, rbrackbill@state.pa.us.

M. DIANE KOKEN,
Insurance Commissioner

[Pa.B. Doc. No. 07-280. Filed for public inspection February 16, 2007, 9:00 a.m.]

Bryn Mawr Hospital; Prehearing

Appeal of Bryn Mawr Hospital under the Medical Care Availability and Reduction of Error (MCARE) Act (40 P. S. §§ 1303.101—1303.910); Doc. No. MM06-12-028

On or before February 13, 2007, the appellant shall file a concise statement setting forth the factual and/or legal basis for the disagreement with MCARE's December 7, 2006, determination. The statement may be in narrative form or in numbered paragraphs, but in either event shall not exceed two pages. A prehearing telephone conference initiated by this office is scheduled for March 6, 2007. Each party shall provide a telephone number to

be used for the telephone conference to the Hearings Administrator on or before March 1, 2007. A hearing date shall be determined, if necessary, at the prehearing telephone conference.

Motions preliminary to those at hearing, protests, petitions to intervene or notices of intervention, if any, must be filed on or before February 20, 2007, with the Hearings Administrator, Administrative Hearings Office, Capitol Associates Building, Room 200, 901 North Seventh Street, Harrisburg, PA 17102. Answer to petitions to intervene, if any shall be filed on or before February 27, 2007.

M. DIANE KOKEN,
Insurance Commissioner

[Pa.B. Doc. No. 07-281. Filed for public inspection February 16, 2007, 9:00 a.m.]

Donna Dobrinski; Hearing

Appeal of Donna Dobrinski under 40 P. S. §§ 991.210—991.2193; UPMC Health Plan Doc. No. HC07-01-016

Under 40 P. S. §§ 991.2101—991.2193, notice is hereby given that the appellant in this action has requested a hearing, in connection with the appellant's managed health care plan. The proceedings in this matter will be governed by 2 Pa.C.S. §§ 501—508 and 701—704 (relating to the Administrative Agency Law), 1 Pa. Code Part II (relating to General Rules of Administrative Practice and Procedures) and any other relevant procedure provisions of law.

A prehearing telephone conference initiated by the Administrative Hearings Office shall be conducted on March 28, 2007. Each party shall provide a telephone number to be used for the telephone conference to the Hearings Administrator on or before March 22, 2007.

Motions preliminary to those at hearing, protests, petitions to intervene, or notices of intervention, if any, must be filed on or before March 14, 2007, with the Hearings Administrator, Administrative Hearings Office, Capitol Associates Building, Room 200, 901 North Seventh Street, Harrisburg, PA 17102. Answer to petitions to intervene shall be filed on or before March 21, 2007.

M. DIANE KOKEN,
Insurance Commissioner

[Pa.B. Doc. No. 07-282. Filed for public inspection February 16, 2007, 9:00 a.m.]

Insurance Service Office, Inc.; Rate Filing for Private Passenger Automobile Loss Cost Revision

On February 1, 2007, the Insurance Department (Department) received from Insurance Services Office, Inc. a filing for a proposed loss cost level change for private passenger automobile insurance.

The advisory organization requests an overall 3.1% decrease in loss cost effective October 1, 2007.

Unless formal administrative action is taken prior to April 2, 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 Harrisburg office.

All 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, (e-mail: xlu@state.pa.us) within 15 days after publication of this notice in the *Pennsylvania Bulletin*.

M. DIANE KOKEN,
Insurance Commissioner

[Pa.B. Doc. No. 07-283. Filed for public inspection February 16, 2007, 9:00 a.m.]

Donald Oakes; Prehearing

License Denial; Doc. No. AG07-01-007

The proceedings in this matter will be governed by 2 Pa.C.S. §§ 501—508 and 701—704 (relating to the Administrative Agency Law), 1 Pa. Code Part II (relating to General Rules of Administrative Practice and Procedure) and 31 Pa. Code Chapter 56 (relating to special rules of administrative practice and procedure).

A prehearing telephone conference initiated by this office is scheduled for March 7, 2007. Each party shall provide the Hearings Administrator a telephone number to be used for the telephone conference on or before March 2, 2007. A hearing shall occur on March 27, 2007, in the Administrative Hearings Office, Capitol Associates Building, Room 200, 901 North Seventh Street, Harrisburg, PA.

Motions preliminary to those at hearing, protests, petitions to intervene or notices of intervention, if any, must be filed on or before February 21, 2007, with the Hearings Administrator, Administrative Hearings Office, Capitol Associates Building, Room 200, 901 North Seventh Street, Harrisburg, PA 17102. Answer to petitions to intervene, if any shall be filed on or before February 28, 2007.

M. DIANE KOKEN,
Insurance Commissioner

[Pa.B. Doc. No. 07-284. Filed for public inspection February 16, 2007, 9:00 a.m.]

Sulochana Pradhan, M. D.; Prehearing

Appeal of Sulochana Pradhan, M. D. under the Medical Care Availability and Reduction of Error (MCARE) Act (40 P. S. §§ 1303.101—1303.910); Doc. No. MM06-12-027

On or before February 8, 2007, the appellant shall file a concise statement setting forth the factual and/or legal basis for the disagreement with MCARE's November 7, 2006, determination. The statement may be in narrative form or in numbered paragraphs, but in either event shall not exceed two pages. A prehearing telephone conference initiated by this office is scheduled for March 1, 2007. Each party shall provide a telephone number to be used for the telephone conference to the Hearings

Administrator on or before February 26, 2007. A hearing date shall be determined, if necessary, at the prehearing telephone conference.

Motions preliminary to those at hearing, protests, petitions to intervene or notices of intervention, if any, must be filed on or before February 15, 2007, with the Hearings Administrator, Administrative Hearings Office, Capitol Associates Building, Room 200, 901 North Seventh Street, Harrisburg, PA 17102. Answer to petitions to intervene, if any shall be filed on or before February 22, 2007.

M. DIANE KOKEN,
Insurance Commissioner

[Pa.B. Doc. No. 07-285. Filed for public inspection February 16, 2007, 9:00 a.m.]

Ramana Petro, Inc.; Hearing

Appeal of Ramana Petro, Inc. under the Storage Tank and Spill Prevention Act; Underground Storage Tank Indemnification Fund; USTIF File No. 05-185(F); Doc. No. UT06-12-021

The proceedings in this matter will be governed by 2 Pa.C.S. §§ 501—508 and 701—704 (relating to the Administrative Agency Law), 1 Pa. Code Part II (relating to General Rules of Administrative Practice and Procedure) and any other relevant procedure provisions of law.

A prehearing telephone conference shall be held on March 8, 2007. Motions preliminary to those at hearing, protests, petitions to intervene, notices of appearance or notices of intervention, if any, must be filed with the Hearings Administrator, Administrative Hearings Office, Room 200, Capitol Associates Building, 901 North Seventh Street, Harrisburg, PA 17102 on or before February 23, 2007. Answers to petitions to intervene, if any, shall be filed on or before March 1, 2007.

A date for a hearing shall be determined, if necessary, at the prehearing telephone conference.

M. DIANE KOKEN,
Insurance Commissioner

[Pa.B. Doc. No. 07-286. Filed for public inspection February 16, 2007, 9:00 a.m.]

Reighard's Service Station; Hearing

Appeal of Reighard's Service Station under the Storage Tank and Spill Prevention Act; Underground Storage Tank Indemnification Fund; USTIF File No. 95-147(M); Doc. No. UT07-01-003

The proceedings in this matter will be governed by 2 Pa.C.S. §§ 501—508 and 701—704 (relating to the Administrative Agency Law), 1 Pa. Code Part II (relating to General Rules of Administrative Practice and Procedure) and any other relevant procedure provisions of law.

A prehearing telephone conference shall be held on February 28, 2007. A hearing shall occur on March 14, 2007, at 10 a.m. in the Administrative Hearings Office, Room 200, Capitol Associates Building, 901 North Seventh Street, Harrisburg, PA 17102. Motions preliminary to those at hearing, protests, petitions to intervene,

notices of appearance or notices of intervention, if any, must be filed with the Hearings Administrator at the previously listed address on or before March 5, 2007. Answers to petitions to intervene, if any, shall be filed on or before March 12, 2007.

Persons with a disability who wish to attend the previously referenced administrative hearing and require an auxiliary aid, service or other accommodation to participate in the hearing should contact Kathryn Culbertson, Agency Coordinator at (717) 705-4194.

M. DIANE KOKEN,
Insurance Commissioner

[Pa.B. Doc. No. 07-287. Filed for public inspection February 16, 2007, 9:00 a.m.]

Review Procedure Hearings; Cancellation or Refusal of Insurance

The following insured has requested a hearing as authorized by the act of June 17, 1998 (P. L. 464, No. 68) (Act 68) in connection with the termination of the insureds' automobile policies. The hearing will be held in accordance with the requirements of Act 68, 1 Pa. Code Part II (relating to the General Rules of Administrative Practice and Procedure) and 31 Pa. Code §§ 56.1—56.3 (relating to Special Rules of Administrative Practice and Procedure). The administrative hearing will be held in the Insurance Department's regional office in Philadelphia. Failure by an appellant to appear at the scheduled hearing may result in dismissal with prejudice.

The following hearing will be held in the Philadelphia Regional Office, Room 1701, State Office Building, 1400 Spring Garden Street, Philadelphia, PA 19130.

Appeal of Michael Aponti; file no. 06-265-29401; Bristol West Insurance Co.; doc. no. PH06-12-025; April 27, 2007, 10 a.m.

Parties may appear with or without counsel and offer relevant testimony or other relevant evidence. Each party must bring documents, photographs, drawings, claims files, witnesses, and the like, necessary to support the party's case. A party intending to offer documents or photographs into evidence shall bring enough copies for the record and for each opposing party.

In some cases, the Insurance Commissioner (Commissioner) may order that the company reimburse an insured for the higher cost of replacement insurance coverage obtained while the appeal is pending. Reimbursement is available only when the insured is successful on appeal, and may not be ordered in all instances. If an insured wishes to seek reimbursement for the higher cost of replacement insurance, the insured must produce documentation at the hearing which will allow comparison of coverages and costs between the original policy and the replacement policy.

Following the hearing and receipt of the stenographic transcript, the Commissioner will issue a written order resolving the factual issues presented at the hearing and stating what remedial action, if any, is required. The Commissioner's Order will be sent to those persons participating in the hearing or their designated representatives. The Order of the Commissioner may be subject to judicial review by the Commonwealth Court.

Persons with a disability who wish to attend an administrative hearing and require an auxiliary aid, service or other accommodation to participate in the hearing, contact Kathryn Culbertson, Agency Coordinator at (717) 705-4194.

M. DIANE KOKEN,
Insurance Commissioner

[Pa.B. Doc. No. 07-288. Filed for public inspection February 16, 2007, 9:00 a.m.]

Review Procedure Hearings under the Unfair Insurance Practices Act

The following insureds have requested a hearing as authorized by section 8 of the Unfair Insurance Practices Act (40 P. S. §§ 1171.8) in connection with their companies' termination of the insureds' policies. The administrative hearing will be held in the Insurance Department's regional office in Harrisburg, PA. Failure by an appellant to appear at a scheduled hearing may result in dismissal with prejudice.

The following hearings will be held in the Administrative Hearings Office, Capitol Associates Building, Room 200, 901 N. Seventh Street, Harrisburg, PA 17102.

Appeal of Kenneth W. Kelly, file no. 06-266-28398; Utica First Insurance Company, doc. no. P06-12-023; February 15, 2007, 10 a.m.

Appeal of Juliet E. LeBoss; file no. 06-177-29387; State Farm Insurance Co.; doc. no. P06-12-024; February 27, 2007, 10 a.m.

Parties may appear with or without counsel and offer relevant testimony and/or other relevant evidence. Each party must bring documents, photographs, drawings, claims files, witnesses, and the like, necessary to support the party's case. A party intending to offer documents or photographs into evidence shall bring enough copies for the record and for each opposing party.

In some cases, the Insurance Commissioner (Commissioner) may order that the company reimburse an insured for the higher cost of replacement insurance coverage obtained while the appeal is pending.

Reimbursement is available only when the insured is successful on appeal and may not be ordered in all instances. If an insured wishes to seek reimbursement for the higher cost of replacement insurance, the insured must produce documentation at the hearing which will allow comparison of coverages and costs between the original policy and the replacement policy.

Following the hearing and receipt of the stenographic transcript, the Commissioner will issue a written order resolving the factual issues presented at the hearing and stating what remedial action, if any, is required. The Commissioner's Order will be sent to those persons participating in the hearing or their designated representatives. The Order of the Commissioner may be subject to judicial review by the Commonwealth Court.

Persons with a disability who wish to attend the above-referenced administrative hearing, and require an

auxiliary aid, service or other accommodation to participate in the hearing, contact Kathryn Culbertson, Agency Coordinator at (717) 705-4194.

M. DIANE KOKEN,
Insurance Commissioner

[Pa.B. Doc. No. 07-289. Filed for public inspection February 16, 2007, 9:00 a.m.]

Charles Sullivan M. D.; Prehearing

Appeal of Charles Sullivan, M. D. under the Medical Care Availability and Reduction of Error (MCARE) Act (40 P. S. §§ 1303.101—1303.910); Doc. No. MM06-12-026

On or before February 8, 2007, the appellant shall file a concise statement setting forth the factual and/or legal basis for the disagreement with MCARE's November 29, 2006, determination. The statement may be in narrative form or in numbered paragraphs, but in either event shall not exceed two pages. A prehearing telephone conference initiated by this office is scheduled for March 1, 2007. Each party shall provide a telephone number to be used for the telephone conference to the Hearings Administrator on or before February 26, 2007. A hearing date shall be determined, if necessary, at the prehearing telephone conference.

Motions preliminary to those at hearing, protests, petitions to intervene or notices of intervention, if any, must be filed on or before February 15, 2007, with the Hearings Administrator, Administrative Hearings Office, Capitol Associates Building, Room 200, 901 North Seventh Street, Harrisburg, PA 17102. Answer to petitions to intervene, if any shall be filed on or before February 22, 2007.

M. DIANE KOKEN,
Insurance Commissioner

[Pa.B. Doc. No. 07-290. Filed for public inspection February 16, 2007, 9:00 a.m.]

Young's Sales and Service; Prehearing

Appeal of Young's Sale and Service under the Storage Tank and Spill Prevention Act; Underground Storage Tank Indemnification Fund; USTIF File No. 00-284(M); Doc. No. UT06-12-014

The proceedings in this matter will be governed by 2 Pa.C.S. §§ 501—508 and 701—704 (relating to the Administrative Agency Law), 1 Pa. Code Part II (relating to General Rules of Administrative Practice and Procedure) and any other relevant procedure provisions of law.

A prehearing telephone conference shall be held on March 6, 2007. A hearing shall occur on March 20, 2007, in the Administrative Hearings Office, Room 200, Capitol Associates Building, 901 North Seventh Street, Harrisburg, PA 17102. Motions preliminary to those at hearing, protests, petitions to intervene, notices of appearance or notices of intervention, if any, must be filed with the Hearings Administrator at the previously listed address

on or before February 23, 2007. Answers to petitions to intervene, if any, shall be filed on or before February 28, 2007.

Persons with a disability who wish to attend the previously referenced administrative hearing and require an auxiliary aid, service or other accommodation to participate in the hearing should contact Kathryn Culbertson, Agency Coordinator at (717) 705-4194.

M. DIANE KOKEN,
Insurance Commissioner

[Pa.B. Doc. No. 07-291. Filed for public inspection February 16, 2007, 9:00 a.m.]

PATIENT SAFETY AUTHORITY

Public Meeting

The Patient Safety Authority (Authority), established by section 303 of the Medical Care Availability and Reduction of Error (MCARE) Act (40 P.S. § 1303.303), enacted on March 20, 2002, will hold a meeting of the Authority's 11 member Board of Directors on Monday, March 5, 2007, at 3:30 p.m. at the Wyndham Hotel and Conference Center, 95 Presidential Circle, Gettysburg, PA.

Individuals having questions regarding this meeting, which is open to the public, should contact the Authority at (717) 346-0469.

MICHAEL DOERING,
Interim Administrator

[Pa.B. Doc. No. 07-292. Filed for public inspection February 16, 2007, 9:00 a.m.]

PENNSYLVANIA PUBLIC UTILITY COMMISSION

Gas Service

A-121100 F2003. Equitable Gas Company. Application of Equitable Gas Company for approval of the abandonment of gas service to 26 field gathering line customers in Richhill Township, Greene County, PA.

Formal protests and petitions to intervene must be filed in accordance with 52 Pa. Code (relating to public utilities). Filings must be made with the Secretary, Pennsylvania Public Utility Commission, P. O. Box 3265, Harrisburg, PA 17105-3265, with a copy served on the applicant, on or before March 5, 2007. The documents filed in support of the application are available for inspection and copying at the Office of the Secretary between the hours of 8 a.m. and 4:30 p.m., Monday through Friday, and at the applicant's business address.

Applicant: Equitable Gas Company

Through and By Counsel: Charles E. Thomas, Jr., Esquire, Thomas T. Niesen, Esquire, Thomas, Thomas,

Armstrong & Niesen, 212 Locust Street, P. O. Box 9500,
Harrisburg, PA 17108-9500

JAMES J. MCNULTY,
Secretary

[Pa.B. Doc. No. 07-293. Filed for public inspection February 16, 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 March 12, 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-00123445. Charles L. Sypolt, Jr. (372 Grant Street, Chambersburg, Franklin County, PA 17301)—persons, upon call or demand, in the Borough of Chambersburg, Franklin County.

A-00123455. Mary Ann Bower, t/d/b/a Mary Ann Bower Van Service (246 Summitville Road, New Holland, Lancaster County, PA 17557)—persons, in paratransit service, from points in the Counties of Lancaster, Lebanon, Perry, York, Dauphin and Berks, to points in Pennsylvania, and return; limited to the transportation of persons whose personal convictions prevent them from owning or operating motor vehicles.

Application of the following for approval of the *beginning* of the exercise of the right and privilege of operating motor vehicles as *common carrier* for the transportation of *household goods* as described under the application.

A-00123436. Troy A. Estep, t/a Estep's Hauling (430 2nd Avenue, Altoona, Blair County, PA 16602)—begin to transport household goods in use, from points in the Counties of Blair, Cambria and Centre, to points in Pennsylvania, and vice versa.

Applications 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 each application.

A-00009329 F.32, Am-B. Fullington Trailways, LLC (316 East Cherry Street, Clearfield, Clearfield County, PA 16803), a limited liability company of the Commonwealth—certificate of public convenience to abandon/discontinue the rights to transport, as a common carrier, by motor vehicle, the transportation of persons on schedule, on a

guaranteed seat basis, between the City of Lewistown, Mifflin County and the City of Harrisburg, Dauphin County, over the following route: Beginning in the City of Lewistown, thence over US Highway Route 22—322 to the Mifflintown Exit, thence over US Highway Route 35 to Truck Stop No. 35, thence returning by means of Pennsylvania Highway Route 35 to US Highway Route 22—322, thence over said highway route to the Thompsontown Exit, thence by means of Thompsontown Exit and unnumbered highway to the Thompsontown V.F.W., returning by means of unnumbered highway route to US Highway Route 22—322 to the City of Harrisburg, with the right to deviate from said route: (a) 1/4 mile at the Millerstown Exit; (b) to the Borough of Newport, Perry County, at the Newport Exit; and (c) 1/4 mile at the Duncannon Exit; and return over the same route in the reverse direction; subject to the following conditions: Provided that the service herein authorized shall be limited to those persons commuting between places of their employment; provided that no right, power, or privilege is granted to render local service between points in the County of Dauphin; and provided that the service herein authorized shall be rendered on week days only with service from the City of Lewistown commencing between the hours of 6 and 7 a.m. and returning service from Harrisburg commencing between the hours of 4 and 5 p.m. *Attorney:* John A. Pillar, 680 Washington Road, Suite B101, Pittsburgh, PA 15228.

A-00009329 F.36, Am-B. Fullington Trailways, LLC (316 East Cherry Street, Clearfield, Clearfield County, PA 16803), a limited liability company of the Commonwealth—certificate of public convenience to abandon/discontinue the rights to transport, as a common carrier, by motor vehicle, the transportation of persons and their baggage on schedule, between points in the City of DuBois, Clearfield County, and the City of Erie, Erie County, over the following routes: Beginning in the City of DuBois; thence over US Traffic Route 219 to its intersection with Interstate Highway 80; thence on Interstate Highway 80 to its intersection with PA Traffic Route 68; thence on PA Traffic Route 68 to its intersection with US Traffic Route 322 in the Borough of Clarion, Clarion County; thence on US Traffic Route 322 to the City of Meadville and thence on US Traffic Route 322 and US Traffic Route 6 to its intersection with Interstate Highway 79; thence on Interstate Highway 79 to the City of Erie, Erie County, and return over the same route in the reverse direction; with the right to provide through service in conjunction with applicant's other certificated routes; *Alternate Route:* Beginning at the intersection of US Traffic Route 322 and PA Traffic Route 257 in Cranberry Township, Venango County; thence on PA Traffic Route 257 to the City of Oil City; thence over US Traffic Route 62 to its intersection with US Traffic Route 322 in the City of Franklin and return over the same route in the reverse direction with the right to provide through service in conjunction with applicant's other certificated routes. *Attorney:* John A. Pillar, 680 Washington Road, Suite B101, Pittsburgh, PA 15228.

Pennsylvania Public Utility Commission, Bureau of Transportation and Safety v. Style Enterprises, Inc. t/a Style Logistics, 20 Ave. at The Common, Suite 203, Shrewsbury, NJ 07702; Doc. No. A-00120362C0601

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 del-

egated 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 Style Enterprises, Inc., respondent, is under suspension effective August 30, 2006, for failure to maintain evidence of insurance on file with this Commission.

2. That respondent maintains a principal place of business at Style Enterprises, Inc., t/a Style Logistics, 20 Ave. at The Common, Ste. 203, Shrewsbury, NJ 07702.

3. That respondent was issued a certificate of public convenience by this Commission on March 12, 2004, at Application Docket No. A-00120362.

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 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-00120362 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

Wendy J. Keezel, 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 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 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 days of the date of service, the Bureau of Transportation and Safety will request that the Commission issue an Order imposing a penalty. Under 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 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 FORMS 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.

Pennsylvania Public Utility Commission, Bureau of Transportation and Safety v. L. W. Shaffer, Jr.; Doc. No. A-00112678C0601

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. Under 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 L. W. Shaffer, Jr., respondent, maintains his principal place of business at 63 Dodds Avenue, Valencia, PA 16059.

2. That respondent was issued a certificate of public convenience by this Commission on May 31, 1996, at Application Docket No. A-00112678.

3. That respondent abandoned or discontinued service without having first submitted a letter to this Commission containing a statement that the service is no longer being rendered. Respondent has not reported intrastate revenue for the years 2003, 2004 and 2005.

4. That respondent, by failing to submit a letter to this Commission containing a statement that the service is no longer being rendered, failed to comply with the January 11, 1999 Commission Decision at P-981458 and, by failing to maintain adequate, efficient and safe service and facilities, violated 66 Pa.C.S. § 1501.

Wherefore, the Bureau of Transportation and Safety Prosecutory Staff hereby requests that the Commission revoke respondent's Certificate of Public Convenience at A-00112678.

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

Wendy J. Keezel, 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 to be able to prove the same at any hearing held in this matter. I understand that the statements herein are made subject to the penalties of 18 Pa.C.S. § 4904 relating to unsworn falsification to authorities.

Date: _____
 Wendy J. Keezel, Chief of Enforcement

NOTICE

A. You must file an answer within twenty 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 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 days, the Bureau of Transportation and Safety will request that the Commission issue an Order imposing a penalty, which will include the revocation of your Certificate of Public Convenience.

C. If you file an answer which admits or fails to deny the allegations of the Complaint, the Bureau of Transportation and Safety will request that the Commission issue an Order imposing a penalty, which may include the revocation of your Certificate of Public Convenience.

D. If you file an answer which contests the Complaint, the matter will be assigned to an Administrative Law Judge for hearing and decision.

E. Alternative formats of this material are available, for persons with disabilities, by contacting the Compliance Office at (717) 787-1168.

JAMES J. MCNULTY,
Secretary

[Pa.B. Doc. No. 07-294. Filed for public inspection February 16, 2007, 9:00 a.m.]

Telecommunications

A-310557F7001. Verizon North, Inc. and Access Point, Inc. Joint petition of Verizon North, Inc. and Access Point, Inc. for approval of Amendment Nos. 1 and 2 to an interconnection agreement under section 252(e) of the Telecommunications Act of 1996.

Verizon North, Inc. and Access Point, Inc., by its counsel, filed on February 5, 2007, at the Pennsylvania Public Utility Commission (Commission), a joint petition for approval of Amendment Nos. 1 and 2 to an interconnection agreement under sections 251 and 252 of the Telecommunications Act of 1996.

Interested parties may file comments concerning the petition and agreement with the Secretary, Pennsylvania Public Utility Commission, P. O. Box 3265, Harrisburg, PA 17105-3265. Comments are due on or before 10 days after the date of publication of this notice. Copies of the Verizon North, Inc. and Access Point, 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. 07-295. Filed for public inspection February 16, 2007, 9:00 a.m.]

Tentative Order

Public Meeting held
January 26, 2007

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

Buzz Telecom Corporation (2007.0014); Doc. No. A-311216

Tentative Order

By the Commission:

Buzz Telecom Corporation ("Buzz Telecom") has failed to pay its \$62 general assessment for 2006-2007 pursuant to section 510(c) of the Public Utility Code. 66 Pa.C.S. § 510(c). Buzz Telecom is a telecommunications interexchange reseller certificated at A-311216, whose certificate of public convenience was issued on January 15, 2003. On or about August 21, 2006, Commission staff sent an invoice to Buzz Telecom notifying it that its 2006-2007 annual assessment was due. The Commission has not received payment for this invoice. Commission staff has attempted to reach Buzz Telecom, but staff's efforts have been unsuccessful. Further, according to an internet news source, sources at several different state regulatory agencies have reported that Buzz Telecom may

be out of business and that its internet website stopped functioning on December 19, 2006.

The Commission puts the industry on notice that we will not hesitate to invoke our authority under the Public Utility Code to ensure timely compliance with our regulations and orders including the ordering of such other remedy as the Commission may deem appropriate. 66 Pa.C.S. §§ 504, 505, 506 and 3301. Based on the above and because of Buzz Telecom's failure to pay its annual assessment for 2006-2007, we believe it is appropriate to revoke Buzz Telecom's certificate of public convenience without the necessity of a formal complaint, and we tentatively conclude that revocation of Buzz Telecom's certificate of public convenience is in the public interest. Furthermore, the Commission may take other appropriate action, including the imposition of penalties under section 3301, in lieu of cancellation, if Buzz Telecom seeks relief from this Tentative Order; *Therefore,*

It is Ordered That:

1. That revocation of Buzz Telecom's certificate of public convenience is hereby tentatively approved as being in the public interest.

2. That the Secretary serve a copy of this Tentative Order upon the Office of Consumer Advocate, the Office of Small Business Advocate, and the Office of Trial Staff, and also cause a copy of this Tentative Order to be published in the *Pennsylvania Bulletin* with a 30-day comment period.

3. That absent the filing of adverse public comment within 30 days after publication in the *Pennsylvania Bulletin*, this Tentative Order shall become final without further action by the Commission.

4. That upon this order becoming final, and without further action by the Commission, the certificate of public convenience held by Buzz Telecom at A-311216 shall be canceled and Buzz Telecom's name stricken from all active utility lists maintained by the Commission's Bureau of Fixed Utility Services and the assessment section of the Bureau of Administrative Services.

JAMES J. MCNULTY,
Secretary

[Pa.B. Doc. No. 07-296. Filed for public inspection February 16, 2007, 9:00 a.m.]

Tentative Order

Public Meeting held
January 26, 2007

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

Application of PT-1 Long Distance Inc. (2007.0014); Doc. No. A-311008

Tentative Order

By the Commission:

PT-1 Long Distance Inc. (PT-1) has failed to pay its \$255 general assessment for 2006-2007 under 66 Pa.C.S. § 510(c). PT-1 is a telecommunications interexchange reseller certificated at A-311008, whose certificate of public convenience was issued on November 9, 2000. On or about August 21, 2006, Commission staff sent an invoice to PT-1 notifying it that its 2006-2007 annual

assessment was due. The Commission has not received payment for this invoice. Commission staff has attempted to reach PT-1, but staff's efforts have been unsuccessful. Further, Commission records indicate that PT-1 notified the Commission in May 2002 that it had filed a voluntary Chapter 11 bankruptcy petition and that it was transferring its long distance telephone customers to TTI National, Inc. By letter dated January 28, 2003, Secretary McNulty confirmed that the transfer of customers did not require Commission approval. While PT-1 did not subsequently request abandonment of its certificate of public convenience at the time, we believe PT-1 is no longer in business in Pennsylvania.

The Commission puts the industry on notice that we will not hesitate to invoke our authority under the Public Utility Code to ensure timely compliance with our regulations and orders including the ordering of such other remedy as the Commission may deem appropriate. 66 Pa.C.S. §§ 504, 505, 506 and 3301. Based on the above and because of PT-1's failure to pay its annual assessment for 2006-2007, we believe it is appropriate to revoke PT-1's certificate of public convenience without the necessity of a formal complaint, and we tentatively conclude that revocation of PT-1's certificate of public convenience is in the public interest. Furthermore, the Commission may take other appropriate action, including the imposition of penalties under section 3301, in lieu of cancellation, if PT-1 seeks relief from this Tentative Order; *Therefore,*

It Is Ordered That:

1. Revocation of PT-1's certificate of public convenience is hereby tentatively approved as being in the public interest.
2. The Secretary serve a copy of this Tentative Order upon the Office of Consumer Advocate, the Office of Small Business Advocate, and the Office of Trial Staff, and also cause a copy of this Tentative Order to be published in the *Pennsylvania Bulletin* with a 30-day comment period.
3. Absent the filing of adverse public comment within 30 days after publication in the *Pennsylvania Bulletin*, this Tentative Order shall become final without further action by the Commission.
4. That upon this order becoming final, and without further action by the Commission, the certificate of public convenience held by PT-1 at A-311008 shall be canceled,

and PT-1's name stricken from all active utility lists maintained by the Commission's Bureau of Fixed Utility Services and the Assessment Section of the Bureau of Administrative Services.

JAMES J. MCNULTY,
Secretary

[Pa.B. Doc. No. 07-297. Filed for public inspection February 16, 2007, 9:00 a.m.]

STATE BOARD OF NURSING

Bureau of Professional and Occupational Affairs v. Brian A. McCarthy; Doc. No. 1814-51-05

On January 10, 2007, Brian McCarthy, of Bellefonte, Centre County, was denied application for professional nursing license by endorsement based on findings that he had disciplinary action taken against his nursing licenses by the proper licensing authority in other states, committed fraud or deceit in securing his admission to the practice of nursing in Pennsylvania and does not possess the good moral character required for licensure.

Individuals may obtain a copy of the adjudication by writing to Carmen L. Rivera, Board Counsel, State Board of Nursing, P. O. Box 2649, Harrisburg, PA 17105-2649.

This adjudication and order represents the final State Board of Nursing (Board) decision in this matter. It may be appealed to the Commonwealth Court of Pennsylvania by the filing of a petition for review with that court in accordance with the Pennsylvania Rules of Appellate Procedure. Individuals who take an appeal to the Commonwealth Court, must serve the Board with a copy of the petition for review. The Board contact for receiving service of the appeals is the previously named Board counsel.

MARY E. BOWEN, R. N., CRNP
Chairman

[Pa.B. Doc. No. 07-298. Filed for public inspection February 16, 2007, 9:00 a.m.]

STATE CONTRACTS INFORMATION

DEPARTMENT OF GENERAL SERVICES

Act 266 of 1982 provides for the payment of interest penalties on certain invoices of "qualified small business concerns". The penalties apply to invoices for goods or services when payments are not made by the required payment date or within a 15 day grace period thereafter.

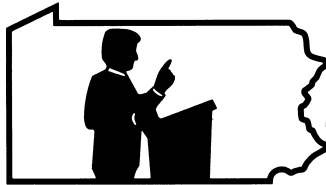
Act 1984-196 redefined a "qualified small business concern" as any independently owned and operated, for-profit business concern employing 100 or fewer employees. See 4 Pa. Code § 2.32. The business must include the following statement on every invoice submitted to the Commonwealth: "(name of business) is a qualified small business concern as defined in 4 Pa. Code 2.32."

A business is eligible for payments when the required payment is the latest of:
 The payment date specified in the contract.
 30 days after the later of the receipt of a proper invoice or receipt of goods or services.
 The net payment date stated on the business' invoice.

A 15-day grace period after the required payment date is provided to the Commonwealth by the Act.

For more information: contact: Small Business Resource Center
 PA Department of Community and Economic Development
 374 Forum Building
 Harrisburg, PA 17120
 800-280-3801 or (717) 783-5700

Reader's Guide



Legal Services & Consultation

① Service Code Identification Number

② Commodity/Supply or Contract Identification No.

B-54137. Consultant to provide three 2-day training sessions, covering the principles, concepts, and techniques of performance appraisal and standard setting with emphasis on performance and accountability, with a knowledge of State Government constraints.

Department: General Services
 Location: Harrisburg, Pa.
 Duration: 12/1/93-12/30/93
 Contact: Procurement Division 787-0000

③ Contract Information

④ Department

⑤ Location

⑥ Duration

⑦

(For Commodities: Contact:)
 Vendor Services Section
 717-787-2199 or 717-787-4705

REQUIRED DATA DESCRIPTIONS

- ① Service Code Identification Number: There are currently 39 state service and contractual codes. See description of legend.
- ② Commodity/Supply or Contract Identification No.: When given, number should be referenced when inquiring of contract of Purchase Requisition. If more than one number is given, each number represents an additional contract.
- ③ Contract Information: Additional information for bid preparation may be obtained through the departmental contracting official.
- ④ Department: State Department or Agency initiating request for advertisement.
- ⑤ Location: Area where contract performance will be executed.
- ⑥ Duration: Time estimate for performance and/or execution of contract.
- ⑦ Contact: (For services) State Department or Agency where vendor inquiries are to be made.
 (For commodities) Vendor Services Section (717) 787-2199 or (717) 787-4705

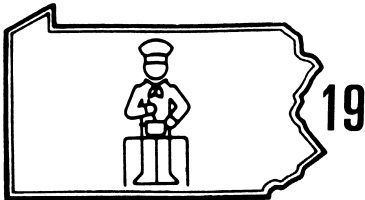
DO BUSINESS WITH STATE AGENCIES

The Treasury Department's Bureau of Contracts and Public Records can help you do business with state government agencies. The bureau is, by law, the central repository for all state contracts over \$5,000. Contract Specialists can supply you with descriptions of contracts, names of previous bidders, pricing breakdowns and other information. They can also direct you to the appropriate person and agency looking for your product or service. Copies of state contracts are also available. (Duplicating and mailing costs may apply). For more information, visit us online at www.patreaury.org.

Contact: **Bureau of Contracts and Public Records**
 Pennsylvania Treasury Department
 201 Finance Building
 Harrisburg, PA 17120
 Phone: (717) 787-2990 or 1-800-252-4700
 Fax: (717) 772-0977

ANTHONY E. WAGNER,
Acting Treasurer
Deputy State Treasurer for Investments and Programs

SERVICES



Food

CN00024717. Produce to be delivered weekly for the month of March 2007. Bidders must have a vendor identification number (SAP) issued by the Commonwealth of Pennsylvania. Bid Opening 02/12/2007 at 2 PM in the Purchasing Office of the State Correctional Institution at Dallas, 1000 Follies Road, Dallas, PA 18612. Delivery to SCI Retreat—660 State Route 11, Hunlock Creek, PA 18621.

Department: Corrections
Location: State Correctional Institution at Retreat, 660 State Route 11, Hunlock Creek, Pa. 18621
Duration: March 1, 2007—March 31, 2007
Contact: Barbara Swiatek, 570-674-2717

CN00024727. Eggs, Frozen, Liquid, Frozen.

Department: Corrections
Location: SCI Huntingdon, 1100 Pike Street, Huntingdon, PA 16654
Duration: March 9, 2007
Contact: Susan Barben, Purchasing Agent, 814-643-2400 Ext. 305

CN00024715. Frozen meats, vegetables, fish, and other frozen foods to be delivered the last week in February 2007 for use in the month of March 2007. All bidders must have a vendor identification number (SAP) issued by the Commonwealth of Pennsylvania. Bid Opening 02/12/2007 at 2:15 PM in the Purchasing Office of the State Correctional Institution at Dallas, 1000 Follies Road, Dallas, PA 18612. Delivery to SCI Retreat, 660 State Route 11, Hunlock Creek, PA 18621.

Department: Corrections
Location: State Correctional Institution at Retreat, 660 State Route 11, Hunlock Creek, PA 18621
Duration: Feb 26, 2007-March 31, 2007
Contact: Barbara Swiatek, 570-674-2717

CN00024813. The State Correctional Institution at Somerset will be soliciting bids for Produce for delivery the month of March 2007. Interested vendors must be registered with the Commonwealth of PA to receive bids and purchase orders and should contact the institution directly for a bid package. Bid opening date is 2/20/07 at 1:00 PM.

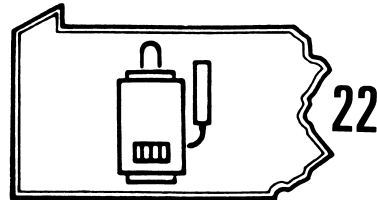
Department: Corrections
Location: State Correctional Institution at Somerset, 1590 Walters Mill Road, Somerset, PA 15510-0001
Duration: 2/5/07 through 3/31/07
Contact: Jackie Albright, Purchasing Agent, (814) 445-6501

CN00024712. Bid Opening Date/Time: February 12, 2007 at 11:00 a.m. Produce: Fresh fruits and vegetables, ready-to-use vegetables. Deliveries will be made weekly on the specified date. MBE/WBE vendors are encouraged to respond. Vendor must be registered with the state of Pennsylvania and have a valid SAP vendor number to submit bid packets. Bid specifications will be available for downloading at ww.w.dgs.state.pa.us

Department: Corrections
Location: Quehanna Boot Camp, 4395 Quehanna Highway, Karthaus PA 16845
Duration: March 1, 2007 through March 31, 2007
Contact: Peggy Baughman, PA2, 814-378-1000 x 1728

CN00024810. Contractor shall furnish and service three meals per day, Monday through Sunday, and an evening snack for residents of the Bureau of Juvenile Justice Services, Youth Forestry Camp #2, White Haven, PA.

Department: Public Welfare
Location: Youth Forestry Camp #2, Hickory Run State Park, RD #1, Box 82, White Haven, PA.
Duration: Approximately 3/1/07 through 12/31/09
Contact: Nikki Koser, Purchasing Agent, 717-789-5508



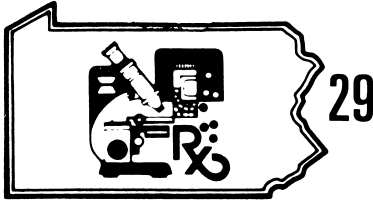
HVAC Services

CN00024726. Hot Water Heat Exchanger Tube Bundles. (2 each) To request a bid package, fax your request to 570-587-7108 on your company letterhead that includes name, address, telephone and fax numbers, Federal ID number and PA State vendor number. If you do not have a PA State Vendor number, one can be obtained by calling: 866-775-2868 or by registering online at: <http://www.vendorregistration.state.pa.us/> Bid packages cannot be faxed.

Department: Public Welfare
Location: Clarks Summit State Hospital, 1451 Hillside Drive, Clarks Summit, PA 18411
Duration: 4/1/07 - 5/15/07
Contact: Stanley Rygelski, PA, 570-587-7291

CN00024646. Dynamic Message Sign maintenance in Engineering District 1-0. Make and location of equipment will be found in the Specifications of the RFQ.

Department: Transportation
Location: Various locations within District 1-0
Duration: This Contract will be for one year with four one year renewals for a total of five years
Contact: Rodney C. Young, 814-678-7186



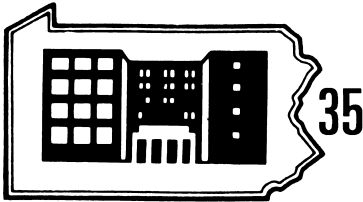
Medical Services

CN00024718. Portable X-Ray Services for Patients of Clarks Summit State Hospital. To request a bid package, please fax your request to 570-587-7108 on your company letterhead that includes your name, address, telephone and fax numbers, Federal ID Number and PA State Vendor Number. If you do not have a PA State Vendor Number, one can be obtained by calling 866-775-2868 and registering online at: <http://www.vendorregistration.state.pa.us/> Bid packages cannot be faxed.

Department: Public Welfare
Location: Clarks Summit State Hospital, 1451 Hillside Drive, Clarks Summit, PA 18411-9505
Duration: April 1, 2006 through May 31, 2011
Contact: Stanley Rygelski, PA, 570-587-7291

CN00024855. Provide Medical Services from a qualified provider for the purpose of carrying out examinations and obtaining a medical evaluation of the employee's ability to utilize respiratory protection equipment, such as respirators, for asbestos abatement, lead paint abatement, and general respirator usage. To request a bid package, please fax your company letterhead to 570-587-7108 that includes your name, address, telephone and fax numbers, federal identification number and PA State Vendor number. If you do not have a PA State vendor number, you can call 866-775-2868 or register online at: <http://vendorregistration.state.pa.us/> Bid packages cannot be faxed.

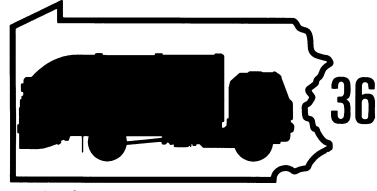
Department: Public Welfare
Location: Clarks Summit State Hospital, 1451 Hillside Drive, Clarks Summit, PA 18411
Duration: July 1, 2007 through June 30, 2012
Contact: Stanley Rygelski, PA, 570-587-7292



Real Estate Services

120ROW01. Notice is hereby given that pursuant to 67 Pa. Code 495.4(d), an application to lease highway right-of-way has been made to the Department of Transportation by The Township of Chartiers, of 2 Buccaneer Drive, Houston, PA 15342, seeking to lease highway right-of-way located at D.B.V. 702 Pg. 9, D.B.V. 1314 Pg. 694, D.B.V. 1191 pg. 253, D.B.V. 817 Pg. 304, D.B.V. 731 Pg. 456, D.B.V. 829 Pg. 107, D.B.V. 786 Pg. 144, D.B.V. 1148 Pg. 304, Chartiers Township, Washington, 93,654 Square Feet, adjacent to SR 1007, formerly acquired for LR 62090, Section 01S, for purposes of a public park. Interested persons are invited to submit, within thirty (30) days from the publication of this notice in the *Pennsylvania Bulletin*, written comments, suggestion and/or objections regarding the approval of this application to Joseph Szczur, P.E., District Executive, Engineering District 12-0, PO Box 459, Uniontown, PA 15401. Questions regarding this application or the proposed use may be directed to: Steven King, Real Estate Technician, PennDot District 12-0, Right of Way Unit, PO Box 459, Uniontown, PA 15401, 724-439-7241.

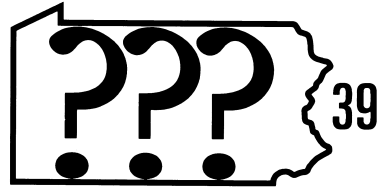
Department: Transportation
Location: Pa. Department of Transportation, Right of Way Unit, PO Box 459, Uniontown, PA 15401, Steven King, Real Estate Technician, 724-439-7241
Duration: n/a
Contact: Steven King, 724-439-7241



Sanitation

CN00024829. The State Correctional Institution at Somerset will be soliciting bids for garbage removal. Interested vendors must be registered with the Commonwealth to receive bids and purchase orders and should contact the institution directly for a bid package. Bidding vendors must be located in a proximity that will allow for multiple weekly pick-ups and must use one of the landfills designated by Somerset County. Tentative bid due date will be 3/9/07 at 1PM.

Department: Corrections
Location: State Correctional Institution at Somerset, 1590 Walters Mill Road, Somerset, PA 15510-0001
Duration: 7/1/07 through 6/30/10
Contact: Theresa Solarczyk, Purchasing Agent II, 814-445-6501 x1232



Miscellaneous

CN# 00022839. Contractor shall provide the Pennsylvania Department of Health with training facilities for the Training Institute in Centre County, Pennsylvania. The Contractor will provide a central location in the state for the Institute. This will aid travelers from North, South, East, and West parts of the Commonwealth to come to a central location. Historically, there has been a greater attendance in central locations. With the continuing growth of the Institute because of recent successes, there is a larger turnout expected than in previous years. The location must be able to accommodate a maximum of 600 participants with a minimum of fifteen breakout rooms for each of the five days. Contractor shall provide the Department of Health with a minimum of five days of meals, three meals per day, for selected staff and trainers. Contractor will receive a list of the selected staff and trainers from the PHI Planning Committee. All other training participants shall pay for their own meals. There will be one evening reception during the week from 5:00 p.m. to 8:00 p.m., day to be decided later. Except for unit prices, total costs and quantities are estimates. Unit prices are firm. The Pennsylvania Department of Health will only pay for those services received, and charges will only be for those services utilized. Services are scheduled for May 18–25, 2007. All Bids must arrive prior to the Bid opening date and time to be considered, and become property of the Commonwealth once submitted. Prospective vendors must register with the Integrated Enterprise System (IES) at www.vendorregistration.state.pa.us or by calling the toll free number 1-866-775-2868. Registered vendors who need to update or change the existing information in this file must contact IES and provide the changes or updates to IES.

Department: Health
Location: Central location in Pennsylvania
Duration: May 18–25, 2007
Contact: Donna Hawkins, 717-346-0640

SU-06-12. SU-06-12 Perkins, National Direct/Defense Student Loan Billing. Shippensburg University is seeking vendors interested in providing a proposal for student loan billing and support services consistent with Federal regulations and US Office of Education guidelines. Vendors interested in obtaining a proposal package should fax request to 717-477-4004, Attn: Deborah K. Martin, Shippensburg University, 1871 Old Main Drive, Shippensburg, PA 17257 or Email request to DKMART@ship.edu.

Department: State System of Higher Education
Location: Shippensburg, PA
Duration: One year contract from 1 Jul 07 thru 30 Jun 08, with the option to renew for four additional one year periods.
Contact: Deborah K. Martin, 717-477-1121

SWIF03-2007. State Workers' Insurance Fund is seeking the services of an Offeror to advise SWIF with respect to its reinsurance needs and to design, negotiate, secure and monitor reinsurance coverage. A copy of this RFP will be available at www.dgsweb.state.pa.us/comod/main.asp

Department: Labor and Industry
Location: SWIF, 100 Lackawanna Avenue, Scranton, PA 18503
Duration: 3 year contract period with 2-one year renewals.
Contact: Joe Dorbad, 570-941-1994

[Pa.B. Doc. No. 07-299. Filed for public inspection February 16, 2007, 9:00 a.m.]

DESCRIPTION OF LEGEND

- | | |
|--|---|
| <p>1 Advertising, Public Relations, Promotional Materials</p> <p>2 Agricultural Services, Livestock, Equipment, Supplies & Repairs: Farming Equipment Rental & Repair, Crop Harvesting & Dusting, Animal Feed, etc.</p> <p>3 Auctioneer Services</p> <p>4 Audio/Video, Telecommunications Services, Equipment Rental & Repair</p> <p>5 Barber/Cosmetology Services & Equipment</p> <p>6 Cartography Services</p> <p>7 Child Care</p> <p>8 Computer Related Services & Equipment Repair: Equipment Rental/Lease, Programming, Data Entry, Payroll Services, Consulting</p> <p>9 Construction & Construction Maintenance: Buildings, Highways, Roads, Asphalt Paving, Bridges, Culverts, Welding, Resurfacing, etc.</p> <p>10 Court Reporting & Stenography Services</p> <p>11 Demolition—Structural Only</p> <p>12 Drafting & Design Services</p> <p>13 Elevator Maintenance</p> <p>14 Engineering Services & Consultation: Geologic, Civil, Mechanical, Electrical, Solar & Surveying</p> <p>15 Environmental Maintenance Services: Well Drilling, Mine Reclamation, Core & Exploratory Drilling, Stream Rehabilitation Projects and Installation Services</p> <p>16 Extermination Services</p> <p>17 Financial & Insurance Consulting & Services</p> <p>18 Firefighting Services</p> <p>19 Food</p> <p>20 Fuel Related Services, Equipment & Maintenance to Include Weighing Station Equipment, Underground & Above Storage Tanks</p> <p>21 Hazardous Material Services: Abatement, Disposal, Removal, Transportation & Consultation</p> | <p>22 Heating, Ventilation, Air Conditioning, Electrical, Plumbing, Refrigeration Services, Equipment Rental & Repair</p> <p>23 Janitorial Services & Supply Rental: Interior</p> <p>24 Laboratory Services, Maintenance & Consulting</p> <p>25 Laundry/Dry Cleaning & Linen/Uniform Rental</p> <p>26 Legal Services & Consultation</p> <p>27 Lodging/Meeting Facilities</p> <p>28 Mailing Services</p> <p>29 Medical Services, Equipment Rental and Repairs & Consultation</p> <p>30 Moving Services</p> <p>31 Personnel, Temporary</p> <p>32 Photography Services (includes aerial)</p> <p>33 Property Maintenance & Renovation—Interior & Exterior: Painting, Restoration, Carpentry Services, Snow Removal, General Landscaping (Mowing, Tree Pruning & Planting, etc.)</p> <p>34 Railroad/Airline Related Services, Equipment & Repair</p> <p>35 Real Estate Services—Appraisals & Rentals</p> <p>36 Sanitation—Non-Hazardous Removal, Disposal & Transportation (Includes Chemical Toilets)</p> <p>37 Security Services & Equipment—Armed Guards, Investigative Services & Security Systems</p> <p>38 Vehicle, Heavy Equipment & Powered Machinery Services, Maintenance, Rental, Repair & Renovation (Includes ADA Improvements)</p> <p>39 Miscellaneous: This category is intended for listing all bids, announcements not applicable to the above categories</p> |
|--|---|

JAMES P. CREEDON,
Secretary

RULES AND REGULATIONS

Title 25—ENVIRONMENTAL PROTECTION

ENVIRONMENTAL QUALITY BOARD

[25 PA. CODE CH. 123]

Standards for Contaminants; Mercury

The Environmental Quality Board (Board) amends Chapter 123 (relating to standards for contaminants) to read as set forth in Annex A. The purpose of this final-form rulemaking is to establish "State-specific" requirements to reduce mercury emissions from coal-fired electric generating units (EGUs) with a nameplate rated capacity of 25 megawatts or more that produce electricity for sale. The final-form rulemaking establishes mercury emission standards, annual emission limitations as part of a Statewide annual nontradable mercury allowance program and monitoring, recordkeeping and reporting requirements to reduce mercury emissions from coal-fired EGUs or cogeneration units. This final-form rulemaking will be submitted to the United States Environmental Protection Agency (EPA) as an element of the State Plan required under section 111(d) of the Clean Air Act (CAA) (42 U.S.C.A. § 7411(d)).

This order was adopted by the Board at its meeting of October 17, 2006.

A. *Effective Date*

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

B. *Contact Persons*

For further information, contact Krishnan Ramamurthy, Chief, Division of Compliance and Enforcement, Bureau of Air Quality, 12th Floor, Rachel Carson State Office Building, P. O. Box 8468, Harrisburg, PA 17105-8468, (717) 783-9476; or Robert "Bo" Reiley, Assistant Counsel, Bureau of Regulatory Counsel, 9th Floor, Rachel Carson State Office Building, P. O. Box 8464, Harrisburg, PA 17105-8464, (717) 787-7060.

C. *Statutory Authority*

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

D. *Background and Summary*

1. *Legal and Regulatory History Regarding the Control of Mercury Emissions*

Mercury is a highly toxic pollutant—one specifically targeted by Congress when, in 1990, it amended section 112 of the CAA (42 U.S.C.A. § 7412). The environmental impacts of mercury are significant, widespread and adverse.

Under the 1990 amendments to the CAA, Congress altered the principle focus of the hazardous air pollutants (HAPs) program under section 112 of the CAA from a health-based to a technology-based regulatory program. As part of this new regulatory focus, under section 112(b) of the CAA, Congress listed 189 HAPs. Those chemicals chosen to be regulated as HAPs under the CAA by Congress are especially harmful to public health and the

environment. These chemicals are known to cause cancer, birth defects, lung disease, nervous system disorders, liver damage and other health problems. Many of these chemicals are also known to bioaccumulate in living organisms and become more concentrated at higher levels in the food chain.

Congress chose to regulate and reduce HAP emissions through a technology-based standard rather than a health-based standard because the former is more effective in reducing emissions. The control of HAPs through health-based standards by the EPA under the pre-1990 CAA amendments resulted in serial litigation with industry and regulatory paralysis at the agency. Moreover, the EPA had a difficult time conducting the necessary risk analysis and ambient air quality analysis to list pollutants and establish emission standards. As a result, Congress concluded that a technology-based approach was appropriate because routine and episodic releases of HAPs posed a significant threat to public health; the risk of adverse health effects related to these emissions were significant; and HAPs may cause significant environmental damage. See S. COMM. REP. NO. 101-228 at 132 (Report on S. 1630, Clear Air Amendments of 1989.)

Under section 112(c) of the CAA, the EPA was required to establish a list of all categories and subcategories of major and area sources of air pollution for those pollutants listed under subsection (b). For each listed category of sources, the EPA is required, under section 112(d) of the CAA, to promulgate standards requiring the installation of maximum achievable control technology (MACT) in light of economic, energy and environmental considerations.

The EPA is required to base the standard on the best technology currently available for the source category in question. These standards must be at least as stringent as the level achieved in practice by the best-controlled source in the source category for new sources or for the best performing group of sources for existing source MACT standards. For existing source MACT standards, the EPA defines the "MACT floor" (the minimum stringency level for existing source MACT) in terms of the central tendency (arithmetic mean or median) of the best 12% of sources in the source category (where there are 30 or more sources in the category) or the best performing 5 sources (where there are fewer than 30 sources in the category).

As part of this MACT process, the EPA has already finalized mercury emission limits for municipal waste combustors and medical waste incinerators, which resulted in a 90% reduction in mercury emissions within 5 years. However, Congress set forth additional regulatory steps before mercury emissions from EGUs could be controlled.

Under section 112(n)(1)(A) of the CAA, Congress directed the EPA to perform a study of the hazards to public health reasonably anticipated to occur as a result of emissions of HAPs by EGUs. Under this same subparagraph, the EPA is further directed to regulate these units if the agency finds regulation is appropriate and necessary after considering the results of the study.

In addition to this section of the CAA, section 112(n)(1)(B) of the CAA further directs the EPA to conduct a study of mercury emissions from EGUs, municipal waste combustion units and other sources to consider the rate and mass of these emissions, the health and environ-

mental effects of these emissions, control technologies and the costs of these technologies.

In December of 1997, the EPA fulfilled the statutory directive of section 112(n)(1)(B) of the CAA when it issued its "Mercury Study Report to Congress," EPA-452/R-97-003. This 1,800-page, 8-volume report discusses the National inventory of anthropogenic mercury emissions in the United States, the fate and transport of mercury in the environment, an assessment of exposure to mercury in the United States, health effects of mercury and mercury compounds, an ecological assessment for anthropogenic mercury emissions in the United States, characterization of human health and wildlife risks from mercury in the United States and an evaluation of mercury control technologies and costs.

On February 28, 1998, the EPA fulfilled its statutory obligation, under section 112(n)(1)(A) of the CAA, when it released its "Study of Hazardous Air Pollutant Emissions from Electric Steam Generating Units—Final Report to Congress." This Utility Air Toxics Study issued in February 1998 evaluated EGUs that burn coal, oil or gas to generate electricity and are greater than 25 megawatts in size. This study includes the description of the utility industry; an analysis of air toxics emissions data from fossil-fuel (coal, oil and gas) fired utilities; an assessment of risks to public health from exposure to toxics emissions through inhalation; assessment of potential risks to the public health from exposure to four specific air toxics (radio nuclides, mercury, arsenic and dioxins) through other indirect means of exposure (for example, food ingestion, dermal absorption); a general assessment of the fate and transport of mercury through environmental media; and a discussion of alternative control strategies.

December 20, 2000, the EPA concluded, based upon the findings of its 1998 report and on information subsequently obtained, that in accordance with section 112(n)(1)(A) of the CAA, the regulation of mercury emissions from electric utilities was "appropriate and necessary" 65 FR 79825. As a result of these findings, the EPA added these units to the list of source categories to be regulated under section 112(c) of the CAA. The EPA was then required to establish emission standards for this source category under section 112(d) of the CAA.

The EPA published a final rule at 70 FR 15993 (March 29, 2005) entitled "Revision of December 2000 Regulatory Finding on the Emissions of Hazardous Air Pollutants From Electric Utility Steam Generating Units and the Removal of Coal- and Oil-Fired Electric Utility Steam Generating Units From the Section 112(c) List." The EPA now believes that it is neither appropriate nor necessary to regulate mercury from these units under section 112 of the CAA.

As a result of this conclusion, the EPA removed coal- and oil-fired EGUs from the Section 112(c) list. This final action means that the EPA does not have to promulgate MACT standards for the control of mercury emissions from utility units. This action also cleared the way for the EPA to regulate these emissions under a Section 111 cap-and-trade approach.

On March 15, 2005, the EPA finalized the Clean Air Mercury Rule (CAMR). The final rulemaking published at 70 FR 28606 (May 18, 2005) established standards of performance for mercury for new and existing coal-fired EGUs as defined in section 111 of the CAA. New EGUs are subject to different standards of performance based on five subcategories—subbituminous, bituminous, lignite, waste coal or integrated gasification combined cycle

(IGCC). The CAMR establishes a "cap-and-trade" program by which mercury emissions from new and existing coal-fired EGUs are capped at specified, Nationwide levels. The Phase 1 cap of 38 tons per year (tpy) becomes effective in 2010 and the Phase 2 cap of 15 tpy becomes effective in 2018. Facility owners and operators must demonstrate compliance with the standard by holding one "allowance" for each ounce of mercury emitted in any given year. Allowances will be readily transferable among all regulated facilities under the Section 111 trading scheme.

In response to the EPA's March 29, 2005, revision and the CAMR, petitions for review challenging these final agency actions were filed with the United States Court of Appeals for the D.C. Circuit. In addition to the Commonwealth, state challengers include California, Connecticut, Delaware, Illinois, Maine, Massachusetts, New Hampshire, New Mexico, New Jersey, New York, Rhode Island, Vermont and Wisconsin.

On May 31, 2005, the Commonwealth, together with the States of California, Connecticut, Delaware, Illinois, Maine, Massachusetts, New Hampshire, New Jersey, New Mexico, New York, Minnesota, Rhode Island, Vermont and Wisconsin, filed a petition for reconsideration under section 307(d)(7)(B) of the CAA (42 U.S.C.A. § 7607(d)(7)(B)) related to the EPA's March 29, 2005, final action revising its December 2000 regulatory finding. Issues related to this petition included, but were not limited to, whether the EPA's action is contrary to the CAA and supported by the record and whether the procedural requirements under the Administrative Procedures Act and the CAA were followed.

On July 18, 2005, the Commonwealth, together with these same states, filed a petition for reconsideration under section 307(d)(7)(B) of the CAA related to the CAMR. Issues related to this petition included, but were not limited to, the setting of new source performance standards (NSPS) standards based on subcategories of coal, the cost-benefit analysis, air quality modeling and provisions concerning the 2010 cap on mercury emissions.

On October 28, 2005, the EPA granted reconsideration on both petitions and reopened the public comment period related to certain issues under both final actions. *See* 70 FR 62200 and 62213 (October 28, 2005).

On December 19, 2005, the Commonwealth and the other states filed comments on these reconsideration actions. Issues related to these reconsideration notices included, but were not limited to, the EPA's legal interpretations, the EPA's methodology and conclusions concerning reasonably anticipated hazards to public health resulting from EGU mercury emissions, modeling of mercury deposition, costs, NSPS standards and statistical analysis used for the NSPS standards.

On June 9, 2006, after considering the petitions for reconsideration and the comments received, the EPA decided not to further revise the CAMR other than to explain in more detail what the agency meant by the effectiveness element in the term "necessary" 70 FR 33388. The only two substantive changes the EPA made to the CAMR in response to comments involve revisions to the state mercury allocations and to the NSPS. The EPA also finalized the regulatory text that clarifies the applicability of the CAMR to municipal waste combustors and certain industrial boilers. Finally, the EPA denied the requests for reconsideration with respect to all other issues raised in the petitions for reconsideration submitted for both rules.

Section 111(c) and (d) of the CAA requires each state to develop and submit to the EPA Administrator a procedure for implementing and enforcing the NSPS for new sources and emission guidelines for existing sources. Specifically, the EPA authorizes states, under the CAMR, to adopt the mercury cap-and-trade program whether by incorporating by reference the CAMR cap-and-trade rule that will be codified in 40 CFR Part 60, Subparts Da and HHHH (relating to standards of performance for electric utility steam generating units for which construction is commenced after September 18, 1978; and emission guidelines and compliance times for coal-fired electric steam generating units), or by codifying the provisions of the CAMR cap-and-trade rule, to participate in the EPA-administered mercury cap-and-trade program. The final CAMR establishes the Commonwealth's 2010-2017 mercury emissions budget as 1.77 tons and the 2018 budget as 0.702 ton.

Each state participating in the EPA-administered cap-and-trade program must develop a method for allocating an amount of allowances authorizing the emissions tonnage of the state's CAMR budget. Each state has the flexibility to allocate its allowances however it chooses, so long as certain timing requirements are met. States may elect to participate in the EPA-managed cap-and-trade program for coal-fired EGUs. However, state participation in this program is voluntary. For states that elect not to participate in the EPA-administered mercury cap-and-trade program, a methodology must be established by the states to meet the CAMR mercury emission budgets by reducing mercury emissions.

By November 17, 2006, states must submit a plan to the EPA to implement the requirements of the CAMR or a more protective program. If a state fails to submit a state plan, as required in the final rule, the EPA will prescribe a Federal plan for that state under section 111(d)(2)(A) of the CAA. The EPA would propose the model rule under the CAMR as that Federal plan. However, the EPA has indicated in the preamble to the final rule that states are free to develop a more stringent mercury control program than the one in the final rule.

The Department of Environmental Protection (Department) held three public hearings on the proposed State Plan for designated EGU facilities. See 36 Pa.B. 4269 (August 5, 2006). On September 6, 2006, public hearings were held at two Department regional offices in Norristown and Pittsburgh and at the Rachel Carson State Office Building in Harrisburg. This final-form rulemaking will be submitted to the EPA as the State Plan to fulfill the Commonwealth's requirements under the CAMR for new and existing EGUs.

2. Anthropogenic Sources of Mercury Emissions

Since the beginning of the industrial age, human activities have increased the amount of mercury releases to the environment. Today in the United States, the combustion of coal at coal-fired power plants represents the largest source category of mercury emissions at approximately 43%. The second largest category after coal-fired power plants is electric arc furnaces at 10%.

This Commonwealth has 36 coal-fired power plants with 78 EGUs that represent approximately 20,000 megawatts of capacity. These units accounted for approximately 78% of the more than 5 tons of mercury emitted into the air from all contamination sources in this Commonwealth, ranking this Commonwealth second only to Texas in terms of total mercury emissions and third behind Texas and Ohio, respectively, for EGU-specific

mercury emissions in 2003. The Commonwealth's next largest source of mercury emissions is the stone/clay/glass category, which accounts for almost 9% of the total.

The primary reason that coal-fired power plants represent such a large percentage of mercury emissions in the United States and this Commonwealth is because this source category is unregulated for this type of emissions. While both the National and Pennsylvania figures show that coal-fired power plants emit a disproportionate amount of mercury, mercury emissions from coal-fired power plants in this Commonwealth are disproportionate to the National figure. Therefore, the Board believes that it is important to ensure that uncontrolled mercury emissions from the EGU source category are regulated as intended by Congress under the CAA.

3. The Mercury Cycle in the Environment

Mercury cycles throughout the environment are a consequence of both natural and human activities. The annual global cycling of mercury in the earth's atmosphere amounts to about 5,000 tons. It is estimated that 4,000 tons are the consequence of anthropogenic activities. The United States is responsible for 3% of global anthropogenic emissions. Mercury in the air eventually settles into water or onto land where it can be washed into water. Once deposited, certain microorganisms can change it into methylmercury, a highly toxic form that builds up in fish, shellfish and animals that eat fish. Methylmercury builds up more in some types of fish and shellfish than others. The levels of methylmercury in fish and shellfish depend on what they eat, how long they live and how high they are in the food chain. Fish and shellfish are the main sources of methylmercury exposure to humans. Because the developing fetus may be the most sensitive to the effects from methylmercury, women of childbearing age are regarded as the population of greatest interest.

4. Mercury Deposition in this Commonwealth's Environment

The mercury in the flue gas of EGUs can be characterized as being in two forms: ionic (oxidized) or elemental. The ability of an air pollution control system to capture the mercury is dependent, in part, on the species of the mercury in the flue gas. When the coal is burned in an electric utility boiler, the resulting high combustion temperatures vaporize the mercury in the coal to form gaseous elemental mercury (Hg^0). Subsequent cooling of the combustion gases and interaction of the gaseous Hg^0 with other combustion products results in a portion of the Hg being converted to gaseous ionic or oxidized forms of mercury (Hg^{+2}) and particle bound mercury (Hg_p). The lifetime of elemental mercury (Hg^0) in the atmosphere is estimated to be up to 1 year, while ionic forms have a lifetime of only a few days because of particulate settling and solubility. Hg^0 can be transported over transcontinental distances, whereas Hg^{+2} and Hg_p forms are deposited near their source. Coal-fired power plants that burn bituminous coal emit oxidized forms of mercury. In this Commonwealth, 85% of the coal burned by coal-fired power plants is bituminous, with the remainder waste coal. In this Commonwealth, on a Statewide average, the exhaust gas split of the three forms of mercury is as follows: 5.93% Hg_p ; 59.99% Hg^{+2} ; and 34.08% Hg^0 . The percentage of Hg^{+2} emitted in this Commonwealth is higher than the National average. Consequently, coal-fired power plants in this Commonwealth are more likely to cause local deposition.

On April 27, 2005, preliminary results from the EPA-funded "Steubenville Mercury Deposition Source Appor-

tionment Study” were released. This study found that nearly 70% of the mercury in rain collected at an Ohio River Valley monitoring site originated from nearby coal-burning industrial plants. See “Sources of Mercury Wet Deposition in Eastern Ohio, USA,” Keeler, et al. *Environ. SciTechol* 40(19)5874-5881 (2006). Also, according to the Goddard Earth Observing System-Chem modeling and Community Multi-scale Air Quality modeling results for 2001, the mercury deposition attributable to United States EGUs in the eastern portion of the country is generally 1–5 $\mu\text{g m}^{-2}$ range. However, in the eastern United States, there is a large area in the Ohio River Valley with EGU attributable mercury depositions in the 5-10 $\mu\text{g m}^{-2}$ range and a much smaller area in the 10-15 $\mu\text{g m}^{-2}$ range. United States EGUs attributable mercury depositions over 20 $\mu\text{g m}^{-2}$ are found in parts of this Commonwealth. It is in this Commonwealth where the maximum percentage of utility attributable deposition of 71% compared to total deposition from all sources occurs. See “Mercury Deposition Modeling with the Community Multi-scale Air Quality (CMAQ) Model for the Clean Air Mercury Rule (CAMR),” Thomas N. Braverman, United States Environmental Protection Agency, Office of Air Quality Planning and Standards, Mail Code C439-01, Research Triangle Park, NC 27711, Poster Session, 8th International Conference on Mercury as a Global Pollutant, June 2006. These and other studies confirm the Board’s conclusion that the mercury speciation trends for this Commonwealth tend to favor the likelihood of higher local mercury deposition than that for the National average.

5. Mercury in this Commonwealth’s Environment

Accumulation of mercury in aquatic ecosystems has resulted in 45 states, including this Commonwealth, issuing fish consumption advisories. The Commonwealth has fish consumption advisories for mercury in approximately 80 waterways across this Commonwealth, which include the Delaware, Ohio, Potomac and Susquehanna River Basins and the Lake Erie Basin. Mercury fish advisories account for 60% of the fish consumption advisories throughout this Commonwealth.

The Department has reviewed the mercury tissue concentration of fish in water bodies in this Commonwealth from 1999 to 2004. The highest fish concentration of mercury was 1.564 ppm in walleye found at Lake Wallenpaupack. The lowest fish concentration of mercury was 0.036 ppm found in brown trout in the Delaware River near State Route 191. Of the approximately 187 sampling sites, 100 sites found fish tissue concentrations of 0.32 ppm or more which has an EPA risk-based consumption limit of no more than 2 meals per month.

The Department has mapped the location of the active, and in some cases, inactive power plants in this Commonwealth together with the mercury concentration found in fish. For example, the Department has identified 4 sampling sites with fish tissue concentrations in the 0.30 to 0.89 ppm range within a 50-mile radius of the Shawville power plant in Clearfield County. This data suggests a correlation between higher mercury fish concentrations and power plants within a 50-mile radius from the sampling sites. Also, this data lends strong support to the Department’s concern that coal-fired power plants that burn bituminous coal emit ionic forms of mercury, which are deposited near their source. As a result, the Board has concluded that mercury contamination is ubiquitous across this Commonwealth and should be reduced.

6. Health Effects of Mercury

Mercury is a dangerous reproductive and neurological toxicant. It can affect the brain, spinal cord, kidneys and liver. High exposure levels to mercury can affect the ability to feel, see and taste and has the potential to limit mobility. A study by the National Academy of Sciences (NAS) concluded that human exposure to methylmercury from eating contaminated fish and seafood is associated with adverse neurological and developmental health effects. Women of childbearing age and pregnant women are of special concern in terms of methylmercury exposure. Methylmercury exposure prior to pregnancy can actually place the developing fetus at risk because methylmercury persists in body tissue and is only slowly excreted from the body. Furthermore, according to the NAS, chronic low-dose prenatal methylmercury exposure has been associated with poor performance on neurobehavioral tests in children, including tests that measure attention, visual spatial ability, verbal memory, language ability, fine motor skills and intelligence. Adults can be affected by high mercury exposures as well, with effects on the nervous system and impaired vision and hearing.

In the EPA’s Mercury Study Report to Congress (1997), the EPA estimated that 7% of women of childbearing age would have blood mercury concentrations greater than those equivalent to the Reference Dose (RfD). The estimate of 7% of women of childbearing age above the RfD was based on patterns of fish and shellfish consumption and methylmercury concentrations present in fish and shellfish. Blood mercury analyses in the 1999-2000 National Health and Nutrition Examination Survey (NHANES) for 16- to 49-year old women showed that approximately 8% of women in the survey had blood mercury concentrations greater than 5.8 $\mu\text{g/L}$ (which is a blood mercury level equivalent to the current RfD). Based on this prevalence for the overall population of women of reproductive age in the United States and the number of births each year in the United States, it is estimated that more than 300,000 newborns each year may have increased risk of learning disabilities associated with in utero exposure to methylmercury.

To determine levels of total blood Hg in childbearing-aged women and in children 1 to 5 years of age in the United States, the CDC’s NHANES began measuring blood Hg levels in these populations in 1999. The NHANES is a continuous survey of the health and nutritional status of the civilian, noninstitutionalized U.S. population; data are released and reported in 2-year cycles. NHANES results for 1999–2002 confirmed that blood mercury levels in young children and women of childbearing age usually are below levels of concern. However, approximately 6% of childbearing-aged women had levels at or above an RfD.

One area in which the toxicokinetic data have been consistent is the finding that methylmercury is actively transferred to the fetus across the placenta by means of neutral amino acid carriers during gestation. Although maternal and cord blood mercury concentration is highly correlated, cord-blood mercury is consistently higher than the corresponding maternal concentration with an average ratio of about 1.7. Consequently, for biomonitoring of adult women’s blood methylmercury commonly used as a surrogate for potential fetal exposure, the corresponding fetal level will be, on average, 70% higher than maternal blood and up to three times higher at the 95th percentile. The maternal body burden of methylmercury tends to

decrease during gestation, consistent with hemodilution and a transfer of a portion of the maternal body burden to the fetus.

Recent separate studies by *Stern, et al.*, (2006), *Trasande et al.*, (2005) and *Mahaffey, et al.*, (2004) suggest that even the EPA-established RfD is too high. According to Trasande, there is no evidence to date validating the existence of a threshold blood mercury concentration below which adverse effects on cognition are not seen. See Leonardo Trasande, *et al.*, "Public Health and Economic Consequences of Methylmercury Toxicity to the Developing Brain," *Environmental Health Perspectives*, 113:590-596 (2005). Stern in his 2006 presentation at the 8th International Conference on Mercury as a Global Pollutant entitled "An Estimate of the Population Variability in the Relationship Between Cord Blood Mercury and Maternal Methylmercury Intake" found that the EPA RfD should be reduced by 33%. See also *Stern, et al.*, "An Assessment of the Cord Blood Maternal Blood Methylmercury Ratio: Implications for Risk Assessment," *Environmental Health Perspectives* 111:1465-1470 (2003). In January 2004, an EPA researcher estimated that at least 7.8% (and possibly as many as 15.7%) of women of childbearing age had blood mercury levels high enough that approximately 630,000 newborns may be at risk from the adverse effects of mercury. Kathryn R. Mahaffey, Ph.D., "Methylmercury: Epidemiology Update" (January 26, 2004).

Additionally, Congress declared that the HAPs listed under section 112(b) of the CAA pose a significant threat to public health; the risk of adverse health effects related to these emissions were significant; and HAPs may cause significant environmental damage.

Because of these and other studies, the Board has determined that methylmercury is a public health concern for the developing fetus, women of childbearing age, young children and adults. Moreover, the Board has determined that a reduction in the amount of mercury and methylmercury in the environment would improve local ecosystems and public health, especially the health of developing fetuses, young children and women of childbearing age.

7. Cost Benefit Studies Related to Mercury Emissions

The Northeast States for Coordinated Air Use Management (NESCAUM) sponsored a report analyzing the cost savings and public health benefits of controlling mercury emissions from power plants. NESCAUM, *Economic Valuation of Human Health Benefits of Controlling Mercury Emissions from U.S. Coal-fired Power Plants* (February 2005) (Harvard Study). The Harvard Study reveals that the EPA miscalculated the "nature of the risk involved" by underestimating the public health benefits of reducing mercury. Specifically, the Harvard Study indicates that the public benefit of reducing power plant mercury emissions to 15 tpy ranges from \$119 million annually (if only persistent IQ deficits from fetal exposures to methylmercury are counted) to as much as \$5.2 billion annually (if IQ deficits, cardiovascular effects and premature mortality are all counted).

The May 2005 edition of *Environmental Health Perspectives* indicates that the EPA underestimated the health benefits to be gained from reducing mercury. In one study, scientists from the Mount Sinai School of Medicine examined National blood mercury prevalence data from the CDC and found that between 316,588 and 637,233 children each year have cord blood mercury levels greater than 5.8 micrograms per liter—the level associated with

loss of IQ. See Leonardo Trasande, *et al.*, "Public Health and Economic Consequences of Methylmercury Toxicity to the Developing Brain," 113 *Environmental Health Perspectives*, No. 5 (May 2005). They estimated that the resulting loss of intelligence and diminished economic activity amounted to \$8.7 billion annually, with \$1.3 billion each year being directly attributable to mercury emissions from power plants. The scientists further caution that these costs will recur each year with each new birth cohort as long as mercury emissions are not controlled.

Trasande and his colleagues have further concluded that their calculations on economic cost may, in fact, be an underestimate. See "Mental retardation and prenatal methylmercury toxicity," *Am. J. Ind. Med.* 2006 Mar; 49(3):153-8. Downward shifts in IQ resulting from prenatal exposure to methylmercury of anthropogenic origin are associated with 1,566 excess cases of mental retardation annually (range: 376—14,293). This represents 3.2% of mental retardation cases in the United States (range: 0.8%—29.2%). The mental retardation costs associated with decreases in IQ in these children amount to \$2.0 billion/year (range: \$0.5—\$17.9 billion). Mercury from American power plants accounts for 231 of the excess mental retardation cases/year (range: 28—2,109), or 0.5% (range: 0.06%—4.3%) of all mental retardation. These cases cost \$289 million (range: \$35 million—\$2.6 billion). Therefore, Trasande concludes that toxic injury to the fetal brain caused by mercury from coal-fired power plants exacts a significant human and economic toll on American children. These conclusions have been peer-reviewed.

It should also be noted, as previously discussed, under the 1990 amendments to the CAA, Congress ended the debate regarding the development of risk analyses for HAPs. Congress concluded that a technology-based approach was appropriate because routine and episodic releases of HAPs posed a significant threat to public health; the risk of adverse health effects related to these emissions were significant; and HAPs may cause significant environmental damage. As a result, HAP emissions must be regulated to the maximum extent possible. Therefore, the Board concludes that the benefits of regulating mercury emissions from coal-fired power plants in this Commonwealth outweigh the costs associated with that regulation.

8. Federal Analysis Related to the CAMR

On February 3, 2005, the EPA's Office of Inspector General (OIG) published an Evaluation Report: "Additional Analyses of Mercury Emissions Needed before EPA Finalizes Rules for Coal-Fired Electric Utilities." The EPA's OIG found that the EPA's cap-and-trade proposal failed to adequately address the potential for hotspots of mercury pollution. The OIG also found evidence that, instead of basing its proposed MACT standard on an unbiased determination under section 112(d) of the CAA of what mercury emission rates the top performing units were achieving, EPA staff followed orders from EPA senior management and simply set the MACT standard at a rate that would result in National emissions of 34 tons annually. Finally, the OIG found that the EPA's rule development process did not comply with certain Agency and Executive Order requirements, including fully analyzing the costs/benefits of regulatory alternatives and fully assessing the rule's impact on children's health. The OIG recommended that the EPA conduct additional analyses of mercury emissions data, strengthen its cap-and-

trade proposal, assess the costs/benefits of regulatory alternatives to its proposal and fully explore potential impacts to children's health.

In February 2005, the United States Government Accountability Office (GAO) issued a report to Congressional requesters entitled "Clean Air Act: Observations on EPA's Cost-Benefit Analysis of Its Mercury Control Options." The GAO concluded that the EPA's economic analysis of its proposed mercury control options had four major shortcomings: it failed to document some of its analysis; it failed to follow Office of Management and Budget guidance; it did not estimate the value of health benefits that would result from decreased mercury emissions; and it failed to analyze some of the key uncertainties underlying its cost/benefit estimates. The GAO concluded that, as a result of these shortcomings, the EPA's cost/benefit estimates are not comparable and are of limited use for assessing the economic trade-offs of the different options for controlling mercury.

On April 15, 2005, the Congressional Research Service developed a report entitled "Mercury Emissions from Electric Power Plants: An Analysis of EPA's Cap-and-Trade Regulations." Among other things, this report found that the CAMR would allow utilities to delay full compliance with the 70% reduction until well beyond 2018, as they use up banked allowances rather than install further controls. The EPA's analysis projects actual emissions to be 24.3 tons as late as 2020 (less than a 50% reduction compared to baseline 1999 emissions). The report further found that it appears that full compliance with the 70% reduction might be delayed until 2030.

In a May 15, 2006, report entitled "Monitoring Needed to Assess Impact of EPA's Clean Air Mercury Rule on Potential Hotspots," the EPA OIG found several uncertainties associated with key variables in the analysis could affect the accuracy of the EPA's conclusion that the CAMR will not result in "utility-attributable" hotspots. They noted gaps in available data and science for mercury emissions estimates, limitations with the model used for predicting mercury deposition, uncertainty over how mercury reacts in the atmosphere and uncertainty over how mercury changes to a more toxic form in water bodies.

The Board finds that there were serious procedural and analytical flaws related to the promulgation of the EPA's CAMR.

9. *Legal Analysis Related to the Control of HAPs under the CAA and the APCA*

The Department has determined that the EPA does not have the legal authority to develop a regulatory scheme for a HAP, like mercury, under section 111 of the CAA. The Congressional intent regarding the regulation of mercury is clear and unambiguous—it must be regulated under section 112 of the CAA. Mercury is explicitly identified as an HAP under section 112(b) of the CAA. For sources other than coal-fired units, the EPA must list source categories under section 112(c) of the CAA and then set emission standards for those categories under section 112(d) of the CAA. While the statutory scheme for regulating mercury from coal-fired units is under section 112(n) of the CAA, the Congressional intent is the same—mercury emissions from these units must be regulated under the Section 112 MACT approach. See *Chevron, U.S.A., Inc. v. Natural Resources Defense Council, Inc.*, 467 U.S. 837 (1984) (where if the intent of Congress is clear, that is the end of the matter; for the court, as well as the agency, must give effect to the unambiguously expressed intent of Congress.)

The EPA's proposed "cap-and-trade" program is an unreasonable interpretation of its statutory authority under sections 111 and 112 of the CAA. The fact that Congress chose to list specific HAPs under section 112 of the CAA indicated that Congress believed that these pollutants required more stringent measures than those permitted under section 111 of the CAA. Moreover, regulation under section 112 of the CAA has been historically and consistently interpreted as requiring HAPs to be controlled through installation and operation of MACT. A cap-and-trade approach under this section was never contemplated as a control technology. As a result, the EPA is now acting contrary to Congressional intent by attempting to regulate mercury HAP sources under a less stringent standard than the framers of the CAA desired.

The APCA also contains specific provisions applicable to the regulation of HAPs under section 112 of the CAA. Section 6.6(a) of the APCA (35 P. S. § 4006.6(a)) provides that "the regulations establishing performance or emission standards promulgated under section 112 of the [CAA] are incorporated by reference into the Department's permitting program." Section 6.6(a) of the APCA further provides that the "Environmental Quality Board may not establish a more stringent performance or emission standard for hazardous air pollutant emissions from existing sources, except as provided in subsection (d) [regarding health risk-based emission standards]." This "no more stringent than" provision applies to performance standards (MACT) or requirements adopted under section 112 of the CAA.

As previously noted, the EPA revised its December 2000 "appropriate and necessary" regulatory finding for the regulation of mercury emissions from coal- and oil-fired EGUs as HAPs and delisted EGUs, which were included on a list of source categories under section 112(c) of the CAA. Section 6.6(a) of the APCA provides that the Board may establish emission standards for source categories which are not included on the list of source categories established under section 112(c) of the CAA. Because of the EPA's "delisting" action in December 2000, the limitations in section 6.6(a) of the APCA are not applicable to performance standards and other measures that would be adopted to implement the Section 111 standards for new and existing sources.

The Board had determined that it has the legal authority to promulgate a regulation under the APCA to control mercury emissions from coal-fired EGUs within this Commonwealth.

10. *Petition for Rulemaking Process*

On August 9, 2004, Citizens for Pennsylvania's Future, PennEnvironment, Pennsylvania Federation of Sportsmen's Clubs, Pennsylvania NOW, Pennsylvania State Building and Construction Trades Council, Pennsylvania Trout, Planned Parenthood Pennsylvania Advocates, Sierra Club Pennsylvania Chapter, Women's Law Project and WomenVote PA (petitioners) filed a petition for rulemaking under Chapter 23 (relating to Environmental Quality Board policy for processing petitions—statement of policy) requesting that the Board adopt regulations to reduce mercury emissions from electric utilities in this Commonwealth. Since the original filing of the petition, an additional 39 organizations declared their intent to be copetitioners. The petitioners seek to protect human health and the environment through the regulation of mercury emissions from coal-fired power plants in this Commonwealth. They requested that the Department exercise its statutory authority under the APCA and develop a regulatory program to reduce the mercury

emissions from electric utilities for consideration by the Board. The petitioners submitted suggested regulatory language adapted from a January 5, 2004, New Jersey Department of Environmental Protection (NJDEP) proposal to reduce mercury emissions from coal-fired boilers.

On May 18, 2005, the Department finalized its response to the petitioners' petition for rulemaking and set forth its rationale as to why neither the NJDEP regulation nor the EPA's CAMR was in the best interest of this Commonwealth. The New Jersey regulatory language has one emission standard for both new and existing sources. The Department believes there should be separate emission standards for new and existing coal-fired boilers. Moreover, New Jersey has a limited number of coal-fired utility units which are not representative of the significantly varied boiler types in this Commonwealth.

The Department also does not believe that the EPA's Section 111 approach to mercury control for the electric generating sector is best for this Commonwealth. The Department strongly opposes a cap-and-trade approach under the CAMR for the regulation of mercury emissions from the utility sector for a number of reasons. First, the Department believes that the EPA does not have the legal authority to regulate an HAP like mercury under the less stringent provisions of section 111 of the CAA, as opposed to the more stringent provisions under section 112 of the CAA. Second, the Department believes this approach will significantly delay the control of mercury emissions from the utility sector and will create "hot spots" of mercury exposure that could be very detrimental to humans and wildlife. Third, the Department believes that the CAMR, since it is not a fuel-neutral regulation, requires greater reductions from coal-fired units that burn bituminous coal from states like this Commonwealth. Consequently, the Department recommended that a comprehensive approach to mercury control should be considered and recommended the development of a fuel-neutral regulatory approach to mercury emissions control.

On August 16, 2005, the Board accepted the Department's recommendation to move forward with a Pennsylvania-specific mercury rulemaking with an expanded public involvement process. The list of stakeholders to be included in the public involvement process was expanded to include the Pennsylvania Chamber of Business and Industry, Pennsylvania Chemical Industry Council, Associated Petroleum Industries of Pennsylvania, Pennsylvania Manufacturers Association, Industrial Energy Users of Pennsylvania, Electric Power Generation Association, Pennsylvania Coal Association, United Mine Workers of America, Air Quality Technical Advisory Committee (AQTAC), Citizens Advisory Council, the petitioners and other representatives of the potentially regulated community.

The Department established a Mercury Rule Workgroup (Workgroup) as part of the expanded public involvement process for a Pennsylvania-specific mercury rule. The intent of the Workgroup was not to reach consensus regarding the regulation of mercury emissions in this Commonwealth, but to develop information to assist the Department in the development of a mercury rule and enhance the public participation regarding the drafting of this final-form rulemaking. The first Workgroup meeting was held on October 14, 2005. During the first meeting, presentations included Workgroup objectives, an overview of mercury, its fate and transport and other State regulations. The second meeting of the Workgroup was held on October 28, 2005. The second meeting focused on the health impacts of mercury. The

third meeting of the Workgroup was held on November 18, 2005. Speakers at this meeting discussed the health impacts of mercury and methods of controlling mercury emissions from coal-fired power plants. The last Workgroup meeting was held on November 30, 2005. The last meeting focused on additional health impacts regarding mercury and Workgroup members and others discussed their organizations' proposals for the control of mercury.

On February 22, 2006, the Department presented concepts of its proposed rulemaking at a joint meeting of the Workgroup, the AQTAC and the Citizens Advisory Council. Additionally, on March 30, 2006, the AQTAC recommended that the Board consider the proposed rulemaking at its May 17, 2006, meeting.

On May 17, 2006, the Board heard a Department presentation concerning the proposed mercury rulemaking. During discussions on the proposed rulemaking, Board members from the Citizen's Advisory Council requested that the Department prepare a Decision Document. Following discussion, the Board approved the proposed rulemaking for public comment. The Board also requested a Decision Document to complement other documentation prepared for the final-form mercury rulemaking. The Board noted that this document should set forth the Department's justification, rationale and supporting information for any final-form rulemaking. The Decision Document is available for public inspection at the Department's website: www.depweb.state.pa.us. The Decision Document includes a compilation and summary of the data, models, studies and evidence considered and used to support the decision making; the legal and regulatory history and rationale for the rulemaking; and an evaluation of arguments and information presented by those in favor and opposed to the rulemaking and an explanation of the decision trail and intent of the final-form rulemaking.

The proposed rulemaking was published at 36 Pa.B. 3185 (June 24, 2006) for a 60-day comment period.

The Board held public meetings on the proposed regulation on July 25, 2006, at the Department's Southwest Regional Office in Pittsburgh; on July 26, 2006, at the Rachel Carson State Office Building in Harrisburg; and on July 27, 2006, at the Department's Southeast Regional Office in Norristown.

On September 27, 2006, the Department requested that the AQTAC take action on this final-form rulemaking. The AQTAC approved this final-form rulemaking for consideration by the Board at its October 17, 2006, meeting.

11. *Public Health and Environmental Improvements Regarding a Pennsylvania-Specific Mercury Emissions Reduction Rule*

The Department has reviewed several studies and reports of fish consumption by the general population and by sport anglers to answer the question of how these anglers and their families might be at risk of consuming mercury contaminants at levels greater than health-based limits in the fish they caught. Because Statewide data is limited, the Department reviewed National surveys to evaluate fish consumption. These studies are extraordinarily useful to summarize data on human behaviors and characteristics, which affect exposure to environmental contaminants, like mercury. For example, the EPA's "Exposure Factors Handbook" was consulted to obtain data on standard factors needed to calculate human exposure to mercury from fish intake. For all fish the recommended

values are 6.0 grams per day (g/d) for freshwater/estuarine fish, 14.1 g/d for marine fish, and 20.1 g/d for all fish. The recommended mean and 95th percentile values for recreational freshwater anglers are 8 g/d and 25 g/d, respectively.

The Fish and Boat Commission determined that in 2005 approximately 800,000 anglers fished in waters in this Commonwealth. Studies of sport fish consumption by angler cohorts in Michigan provide a thorough evaluation of consumers of sport fish. The studies of Michigan anglers provide data for total amounts of fish and self-caught fish consumed by various subgroups of the cohort. See, for example, West, "1991-1992. Michigan sport anglers fish consumption study," University of Michigan School of Natural Resources for the Michigan Department of Natural Resources, Technical Report No. 6, 1993. This group also consumes much more fish than the general population, with mean and 95th percentile rates as high as 61.3 and 123.9 g/d (99 and 199 meals/year), respectively. Particularly relevant for describing at-risk populations is the information regarding females (ages not specified), with mean and 95th percentile of total fish consumption reported to be 42.3 and 85.7 g/d (68 and 138 meals/year), respectively.

Hudson River Sloop Clearwater, Inc. conducted a survey of adherence to fish consumption health advisories among Hudson River anglers. See "Hudson River Angler Survey," Hudson River Sloop Clearwater, Inc. (1993). Approximately 94% of Hispanic Americans were likely to eat their catch, while 77% of African Americans and 47% of Caucasian Americans intended to eat their catch. Of those who eat their catch, 87% were likely to share their meal with others (including women of childbearing age and children under 15 years of age).

In 2000, a study was published on behalf of the Fish and Boat Commission to determine levels of stocked trout consumption among anglers as well as their awareness and attitudes towards consumption advisories. See "Levels of Trout Consumption and Attitudes Toward Consumption Advisories Among Pennsylvania Trout Anglers," Responsive Management, 2000, conducted for the Pennsylvania Fish and Boat Commission. Of those who were aware of trout consumption advisories, 78% stated that they followed them but only 48% said that the advisory impacted their consumption decisions regarding stocked trout.

The Department's review of fish consumption literature provides strong support that sport anglers in this Commonwealth may consume amounts of sport-caught fish that could allow them and their families to exceed health-based limits for mercury contaminants in their fish. The literature regarding anglers' consumption of their catch strongly suggests that a subset of these anglers have meal frequencies that put them well above the recommended rates for even fairly low levels of contamination. Furthermore, a review of the relevant studies suggests that there is a strong environmental justice component regarding this public health issue. Consumption rates were higher among minorities, people with low income and people residing in smaller communities. As a result, the Department can say with a high level of confidence that it is possible for anglers and their families to consume enough sport fish to put themselves and their families at risk from mercury contamination from their fish.

A multiagency State of Florida study launched in 1994 compared mercury levels in the Everglades before and after pollution controls were installed at municipal and

medical waste incinerators in South Florida. See "Everglades Consolidated Report," The South Florida Water Management District and the Florida Department of Environmental Protection. Since the 1980s, mercury emissions from waste incinerators close to the Everglades have dropped nearly 99%. Over the last 10 years, scientists documented a 70% decline in mercury in bird feathers and a 60% decrease in fish tissue. While this study focused on waste incinerators and not bituminous coal-fired power plants, it is important to note that both source categories emit comparable amounts of ionic mercury, which deposits locally. As a result, the conclusions in the multiagency Florida study are applicable to this Commonwealth.

The mercury concentration in fish was investigated in a region of Massachusetts predicted to have regionally high atmospheric deposition of mercury during 1999 to 2004. See "Massachusetts Fish Tissue Mercury Studies: Long Term Monitoring Results 1999-2004," Massachusetts Department of Environmental Protection, 2006. In eight of the nine water bodies in northeastern Massachusetts, significant decreases in mercury in yellow perch were observed with a range of 26.0% to 61.9%. The mean decrease over all lakes was 32.4%. Five of the remaining eight lakes around the rest of the state also had statistically significant, but not as large, decreases in yellow perch mercury levels ranging from 20.1% to 28.0% with an overall mean decrease of 15.4%.

Large mouth bass mercury concentrations followed a similar pattern with 11 of 17 lakes throughout the state decreasing in tissue mercury concentrations. Eleven of the lakes sampled were in northeastern Massachusetts and mercury levels in large mouth bass from seven of those decreased significantly, ranging from 16.0% to 55.2% with a mean decrease of 24.8%. Four of the remaining six lakes located around the rest of the state also had statistically significant but smaller decreases in large mouth bass mercury concentrations. The range of these decreases was 15.9% to 36.4% with a mean decrease of 19.0%. These reductions were achieved primarily through the imposition of stringent mercury emissions controls on municipal solid waste incinerators and medical waste incinerators, as well as reductions from other regional sources. In both studies, the emission reductions, which are predominantly in the form of ionic mercury from local incinerators, resulted in significant reductions in mercury levels in fish. As with the Florida study, while this study focused on waste incinerators, and not bituminous coal-fired power plants, it is important to note that both of source categories emit comparable amounts of ionic mercury, which deposits locally. As a result, the conclusions in this Massachusetts study are applicable to this Commonwealth.

Other studies confirm the results of the Florida and Massachusetts studies where the response of mercury deposition rates to emission reductions close to anthropogenic sources is expected to be much more rapid than that at remote locations, largely because near-field mercury deposition is probably dominated by local Hg⁺² emissions. These studies find good historical evidence from lake-sediment records for rapid and large (30%—50%) declines in mercury deposition from urban areas in the United States and Europe. Moreover, these declines occurred over the last 1 to 3 decades and correspond with known reductions in local and regional mercury emissions for the same areas. See Munthe, J., *et al.*, "Input-output of Hg in forested catchments in Europe and North America." *RMZ-Materials and Geoenvironment*, 51:1243—1246, (2004). See also Engstrom, D.R., and Swain, E.B.

1997. "Recent declines in atmospheric mercury deposition in the upper Midwest." *Environ. Sci. Technol.* 31:2: 60—967. See Kamman, N.C., and Engstrom, D.R. 2002. "Historical and present fluxes of mercury to Vermont and New Hampshire lakes inferred from 210Pb dated sediment cores." *Atmos. Environ.* 36: 599—1609.

The literature review conducted by the Department confirms that mercury reduction approaches translate into a significant drop in mercury concentrations found in fish and other fauna. These illustrate the point that despite the fact that there are global mercury transportation issues, local emission reduction efforts are very significant to the local air quality, human exposure and environmental impacts. Continued improvements to the ecosystem are expected in the long-term as these reductions work their way through the food chain. Consequently, the Board has found reductions in mercury emissions do translate into real, measurable improvements in public health and the environment in this Commonwealth.

12. *Improvements Regarding the Tourism Industry in this Commonwealth*

As previously noted, the Fish and Boat Commission determined that in 2005 approximately 800,000 anglers fished in waters in this Commonwealth. Fish licensing sales in this Commonwealth amounted to \$18.5 million in 2005. According to the Erie Regional and Growth Partnership, residents of this Commonwealth 16 years of age and older spent \$400 million on fishing in this Commonwealth in 2001. The average angler spent \$458 in 2001 on fishing. These direct expenditures created \$1.2 billion in Pennsylvania economic output. Also as noted previously, this Commonwealth has fish consumption advisories for mercury in approximately 80 waterways across this Commonwealth, 60% of which are related to mercury fish consumption advisories.

Resources for the Future conducted a study on mercury contamination of the Chesapeake Bay entitled "The Benefits and Costs of Fish Consumption Advisories for Mercury," October 2002. Applying an estimate of the percentage of consumer surplus lost due to an advisory from the literature to consumer surplus estimates for a fishing day in the Chesapeake Bay, they estimate an annual consumer surplus loss over all Maryland saltwater fishing days of \$8.83 million (in \$2,000). For the commercial striped bass fishery, they estimate a very simple model of supply and demand that predicts equilibrium price and quantity with reasonable accuracy. Using parameter estimates from this model, they estimate annual consumer and producer surplus losses of \$215,800 and \$304,500, respectively, under commercial consumption advice, for a total annual surplus loss of \$520,300.

Furthermore, based on their mortality estimate, the Resources for the Future report estimates annual health benefits from an advisory to be approximately \$14 million. They conclude the value of further information for this mercury mortality relationship is quite high, as it suggests that significant health benefits may accrue at lower mercury levels than has been suggested by the research focusing on neurological development effects from fetal exposure, the health endpoint that has been the focus of policy discussion to date.

As a result, the Commonwealth has a significant economic interest in fresh water fishing as an economic driver. Therefore, the Board finds that any improvement, or prevention of loss, to fish activities in this Common-

wealth through implementation of this final-form mercury rulemaking could have a positive impact to this important industry.

13. *Mercury Reduction Technologies*

Coal-fired power plants that burn subbituminous coal emit elemental mercury, which is very difficult to capture with conventional air pollution control devices like wet flue gas desulfurization (WFGD) for sulfur dioxide (SO₂) control and selective catalytic reduction (SCR) for nitrogen oxides (NO_x) control. Moreover, coal-fired power plants that burn subbituminous coal emit Hg₀, which can be transported over transcontinental distances. Coal-fired power plants that burn bituminous coal emit oxidized forms of mercury, which are easier to capture using WFGD and SCR. Coal-fired power plants that burn bituminous coal emit oxidized forms of mercury, which are deposited near their source. For example, EGUs that burn 100% subbituminous coal and control emissions with a WFGD and SCR can expect to capture approximately 16% of mercury emissions. In contrast, EGUs that burn 100% bituminous coal and control emissions with WFGD and SCR can expect to capture approximately 90% of mercury emissions. In this Commonwealth, 85% of coal the burned by coal-fired power plants is bituminous, with the remainder waste coal.

This final-form rulemaking is designed, in part, to take advantage of the cobenefit reductions that will occur under the Clean Air Interstate Rule (CAIR), published at 70 FR 72268 (December 2, 2005), designed to reduce SO₂ and NO_x emissions from EGUs.

Owners and operators of facilities in this Commonwealth provided mercury emissions data and mercury coal content data to the Department in December 2005 in response to an information request. Using this data, the mercury removal efficiencies from the facilities that provided mercury emissions data were determined. The analysis of this data show that EGUs controlled with cold side-electrostatic precipitator (ESP) and WFGD reduce mercury by 80% and EGUs controlled with cold side-ESP, WFGD and SCR reduce mercury by over 90%. While these control devices were not specifically designed to remove mercury, it is possible to modify their operation to increase mercury collection without degrading other emission control or operational aspects. Testing has shown that increasing the rate of slurry recirculation in scrubbers will increase mercury removal. New additives, injected into the scrubber slurry, may also increase mercury removal.

Powdered activated carbon injection (ACI) controls mercury emissions by adsorption onto its surface. Carbon is injected into flue gas and controlled downstream by a particulate collector along with adsorbed mercury. Properties of the activated carbon are selected to maximize mercury control. It is much more effective adsorbing ionized mercury than elemental mercury vapor. Activated carbon treated with a halide, usually bromine, can also be used. It generally provides additional mercury control over other activated carbon for the same injection rate into the flue gas. The Compact Hybrid Particulate Collector (COHPAC) system requires installation of a final fabric filter in addition to existing control equipment. Tested mercury removal rates for various ACI rates from the EPA paper "Control of Mercury Emissions from Coal Fired Electric Utility Boilers: An Update" issued February 18, 2005, shows removal rates of 90% for ACI with cold side-ESP, ACI-COHPAC and brominated-ACI (B-ACI) with cold side-ESP.

The Institute of Clean Air Companies found that air pollution control vendors are reporting booking new contracts for mercury control equipment for more than a dozen power plant boilers. The contracts for commercial systems are attributed to Federal and state regulations, including new source permit requirements and consent decrees, which specify high levels of mercury capture.

A Congressional Research Service Report, April 15, 2005, found that the EPA's own Office of Research and Development (ORD) in a white paper posted on the EPA's website on March 2, 2004, appears to conclude that technology is more available and more effective than is maintained in the EPA's CAMR rulemaking. The ORD found that fabric filters, a relatively simple technology that is currently installed on more than 12% of power plants, achieve a 90% reduction in mercury emissions at bituminous coal plants and a 72% reduction at sub-bituminous plants. The addition of a scrubber increased the emission reduction to 98% at bituminous plants, according to the ORD. The white paper further stated that, by 2010, ACI with a fabric filter "has the potential to achieve 90% Hg reduction" on any rank of coal, and could be installed within 1 to 2 years of signing a contract to do so. Since the white paper was written, there have been reports that a European firm, Donau Carbon, has begun offering commercial guarantees for mercury removal from coal-fired power plants using ACI technology.

Accordingly, the Board finds that mercury reduction technologies and other technologies are commercially available and cost effective to the owners and operators of EGUs to assist them in reducing mercury emissions from EGUs.

14. *Issues Regarding Cost and Electricity Availability*

The Department conducted an analysis to determine the cost of this final-form rulemaking above and beyond the CAIR. The CAIR involves the installation air pollution control equipment for SO₂ and NO_x. Under the EPA's CAIR analysis, this Commonwealth' average retail electric prices without the CAIR would be as follows: in 2010—\$0.0593 kWh; and in 2015—\$0.0695 kWh. Under this same analysis, this Commonwealth's average retail electric prices with the CAIR would be as follows: in 2010—\$0.061 kWh; and in 2015—\$0.072 kWh. Consequently, the average retail electric price in this Commonwealth would rise approximately 3% because of CAIR compliance costs.

For each unit, the capital cost, annualized capital costs and operating costs were determined. This was offset against how much it would cost to purchase an equivalent amount of emissions allowances based on the EPA's projections of mercury allowance costs from 2010—2030. These projections come from a United States Department of Energy (DOE) document entitled "Annual Energy Outlook 2006 With Projections to 2030." The costs of control were based on cost estimates for installing and operating ACI systems. The capital costs were determined by estimating the cost ranging from \$2/kW to \$4/kW of plant electrical generating capacity. This capital cost was then annualized over 20 years assuming a 10% interest rate. The operating costs were calculated for Phase 1 based on a B-ACI injection rate of 6 lbs. per million actual cubic feet of exhaust gas. For Phase 2, an injection rate of 4.84 or 9.68 pounds per million actual cubic feet of exhaust gas was used depending on how much was needed to meet the emission limit. The injection rate was multiplied by the average of the 3 highest years of heat input between 1998 and 2002 and then multiplied by

\$ 0.0175 lb of sorbent/Million "Btu". This calculation was performed for each effected emission unit.

For each applicable EGU in this Commonwealth, the Department determined the amount of mercury, if any, that would need to be controlled beyond CAIR control levels for Phase 1 and Phase 2. For Phase 1, the Department estimated that 16 units at 7 facilities might opt for mercury-specific control beyond the CAIR control installations. The total capital costs needed for B-ACI were estimated to be approximately \$4.9 to \$9.8 million. The annual operating costs were estimated to be approximately \$14.7 million. The total annualized costs for Phase 1 were estimated to be approximately \$15.4 to \$15.8 million.

For Phase 2, the Department estimated that 18 units at 7 facilities might opt for mercury specific control beyond the CAIR control installations. Some EGU owners and operators may choose to install compact hybrid powdered activated carbon (COHPAC) filter systems to comply with the Commonwealth's mercury final-form rulemaking. The Electric Power Research Institute has patented the "TOXECON" process which employs COHPAC in the control configuration. TOXECON/COHPAC has been demonstrated to achieve around 90% reduction of mercury emissions. The capital costs for were determined by estimating the cost ranging from \$56.53/kW to \$125/kW of plant electrical generating capacity.

The difference between the lower-bound and upper-bound costs estimates for Phase 2 reflects the difference between carbon injection and the installation of COHPAC filter systems. The total capital costs are estimated to range from \$141.6 to \$313.3 million. The total annualized cost (capital and operating) of mercury-specific control technology that EGU owners and operators might opt to install beyond CAIR to comply with the final-form rulemaking would range from \$16.7 to \$53 million per year. The estimated total cost of purchasing mercury allowances (using \$2,619 per ounce, according to a DOE estimate) would be approximately \$28.3 million per year if EGU owners and operators did not implement additional measures beyond the CAIR to comply with the CAMR.

As previously noted, this final-form rulemaking is designed, in part, to take advantage of the cobenefit reductions that will occur under the CAIR, designed to reduce SO₂ and NO_x emissions from EGUs. The Phase 1 and Phase 2 timeframes under this final-form rulemaking coincide with the time frames under the CAIR. It is anticipated that the majority of EGUs in this Commonwealth will opt to comply with both phases of the rule using existing WFGD and SCR technology, which will be necessary to comply with the CAIR. While some EGUs may opt to install mercury specific control technology, the Department believes that there are a number of currently available control technologies that coal-fired power plants can use to reduce their emissions of mercury to the atmosphere, which will result in a minor cost increase on a cents per kW-hr. basis.

As previously described for Phase 1, the total annualized cost (capital and operating) of mercury-specific control technology that EGU owners and operators may opt to install beyond the CAIR to comply with the Pennsylvania-specific mercury rulemaking would be \$15.4 million per year. The total cost of purchasing mercury allowances if EGUs did not do anything beyond the CAIR to comply with the CAMR would be \$15.7 million per year. As a result, the total cost of complying with the

Pennsylvania-specific mercury rulemaking for Phase 1 would be no more than the cost of complying with the CAMR.

As previously described for Phase 2, the total annualized cost (capital and operating) of mercury-specific control technology that EGU owners and operators might opt to install beyond the CAIR to comply with the Pennsylvania mercury final-form rulemaking would range from \$16.7 to \$53 million per year. The resulting cost per kilowatt-hour would be no greater than \$0.0038/kWh for EGU owners and operators utilizing the TOXECON/COHPAC control technology to comply with the Phase 2 limits. The cost of \$0.0038/kWh represents the upper bound cost estimate for the owners and operators of EGUs to comply with the Phase 2 limits.

The cost differential between allowance costs and technology costs were \$25.1 million on the high end and an incremental cost reduction of \$11.6 million on the low end. The total kilowatt-hours calculated for the 18 units that will not be installing CAIR controls to meet the Phase 2 requirements are 13,748,393,901. The resulting cost per kilowatt-hour ranges from \$0.0018/kWh for the use of the TOXECON/COHPAC control technology to \$0.00084/kWh for using B-ACI to comply with the Phase 2 limits.

Because of these analyses, the Board concludes that the costs regarding the control of mercury emissions from coal-fired EGUs is reasonable and that any increased cost in electricity is insignificant on a dollar per kilowatt hour basis.

15. *Impacts on Pennsylvania Coal*

When coal burns, mercury vapor can be released to the atmosphere. Therefore, any regulatory approach aimed at reducing these emissions is of concern to the coal mining industry. This is especially the case in this Commonwealth, which is the fourth largest coal producing state in the Nation with approximately 66 million short tons mined annually. Wyoming is first with 396 million short tons. West Virginia is second with 148 million short tons. Kentucky is third with 114 million short tons. Texas is fifth with 45 million short tons.

According to the Department's Pennsylvania Coal Report for 2004, 6,825 miners are employed in this Commonwealth with about 55% of the miners employed in Greene and Washington Counties. In addition, these two counties account for over 66% of the coal mined in this Commonwealth. Moreover, the Department determined that the median mercury content of the coals mined in these two counties is approximately 8.8 lb of mercury per Trillion "Btu" (lb. Hg/TBtu). The median content of mercury from all coals mined in this Commonwealth is 18.1 lb. Hg/TBtu.

Data acquired by the Department shows that coal washing is a viable pretreatment option. For example, the data from our analysis shows an average "as received" mercury content of 26.73 lb. Hg/TBtu. The average "as washed" mercury content is 12.93 lb. Hg/TBtu. This translates into an average removal of 49.5%. As a result of this study and comments received during the proposed rulemaking, a pretreatment credit has been added to this final-form rulemaking.

The EPA CAMR finalized New Source Performance Standards Mercury limits for new units are: bituminous coal at 20×10^6 lb/MWh; subbituminous coal (wet units) at 66×10^6 lb/MWh; subbituminous coal (dry units) at 97×10^6 lb/MWh; lignite coal at 175×10^6 lb/MWh; coal refuse at 16×10^6 lb/MWh; and IGCC at 20×10^6

lb/MWh. This clearly shows that the most stringent standards have been reserved for bituminous and coal refuse units. All units in this Commonwealth burn either bituminous or coal refuse. As a result, all new EGUs in this Commonwealth would be subject to the most stringent mercury emission standards in the Nation.

On the other hand, this mercury final-form rulemaking is fuel-neutral. All new and existing units, regardless of fuel-type, are subject to the same mercury emission standards. New pulverized coal-fired (PCF) units must meet an emission standard of 0.011 pound of mercury per gigawatt hour (lb. Hg/GWh) or a minimum 90% of total mercury removal. New circulating fluidized bed (CFB) units burning 100% coal refuse must meet a mercury emission standard of 0.0096 lb. Hg/GWh or a minimum 95% control of total mercury as measured from the mercury content in the coal, as fired. New CFBs burning 100% coal must meet an emission of 0.011 lb. Hg/GWh or a minimum 90% of total mercury removal. New IGCC must meet a mercury emission standard of 0.0048 lb. Hg/GWh or a minimum 95% of total mercury removal.

Existing PCF units must meet an emission of 0.024 lb. Hg/GWh or a minimum 80% of total mercury removal in Phase 1, and an emission of 0.012 lb. Hg/GWh or a minimum 90% of total mercury removal in Phase 2. Existing CFB units burning 100% coal refuse must meet a mercury emission standard of 0.0096 lb. Hg/GWh or a minimum 95% control of total mercury as measured from the mercury content in the coal in Phases 1 and 2.

In addition to these fuel neutral emission standards, the Department anticipates the vast majority of the mercury reductions in this Commonwealth will be achieved through the installation of CAIR controls for NO_x and SO_x . Therefore, the same incentive does not exist to utilize fuel switching to lower mercury content coal as there is under the CAMR. Based on emissions data submitted to the Department's data request, fuel switching is not necessary to comply with the emission standards.

One of the more significant changes to the final-form rulemaking involves the demonstration of compliance under subsection (o) for those EGUs subject to § 123.207 (relating to annual emission limitations for coal-fired EGUs). In addition to compliance on a unit-by-unit and facility-wide basis, owners and operators of affected EGUs may now demonstrate compliance through system-wide demonstration. For example, so long as the actual emissions of mercury from the EGUs at the facility and other EGUs at other facilities covered in the system-wide demonstration are less than the allowable emissions of mercury from all EGUs covered by the demonstration on an annual basis compliance has been demonstrated. This additional compliance option will make it even less likely that owners and operators will opt to switch fuels as a compliance option.

As a result of the Department's analysis and changes made between proposed and final-form rulemaking, the Board does not anticipate adverse impact on the local coal industry because of the Pennsylvania-specific mercury rulemaking.

16. *Reductions Beyond the CAMR*

The Department reviewed the list of Integrated Planning Model (IPM) runs that the EPA conducted in support of the CAMR. Base case model runs for this Commonwealth in 2010 and 2020 include the National Title IV SO_2 cap-and-trade program and the NO_x SIP Call regional ozone season cap-and-trade program without the

CAIR or the CAMR. These show mercury emissions from coal-fired power plants in this Commonwealth in 2010 and 2020 as 5.862 tons (11,724 lbs.) and 5.625 tons, (11,250 lbs.), respectively. A second round of model runs was conducted for 2010 which included CAIR and CAMR control strategies and for 2020, which included CAIR and CAMR control strategies. These show mercury emissions from coal-fired power plants in this Commonwealth in 2010 and 2020 as 1.491 tons (2,982 lbs.) and 1.153 tons, (2,306 lbs.), respectively. While these model runs show that coal-fired power plants in this Commonwealth will emit 16% less mercury or 0.279 ton (558 lbs.) than the established cap in 2010 of 1.77 tons of mercury (3,540 lbs.), these same model runs show that coal-fired power plants in this Commonwealth will emit 39% more mercury 0.451 ton (902 lbs.) than the established cap of 0.702 ton (1,404 lbs.) in 2020. As a result, the owners and operators of these EGUs would be required to purchase allowances to come into compliance with the CAMR. The purchase of additional allowances needed to comply with the CAMR is particularly troublesome given the Commonwealth's experience under Title IV of the CAA. In this Commonwealth, the total current SO₂ acid rain allowances equal 540,000. EGUs in this Commonwealth emit about 1 million tpy of SO₂. Therefore, this Commonwealth currently "imports" about 460,000 SO₂ allowances per year from reductions in other states. The trading of mercury allowances under the CAMR may mimic the Acid Rain Program.

In comparison, the Pennsylvania mercury final-form rulemaking would require an 80% reduction of mercury present in the coal fired in EGUs on a 12-month rolling average by 2010, and 90% reduction of mercury present in the coal fired in EGUs on a 12-month rolling average by 2015. After Phase 1 of the program, it is anticipated that the Pennsylvania mercury final-form rulemaking would achieve a 29% greater reduction than required under the CAMR or a 16% greater reduction than the EPA projects from its IPM model runs. This would amount to 1.2567 tons (2,513.4 lbs.) of mercury emissions as opposed to 1.77 tons (3,558 lbs.) mercury emissions under the required CAMR cap or 1.491 tons (2,983 lbs.) as projected under the EPA's IPM model runs. After Phase 2, it is anticipated that the Pennsylvania mercury final-form rulemaking would achieve a 39% greater reduction than what would be achieved by the CAMR under Phase 2. This would mean that the Commonwealth would achieve its cap of 0.702 ton (1,404 lbs.) by 2015 rather than exceeding it by 0.451 ton (902 lbs.)

However, it should be noted that the EPA concedes that due to the banking and trading provisions of the CAMR, projected reductions may not be achieved until 2026 or later. Moreover, as the previous analysis shows, the EPA's IPM models expect coal-fired power plants in this Commonwealth will emit 64% more mercury 0.451 ton (902 lbs.) than the established cap of 0.702 ton (1,404 lbs.) in 2020. As a result, under a Pennsylvania-specific rulemaking no mercury allowances would be imported which would result in greater mercury emissions and greater local mercury deposition.

Due to this analysis, the Board finds that a Pennsylvania-specific mercury rulemaking would result in faster and steeper cuts in mercury emissions than under the CAMR.

17. *Benefits to Residents of this Commonwealth*

Prior to the CAIR and the CAMR, in the base year of 2001, the EPA estimates fish-tissue methylmercury concentrations at the 90th percentile, 99th percentile, and

maximum levels attributable to coal-fired power plants are 0.11, 0.27 and 0.85 milligram per kilogram (mg/kg), respectively. The EPA estimates that after CAIR and CAMR implementation, these concentrations at the 90th percentile, 99th percentile, and maximum levels attributable to coal-fired power plants would be reduced by 0.06, 0.19 and 0.44 mg/kg, respectively.

However, the Department estimates that after implementation of the Pennsylvania-specific mercury final-form rulemaking in Phase 2, these concentrations at the 90th percentile, 99th percentile and maximum levels attributable to coal-fired power plants would be reduced to 0.0985, 0.31 and 0.72 mg/kg, respectively. This means that these concentrations at the 90th percentile, 99th percentile and maximum levels would be reduced by an additional 0.0385, 0.12 and 0.28 mg/kg, respectively. As a result, the Pennsylvania-specific mercury final-form rulemaking would amount to an additional 36% reduction in fish-tissue methylmercury concentrations.

The EPA estimates that when the CAMR is fully implemented it will reduce mercury emissions from coal-fired power plants to 15 tpy by 2018. If this goal is reached, NESCAUM estimates that the predicted annual benefit associated with IQ increases in the annual birth cohort ranges are \$119 million to \$288 million. This benefit is from reduced fetal methylmercury exposure. If cardiovascular effects are only experienced by male populations that consume nonfatty freshwater fish, the monetized annual benefits are \$86 million. If these cardiovascular effects are experienced by the whole population of the United States, then the monetized annual benefits are predicted to be \$4.9 billion.

If, as the EPA predicts in Phase 2, EGUs in this Commonwealth emit 1.153 tons (2,306 lbs.), then the annual benefit associated with IQ increases in the annual birth cohort ranges are \$2.66 million to \$6.45 million. This benefit is from reduced fetal methylmercury exposure. If cardiovascular effects are only experienced by the male population that consumes nonfatty freshwater fish, then the monetized annual benefits are \$1.15 million. If these cardiovascular effects are experienced by all residents of this Commonwealth, then the monetized annual benefits are predicted to be \$128.6 million.

However, under a Pennsylvania-specific mercury rulemaking, EGUs in this Commonwealth will emit no more than 0.702 ton (1,404 lbs.) by 2015. As a result, annual benefit associated with IQ increases in the annual birth cohort ranges are \$4.165 million to \$10.08 million. This benefit is from reduced fetal methylmercury exposure. This means that the Pennsylvania rulemaking will provide an additional benefit of \$1.49 million to \$3.63 million per year over the CAMR. If cardiovascular effects are only experienced by the male population that consumes nonfatty freshwater fish, then the monetized annual benefits are \$1.8 million. This means that the Pennsylvania rulemaking will provide an additional benefit of \$0.65 million per year over the CAMR. If these positive cardiovascular effects are experienced by all residents of this Commonwealth, then the monetized annual benefits are predicted to be \$200.9 million. This means that the fully implemented Pennsylvania final-form rulemaking will provide an additional benefit of \$72.3 million per year over the CAMR. Moreover, residents of this Commonwealth will see these results being achieved by 2015.

In comparison, the total cost of complying with Phase 1 of the Pennsylvania-specific rulemaking would be no more than the cost of complying with the CAMR. For Phase 2 at the low end of the cost estimate, the annualized cost of

mercury specific technology may not be any more than the costs of purchasing the allowances. However, at the high end of the cost estimate, the additional cost above purchasing allowance would be around \$24.7 million. Nevertheless, the benefits of a Pennsylvania rulemaking outweigh the costs. Therefore, the Board finds that this difference will result in significant environmental improvement with reduced fish-tissue methylmercury concentrations and increased monetized benefits for all residents of this Commonwealth as well as future residents of this Commonwealth.

18. *Conclusion*

A large body of scientific evidence, some of which was developed as a result of the EPA's obligations under the CAA, has clearly demonstrated that mercury is a persistent, toxic, bioaccumulative pollutant which can have adverse effects on human health and the environment. The Board has determined that effective mercury control technology does exist to significantly reduce mercury emissions from EGUs. Furthermore, mercury control technology is presently being implemented at a number of air pollution emitting sources and recent testing of mercury control technologies on coal-fired utilities has been shown to be effective in reducing mercury emissions. The Board has determined that the provisions in the EPA's final mercury rule for the utility sector that was promulgated under section 111 of the CAA are not adequate to ensure that the citizens of this Commonwealth and the environment will be adequately protected from the harmful effects of mercury emissions.

The CAMR does not require specific reductions in mercury emissions from any specific EGU facility. Due to the CAMR cap-and-trade provisions, the owners and operators of a facility that emits mercury beyond its CAMR allowance level can purchase allowances from credits generated at a facility that emits below its CAMR allowance level anywhere in the United States. A large portion of the mercury emission reductions that will occur will be as a result of cobenefit reductions occurring when a CAIR compliance plan for a facility to reduce both its NO_x and SO_x emissions involves the installation of SCR and wet WFGD control technologies. The NO_x emission control equipment of SCR oxidizes elemental mercury of the mercury emissions, which makes the removal of mercury emissions even more efficient by the wet WFGD controls. However, where a facility only reduces its NO_x emissions with a SCR control to meet the CAIR requirements, but does not also utilize a wet WFGD for SO_x control, this will result in much higher quantities of the ionic form of mercury to be emitted and deposited nearby, and this will result in a much greater negative mercury impact on the nearby environment.

Additionally, under CAMR mercury emissions trading, it is even possible that mercury emissions in this Commonwealth could actually increase because there would not be a regulatory ability to restrict actual emission increases due to the importation of out-of-State allowances. Another important problem with the EPA's National mercury emissions trading provisions under the CAMR is that it allows significantly less control of mercury in one area compared to another; and it allows emissions to be further increased through the use of banked allowances from previous years. Allowing mercury emission reductions to be used in different control periods further delays the real mercury emission reductions that are seen by the environment. The GAO evaluation of the CAMR states that the mercury emission levels that are required by 2018, during the second Phase of the required

CAMR reductions, will not actually occur until 2030, or later. This will result in a larger burden of mercury into the ecosystem resulting over time and a significant lengthening of the time exposure to these emissions.

The Pennsylvania State-specific mercury rulemaking assures a specific maximum level of actual mercury emissions from utilities in this Commonwealth, and assures that these levels are achieved in a much shorter time than the CAMR. The Phase 2 mercury emissions caps will be achieved in this Commonwealth by 2015, not 2018, which translates into 2026 or 2030 because of emissions trading under the CAMR. Furthermore, each and every owner or operator of an electric generating facility in this Commonwealth will make significant reductions in their mercury emissions at each and every one of their facilities. This is not the case under the CAMR.

Data generated by the EPA has shown that this Commonwealth has the highest wet deposition of mercury in the Nation with a direct correlation to the location and quantity of mercury emissions from coal-fired electric generating facilities. Research has also shown that higher percentages of more recently deposited ionic mercury are more quickly methylated in the ecosystem. The methylation of mercury eventually leads to a concentration of methylmercury in the tissue of fish and other wildlife. These higher concentrations of mercury in the wildlife are not only directly affecting the wildlife in ways such as reduced reproductivity, but also affecting humans when they eat this wildlife.

Recent studies in the Florida Everglades and in Massachusetts indicate that mercury concentrations found in fish and wading birds in the Everglades have dropped significantly. These illustrate the point that despite the fact that there are global mercury transportation issues, local emission reduction efforts are very significant to the local air quality and environmental impacts and reductions in mercury emissions do translate into real, measurable improvements in the environment. Continued improvements to the ecosystem are expected in the long-term as these reductions work their way through the food chain and residents of this Commonwealth will receive the greatest portion of these benefits.

After consideration of mercury control technology, the Department has determined that a State-specific mercury reduction rulemaking is necessary to protect the public health and environment. Moreover, the required control levels of 80% in Phase 1 and 90% in Phase 2 are achievable and will allow the Pennsylvania emission limits under the CAMR to be achieved as well.

E. *Summary of Final-Form Rulemaking*

The final-form rulemaking amends Chapter 123 by adding § 123.201 (relating to purpose) to provide that §§ 123.202—123.215 establish mercury emission standards, annual emission limitations as part of a Statewide mercury allowance program with annual nontradable mercury allowances and other requirements for the purpose of reducing mercury emissions from coal-fired EGUs or cogeneration units.

Section 123.202 (relating to definitions) defines terms used in §§ 123.203—123.215. The definitions include: "Act," "Administrator," "Btu—British thermal unit," "Bottoming-cycle cogeneration unit," "CFB—circulating fluidized bed unit," "CO₂," "CS-ESP—cold side electrostatic precipitator," "Clean Air Act," "coal," "coal refuse," "cogeneration unit," "commence operation," "control period," "EGU—electric generating unit," "existing EGU,"

“FF—fabric filter,” “facility,” “GWh—gigawatt-hour,” “heat input,” “IGCC—integrated gasification combined cycle unit,” “MMBtu,” “MW—megawatt,” “MWe—megawatt electric,” “MWh—megawatt-hour,” “nameplate capacity,” “new EGU,” “O₂,” “operator,” “owner,” “PCF—pulverized coal-fired unit,” “Phase 1,” “Phase 2,” “rolling 12-month basis,” “SCR—selective catalytic reduction,” “SO₂,” “space velocity,” “standby unit,” “system,” “system-wide compliance demonstration,” “topping-cycle cogeneration unit,” “WFGD—wet flue gas desulfurization unit” and “watt-hour.” The proposed definition of “bituminous coal” has been deleted. While the definition of “EGU—electric generating unit” remains, it has been amended to reflect a change made by the EPA during its reconsideration process. Minor changes between the proposed and final-form rulemaking were made to the terms “CFB—Circulating fluidized bed unit,” “existing EGU” and “new EGU.” The following terms were added between the proposed and final-form rulemaking: “Act,” “administrator,” “bottoming-cycle cogeneration unit,” “Clean Air Act,” “coal,” “commence operation,” “control period,” “heat input,” “operator,” “owner,” “system,” “system-wide compliance demonstration” and “topping-cycle cogeneration unit.”

Additionally, a subsection was added to § 123.202 between proposed and final-form rulemaking to provide that the definitions under the Standards of Performance for New Stationary Sources and Emission guidelines for Existing Sources Promulgated in 40 CFR Part 60, Subparts Da and HHHH are adopted in their entirety and incorporated by reference. The provisions will be used in the interpretation of applicable requirements in §§ 123.202—123.215.

Section 123.203 (relating to applicability) provides that the requirements of §§ 123.201, 123.202 and 123.204—123.215 and this section apply to owners and operators of EGUs in this Commonwealth and except, as otherwise noted, supercedes those requirements adopted in their entirety and incorporated by reference under § 122.3 (relating to adoption of standards).

Section 123.204 (relating to exceptions) provides that the owner or operator of an EGU that enters into an enforceable agreement with the Department for the shutdown and replacement of the unit with IGCC technology shall be exempted from compliance with the Phase 1 requirements of § 123.205 (relating to emission standards for coal-fired EGUs). This section was revised between proposed and final-form rulemaking so that owners or operators that shutdown and replacement a unit with IGCC technology are not exempt from compliance with the Phase 2 emission limitation requirements under § 123.207.

Section 123.205 establishes emission standards for coal-fired EGUs. New PCF EGUs and IGCC EGUs are required to meet either a certain mercury emission standard or minimum mercury control percentage upon construction and new CFB EGUs are required to meet a certain mercury emission standard upon construction. In addition, existing PCF EGUs are required to meet either an increasingly stringent mercury emission standard or minimum mercury control percentage from Phase 1 (effective from January 1, 2010, to December 31, 2014) to Phase 2 (effective beginning January 1, 2015). Existing CFB EGUs are required to meet a certain mercury emission standard or minimum mercury control percentage, which does not change from Phase 1 to Phase 2. IGCC units are required to meet a 95% mercury reduction.

This section was revised between proposed and final-form rulemaking to provide that CFB EGUs must meet either a certain mercury emission standard or minimum control efficiency of mercury emissions. The owners and operators of CFB EGUs must comply with either: (1) a mercury emission standard of 0.0096 pound of mercury per GWh; or (2) a minimum 95% control of total mercury as measured from the mercury content in the coal refuse, either as fired or as approved in writing by the Department. Changes were also made to ensure that owners and operators of new EGUs comply with the standards promulgated under 40 CFR Part 60, Subparts Da and HHHH. Modifications were further rendered to allow owners and operators to receive mercury reduction credit for the pretreatment of fuel. Additionally, modifications were made to delete the terms “bituminous” and “rolling 12-month basis” under specific subsections.

Section 123.206 (relating to compliance requirements for the emission standards for coal-fired EGUs) establishes compliance requirements for the emission standards for coal-fired EGUs. Compliance can be demonstrated on a unit-by-unit basis or by facility-wide emissions averaging. The Department may approve in a plan approval or operating permit an alternative mercury emission standard or schedule, or both, if the owner or operator of an EGU subject to the emission standards of § 123.205 demonstrates in writing to the Department’s satisfaction that the mercury reduction requirements are economically or technologically infeasible. Lastly, the Department has established certain calculation requirements to ensure that a facility does not exceed the applicable emission standard or control percentage requirement.

The Board has made some significant modifications to this section. The compliance presumptions for owners and operators of an existing EGU combusting 100% bituminous coal controlled by certain air pollution control device configurations has been deleted because of constitutionality concerns raised by commentators. The Board has also added language that the Department’s approval of an alternate emission standard or a compliance schedule will not relieve the owner or operator of the EGU from complying with the other requirements of §§ 123.207—123.215. Additional language has been added to provide that the Department’s approval of an alternative emission standard or compliance schedule shall be based on the information provided in the application submitted by the owner or operator of the EGU. Another addition includes certain provisions related to facility wide averaging. Subsection (f) allows an EGU owner or operator to demonstrate compliance with the requirements of § 123.205 by means of facility-wide averaging that demonstrates that the actual mercury emissions from EGUs covered under the emissions averaging demonstration are less than the allowable mercury emissions from all EGUs covered by the demonstration on a 12-month rolling basis.

Section 123.207 (relating to annual emission limitations for coal fired EGU) establishes an annual emission limitation for coal-fired EGUs. In addition to the mercury emission standard requirements in § 123.205, the owner or operator of a new or existing affected EGU subject to § 123.203 shall comply with the annual emission limitations established through a Statewide mercury nontradable allowance program under this section. The total ounces of mercury emissions available for emission limitation set-asides as annual nontradable mercury allowances in the Statewide mercury allowance program are 56,928 ounces (3,558 pounds) of mercury emissions for Phase 1, effective from January 1, 2010, through December 31,

2014, and 22,464 ounces (1,404 pounds) of mercury emissions for Phase 2, effective beginning January 1, 2015, and each subsequent year. Of this overall total, 5% of the Phase 1 annual allowances will be set aside for new units and 3% of the Phase 2 annual allowances will be set aside for new units for the calendar year beginning January 1, 2015, and subsequent years. However, annual allowances will not be set aside for the owner or operator of an existing affected EGU, which is already shut down, scheduled for shutdown or is on standby as of the effective date of each set-aside phase.

The maximum number of annual nontradable mercury allowances set aside for the owner or operator of each existing affected CFB or PCF will be determined by multiplying the affected unit's baseline heat input fraction of the State's total baseline annual heat input for all EGUs. The Department will publish in the *Pennsylvania Bulletin* the maximum number of annual allowances set aside for the owner or operator of each existing affected CFB and PCF. If the actual emissions of mercury reported to the Department are less than the maximum number of annual allowances set aside in the allowance program for the owner or operator of an EGU, the Department will place the unused portion of annual allowances in the annual emission limit supplement pool established under § 123.208 (relating to annual emission limitation supplement pool).

A number of modifications have been made to § 123.207 between proposed and final-form rulemaking. First, subsection (a) additionally provides that the Department will issue to the owner or operator of an affected EGU a plan approval or operating permit that contains the applicable requirements of this section and §§ 123.202—123.206 and 123.210—123.215 before the later of January 1, 2010, or the date on which the affected EGU begins operation. Second, because of changes made by the EPA during the reconsideration process, the Commonwealth was allotted 2 lbs. less than under the original CAMR. As a result, this change is reflected in the final-form rulemaking. Third, the Board has established a more detailed process for the allocation of allowances for new EGUs under subsection (c). For instance, after a new EGU has begun operation and completed three control periods, the EGU will become an existing EGU. The new EGU will continue to receive nontradable allowances from the new unit set-aside until the new EGU is eligible for nontradable allowances allocated from the existing EGU set-aside. Fourth, the Board has promulgated additional procedures for the allocation of allowances for permanently shutdown units under subsection (k). For example, annual nontradable mercury allowances will not be set aside for the owner or operator of an existing affected EGU that is already shut down or scheduled for shutdown, unless the owner or operator of the EGU obtains a plan approval for the construction of a new EGU.

One of the more significant changes to this section involves the demonstration of compliance under subsection (o) for EGUs subject to § 123.207. In addition to compliance on a unit-by-unit and facility-wide basis, owners and operators of affected EGUs may now demonstrate compliance through a system-wide compliance demonstration. For example, so long as the actual emissions of mercury from the EGUs at the facility and other EGUs at other facilities covered in the system-wide demonstration are less than the allowable emissions of mercury from all EGUs covered by the demonstration on an annual basis compliance has been demonstrated. However, an owner or operator may not include an EGU in

more than one system-wide averaging demonstration submitted for the purposes of complying with the requirements of §§ 123.202—123.215. Additionally, the Board has made a number of minor changes to subsections of this section to ensure consistency with the more significant changes that were made.

Section 123.208 establishes the annual emission limitation supplement pool. Annual allowances that have either been created as part of the new EGU set-aside or are unused annual allowances as part of the annual emission limitation for coal-fired EGUs will be set aside in the supplement pool for future use. Minor clarifications were made to this section between proposed and final rulemaking.

Section 123.209 (relating to petition process) establishes a petition process for the owner or operator of an EGU to request additional annual allowances from the annual emission limit supplement pool. Each calendar year beginning January 1, 2010, the Department may, at its discretion, allocate allowances from the supplemental pool to the owners or operators of new or existing affected EGUs that successfully petition the Department in accordance with the requirements of this section. If the petition for supplemental annual nontradable mercury allowances is approved by the Department, the supplemental annual nontradable mercury allowances set aside for the owner or operator of the new or existing affected EGU will be added to the maximum number of annual nontradable mercury allowances set aside for the owner or operator of the EGU under § 123.207 only for the calendar year of the request.

The major change to § 123.209 that occurred between proposed and final-form rulemaking is the deletion of the order of preference for the allocation of supplemental allowances generally, and the order of preference for the allocation of supplemental allowances as it specifically relates to those owners and operators that burn 100% bituminous coal and employ certain air pollution control technologies. The Board has added a provision that the Department's approval of supplemental annual nontradable mercury allowance allocations shall be based on the information provide in the petition submitted by the owner or operator of the EGU.

Section 123.210 (relating to monitoring and recordkeeping requirements) creates general monitoring and reporting requirements for the owner or operator of a new or existing EGU subject to §§ 123.201—123.215. The owner or operator of a new EGU shall demonstrate compliance with §§ 123.205 and 123.207 by installing and operating a continuous emissions monitoring system to measure, record and report the concentration of mercury in the exhaust gases from each stack. The owner or operator of a new or existing affected EGU shall comply with the monitoring, recordkeeping and reporting requirements in this section, §§ 123.211—123.215 and § 139.101 (relating to general requirements), the applicable provisions of the *Continuous Source Monitoring Manual* (DEP 274-0300-001) and 40 CFR Part 75, Subpart I (relating to Hg mass emission provisions). Additionally, for purposes of complying with this section, the definitions in § 123.202 and 40 CFR 72.2 (relating to definitions) are applicable requirements. However, the owner or operator of an existing affected EGU that emits 464 ounces (29 pounds) or less of mercury per year shall either demonstrate compliance with the requirements of §§ 123.205 and 123.207 and 40 CFR Part 75, Subpart I or implement the excepted sorbent trap monitoring methodology for an EGU meeting the requirements in 40 CFR 75.81(b)—(e).

The Board has made a number of modifications to § 123.210 between proposed and final-form rulemaking. For example, the owner or operator of a new or existing affected EGU shall comply with the monitoring, recordkeeping and reporting requirements in this section, §§ 123.211—123.215 and 139.101, the applicable provisions of the *Continuous Source Monitoring Manual* (DEP 274-0300-001) and 40 CFR Part 75, Subpart I. Also, 40 CFR 60.4110—60.4114 are adopted in their entirety and incorporated by reference in this subsection in response to the EPA comments concerning mercury designated representative provisions. Additionally, for purposes of complying with the requirements of this section, the definitions in § 123.202 and 40 CFR 72.2 apply. Also, the owner or operator of an existing affected EGU that emits 464 ounces (29 pounds) or less of mercury per year shall either demonstrate compliance with the requirements of §§ 123.205 and 123.207 and 40 CFR Part 75, Subpart I or implement the excepted sorbent trap monitoring methodology for an EGU meeting the requirements in 40 CFR 75.81(b)—(e). Additional minor changes were also made to § 123.210 to ensure consistency with the more significant changes that were made.

Subsection (h) was added in the final-form rulemaking to provide that the owner or operator of an EGU for which construction of a new stack or flue, installation of add-on mercury emission controls, a flue gas desulfurization system, an SCR system or a compact hybrid particulate collector system is completed after the applicable deadline must comply with the monitoring system certification and other requirements in § 123.210.

Additionally, subsection (k) now provides that owner or operator of an EGU shall not use an alternative monitoring system, alternative reference method or other alternative to any requirement in 40 CFR Part 75 unless the alternative system, method or requirement is approved, in writing, by the Administrator in accordance with 40 CFR Part 75, Subpart E.

Subsection (n)(3) now provides that the owner or operator of an EGU that is using a continuous emission monitoring system or a sorbent trap system to continuously monitor mercury emissions under § 123.210(c)(1) and 40 CFR 75.81(a) may elect to comply with the methodology in § 123.210(c)(2) and 40 CFR 75.81(b)—(f).

Section 123.211 (relating to initial certification and recertification procedures for emissions monitoring) creates initial certification and recertification procedures for emissions monitoring. By the applicable deadline in § 123.210, the owner or operator of an affected EGU shall comply with certain initial certification and recertification procedures for a continuous monitoring system or continuous emission monitoring system and an excepted monitoring system (sorbent trap monitoring system) as required under 40 CFR 75.15 (relating to special provisions for measuring Hg mass emissions using the excepted sorbent trap monitoring methodology) and Chapter 139, Subchapter C (relating to requirements for source monitoring for stationary sources). Only minor changes were made to this section between proposed and final rulemaking to reflect that § 123.210 also applies in certain circumstances.

Section 123.212 (relating to out-of-control periods for emissions monitors) creates out-of-control periods for emissions monitors if an emissions monitoring system fails to meet the quality-assurance and quality-control requirements or data validation requirements. One change to this section has been made between proposed and final-form rulemaking. If a mass emissions monitor-

ing system fails to meet a quality-assurance or quality-control requirement, mass emissions data shall be substituted using the missing data procedures in 40 CFR Part 75, Subpart I.

Section 123.213 (relating to monitoring of gross electrical output) creates monitoring requirements regarding gross electrical output of an affected EGU. One minor change to this section has been made between proposed and final-form rulemaking. The owner or operator of an EGU complying with the requirements of only § 123.206(d) and not § 123.206(e) must monitor gross electrical output of the associated generators and report in watt-hours per hour.

Section 123.214 (relating to coal sampling and analysis for input mercury levels) creates sampling and coal analysis for input mercury levels of affected EGUs. The Department may revise the frequency of the sampling of the coal combusted in the EGU for the mercury content based on historical data provided by the owner or operator of the EGU. One change to this section has been made between proposed and final-form rulemaking. The Department now has the authority to approve, in writing, an alternate coal sampling and analysis program submitted by the owner or operator of an EGU to demonstrate compliance with §§ 123.201—123.215.

Section 123.215 (relating to recordkeeping and reporting) creates recordkeeping and reporting requirements. Among other things, the owner or operator of an affected EGU must comply with the recordkeeping and reporting requirements in this section and the applicable recordkeeping and reporting requirements in Chapter 139, Subchapter C and 40 CFR Part 75. Minor clarifications were made to this section between proposed and final rulemaking.

F. *Comments and Responses*

The Board received nearly 11,000 comments on the proposed rulemaking. The Board determined that over 99% of the commentators are in favor of the proposed rulemaking. The commentators were extraordinarily diverse ranging from the public, sportsmen, industry, trade associations and the EPA. Additionally, comments were received from the Senate Environmental Resources and Energy Committee and the Independent Regulatory Review Commission (IRRC). The complete set of comments and responses is in the Comment and Response document for the final-form rulemaking. A summary of the comments and responses follows.

While other commentators echoed many of the comments of the Senate Environmental Resources and Energy Committee, the Committee recommended that the advanced notice of final rulemaking process be used to solicit comment and input on its revisions. The Board disagrees. Since the close of the public comment period, the Department has held additional meetings with the Workgroup, the Citizens Advisory Council and the AQTAC on the draft final-form rulemaking. Notices of these meetings were published in the *Pennsylvania Bulletin* and the meetings were open to the public to comment on the revisions. As a result, the Board believes that sufficient comment has been received on the revisions.

IRRC also had many of the same comments posed by other commentators, but believes that a “health-based” analysis is necessary as provided under section 6.6 of the APCA. The Board disagrees. The statutory requirements in section 6.6 of the APCA do not apply to this final-form rulemaking because the EPA revised the “appropriate and necessary” finding to establish a cap-and-trade scheme

under section 111 of the CAA for the trading of mercury allowances. As part of its decision making process, the Department has completed an analysis of the health impacts of this final-form rulemaking. A detailed summary of the health benefits resulting from the implementation of this final rulemaking is provided in Section G of this Order.

An overwhelming number of commentators strongly supported the proposed rulemaking on mercury reductions from coal-fired power plants in this Commonwealth. The Board appreciates this strong support for this final-form rulemaking.

One commentator noted lakes, rivers and streams in this Commonwealth are contaminated with mercury pollution. The Board agrees. There is a Statewide fish consumption advisory in effect in this Commonwealth. The 2006 advisory covers water bodies in the Delaware River Basin, Susquehanna River Basin, Lake Erie Basin, Ohio River Basin and the Potomac River Basin. Over 60% of those advisories are for mercury.

Another commentator said mercury pollution builds up in areas close to the source, creating dangerous "hot spots" of high mercury concentrations. The Board agrees. The preliminary results of the study titled "*Sources of Mercury Wet Deposition in Eastern Ohio, USA*" (Steubenville Study) conducted by Dr. Gerald J. Keeler, *et al.*, found that local and regional wet deposition of mercury from coal-fired powered plants is much higher than anticipated. This study was published on the American Chemical Society's website on September 8, 2006, and was subsequently published in *Environmental Science and Technology*.

Approximately 70% of the wet mercury deposition has been attributed to coal-fired units. Moreover, in May 2006, the EPA's Acting Inspector General, Bill Roderick, stated that the EPA's analysis of the methylation of mercury "... did not fully account for the highly variable ways that mercury bioaccumulates in fish." See also "Monitoring Needed to Assess Impact of EPA's Clean Air Mercury Rule on Potential Hotspots, Report No. 2006-P-00025."

A commentator found that this Commonwealth is number two in the Nation for mercury pollution to air from coal-fired power plants and that the most recent Toxic Release Inventory from the EPA ranks this Commonwealth as second worst in the Nation for mercury pollution to the air, behind Texas. The Board agrees with this comment. According to the 2004 Toxic Release Inventory, mercury emissions from coal-fired EGUs in this Commonwealth accounted for approximately 79% of the mercury emitted to the atmosphere.

One commentator said the CAMR does too little too late. CAMR proponents claim that this Commonwealth will see an 86% drop in mercury pollution as a result of the Federal rule. The Congressional Research Service detailed that the CAMR won't deliver the reductions it promises due to mercury pollution trading, when dirty plants are allowed to buy credits from cleaner, more modern ones. The Board agrees. The claims that implementation of the CAMR in this Commonwealth would result in an 86% reduction in mercury emissions in this Commonwealth by 2018 overestimates the actual reduction under the cap-and-trade program. According to the independent Congressional Research Service, the EPA projected mercury emission reductions may not be met until 2030. The final-form "state-specific" regulation establishes emission standards requiring at least an 80%

mercury emissions reduction by January 1, 2010, and at least a 90% reduction by January 1, 2015, from existing EGUs or in the alternative a numerical emission standard.

One commentator contended that mercury pollution controls are available and affordable, and coal-fired power plants in this Commonwealth are very profitable. The Board agrees. The Board has determined that a control technology combination of cold side-ESP and WFGD would result in at least 80% control efficiency of mercury emissions from coal-fired power plants in this Commonwealth. Moreover, a control technology combination of cold side-ESP, WFGD and SCR would result in at least 90% control efficiency of mercury emissions from coal-fired power plants in this Commonwealth. Because of this determination, the Board has selected the 80 and 90% control efficiencies as requirements for the Pennsylvania-specific mercury final-form rulemaking. In addition, the Board has selected the Phase 1 and Phase 2 compliance dates of 2010 and 2015 because they coincide with the deadlines under the CAIR. As this analysis relates to mercury-specific control technology, the Board believes there is sufficient evidence to show that for owners and operators that choose to this type of technology it is cost-effective and commercially available.

Another commentator noted that the Federal mercury rule is bad for this Commonwealth's economy. Mercury contamination is threatening this Commonwealth's sporting, angling and recreation industry, a significant source of revenue and jobs throughout this Commonwealth. Because of the trading system in the CAMR, plants in this Commonwealth are more likely to pay for pollution credits than to clean up and modernize old plants. Most importantly, there are significant costs associated with the devastating health impacts, rates of learning disabilities and associated health effects of mercury in children are increasing.

The Board agrees. The Fish and Boat Commission determined that in 2005 approximately 800,000 anglers fished in waters in this Commonwealth. Fish licensing sales in this Commonwealth amounted to \$18.5 million in 2005. According to the Erie Regional and Growth Partnership, residents of this Commonwealth 16 years of age and older spent \$400 million on fishing in this Commonwealth in 2001. The average angler spent \$458 in 2001 on fishing. These direct expenditures created \$1.2 billion in economic output in this Commonwealth. As a result, this Commonwealth has a significant economic interest in fresh water fishing as an economic driver. The purchase and sale of mercury allowances will not be allowed under the Pennsylvania-specific final-form rulemaking. The Board shares this concern regarding the adverse health impacts of exposure to mercury emissions. According to Dr. Leonardo Trasande, Assistant Director for The Mount Sinai Center for Children's Health and the Environment, it is found that each year between 316,588 and 637,233 children "... have cord blood mercury levels >5.8 µg/L, a level associated with loss of IQ." The resulting loss of intelligence causes diminished economic productivity that persists over the entire lifetime of these children. This lost productivity is the major cost of methylmercury toxicity, and it amounts to \$8.7 billion annually (range, \$2.2—\$43.8 billion; costs are in 2000 dollars). Of this total, \$1.3 billion (range, \$0.1—\$6.5 billion) each year is attributable to mercury emissions from American power plants.

One commentator said that each unit should make mercury reductions. The Board agrees. In February 2005,

the EPA OIG issued a report to the EPA stating “. . . the EPA did not fully analyze the potential for hot spots (i.e., areas of elevated pollutant concentrations) to occur under its proposed cap-and-trade option.” The potential for hot spot formation under the proposed cap-and-trade rule has generated a great deal of concern and debate among various stakeholders. In the Decision Document, the Department has a summary of the hot spot analysis it conducted and determined that a reduction in the local contribution of mercury emissions from coal-fired utilities in this Commonwealth through a Pennsylvania-specific mercury final-form rulemaking would result in direct benefits to the citizens of this Commonwealth. The Commonwealth will receive the majority of a reduction that is required to come from a coal-fired utility in this Commonwealth. The CAMR not only ignores the issue of potential local mercury hotspots, but also does not guarantee that any reductions in mercury emissions will occur at coal-fired utilities in this Commonwealth. As a result, a Pennsylvania-specific mercury final-form rulemaking would improve local ecosystems and concomitantly improve public health by reducing mercury deposition.

One commentator supported the fastest and furthest reduction of mercury emissions to protect citizens in this Commonwealth from even low levels of exposure. The Board agrees that the CAMR will not adequately protect public health and the environment within the borders of this Commonwealth. The final-form rulemaking does not establish a cap-and-trade program and will ensure that greater reductions in mercury emissions are achieved prior to the 2018 compliance deadline established under Phase 2 of the CAMR. The final-form rulemaking will achieve a 90% reduction in total mercury removal from coal-fired power EGUs by January 1, 2015. Alternatively, the owners and operators of PCF units may comply with an output-based standard of 0.012 pound of mercury per gigawatt-hour (lb/GWh) starting January 1, 2015 (Phase 2) and each year thereafter. The owners and operators of CFB EGUs will have the option of complying with an emission standard of 0.0096 lb/GWh or a minimum 95% control of total mercury, as measured from the mercury content in the coal as fired.

A commentator stated that no evidence was presented by any party showing the proposed rulemaking will provide additional environmental or health benefit to this Commonwealth beyond the EPA CAMR and that no credible evidence of mercury “hot spots” was presented by any party. The commentator stated that evidence was presented that there were no local mercury “hot spots.” The Board strongly disagrees. The Department’s analysis has determined that a reduction in the local contribution of mercury emissions from coal-fired utilities in this Commonwealth through a Pennsylvania-specific mercury final-form rulemaking would result in direct benefits to the citizens of this Commonwealth. For instance, it is well known that some forms of atmospheric mercury are rapidly deposited by both wet and dry processes, and emissions of these forms of mercury, especially near ground level, are responsible for a large portion of the observed mercury deposition in a surrounding area. These more reactive forms of mercury, which are emitted by EGUs burning bituminous coal, are usually deposited from the atmosphere before they can travel long distances. Therefore, the Department can say with confidence that elemental mercury is more inert and can be transported globally, and that oxidized mercury compounds are more reactive and travel much shorter distances before depositing. As a result, the Commonwealth will receive the majority of any reduction that is required

to come from a coal-fired utility in this Commonwealth. The CAMR not only ignores the issue of potential local mercury hotspots, but also does not guarantee that any reductions in mercury emissions will occur at coal-fired utilities in this Commonwealth.

One commentator said that mercury pollution credit trading cannot be allowed. The Board agrees. The Board believes the EPA is without the legal authority to regulate HAPs such as mercury under section 111 of the CAA. The Board also believes that the EPA is not legally authorized under section 111 or section 112 of the CAA to implement a cap-and-trade program. The Congressional intent regarding the regulation of mercury is clear and unambiguous—it must be regulated under section 112 of the CAA. Mercury is explicitly identified as an HAP under section 112(b) of the CAA. For sources other than coal-fired units, the EPA must list source categories under section 112(c) of the CAA and the set emission standards for those categories under section 112(d) of the CAA. While the statutory scheme for regulating mercury from coal-fired units is under section 112(n) of the CAA, the Congressional intent is the same—mercury emissions from these units must be regulated under the Section 112 MACT approach. See *Chevron, U.S.A., Inc. v. Natural Resources Defense Council, Inc.*, 467 U.S. 837 (1984) (where if the intent of Congress is clear, that is the end of the matter; for the court, as well as the agency, must give effect to the unambiguously expressed intent of Congress.) The EPA’s proposed cap-and-trade program is an unreasonable interpretation of its statutory authority under sections 111 and 112 of the CAA. The fact that Congress chose to list specific HAPs under section 112 of the CAA indicated that Congress believed that these pollutants required more stringent measures than those permitted under section 111 of the CAA. Moreover, regulation under section 112 of the CAA has been historically and consistently interpreted as requiring HAPs to be controlled through installation and operation of MACT. A cap-and-trade approach under this section was never contemplated as a control technology.

A commentator requested that the Commonwealth revise the definition of “EGU” in the State’s rule to reflect the EPA’s revised definition in the rule published at 71 FR 33388 entitled “Revision of December 2000 Clean Air Act Section 112(n) finding Regarding Electric Utility Steam Generating Units: and Standards of Performance for New and Existing Electric Utility Steam Generating Units: Reconsideration.” The Board agrees. This change has been made.

One commentator requested that a number of terms that are now included in the CAMR by virtue of its reconsideration process be included in the final-form rulemaking. In addition, new definitions may be added once the EPA finalizes its Federal implementation plan on the CAMR. The Board agrees. To address the fact that the EPA will be revising definitions, possibly even after the Board’s regulation is final, “incorporation by reference” regulatory language has been added. This new provision reads as follows: “The definitions under the Standards of Performance for New Stationary Sources and Emission Guidelines for Existing Sources promulgated in 40 CFR Part 60 Subparts Da and HHHH are adopted in their entirety.” The Board’s final-form rulemaking contains the necessary EPA definitions and also provides for additional definitions, or changes in definitions, that are required for implementation of the Board’s regulation.

The commentator was concerned by proposed § 123.204 that exempts EGUs replaced with IGCC technology from

the emission limitations under § 123.207 may not assure that the State Plan will meet the cap on annual mercury emissions for the State in 40 CFR 60.24(h) (relating to emission standards and compliance schedules). As a result, the Commonwealth's proposed rulemaking may not be approvable under 40 CFR 60.24(h) if the Commonwealth submits it with § 123.204 as proposed. The Board agrees. Owners and operators of EGUs that are replaced with IGCC technology will only be exempt from the emission standards under § 123.206.

The commentator requested that the Commonwealth include a provision in § 123.205 notifying all owners and operators of new sources that they must also comply with the mercury control requirements in the EPA's NSPS as specified in 40 CFR Part 60, Subpart Da and as adopted by reference by the Commonwealth. The Board agrees. The final-form rulemaking will reflect this change.

Commentators proposed that owners and operators be given credit for coal cleaning. The Board agrees. Proposed § 123.205(a)(4) has been amended to read that the mercury removal efficiency due to pretreatment of coal or waste coal may be credited towards the minimum percent control efficiency of total mercury.

A commentator recommended that the Board eliminate the annual emission limitations for coal-fired EGUs and recommends a restricted market based trading program. The Board disagrees with this recommendation since it does not believe there is sufficient legal authority under existing Federal and State law to allow for the trading of a statutorily recognized HAP and potent neurotoxin like mercury.

A commentator asserted that the proposed rulemaking's prohibition of allowance trading and banking would cause the premature shutdown of smaller, older coal-fired plants in this Commonwealth leading to loss of jobs and reliable electric power. The Board disagrees. Section 123.206 provides that the Department may approve of an alternative mercury emission standard or schedule, or both, if the owner or operator of an EGU subject to the emission standards of § 123.205 demonstrates in writing to the Department's satisfaction that the mercury reduction requirements are economically or technologically infeasible. The provision was added at the request of the AQTAC to address the concerns about smaller, older plants. While the Department's approval of an alternate standard or a compliance schedule will not relieve the owner or operator of an EGU from complying with the other requirements of §§ 123.207–123.215, owners and operators of these smaller, older plants may also petition the Department for supplemental allowances under § 123.209. The Board also added a provision to § 123.207 to allow the owner or operator of an EGU to demonstrate compliance with the annual emission limit by using system-wide averaging. This compliance option will be in addition to the options included in the proposed rulemaking for compliance on a unit-by-unit basis or by facility-wide emissions averaging. As a result, there are a number of provisions in the final-form rulemaking to ensure that smaller, older plants are safeguarded. Because the Commonwealth is not electing to participate in the CAMR, the EPA has not provided the Department with the option of banking allowances from year to year.

A commentator stated that the CAMR allows emission trading, which provides a strong incentive for generators to reduce emissions more than and sooner than required. The Pennsylvania mercury rulemaking does not. The Board disagrees. The EPA admits that compliance with CAMR caps will not be achieved by 2026 or as late as

2030. To provide further incentive in this Commonwealth, the Board has revised § 123.207 to add a provision to allow the owner or operator of an EGU to demonstrate compliance with the annual emission limit by using system-wide averaging. This compliance option will provide an incentive for units within a system to over-control and will be in addition to the options included in the proposed rulemaking for compliance on a unit-by-unit basis or by facility-wide emissions averaging.

A commentator stated that the CAMR does not disadvantage Pennsylvania coal, which contains more mercury than coal from other states. The Pennsylvania mercury rulemaking disadvantages Pennsylvania coal. The Board disagrees. The CAMR discriminates against bituminous coal through the allowance allocation program as well as the NSPS emission limits. The final-form rulemaking treats all coal types evenly. Owners and operators may now take credit for the pretreatment of coal as a means of compliance. These same owners and operators may also take advantage of a system-wide compliance demonstration. Since owners and operators may use CAIR-type technologies to reduce mercury emissions, they are less likely to switch coals because bituminous coal allows for a higher capture rate. Additionally, this Commonwealth has an abundance of low-mercury-content coal found in the southwestern part of this Commonwealth.

Another commentator stated that under the proposed rulemaking, the Commonwealth will be in violation of its CAMR State Budget beginning in 2018. The Board disagrees. The Board reviewed the list of IPM runs that the EPA conducted in support of the CAMR. These model runs show that coal-fired power plants in this Commonwealth will emit 64% more mercury 0.451 ton (902 lbs.) than the established cap of 0.702 ton (1,404 lbs.) in 2020. In contrast, after Phase 2, it is anticipated that the Pennsylvania mercury rulemaking would achieve a 39% greater reductions than the CAMR under Phase 2. This means that the Commonwealth would achieve its 2018 cap of 0.702 ton (1,404 lbs.) by 2015.

Commentators asserted that the annual emission limit in § 123.207, which is based on the CAMR allocations, is an extremely stringent and unnecessary requirement. The imposition of this on a unit or even facility basis will force many Pennsylvania high-mercury coals out of the market for the generation of electricity. Some smaller generating units cannot employ the maximum control technologies that would be necessary to achieve the levels specified in this section and remain competitive in the wholesale power market. The Board disagrees. The annual emission limitation provisions are designed to ensure that the mercury emission cap established for EGUs in this Commonwealth is not exceeded. The Board has revised § 123.207 to include the option of system-wide emissions averaging. This provision allows the owners or operators of two or more affected EGUs under common ownership or operator control within this Commonwealth to demonstrate compliance by ensuring that the aggregate of actual mass emissions from all units, under the averaging demonstration, is less than the aggregate of allowable mass emissions from these units. Therefore, smaller units that belong to systems that include larger units that over-control will be able to average their annual emissions as part of the system-wide averaging provision. This averaging will help the smaller units meet their annual emission limitations. The Board has also decided to give credit to EGUs that pretreat their coal to reduce its mercury content. This will help EGUs meet both the unit-specific emission standards and the annual limit. Also, these owners and operators may petition the De-

partment for alternative emission standards or compliance schedules under § 123.206 and supplemental allowances under § 123.209.

Some commentators believed that the unused nontradable allowances in the new source set aside provision in § 123.207(c)(2) should not be retained in the supplemental pool. Those unused nontradable allowances should be returned to the affected units. The Board disagrees. The final-form rulemaking does not include banking and trading provisions. The Department made the determination that the state-of-the-art mercury control technology is such that each unit can, if the appropriate measures are taken, meet its emissions cap. The Department will retain the unused allowances for each unit and allocate them to units that have not met their cap and have applied for additional allowances from the annual emission limit supplement pool. The Department's petition process will ensure that those units that have demonstrated the most effort in reducing their mercury emissions will be eligible to receive allowances. The Board has also revised § 123.207(o) to include the option of system-wide emissions compliance demonstration. This provision allows the owners or operators of two or more affected EGUs under common ownership or operator control within this Commonwealth to demonstrate compliance by ensuring that the aggregate of actual mass emissions from all units, under the averaging demonstration, is less than the aggregate of allowable mass emissions from these units. This compliance option will be in addition to the options included in the proposed rulemaking for compliance on a unit-by-unit basis or by facility-wide emissions averaging.

Commentators contended that an owner of a standby unit cannot rely on the potential for allowances to be made available to assure they are in compliance with this proposed rulemaking. An owner must be certain a standby unit can come back into service and be in compliance, or there will be no choice but to prematurely retire that unit. A cap-and-trade program would provide that opportunity. The Board disagrees. This Commonwealth currently does not have units that qualify as standby units. If the owner or operator of a unit changes its designation to standby in the future, its allowances will be transferred to the annual emission limit supplement pool established under § 123.208. If the owner or operator subsequently applies to restart a designated standby unit, it would then need to meet the applicable emission limit requirements of § 123.205.

One commentator believed that the Department's compliance bank may not cover all potential requests for allowances. The Board disagrees. The annual emission limit supplement pool established under § 123.208 is not a "compliance bank" nor is it intended to be a permanent "crutch" for owners and operators of units to rely upon to meet their annual emissions cap. The owner or operator of each affected unit should design its compliance program to comply with the applicable requirements in the final-form rulemaking. In the event then that the unit happens to exceed its limit, the Department can make nontradable supplemental allowances available to that unit if the owners or operators successfully petition the Department in accordance with § 123.209. The Department's analysis shows that the Pennsylvania mercury rulemaking would achieve approximately a 29% greater reduction than the CAMR during Phase 1. This would amount to 1.2567 tons (2,513.4 lbs.) of mercury emissions as opposed to 1.77 tons (3,540 lbs.) mercury emissions under the CAMR cap. During Phase 2, it is anticipated that the Pennsylvania mercury rulemaking would achieve

approximately a 39% greater reductions than the CAMR under Phase 2. Therefore, the Commonwealth would achieve its cap of 0.702 ton (1,404 lbs.) by 2015 rather than exceeding it by 0.451 ton (902 lbs.). As a result, there should be sufficient allowances in the supplemental pool.

One commentator believed that proposed §§ 123.206 and 123.209 are unconstitutional under the commerce clause of the United States Constitution because they effect a preference for Pennsylvania coal under the guise of bituminous coal. The Board disagrees that these sections are unconstitutional. However, after consideration of comments received on the proposed rulemaking, the Board has removed the provisions for presumptive compliance with the emission standards and preferential allowance allocations for bituminous coal. While the original intent of the bituminous coal preference was to reflect known control capabilities while burning bituminous coal, the intended simplification of implementation of the mercury regulations was outweighed by the possible legal challenges that jeopardized the reliance of our industry on these provisions. Therefore, the final-form rulemaking does not contain these provisions.

One commentator stated that the Commonwealth must modify proposed § 123.210(b) by adding a statement that source owners and operators must also comply with the requirements of 40 CFR Part 75 with regard to mercury mass emissions. The Board agrees and the requirements for 40 CFR Part 75, Subpart I compliance, for mass emission monitoring systems, have been added to the final-form rulemaking.

A commentator asked that the Commonwealth state in its regulation that 40 CFR Part 75 requirements will take precedence if a case should arise where there is a conflict between 40 CFR Part 75 and the Commonwealth's requirements. The Board agrees. This change has been made to § 123.210.

A commentator asked that the Commonwealth clarify in the proposed rulemaking that the Department will not approve alternative requirements unless they are consistent with 40 CFR Part 75. The Board agrees. This change has been made to § 123.210.

Another commentator believes that the Board should adopt the sampling provisions laid out in the CAMR and not the daily 'as fired' sampling protocol. The Board disagrees. The CAMR does not provide methodology for determining or demonstrating compliance with percent-reduction limits or coal sampling and analysis. The Board believes daily coal sampling in conjunction with outlet mercury emission monitoring will accomplish the goal of ensuring compliance with percent-reduction limits for subject EGUs without imposing unreasonable costs. Daily sampling is specified to establish a relationship between the coal that is sampled and that which is burned, and to conform with provisions of 40 CFR Part 60 (relating to standards of performance for new stationary sources) for pretreatment for sulfur removal, as well as the discussions and clarifications in the preamble to 40 CFR Part 60, Subpart Da and determinations under 40 CFR Part 60, Subpart Da recorded on the EPA's Applicability Determination Index.

One commentator believed that if sources in this Commonwealth purchase allowances from out-of-State sources that have over-controlled their emissions, in virtually all instances the selling sources would be located to the west and southwest of this Commonwealth. This would benefit the environment in this Commonwealth since those power

plants did over-control and are up-wind of this Commonwealth. The Board disagrees. Coal-fired power plants that burn bituminous coal emit oxidized forms of mercury, which are deposited near their source. Sources to the west and south west primarily burn bituminous coal and would see local deposition improve. In this Commonwealth, 85% of the coal burned by coal-fired power plants is bituminous, with the remainder waste coal. As a result, the Commonwealth would not see reductions in actual emissions of mercury within the environs of this Commonwealth and may even see increased emissions, if power plants in this Commonwealth were allowed to purchase allowances from out-of-State sources rather than installing controls.

One commentator believed that MACT would have been a superior way to reduce mercury emissions. By allowing trading, not all geographic areas benefit from pollution reductions. The Board agrees with this comment. The Board believes that the EPA does not have the legal authority to regulate HAP, like mercury, under the less stringent provisions of section 111 of the CAA, as opposed to the more stringent MACT provisions under section 112 of the CAA. Since the EPA promulgated its Section 111 approach for the control of mercury emission from power plants, petitions for review challenging this final EPA action were filed with the United States Court of Appeals for the D.C. Circuit. In addition to the Commonwealth, state challengers include California, Connecticut, Delaware, Illinois, Maine, Massachusetts, New Hampshire, New Mexico, New Jersey, New York, Rhode Island, Vermont and Wisconsin.

Some commentators stated that Dr. Terry Sullivan of Brookhaven National Lab found no evidence of hot spots created by emissions trading. The Board disagrees. Impacts regarding mercury deposition were studied at the Bruce Mansfield coal-fired power plant in Shippingport, PA, and reported in Sullivan, T.M, et al., "Assessing the Mercury Health Risks Associated with Coal-Fired Power Plants: Impacts of Local Depositions," Brookhaven National Laboratory, Upton, NY. The Bruce Mansfield plant is characterized by high total mercury emissions. From the deposition modeling, the average increase in deposition as compared to a background deposition rate of 20 $\mu\text{g}/\text{m}^2/\text{yr}$ over a 2,500 km^2 area around the plant was 15% at Bruce Mansfield. Over an area that is 50–100 km^2 , immediately adjacent to the plant, deposition doubled at the Bruce Mansfield plant. The report concluded that if the plant emissions double the local deposition, the fish concentration would be similarly doubled. As a result, the U.S. mean fish mercury content is 0.21 ppm and near the Bruce Mansfield plant the mean fish mercury content is 0.41 ppm.

One commentator stated that the Board's proposed rulemaking lacked a market-driven cap-and-trade program, a proven tool to reduce air pollution, to promote early reductions of mercury emissions in a cost-effective way. The Board disagrees. The Commonwealth has been a strong proponent of traditional cap-and-trade programs regarding criteria pollutants. However, because mercury is a designated HAP under section 112 of the CAA and a potent neurotoxin, trading of a substance such as this is illegal under the CAA and bad environmental and public health policy. Because of the trading provisions under the CAMR, owners and operators of EGUs in this Commonwealth do not have to make reductions of actual mercury emissions in this Commonwealth. They can purchase allowances to offset the amount of mercury they emit over their cap to ensure compliance, which means that reductions in this Commonwealth may only be realized on

paper. Moreover, mercury emissions in this Commonwealth may be much higher than the EPA projects.

Some commentators said there is no certainty a pool of allowances will be created under the proposed rulemaking to be available to owners of EGUs without the economic incentives included in the CAMR cap-and-trade program. The Board disagrees. After Phase 1 of the program, the Board anticipates that the Pennsylvania mercury rulemaking will achieve approximately 29% greater reductions than the CAMR. After Phase 2, the Board anticipates that the Pennsylvania mercury rulemaking will achieve approximately 39% greater reductions than the CAMR. As a result, the Board anticipates that there will be a supplemental pool available for use for eligible owners or operators of EGUs. Furthermore, the Board has added a system-wide emissions averaging approach to address the commentator's concerns regarding incentives for early reductions. Under this approach, owners or operators of two or more affected EGUs under common ownership or operator control within this Commonwealth may achieve compliance with the annual mercury emission limitation by ensuring that the aggregate of actual mass emissions from all units, under the averaging demonstration, is less than the aggregate of allowable mass emissions from these units.

Some commentators believed that the Board has viewed the public comment period as a public opinion poll, rather than a genuine opportunity to solicit and consider substantive comments. The commentators felt that the vast majority of the comments received were form e-mails or letters drafted by advocacy organizations to "run up the numbers." The Board disagrees. It is undisputed that there is a substantial public interest in the State-specific rulemaking to reduce mercury emissions from coal fired power plants. The unprecedented number of commentators for this final-form rulemaking shows that the public is extraordinarily concerned about mercury emissions from coal-fired power plants and is exercising their constitutional right to comment on an issue that directly affects them. Many of these comments were substantive in nature, which resulted in the Board making revisions to the final-form rulemaking.

Some commentators believed that if trading is not added to the proposed rule and controls cannot be built because of time, labor or financial constraints. The Board disagrees. Section 123.206(c) provides that the Department may approve of an alternative mercury emission standard or schedule, or both, if the owner or operator of an EGU subject to the emission standards of § 123.205 demonstrates in writing to the Department's satisfaction that the mercury reduction requirements are economically or technologically infeasible. While the Department's approval of an alternate standard or a compliance schedule will not relieve the owner or operator of an EGU from complying with the other requirements of §§ 123.207–123.215, owners and operators of these plants may also petition the Department for supplemental allowances under § 123.209. As a result, there are a number of provisions in the regulation to ensure that plants are safeguarded. In addition, an alternate schedule would not require these units to operate at a reduced level of output.

One commentator stated that a recent study shows the proposed mercury rulemaking would increase this Commonwealth's cost for compliance by \$1.7 billion, doubling the investments EGUs would have to make in advanced pollution control equipment over the CAIR/CAMR. The commentator further stated that the Board has done no

detailed study of the cost impacts of this proposed rulemaking on electric generators or electric customers. The Board disagrees. The Department has done a thorough cost analysis and has found that the increase in cost to electric utility customers in this Commonwealth would be very small, and that the increased cost would be \$0.0012 to 0.0038 KWh.

Some commentators are extremely concerned about the impact the Board's proposed rulemaking will have on the economy. Imposition of burdensome, unnecessary mercury regulations can have a devastating, rippling effect throughout the energy production, mining and manufacturing sectors. The Board shares these concerns as well, but does not believe the final-form rulemaking will have this effect. There will be compliance costs related to the construction and operation of air pollution control devices to control mercury, NO_x and SO₂. The total cost of complying with the State-specific mercury rulemaking in Phase 1 is estimated to be between \$15.4 and \$15.8 million per year. Purchasing mercury allowances (at \$953 per ounce, according to the DOE) would cost approximately \$15.7 million per year.

The Phase 2 cost range is based on the control technologies needed to meet the annual limit. The high end cost estimate is based upon using TOXECON/COHPAC at an annual cost of \$53.4 million. The low end is based upon utilizing B-ACI at an annual cost of \$16.7 million. The capital costs for each of these technologies were annualized based upon 20 years and an interest rate of 10%. The Phase 2 mercury allowance cost was estimated to be \$28.3 million annually based upon the assumption of allowances costing \$41,900/lb. This allowance cost is based on an average from DOE projected costs for 2015 and 2030.

The cost differential between allowance costs and technology costs were \$25.1 million on the high end and a savings of \$11.6 million on the low end. The total kilowatt-hours calculated for the 18 units that may not be installing CAIR controls to meet the Phase 2 requirements are 13,748,393,901. The resulting cost per kilowatt-hour ranges from \$0.0018/KWh for the use of the TOXECON/COHPAC control technology to a savings of \$0.00084/KWh for using B-ACI to comply with the Phase 2 limits.

A commentator contended that there is a lack of evidence that the proposed rulemaking will provide an environmental benefit to this Commonwealth beyond the CAMR. The Board disagrees. The Board's analysis shows that a Pennsylvania-specific mercury reduction rule will reduce mercury emissions in this Commonwealth. A reduction in mercury emissions will lead to improved environmental quality. This improvement in the environment will lead to reduced environmental and public health impacts. These reduced impacts will improve the health of ecosystems and improve public health.

Commentators stated that in 1996, then Governor Tom Ridge promulgated Executive Order 1 of 1996. This order dictated that State rules should be no more stringent than Federal requirements unless there is a compelling State reason to do so. Commentators believed that to date, the Department has demonstrated no compelling reason to implement a State-specific mercury rulemaking. Since executive orders stand until formally withdrawn and this action has not occurred with Executive Order 1 of 1996, the Department's mercury rule should not be promulgated.

The Board disagrees. The Department believes that it has demonstrated that a State-specific rulemaking is

necessary because of compelling reasons. A large body of scientific evidence, some of which was developed as a result of the EPA's obligations under the CAA, has clearly demonstrated that mercury is a persistent, toxic, bio-accumulative pollutant that can have adverse effects on human health and the environment. The Department has determined that effective mercury control technology does exist to significantly reduce mercury emissions from EGUs. Furthermore, mercury control technology is presently being implemented at a number of air pollution emitting sources, and recent testing of mercury control technologies on coal-fired utilities has been shown to be effective in reducing mercury emissions. The Department has joined a number of other parties in a lawsuit challenging the EPA's National cap-and-trade approach as both inappropriate for regulating a potent neurotoxin like mercury and also contrary to the statutory provisions of the CAA. The Department has determined that the provisions in the EPA's final mercury rule for the utility sector that was promulgated under section 111 of the CAA are not adequate to ensure that the citizens of this Commonwealth and the environment will be adequately protected from the harmful effects of mercury emissions.

G. Benefits, Costs and Compliance

Benefits

Overall, the citizens of this Commonwealth will benefit from this final-form rulemaking because they will result in improved air quality by reducing mercury emissions. In addition, it is anticipated that local mercury deposition will be reduced since coal-fired power plants that burn bituminous coal emit oxidized forms of mercury, which are deposited near their source. Moreover, the Board believes that there are a number of reliable cost/benefit studies which indicate cost savings and public health benefits from controlling mercury emissions from EGUs.

The Commonwealth is concerned that the CAMR's cap-and-trade approach will result in hot spots to which this Commonwealth is particularly susceptible given that all 36 coal-fired utilities in this Commonwealth burn bituminous coal as their primary fuel source. Bituminous coals generally have high mercury, chlorine and sulfur contents and low calcium content, resulting in a high percentage of organic mercury. This type of mercury has a residence time of a few days and is deposited near the source of the release. Therefore, it is not a suitable candidate for emission trading against emission reductions in other regions because it results in hot spots.

Impacts regarding mercury deposition were studied at the Bruce Mansfield coal-fired power plant in Shippingport, PA. Sullivan, T.M., et al., *Assessing the Mercury Health Risks Associated with Coal-Fired Power Plants: Impacts of Local Depositions*, Brookhaven National Laboratory, Upton, NY. This plant is characterized by high total mercury emissions. From the deposition modeling, the average increase in deposition as compared to a background deposition rate of 20 µg/m²/yr over a 2,500 km² around the plant was 15% at Bruce Mansfield. Over an area that is 50–100 km², immediately adjacent to the plant, deposition doubled at the Bruce Mansfield plant. The report concluded that if the plant emissions double local deposition, the fish concentration would be similarly doubled. As a result, the United States mean fish mercury content is 0.21 ppm and near the Bruce Mansfield plant the mean fish mercury content is 0.41 ppm.

The 2003 results of the EPA Office of Water study "Draft Mercury REMSAD Deposition Modeling Results" reinforce the Commonwealth's concern. This Regulatory

Modeling System for Aerosols and Deposition modeling shows that, at mercury hot spots, local emission sources within a state can be the dominant source of deposition. At hot spots, local sources within a state commonly account for 50% to 80% of the mercury deposition. In-state sources contribute more than 50% of the pollution to sites in the top eight worst hot spot states, which are Michigan, Maryland, Florida, Illinois, South Carolina, North Carolina, Pennsylvania and Texas, respectively.

In addition to these studies, "Sources of Mercury Wet Deposition in Eastern Ohio, USA," which is the EPA-funded Steubenville Mercury Deposition Source Apportionment Study, was published in *Environmental Science and Technology*. See *Environ Sci Technol.* 40(19)5874-5881 (2006). This study found that approximately 70% of the mercury in rain collected at an Ohio River Valley monitoring site originated from nearby coal-burning industrial plants.

NESCAUM sponsored a report analyzing the cost savings and public health benefits of controlling mercury emissions from power plants. NESCAUM, *Economic Valuation of Human Health Benefits of Controlling Mercury Emissions from U.S. Coal-fired Power Plants* (February 2005) (Harvard Study). The Harvard Study was prepared by the Harvard Center for Risk Analysis, funded by the EPA, co-authored by an EPA scientist and peer-reviewed by two other EPA scientists. The Harvard Study reveals that the EPA miscalculated the "nature of the risk involved" by underestimating the public health benefits of reducing mercury. Specifically, the Harvard Study indicates that the public benefit of reducing power plant mercury emissions to 15 tpy ranges from \$119 million annually (if only persistent IQ deficits from fetal exposures to methylmercury are counted) to as much as \$5.2 billion annually (if IQ deficits, cardiovascular effects and premature mortality are all counted).

The May 2005 edition of *Environmental Health Perspectives* indicates that the EPA underestimated the health benefits to be gained from reducing mercury. In one study, scientists from the Mount Sinai School of Medicine examined National blood mercury prevalence data from the CDC and found that between 316,588 and 637,233 children each year have cord blood mercury levels greater than 5.8 micrograms per liter—the level associated with loss of IQ. See Leonardo Trasande, et al., *Public Health and Economic Consequences of Methylmercury Toxicity to the Developing Brain*, 113:590-596 *Environmental Health Perspectives* (2005). They estimated that the resulting loss of intelligence and diminished economic activity amounted to \$8.7 billion annually, with \$1.3 billion each year being directly attributable to mercury emissions from power plants. The scientists further caution that these costs will recur each year with each new birth cohort as long as mercury emissions are not controlled.

Trasande and his colleagues have further concluded that their calculations on economic cost may, in fact, be an underestimate. See "Mental retardation and prenatal methylmercury toxicity," *AM J Ind Med.* 2006 Mar; 49(3):153-8. Downward shifts in IQ resulting from prenatal exposure to methylmercury of anthropogenic origin are associated with 1,566 excess cases of mental retardation annually (range: 376—14,293). This represents 3.2% of mental retardation cases in the United States (range: 0.8%—29.2%). The mental retardation costs associated with decreases in IQ in these children amount to \$2.0 billion/year (range: \$0.5—\$17.9 billion). Mercury from American power plants accounts for 231 of the excess mental retardation cases/year (range: 28—2,109), or 0.5%

(range: 0.06%—4.3%) of all mental retardation. These cases cost \$289 million (range: \$35 million—\$2.6 billion). Therefore, Trasande concludes that toxic injury to the fetal brain caused by mercury from coal-fired power plants exacts a significant human and economic toll on American children. These conclusions have been peer-reviewed.

On April 28, 2005, an unpublished report that was funded and completed by the EPA's Office of Wetlands, Oceans and Watersheds became available to the public. See Douglas Rae & Laura Graham, *Benefits of Reducing Mercury in Saltwater Ecosystems*. This study found that a 30%—100% reduction of mercury emissions would translate into a \$600 million to \$2 billion cost savings. The cost savings were largely attributable to reduced health risks, including cardiovascular risks.

As a result of these and other studies, the Board believes that there are substantial benefits regarding the final rulemaking. Moreover, the final rulemaking is designed to maximize the cobenefit of mercury emission reduction achieved through the installation of pollution controls, which are required for compliance with the CAIR program. Owners and operators of EGUs are not disadvantaged under this time frame, and there should not be any reliability concerns for delivery of power over the electric grid.

Under a Pennsylvania-specific mercury rule, EGUs in this Commonwealth will emit no more than 0.702 ton (1,404 lbs.) by 2015. As a result, annual benefit associated with IQ increases in the annual birth cohort ranges are \$4.165 million to \$10.08 million. This benefit is from reduced fetal methylmercury exposure. This means that the Pennsylvania mercury rulemaking will provide an additional benefit of \$1.49 million to \$3.63 million per year over the CAMR. If cardiovascular effects are only experienced by the male population that consumes nonfatty freshwater fish, then the monetized annual benefits are \$1.8 million. This means that the Pennsylvania mercury rulemaking will provide an additional benefit of \$0.65 million per year over the CAMR. If these positive cardiovascular effects are experienced by all citizens in this Commonwealth, then the monetized annual benefits are predicted to be \$200.9 million. This means that the Pennsylvania mercury rulemaking will provide an additional benefit of \$72.3 million per year over the CAMR. Moreover, citizens of this Commonwealth will see these results being achieved by 2015.

In comparison, the total cost of complying with Phase 1 of the Pennsylvania-specific mercury rulemaking would be no more than the cost of complying with the CAMR. For Phase 2, at the low end of the cost estimate, the annualized cost of mercury specific technology may not be any more than the costs of purchasing the allowances. However, at the high end of the cost estimate, the additional cost above purchasing allowance would be around \$24.7 million. Consequently, the benefits of a Pennsylvania mercury rulemaking outweigh the costs.

The Department's analysis assumes the continued use of the existing coal feedstocks. Because it is anticipated that the majority of the mercury reductions in this Commonwealth will be achieved through the installation of CAIR controls for NO_x and SO₂, there will not exist the same incentive to utilize fuel switching to lower mercury content coal as there is under the CAMR. A control strategy combining fuel switching and the purchase of mercury allowances is a viable option that many companies are expected to use to meet the CAMR requirements. The Board's final-form rulemaking disallows the purchase

and trading of allowances. Based on the data submitted in response to the Department's data request, fuel switching is not necessary to comply with its final-form rulemaking emission standards. Therefore, fuel switching is not necessary to comply with the final-form rulemaking and the continued use of the existing coal feedstocks should not be affected. However, owners and operators of affected EGUs are free to employ any compliance strategy necessary to comply with this final-form rulemaking.

Compliance Costs

The Department performed a cost analysis as part of the development process of the Pennsylvania mercury rulemaking. The analysis was also conducted to determine the cost of the rulemaking emission limits above and beyond the CAIR. The CAIR involves the installation air pollution control equipment for SO₂ and NO_x control. For each applicable EGU in this Commonwealth, the Department determined the amount of mercury, if any, that would need to be controlled beyond CAIR control levels for Phase 1 and Phase 2.

For each unit the capital cost, annualized capital costs and operating costs were determined. This was offset against how much it would cost to purchase an equivalent amount of emissions allowances based on the EPA's projections of mercury allowance costs from 2010–2030. These projections come from a DOE document entitled "Annual Energy Outlook 2006 With Projections to 2030." The costs of control were based on cost estimates for installing and operating ACI systems. The capital costs were determined by estimating the cost ranging from \$2/kW–\$4/kW of plant electrical generating capacity. This capital cost was then annualized over 20 years assuming a 10% interest rate. The operating costs were calculated for Phase 1 based on a B-ACI injection rate of 6 lbs. per million actual cubic feet of exhaust gas. For Phase 2 an injection rate of 4.84 or 9.68 lbs. per million actual cubic feet of exhaust gas was used depending on how much was needed to meet the emission limit. The injection rate was multiplied by the average of the 3 highest years of heat input between 1998 and 2002 and then multiplied by \$ 0.0175 lb of sorbent/Million Btu. This calculation was performed for each effected emission unit.

For Phase 1, the Department estimated that 16 units at 7 facilities might opt for mercury-specific control beyond the CAIR control installations. The total capital costs needed for B-ACI were estimated to be approximately \$4.9 to \$9.8 million. The annual operating costs were estimated to be approximately \$14.7 million. The total annualized costs for Phase 1 were estimated to be approximately \$15.4 to \$15.8 million. The cost of \$0.0012/kWh represents the upper bound cost estimate for the EGUs to comply with the Phase 1 limits.

The mercury allowance costs were approximately \$15.7 million using the DOE's projections of mercury allowance costs from 2010–2015 at \$953 per ounce. As a result, the total cost of complying with Phase 1 of the Pennsylvania-specific mercury rulemaking would be no more than the cost of complying with the CAMR.

For Phase 2, the Department estimated that 18 units at 7 facilities might opt for mercury specific control beyond the CAIR control installations. Some EGU owners and operators may choose to install compact hybrid powdered activated carbon (COHPAC) filter systems to comply with the Pennsylvania mercury rulemaking. The Electric Power Research Institute has patented the "TOXECON" process which employs COHPAC in the control configura-

tion. TOXECON/COHPAC has been demonstrated to achieve around 90% reduction of mercury emissions. The capital costs for were determined by estimating the cost ranging from \$56.53/kW–\$125/kW of plant electrical generating capacity.

The difference between the lower-bound and upper-bound costs estimates reflects the difference between carbon injection and the installation of TOXECON/COHPAC filter systems. The total capital costs are estimated to range from \$141.6 to \$313.3 million. The total annualized cost (capital and operating) of mercury-specific control technology that EGU owners and operators might opt to install beyond CAIR to comply with the Pennsylvania mercury rulemaking would range from \$16.7 to \$53 million per year. The resulting cost per kilowatt-hour would be no greater than \$0.0038/kWh for the EGUs utilizing the TOXECON/COHPAC control technology to comply with the Phase 2 limits. The cost of \$0.0038/kWh represents the upper bound cost estimate for the EGUs to comply with the Phase 2 limits.

The estimated total cost of purchasing mercury allowances (using \$2,619 per ounce, according to a DOE estimate) would be approximately \$28.3 million per year if EGU owners and operators did not implement additional measures beyond the CAIR to comply with the CAMR. At the low end of the cost estimate, the annualized cost of mercury specific technology may not be any more than the costs of purchasing the allowances. However, at the high end of the cost estimate, the additional cost above purchasing allowance would be around \$24.7 million. This would represent about \$0.0018/kWh.

Based on the Department's analysis, there is no compelling evidence to suggest that electricity rates will significantly be impacted because of the final-form rulemaking.

Compliance Assistance

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

Paperwork Requirements

This final-form rulemaking will not increase the paperwork that is already generated during the normal course of business.

H. Pollution Prevention

The Pollution Prevention Act of 1990 (42 U.S.C.A. §§ 13101–13109) established a National policy that promotes pollution prevention as the preferred means for achieving state environmental protection goals. The Department encourages pollution prevention, which is the reduction or elimination of pollution at its source, through the substitution of environmentally friendly materials, more efficient use of raw materials and the incorporation of energy efficiency strategies. Pollution prevention practices can provide greater environmental protection with greater efficiency because they can result in significant cost savings to facilities that permanently achieve or move beyond compliance. This final-form rulemaking will reduce mercury emissions from EGUs. Coal-fired power plants that burn subbituminous coal emit Hg⁰, which can be transported over transcontinental distances. Coal-fired power plants that burn bituminous coal emit oxidized forms of mercury, which are deposited near their source. In this Commonwealth, 85% of the coal burned by coal-fired power plants is bituminous, with the remainder

as waste coal. Reducing mercury emissions will reduce mercury deposition and will therefore reduce mercury related water pollution.

I. *Sunset Review*

This final-form rulemaking will be reviewed in accordance with the sunset review schedule published by the Department to determine if the regulations effectively fulfill the goals for which they were intended.

J. *Regulatory Review*

Under section 5(a) of the Regulatory Review Act (71 P. S. § 745.5(a)), on October 17, 2006, the Department submitted a copy of this final-form rulemaking and a copy of a Regulatory Analysis Form to IRRC and to the Chairpersons of the House and Senate Environmental Resources and Energy Committees for review and comment.

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

Under section 5.1(d) of the Regulatory Review Act (71 P. S. § 745.5a(d)), on November 15, 2006, this final-form rulemaking was deemed approved by the House Committee. Under section 5.1(e) of the Regulatory Review Act, IRRC met on November 16, 2006, and approved the final-form rulemaking. Under section 5.1(j.2) of the Regulatory Review Act, on October 18, 2006, the Senate Committee notified IRRC of its intent to review the regulation under section 5.1(j.2) of the Regulatory Review Act. The Senate Committee's 14 calendar day period for review began on the date that IRRC delivered notice of its approval, November 16, 2006. It expired without the Senate Committee taking further action.

(Editor's Note: The General Assembly adjourned *sine die* on November 28, 2006, leaving the Senate Environmental Resources and Energy Committee unable to assert its full 14-day review of the final form regulation.

Under section 5.1(j.3) of the Regulatory Review Act (71 P. S. § 745.5a(j.3)) the Department of Environmental Protection resubmitted this regulation to the Environmental Resources and Energy Committee of the Senate on January 31, 2007, to the Environmental Resources and Energy Committee of the House of Representatives and to the Independent Regulatory Review. The Environmental Resources and Energy Committee of the House of Representatives and the Independent Regulatory Review Commission affirmed their original approvals. The final form rulemaking was deemed approved by the Senate Committee on February 12, 2007.

K. *Findings*

The Board finds that:

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

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

(3) These regulations do not enlarge the purpose of the proposed rulemaking published at 36 Pa.B. 3185.

(4) These regulations are necessary and appropriate for administration and enforcement of the authorizing acts identified in Section C of this order.

L. *Order*

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

(a) The regulations of the Department, 25 Pa. Code Chapter 123, are amended by adding §§ 123.201—123.215 to read as set forth in Annex A.

(b) The Chairperson of the Board shall submit this order and Annex A to the Office of General Counsel and the Office of Attorney General for review and approval as to legality and form, as required by law.

(c) The Chairperson of the Board shall submit this order and Annex A to IRRC and the Senate and House Environmental Resources and Energy Committees as required by the Regulatory Review Act.

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

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

KATHLEEN A. MCGINTY,
Chairperson

(Editor's Note: For the text of the order of the Independent Regulatory Review Commission, relating to this document, see 36 Pa.B. 7353 (December 2, 2006).)

Fiscal Note: Fiscal Note 7-405 remains valid for the final adoption of the subject regulations.

Annex A

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

**Subpart C. PROTECTION OF NATURAL
RESOURCES**

ARTICLE III. AIR RESOURCES

**CHAPTER 123. STANDARDS FOR CONTAMINANTS
MERCURY EMISSIONS**

- Sec. 123.201. Purpose.
- 123.202. Definitions.
- 123.203. Applicability.
- 123.204. Exceptions.
- 123.205. Emission standards for coal-fired EGUs.
- 123.206. Compliance requirements for the emission standards for coal-fired EGUs.
- 123.207. Annual emission limitations for coal-fired EGUs.
- 123.208. Annual emission limitation supplement pool.
- 123.209. Petition process.
- 123.210. General monitoring and reporting requirements.
- 123.211. Initial certification and recertification procedures for emissions monitoring.
- 123.212. Out-of-control periods for emissions monitors.
- 123.213. Monitoring of gross electrical output.
- 123.214. Coal sampling and analysis for input mercury levels.
- 123.215. Recordkeeping and reporting.

§ 123.201. Purpose.

Sections 123.202—123.215 establish mercury emission standards, annual emission limitations as part of a Statewide mercury allowance program with annual nontradable mercury allowances and other requirements for the purpose of reducing mercury emissions from coal-fired EGUs or cogeneration units.

§ 123.202. Definitions.

(a) In addition to the words and terms in subsection (b), the definitions promulgated in 40 CFR Part 60, Subpart Da (relating to standards of performance for electric utility steam generating units for which construc-

tion is commenced after September 18, 1978) and 40 CFR Part 60, Subpart HHHH (relating to emission guidelines and compliance times for coal-fired electric steam generating units) are adopted in their entirety and incorporated by reference in this subsection.

(b) The following words and terms, when used in this section and §§ 123.201 and 123.203—123.215, have the following meanings, unless the context clearly indicates otherwise:

Act—The Air Pollution Control Act (35 P. S. §§ 4001—4015).

Administrator—The Administrator of the EPA or the Administrator's authorized representative.

Btu—*British thermal unit*—The amount of thermal energy necessary to raise the temperature of 1 pound of pure liquid water by 1° F. at the temperature at which water has its greatest density (39° F.).

Bottoming-cycle cogeneration unit—A cogeneration unit in which the energy input to the unit is first used to produce useful thermal energy and at least some of the reject heat from the useful thermal energy application or process is then used for electricity production.

CFB—*Circulating fluidized bed unit*—Combustion of fuel in a bed or series of beds in which these materials are forced upward by the flow of combustion air and the gaseous products of combustion.

CO₂—Carbon dioxide.

CS-ESP—*Cold side electrostatic precipitator*—A particulate control device installed downstream of a boiler air preheater that does the following:

(i) Charges particles with an electric field and causes them to migrate from the gas to a collection surface.

(ii) Treats flue gas after heat extraction from the gas has been completed.

(iii) Operates within a temperature range of no greater than 400° F.

Clean Air Act—The Clean Air Act (42 U.S.C.A. §§ 7401—7642) and the rules and regulations promulgated thereunder.

Coal—

(i) Solid fuels classified as anthracite, bituminous, sub-bituminous or lignite by the ASTM International Standard D 388—77, 90, 91, 95, 98A or 99, Specification for Classification of Coals by Rank.

(ii) The term includes synthetic fuels derived from coal and coal refuse for the purpose of creating useful heat, including solvent refined coal, gasified coal, coal-oil mixtures and coal-water mixtures.

Coal refuse—Waste products of coal mining, physical coal cleaning and coal preparation operations (for example—culm, gob, and the like) containing coal, matrix material, clay and other organic and inorganic material.

Cogeneration unit—A stationary, coal-fired boiler or stationary, coal-fired combustion turbine which:

(i) Has equipment used to produce electricity and useful thermal energy for industrial, commercial, heating or cooling purposes through the sequential use of energy.

(ii) Produces, for a topping-cycle cogeneration unit, during the 12-month period starting on the date the unit first produces electricity and during any calendar year after the 12-month period in which the unit first produces electricity:

(A) Useful thermal energy not less than 5% of total energy output.

(B) Useful power that when added to one-half of useful thermal energy produced:

(I) Is not less than 42.5% of total energy input, if useful thermal energy produced is 15% or more of total energy output.

(II) Is not less than 45% of total energy input, if useful thermal energy produced is less than 15% of total energy output.

(iii) Produces, for a bottoming-cycle cogeneration unit, during the 12-month period starting on the date the unit first produces electricity and during any calendar year after the 12-month period in which the unit first produces electricity, useful power not less than 45% of total energy input.

Commence operation—To have begun any mechanical, chemical or electronic process, including, with regard to a unit, a start-up of a unit's combustion chamber.

Control period—The period beginning January 1 of a calendar year and ending on December 31 of the same year, inclusive.

EGU—*Electric generating unit*—

(i) Except as provided in subparagraphs (iv) and (v), a stationary, coal or coal refuse-fired boiler or stationary, coal-fired combustion turbine in this Commonwealth that serves or has served at any time, since the later of November 15, 1990, or the start-up of the unit's combustion chamber, a generator with nameplate capacity of more than 25 MWe producing electricity for sale.

(ii) A stationary boiler or stationary combustion turbine in this Commonwealth that is not an EGU under subparagraph (i) that begins to combust coal or coal-derived fuel or to serve a generator with nameplate capacity of more than 25 MWe producing electricity for sale shall become an electric generating unit as provided in subparagraph (i) on the first date on which it both combusts coal or coal-derived fuel and serves the generator.

(iii) A unit that qualifies as a cogeneration unit during the 12-month period starting on the date the unit first produces electricity and meets the requirements of subparagraph (iv) for at least 1 calendar year, but subsequently no longer meets the requirements shall become an EGU starting on the earlier of January 1 after the first calendar year during which the unit first no longer qualifies as a cogeneration unit or January 1 after the first calendar year during which the unit no longer meets the requirements of subparagraph (iv)(B).

(iv) A unit that is an EGU under subparagraphs (i) or (ii) and meets both of the following requirements will not be an EGU if it:

(A) Qualifies as a cogeneration unit during the 12-month period starting on the date the unit first produces electricity and continues to qualify as a cogeneration unit.

(B) Has not served at any time, since the later of November 15, 1990, or the startup of the unit's combustion chamber, a generator with nameplate capacity of more than 25 MWe supplying in any calendar year more than one-third of the unit's potential electric output capacity or 219,000 MWhs, whichever is greater, to any utility power distribution system for sale.

(v) A "solid waste incineration unit" as defined in section 129(g)(1) of the Clean Air Act (42 U.S.C.A. § 7554(g)(1)) that combusts "municipal waste" as defined

in section 129(g)(5) of the Clean Air Act will not be an EGU if it is subject to one of the following rules:

(A) An EPA-approved state plan for implementing the requirements of 40 CFR Part 60, Subpart Cb (relating to emissions guidelines and compliance times for large municipal waste combustors that are constructed on or before September 20, 1994).

(B) 40 CFR Part 60, Subpart Eb (relating to standards of performance for large municipal waste combustors for which construction is commenced after September 20, 1994 or for which modification or reconstruction is commenced after June 19, 1996).

(C) 40 CFR Part 60, Subpart AAAA (relating to standards of performance for small municipal waste combustors for which construction is commenced after August 30, 1999 or for which modification or reconstruction is commenced after June 6, 2001).

(D) An EPA-approved state plan for implementing 40 CFR Part 60, Subpart BBBB (relating to emission guidelines and compliance times for small municipal waste combustion units constructed on or before August 30, 1999).

(E) 40 CFR Part 62, Subpart FFF (relating to Federal plan requirements for large municipal waste combustors constructed on or before September 20, 1994).

(F) 40 CFR Part 62, Subpart JJJ (relating to Federal plan requirements for small municipal waste combustion units constructed on or before August 30, 1999).

Existing EGU—An EGU which commenced construction, modification or reconstruction on or before January 30, 2004, or which has three complete control periods of heat input data as of December 31 of the preceding control period.

FF-Fabric filter—An add-on air pollution control system that removes particulate matter (PM) and emissions of nonvaporous metals by passing flue gas through filter bags.

Facility—All units located on one or more contiguous or adjacent properties and which are owned or operated by the same person under common control.

GWh—Gigawatt-hour—One billion watt-hours.

Heat input—For a specified period of time, the product, expressed as million “Btus” per unit time (MMBtu/time), of the gross calorific value of the fuel (in “Btus” per pound fuel (Btu/LB fuel) divided by 1,000,000 Btu/MMBtu) multiplied by the fuel feed rate into a combustion device (in pounds of fuel per unit time (LB fuel/time)), as measured, recorded and reported to the Department by the owner or operator of an EGU and determined in accordance with 40 CFR 60.4170—60.4176 and excluding the heat derived from preheated combustion air, reticulated flue gases or exhaust from other sources.

IGCC—Integrated gasification combined cycle unit—An electric utility steam generating unit that burns a synthetic gas derived from coal in a combined-cycle gas turbine. No coal is directly burned in the unit during operation.

MMBtu—One million British thermal units.

MW—Megawatt—A unit for measuring power equal to one million watts.

MWe—Megawatt electric—One million watts of electric capacity.

MWh—Megawatt-hour—One million watt-hours.

Nameplate capacity—The maximum electrical generating output (in MWe) that the generator is capable of producing on a steady-state basis during continuous operation (when not restricted by seasonal or other deratings):

(i) As specified by the manufacturer, starting from the initial installation of the generator.

(ii) As specified by the person conducting the physical change, starting from the completion of a subsequent physical change in the generator resulting in an increase in the maximum electrical generating output in MWe.

New EGU—An EGU which commenced construction, modification or reconstruction, as defined under 40 CFR Part 60 (relating to standards of performance for new stationary sources), on or after January 30, 2004, and has less than three complete control periods of heat input data as of December 31 of the preceding control period.

O₂—Oxygen.

Operator—

(i) A person who operates, controls or supervises an EGU or a facility that includes an EGU.

(ii) The term also includes a holding company, utility system or plant manager of an EGU or facility.

Owner—

(i) A holder of any portion of the legal or equitable title in an EGU or a facility in this Commonwealth that includes an EGU.

(ii) The term also includes a holder of a leasehold interest in an EGU or a facility in this Commonwealth that includes an EGU.

PCF—Pulverized coal-fired unit—

(i) A steam generating unit in which pulverized coal is introduced into an air stream that carries the coal to the combustion chamber of the steam generating unit where it is fired in suspension.

(ii) The term includes both conventional pulverized coal-fired and micropulverized coal-fired steam generating units.

Phase 1—The period from January 1, 2010, through December 31, 2014.

Phase 2—The period beginning January 1, 2015, and each subsequent year thereafter.

Rolling 12-month basis—A determination made on a monthly basis from the relevant data for a particular calendar month and the preceding 11 calendar months (total of 12 months of data).

SCR—Selective catalytic reduction—A process where a gaseous or liquid reductant (most commonly ammonia or urea) is added to the flue gas stream in the presence of a catalyst. The reductant reacts with nitrogen oxides in the flue gas to form molecular nitrogen.

SO₂—Sulfur dioxide.

Space velocity—The exhaust gas volume per hour of the SCR corrected to standard temperature and pressure divided by the volume of the catalyst.

Standby unit—A unit that is out of operation but under a Department-approved maintenance plan as provided under § 127.11a (relating to reactivation of sources), which will enable the source to be reactivated in accordance with the terms of the permit issued to the source.

System—The total number of EGUs under common ownership or operator control in this Commonwealth, which an owner or operator identifies to the Department as participating in an emissions compliance demonstration for the purpose of complying with § 123.207 (relating to annual emission limitations for coal-fired EGUs).

System-wide compliance demonstration—Demonstrating compliance with the annual emission limitation by ensuring that the aggregate of actual mass emissions is less than the aggregate of allowable mass emissions for all EGUs in the system which are included in the demonstration.

Topping-cycle cogeneration unit—A cogeneration unit in which the energy input to the unit is first used to produce useful power, including electricity, and at least some of the reject heat from the electricity production is then used to provide useful thermal energy.

WFGD—Wet flue gas desulfurization unit—An SO₂ control system located downstream of the steam generating unit that removes SO₂ from the combustion gases of the steam generating unit by contacting the combustion gases with an alkaline slurry or solution including lime and limestone.

Watt-hour—A unit of energy equivalent to 1 watt of power expended for 1 hour of time.

§ 123.203. Applicability.

The requirements of this section and §§ 123.201, 123.202 and 123.204—123.215 apply to owners and operators of an EGU located in this Commonwealth and, except as otherwise noted, supersede those requirements adopted in their entirety and incorporated by reference in § 122.3 (relating to adoption of standards).

§ 123.204. Exceptions.

Consistent with § 123.207(b)(1) (relating to annual emission limitations for coal-fired EGUs), the owner or operator of an EGU that enters into an enforceable agreement with the Department not later than December 31, 2007, for the shutdown and replacement of the unit with IGCC technology no later than December 31, 2012, shall be exempted from compliance with the Phase 1 emission standards specified in § 123.205 (relating to emission standards for coal-fired EGUs).

§ 123.205. Emission standards for coal-fired EGUs.

(a) *New EGUs*. In addition to the mercury emission limitation requirements in § 123.207 (relating to annual emission limitations for coal-fired EGUs), the owner or operator of a new EGU subject to § 123.203 (relating to applicability) shall comply at the commencement of operation on a rolling 12-month basis with one of the following standards:

(1) *PCF EGU*. The owner or operator of a PCF EGU shall comply with either of the following:

(i) A mercury emission standard of 0.011 pound of mercury per GWh.

(ii) A minimum 90% control of total mercury as measured from the mercury content in the coal, either as fired or as approved in writing by the Department.

(2) *CFB EGU*. The owner or operator of a CFB EGU shall comply with the following applicable provisions:

(i) CFB EGUs burning 100% coal refuse as the only solid fossil fuel shall comply with either of the following:

(A) A mercury emission standard of 0.0096 pound of mercury per GWh.

(B) A minimum 95% control of total mercury as measured from the mercury content in the coal refuse, either as fired or as approved in writing by the Department.

(ii) CFB EGUs burning 100% coal as the only solid fossil fuel shall comply with either of the following:

(A) A mercury emission standard of 0.011 pound of mercury per GWh.

(B) A minimum 90% control of total mercury as measured from the mercury content in the coal, either as fired or as approved in writing by the Department.

(iii) CFB EGUs burning multiple fuels shall comply with a prorated emission standard based on the percentage of heat input from the coal and the percentage of heat input from the coal refuse.

(3) *IGCC EGU*. The owner or operator of an IGCC EGU shall comply with one of the following:

(i) A mercury emission standard of 0.0048 pound of mercury per GWh.

(ii) A minimum 95% control of total mercury as measured from the mercury content in the coal, either as processed or as approved in writing by the Department.

(b) *Other requirements for new EGUs*. In addition to the emission requirements of subsection (a), the applicable requirements for a new EGU include:

(1) *Best available technology requirement*. The emission standards in this subsection will serve as a baseline for review and approval of case-by-case best available technology determinations for a new EGU in accordance with Chapter 127 (relating to construction, modification, reactivation and operation of sources).

(2) *Standards of performance for new stationary sources requirements*. In addition to the requirements of this section and §§ 123.201—123.204 and 123.206—123.215, the owner or operator of a new EGU shall also comply with the standards of performance for new stationary sources promulgated in 40 CFR Part 60, Subpart Da (relating to standards of performance for electric utility steam generating units for which construction is commenced after September 18, 1978) and adopted in their entirety and incorporated by reference in Chapter 122 (relating to National standards of performance for new stationary sources).

(c) *Existing EGUs*. In addition to the mercury emission limitation requirements of § 123.207, the owner or operator of an existing EGU subject to the emission standards for EGUs specified in this section shall comply on a rolling 12-month basis with one of the following standards:

(1) *Phase 1*. Effective from January 1, 2010, through December 31, 2014:

(i) *PCF EGU*. The owner or operator of a PCF shall comply with one of the following:

(A) A mercury emission standard of 0.024 pound of mercury per GWh.

(B) A minimum 80% control of total mercury as measured from the mercury content in the coal, either as fired or as approved in writing by the Department.

(ii) *CFB EGU*. The owner or operator of a CFB burning coal refuse shall comply with one of the following:

(A) A mercury emission standard of 0.0096 pound of mercury per GWh.

(B) A minimum 95% control of total mercury as measured from the mercury content in the coal refuse, either as fired or as approved in writing by the Department.

(2) *Phase 2*. Effective beginning January 1, 2015, and each subsequent year:

(i) *PCF EGU*. The owner or operator of a PCF shall comply with one of the following:

(A) A mercury emission standard of 0.012 pound of mercury per GWh.

(B) A minimum 90% control of total mercury as measured from the mercury content in the coal, either as fired or as approved in writing by the Department.

(ii) *CFB EGU*. The owner or operator of a CFB burning coal refuse shall comply with one of the following:

(A) A mercury emission standard of 0.0096 pound of mercury per GWh.

(B) A minimum 95% control of total mercury as measured from the mercury content in the coal refuse, either as fired or as approved in writing by the Department.

(d) *Credit for fuel pretreatment*. The owner or operator of an EGU may request, in writing, credit for the mercury removal efficiency resulting from the pretreatment of coal or coal refuse towards the minimum percent control efficiency of total mercury requirements specified in this section. The credit shall be approved, in writing, by the Department consistent with the process outlined in 40 CFR 60.50da (relating to compliance determination procedures and methods).

§ 123.206. Compliance requirements for the emission standards for coal-fired EGUs.

(a) The owner or operator of one or more EGUs subject to the emission standards of § 123.205 (relating to emission standards for coal-fired EGUs) shall demonstrate compliance with the standards using one of the following methods:

- (1) Compliance on a unit-by-unit basis.
- (2) Facility-wide emissions averaging.

(b) The Department may approve in a plan approval or operating permit, or both, an alternate mercury emission standard or compliance schedule, or both, if the owner or operator of an EGU subject to the emission standards of § 123.205 demonstrates in writing to the Department's satisfaction that the mercury reduction requirements are economically or technologically infeasible. The Department's written approval of an alternate mercury emission standard or compliance schedule does not relieve the owner or operator of the EGU from complying with the other requirements of §§ 123.201—123.205 and 123.207—123.215. The owner or operator shall:

(1) Submit a plan approval application or operating permit application requesting an alternate emission standard or compliance schedule, or both, to the Department for approval no later than 120 days before the applicable compliance deadline.

(2) Include the following in the application:

(i) A brief description, including make, model and location of each EGU.

(ii) A list of all air pollution control technologies and measures that have been installed on each EGU and are operating to control emissions of air contaminants including mercury.

(iii) The dates of installation and commencement of operation for each of the technologies and measures required under subparagraph (ii).

(iv) An explanation of how the technology or measure was installed and if it is being operated according to the manufacturer's instructions for each of the technologies and measures required under subparagraph (ii).

(v) The results of each mercury stack test and other emissions measurements for the EGU following installation and commencement of operation of the air pollution control technologies and measures listed in accordance with subparagraph (ii).

(vi) A list of other air pollution control technologies or measures that the owner or operator proposes to install and operate on each EGU to control emissions of air contaminants including mercury.

(vii) A summary of how the owner or operator of the EGU intends to operate and maintain the unit during the term of the approved plan approval or operating permit, or both, including the associated air pollution control equipment and measures that are designed to maintain compliance with all other applicable plan approval or operating permit requirements and that are designed and operated to minimize the emissions of mercury to the extent practicable.

(viii) A proposed schedule that lists the increments of progress and the date for final compliance if an alternate compliance schedule is requested.

(ix) An emission reduction proposal and information on the technological feasibility of meeting the requirements of this section and § 123.205 if an alternate emission standard is requested.

(x) Other information which the Department requests that is necessary for the approval of the application.

(c) The Department's written approval of an alternate emission standard or compliance schedule will be based on the information provided in the application submitted by the owner or operator of the EGU in accordance with subsection (b).

(d) For an EGU complying with the energy output-based mercury emission standards of § 123.205 (expressed in pounds of mercury per GWh), the actual mercury emission rate of the EGU for each 12-month rolling period, monitored in accordance with §§ 123.210—123.215 and calculated as follows, may not exceed the applicable emission standard:

$$ER = \sum_{i=1}^{12} E_i \div \sum_{i=1}^{12} O_i$$

Where:

ER = Actual mercury emissions rate of the EGU for the particular 12-month rolling period, expressed in pounds per GWh.

E_i = Actual mercury emissions of the EGU, in pounds, in an individual month in the 12-month rolling period, as determined in accordance with the monitoring provisions.

O_i = Gross electrical output of the EGU, in GWhs, in an individual month in the 12-month rolling period.

(e) For an EGU complying with the percent control requirements of § 123.205, the actual control efficiency for mercury emissions achieved by the EGU for each 12-month rolling period, monitored in accordance with §§ 123.210—123.215 and calculated as follows, shall meet or exceed the applicable efficiency requirement:

$$CE = 100 * \left\{ 1 - \left(\sum_{i=1}^{12} E_i \div \sum_{i=1}^{12} I_i \right) \right\}$$

Where:

CE = Actual control efficiency for mercury emissions of the EGU for the particular 12-month rolling period, expressed as a percent.

E_i = Actual mercury emissions of the EGU, in pounds, in an individual month in the 12-month rolling period, as determined in accordance with the monitoring provisions of §§ 123.210—123.215.

I_i = Amount of mercury in the fuel fired in the EGU, in pounds, in an individual month in the 12-month rolling period, as determined in accordance with § 123.214 (relating to coal sampling and analysis for input mercury levels).

(f) The owner or operator of an EGU may demonstrate compliance with § 123.205 by means of facility-wide averaging that demonstrates that the actual mercury emissions from EGUs covered under the emissions averaging demonstration are less than the allowable mercury emissions from all EGUs covered by the demonstration on a rolling 12-month basis.

§ 123.207. Annual emission limitations for coal-fired EGUs.

(a) *Statewide mercury nontradable allowance program.* In addition to the mercury emission standard requirements of § 123.205 (relating to emission standards for coal-fired EGUs), the owner or operator of a new or existing affected EGU subject to § 123.203 (relating to applicability) shall comply with the annual emission limitations established through a Statewide mercury nontradable allowance program under this section. The Department will issue to the owner or operator of an affected EGU a plan approval or operating permit (including Title V) that contains the applicable requirements of this section and §§ 123.202—123.206 and 123.208—123.215 before the later of January 1, 2010, or the date on which the affected EGU commences operation.

(b) *Emission limitation set-asides.* The total ounces of mercury emissions available for emission limitation set-asides as annual nontradable mercury allowances in the Statewide mercury allowance program are:

(1) 56,928 ounces (3,558 pounds) of mercury emissions for Phase 1, effective from January 1, 2010, through December 31, 2014.

(2) 22,464 ounces (1,404 pounds) of mercury emissions for Phase 2, effective beginning January 1, 2015, and each subsequent year.

(c) *New affected EGUs.* For each calendar year beginning January 1, 2010, the Department will set aside a total number of annual nontradable mercury allowances for the owners and operators of new affected EGUs in this Commonwealth that do not yet have a baseline heat input determined in accordance with the requirements of an approved plan approval or operating permit.

(1) The total number of annual nontradable mercury allowances set aside for the owners and operators of new affected EGUs will be equal to a percentage of the amount of ounces of mercury emissions in the Statewide mercury allowance program established in subsection (a). The percentage of set-aside is:

(i) 5% of the Phase 1 annual nontradable mercury allowances established in subsection (b)(1) for the years beginning January 1, 2010, through December 31, 2014.

(ii) 3% of the Phase 2 annual nontradable mercury allowances established in subsection (b)(2) for the calendar year beginning January 1, 2015, and subsequent years.

(2) The annual nontradable mercury allowances set aside for the owners and operators of new affected EGUs shall be placed in the annual emission limitation supplement pool established under § 123.208 (relating to annual emission limitation supplement pool).

(3) After a new EGU has commenced operation and completed three control periods, the EGU will become an existing EGU. The new EGU will continue to receive annual nontradable mercury allowances from the new unit set-aside until the new EGU is eligible for annual nontradable mercury allowances allocated from the set-aside for existing EGUs. The annual nontradable mercury allowances allocated from the set-aside for existing EGUs may not exceed the allowable mercury emissions limitation specified in a plan approval or operating permit (including Title V) for the new EGU.

(4) When a new EGU is eligible to receive annual nontradable mercury allowances from the set-aside for existing EGUs, new maximum allowance levels for all existing EGUs will be established and published in the *Pennsylvania Bulletin* for comment by May 31 of the year that is 2 years prior to the affected control period.

(5) If the actual emissions of mercury reported to the Department from the operation of a new EGU during a specific control period are less than the maximum number of annual nontradable mercury allowances specified in the plan approval or operating permit for the EGU, the Department will include the unused portion of the annual nontradable mercury allowances in the set-aside for new EGUs.

(6) The unused portion of annual nontradable mercury allowances set aside under paragraph (3) may not be added to the maximum number of annual nontradable mercury allowances set aside in subsequent years for the owner or operator of a new EGU. The annual nontradable mercury allowances may not be banked for use in future years.

(d) *Existing affected CFBs.* For each calendar year beginning January 1, 2010, the Department will set aside for the owners and operators of existing affected CFBs a total number of annual nontradable mercury allowances from the total ounces of mercury emissions available for annual emission limitation set-asides in Phase 2 of the Statewide mercury allowance program established in subsection (b)(2).

(e) *Maximum allowances set aside for CFBs.* The maximum number of annual nontradable mercury allowances set aside for the owner or operator of each existing affected CFB in accordance with subsection (d) shall be determined by multiplying the affected CFB's baseline heat input fraction of the State's total baseline annual heat input for all EGUs by the Department's Phase 2 annual mercury allowance set-aside for existing EGUs, as follows:

(1) The baseline heat input in MMBtu for each existing affected CFB will be the average of the three highest amounts of annual heat input using the heat input data for the CFB from EPA's acid rain database and the Department's database for the calendar years 2000—2004.

(2) The State's annual mercury allowance set-aside for existing EGUs for Phase 2 is 21,790 ounces.

(f) *Existing affected EGUs other than CFBs.* For each calendar year beginning January 1, 2010, the Department will set aside for the owners and operators of existing affected EGUs other than CFBs a total number of annual nontradable mercury allowances from the total ounces of mercury emissions available for annual emission limitation set-asides in Phase 1 and Phase 2 of the Statewide mercury allowance program established in subsection (b).

(g) *Maximum allowances set aside for existing affected EGUs other than CFBs.* The maximum number of annual nontradable mercury allowances set aside for the owner or operator of each existing affected EGU other than CFB in accordance with subsection (f) shall be determined for the existing affected EGU other than CFB by multiplying its baseline heat input fraction of the State's total baseline annual heat input for all EGUs by the Department's annual mercury allowance set-aside for existing affected EGUs in each phase, as follows:

(1) The baseline heat input in MMBtu for each existing affected EGU other than CFB will be the average of the three highest amounts of annual heat input using the heat input data for the EGU other than CFB from the EPA's acid rain database and the Department's database for calendar years 2000–2004.

(2) The State's annual mercury allowance set-aside for existing affected EGUs is:

(i) 54,080 ounces for Phase 1.

(ii) 21,790 ounces for Phase 2.

(h) *Publication of maximum number of allowances set aside for Phase 1.* By May 31, 2008, the Department will publish for comment in the *Pennsylvania Bulletin* the maximum number of annual nontradable mercury allowances set aside for the owner or operator of each existing affected CFB and EGU other than CFB for Phase 1 of the Statewide mercury allowance program. The nontradable allowances shall only be used to demonstrate compliance with the annual emission limitation requirements.

(i) *Publication of maximum number of allowances set aside for Phase 2.* By May 31, 2013, the Department will publish for comment in the *Pennsylvania Bulletin* the maximum number of annual nontradable mercury allowances set aside for the owner or operator of each existing affected CFB and EGU other than CFB for Phase 2 of the Statewide mercury allowance program. The nontradable allowances shall only be used to demonstrate compliance with the annual emission limitation requirements.

(j) *Maximum number of allowances awarded.* By March 31 of the year following each reporting year, the Department will notify the owner or operator of each affected EGU, facility or system, in writing, of the actual number of annual nontradable mercury allowances awarded to the owner or operator of the EGU, facility or system for the control period.

(1) The actual number of annual nontradable mercury allowances awarded to the owner or operator of the EGU, facility, or system shall be based on the actual emissions reported to the Department in accordance with §§ 123.210–123.215.

(2) If the actual emissions of mercury reported to the Department in accordance with §§ 123.210–123.215 are less than the maximum number of annual nontradable mercury allowances set aside in the Statewide mercury allowance program for the owner or operator of an EGU, facility or system in accordance with either subsection (c), (d) or (f), the Department will place the unused portion of annual nontradable mercury allowances in the annual

emission limitation supplement pool established under § 123.208 (relating to annual emission limitation supplement pool).

(3) The unused portion of annual nontradable mercury allowances set aside under subsection (c), (d) or (f) may not be added to the maximum number of annual nontradable mercury allowances set aside for the owner or operator of the affected EGU, facility or system for subsequent years. The annual nontradable mercury allowances may not be banked for use in future years.

(4) The actual number of annual nontradable mercury allowances awarded to the owner or operator of the EGU, facility or system may not exceed the maximum number of annual nontradable mercury allowances set aside for the owner or operator of the EGU, facility or system in the Statewide mercury allowance program in accordance with subsection (c), (d) or (f) except as provided in § 123.209 (relating to petition process).

(5) Each ounce of mercury emitted in excess of the maximum number of annual nontradable mercury allowances set aside for the owner or operator of the affected EGU, facility or system in accordance with subsection (c), (d) or (f) shall constitute a violation of this section and the act, except as provided under § 123.209.

(k) *Standby units and units permanently shut down.* Annual nontradable mercury allowances will not be set aside for the owner or operator of an existing affected EGU that is already shut down or scheduled for shutdown unless the owner or operator of the EGU obtains a plan approval for the construction of a new EGU, or is on standby as of the effective date of each set-aside phase under subsection (c), (d) or (f). When a standby unit is ready for normal operation, the owner and operator may petition the Department for a number of annual nontradable mercury allowances as provided under § 123.209. Annual nontradable mercury allowances will be allocated to the owner or operator of the EGU. The annual nontradable mercury allowances allocated from the existing EGU set-aside may not exceed the allowable mercury emissions limitation specified in a plan approval or operating permit (including Title V) for the new EGU.

(l) *Units scheduled for permanent shutdown.*

(1) The requirements of this section and §§ 123.202–123.206 and 123.208–123.215 do not apply to the owner or operator of an EGU that will be permanently shut down no later than December 31, 2009. The owner or operator of the EGU scheduled for shutdown shall do the following:

(i) Within 180 days prior to the shutdown, notify the Administrator and the Department, in writing, that the EGU is scheduled to be permanently shut down. The notice must contain a description of the actions that have been taken to shut down the EGU, the future actions and schedule for completing the shut down of the EGU, and the anticipated date of permanent shutdown of the EGU.

(ii) Execute a legally enforceable document prior to shutdown that requires the EGU to be permanently shut down in accordance with this section.

(2) Within 30 days after the permanent shutdown of the EGU, the mercury designated representative shall provide written notice to the Administrator and the Department of the actual date of the permanent shutdown of the unit.

(3) For 5 years from the date the records are created, the owner and operator of an EGU shall retain records demonstrating that the EGU is permanently shut down.

The Administrator or Department may, in writing, extend the recordkeeping time period for cause, at any time before the end of the 5-year period. The owners and operators bear the burden of proof that the unit is permanently shut down. The records shall be retained at the facility where the EGU is located and submitted to the Department upon request.

(m) *Future emission limitations.* The Department may revise the percentage of set-aside used to determine the number of ounces of mercury set aside for future annual mercury emission limitations to accommodate the emissions from new EGUs so that the total number of ounces of mercury emissions in the Statewide mercury allowance program is not exceeded. The Department will publish notice of the proposed and final revisions in the *Pennsylvania Bulletin*.

(n) *Changes in calculation of baseline heat input.* The Department may revise the percentage of set-aside used to determine the number of ounces of mercury set aside for future annual mercury emission limitations to accommodate changes in the calculation of baseline heat input in accordance with subsection (e) or (g) so that the total number of ounces of mercury emissions in the Statewide mercury allowance program is not exceeded. The Department will publish notice of the proposed and final revisions in the *Pennsylvania Bulletin*.

(o) *Maintained by Department.* The Statewide mercury allowance program established under subsection (a) and the annual nontradable mercury allowances set aside for emission limitations under subsections (b)—(n) will be maintained by the Department.

(p) *Demonstration of compliance.* The owner or operator of one or more affected mercury allowance program EGUs subject to this section shall demonstrate compliance with the applicable requirements using one of the following methods by March 1 for the preceding control period:

- (1) Compliance on a unit-by-unit basis.
- (2) Compliance on a facility-wide basis.
- (3) Compliance on a system-wide basis.

(q) *Facility-wide compliance demonstration.* The owner or operator of an EGU may demonstrate compliance with this section on a facility-wide basis. The total of the actual mercury emissions from the EGUs included in the demonstration must be less than the total of the allowable mercury emissions from all EGUs included in the demonstration on an annual basis.

(r) *System-wide compliance demonstration.* The owner or operator of two or more EGUs under common ownership or operator control in this Commonwealth may demonstrate compliance with this section as follows:

(1) The total of the actual mercury emissions from the EGUs at the facility and other EGUs at other facilities included in the system-wide demonstration must be less than the total of the allowable mercury emissions from all EGUs included in the demonstration on an annual basis.

(2) An owner or operator may not include an EGU, or a portion thereof, in more than one system-wide demonstration submitted for purposes of complying with this section and §§ 123.201—123.206 and 123.208—123.215.

§ 123.208. Annual emission limitation supplement pool.

(a) Effective January 1, 2010, the Department will establish an annual emission limitation supplement pool to monitor annual nontradable mercury allowances that:

(1) Have been created as part of the new affected EGU set-aside under § 123.207(c) (relating to annual emission limitations for coal-fired EGUs).

(2) Are unused annual nontradable mercury allowances set aside as annual emission limitation supplements under § 123.207(j)(2).

(b) The annual emission limitation supplement pool of annual nontradable mercury allowances established under subsection (a) will be administered in accordance with § 123.209 (relating to petition process) by the Department.

§ 123.209. Petition process.

(a) Each calendar year beginning January 1, 2010, the owner or operator of either a new EGU or an existing affected EGU that emits amounts of mercury in excess of the maximum number of annual nontradable mercury allowances set aside in accordance with § 123.207 (relating to annual emission limitations for coal-fired EGUs) or a standby affected EGU that is ready for normal operation may petition the Department, in writing, for supplemental annual nontradable mercury allowances to be set aside for the owner or operator from the annual emission limitation supplement pool established under § 123.208(a) (relating to annual emission limitation supplement pool).

(b) The owner or operator shall submit a separate petition for each calendar year for which the owner or operator requests supplemental annual nontradable mercury allowances to be set aside from the annual emission limitation supplement pool.

(c) The owner or operator with more than one affected EGU shall submit a separate petition for each EGU for which the owner or operator requests supplemental annual nontradable mercury allowances to be set aside from the annual emission limitation supplement pool.

(d) The owner or operator of the existing affected EGU shall submit the petition to the Department by January 31 of the year following the calendar year for which the supplemental annual nontradable mercury allowances are requested to be set aside.

(e) The owner or operator of the standby affected EGU shall submit the petition to the Department no later than 120 days before the date of anticipated start-up of the EGU.

(f) The petition must include the following:

(1) A brief description, including make, model and location of each affected EGU.

(2) A list of all air pollution control technologies and measures that have been installed on each affected EGU and are operating to control emissions of air contaminants, including mercury.

(3) For each of the technologies and measures listed in accordance with paragraph (2), the date of installation and original commencement of operation.

(4) For each of the technologies and measures listed in accordance with paragraph (2), an explanation of how the mercury control technology or measure as installed has been optimized for the maximum mercury emission reduction.

(5) The results of each mercury stack test and other emissions measurements for the affected EGU following installation and commencement of operation of the air pollution control technologies and measures listed in accordance with paragraph (2).

(6) A list of other air pollution control technologies or measures that the owner or operator proposes to install and operate on each affected EGU to control emissions of air contaminants, including mercury.

(7) A summary of how the owner or operator of the affected EGU intends to operate and maintain the EGU during the term of the approved plan approval or operating permit, or both, including the associated air pollution control equipment and measures that are designed to maintain compliance with all other applicable plan approval or operating permit requirements and that are designed and operated to minimize the emissions of mercury to the extent practicable.

(g) Each calendar year beginning January 1, 2010, the Department may allocate supplemental annual nontradable mercury allowances from the annual emission limitation supplement pool established under § 123.208(a) for the owners or operators of new and existing affected EGUs. If a petition is approved by the Department in accordance with the requirements of this section, the allowances will be distributed to the following:

(1) Each owner or operator of a standby unit as defined under § 123.202 (relating to definitions) which meets the requirements of this section and §§ 123.205—123.208 and 123.210—123.215.

(2) Each owner or operator of an EGU that enters into an enforceable agreement with the Department by December 31, 2007, for the shut down and replacement of the unit with IGCC technology by December 31, 2012.

(3) Each owner or operator of a new EGU.

(4) Each owner or operator of an existing affected EGU based on the performance of the air pollution control technologies and measures that have been installed and are operating to control mercury emissions.

(h) If the petition for supplemental annual nontradable mercury allowances is approved by the Department, the supplemental annual nontradable mercury allowances set aside for the owner or operator of the existing affected EGU will be added to the maximum number of annual nontradable mercury allowances set aside for the owner or operator of the EGU in accordance with § 123.207 only for the calendar year of the request.

(i) The Department's approval of supplemental annual nontradable mercury allowances will be based on the information provided in the petition submitted by the owner or operator of an EGU in accordance with subsection (f).

(j) The supplemental annual nontradable mercury allowances set aside under subsection (h) may not be added to the maximum number of annual nontradable mercury allowances set aside for the owner or operator of the EGU for subsequent years.

§ 123.210. General monitoring and reporting requirements.

(a) The owner or operator of a new EGU subject to the requirements of this section and §§ 123.201—123.209 and 123.211—123.215 shall demonstrate compliance with §§ 123.205 and 123.207 (relating to emission standards for coal-fired EGUs; and annual emission limitations for coal-fired EGUs) by installing and operating continuous emissions monitoring systems to measure, record and report mercury emissions from each EGU. The monitoring, recordkeeping and reporting requirements provided in this section, §§ 123.211—123.215 and 139.101 (relating to general requirements), 40 CFR Part 75, Subpart I

(relating to Hg mass emission provisions) and the applicable provisions of the *Continuous Source Monitoring Manual* (DEP 274-0300-001) shall apply. For the purpose of complying with this section, the provisions in 40 CFR 60.4110—60.4114 are adopted in their entirety and incorporated herein by reference.

(b) Except as provided in subsection (c), the owner or operator of an existing EGU subject to this section, §§ 123.201—123.209 and 123.211—123.215 shall demonstrate compliance with §§ 123.205 and 123.207 (relating to emission standards for coal-fired EGUs; and annual emission limitations for coal-fired EGUs) by installing and operating continuous emissions monitoring systems to measure, record and report mercury emissions from each EGU. The monitoring, recordkeeping and reporting requirements as provided in this section, §§ 123.211—123.215 and 139.101, 40 CFR Part 75, Subpart I (relating to Hg mass emission provisions) and the applicable provisions of the *Continuous Source Monitoring Manual* (DEP 274-0300-001) shall apply. In addition, for purposes of complying with these requirements, the definitions in § 123.202 (relating to definitions) and in 40 CFR 72.2 (relating to definitions) shall apply. For the purpose of complying with the requirements of this section, the provisions in 40 CFR 60.4110—60.4114 are adopted in their entirety and incorporated herein by reference.

(c) For an affected EGU that emits 464 ounces (29 lbs.) or less of mercury per year, the owner or operator of the affected EGU shall either:

(1) Meet the requirements in subsections (a) and (b) for demonstrating compliance with §§ 123.205 and 123.207 and 40 CFR Part 75, Subpart I.

(2) Implement the excepted monitoring methodology for an EGU meeting the requirements in 40 CFR 75.81(b)—(e) (relating to monitoring of Hg mass emissions and heat input at the unit level).

(d) The owner or operator of an EGU that emits 464 ounces (29 lbs.) or less of mercury per year, may demonstrate compliance with the percent control requirements by averaging the coal mercury content and stack emission data collected during the control period.

(e) The owner or operator of each EGU shall:

(1) Install all monitoring systems required under this section and §§ 123.211—123.215 and the applicable provisions of Chapter 139, Subchapter C (relating to requirements for source monitoring for stationary sources) for monitoring mercury emissions, including all systems required to monitor mercury concentration, stack gas moisture content, stack gas flow rate and CO₂ or O₂ concentration, as applicable, in accordance with 40 CFR 75.81 and 75.82 (relating to monitoring of Hg mass emissions and heat input at common and multiple stacks).

(2) Successfully complete the certification tests required under § 123.211 (relating to initial certification and recertification procedures for emissions monitoring) and meet the other requirements of this section and §§ 123.211—123.215 that are applicable to the monitoring systems required under paragraph (1).

(f) The owner or operator of each EGU shall comply with the monitoring system certification and other requirements of subsection (e) on or before the later of:

(1) January 1, 2009.

(2) Ninety EGU operating days or 180 calendar days, whichever occurs first, after the date on which the EGU commences commercial operation.

(g) The owner or operator of each EGU shall record, report and quality-assure the data from the monitoring systems required under subsection (e)(1) on and after the later of:

(1) January 1, 2009.

(2) Ninety EGU operating days or 180 calendar days, whichever occurs first, after the date on which the EGU commences commercial operation.

(h) The owner or operator of an EGU for which construction of a new stack or flue, installation of add-on mercury emission controls, a flue gas desulfurization system, an SCR system or a compact hybrid particulate collector system is completed after the applicable deadlines of subsections (f) and (g), shall:

(1) Comply with the monitoring system certification and other requirements of subsection (e).

(2) Record, report and quality assure the data from the monitoring systems required under subsection (e)(1).

(3) Comply with this section within 90 EGU operating days or 180 calendar days, whichever occurs first, after the date on which emissions first exit to the atmosphere through the new stack or flue, add-on mercury emission controls, flue gas desulfurization system, SCR system or compact hybrid particulate collector system.

(i) The owner or operator of an EGU that does not meet the applicable monitoring date in subsections (f)—(h) for any monitoring system required under subsection (e)(1) shall, for each monitoring system, determine, record and report maximum potential (or, as appropriate, minimum potential) values for:

(1) Mercury concentration.

(2) Stack gas flow rate.

(3) Stack gas moisture content.

(4) Other parameters required to determine mercury mass emissions in accordance with 40 CFR 75.80(g) (relating to general provisions).

(j) The owner or operator of an EGU that does not meet the applicable monitoring date in subsections (f)—(h) for a monitoring system required under subsection (e)(1) shall, for each monitoring system, determine, record and report substitute data using the applicable missing data procedures in 40 CFR 75.80(f) instead of the maximum potential (or, as appropriate, minimum potential) values for a parameter if the owner or operator demonstrates that there is continuity between the data streams for that parameter before and after the construction or installation of the monitoring systems required under subsection (e)(1).

(k) An owner or operator of an EGU may not use any alternative monitoring system, alternative reference method or any other alternative to any requirement of 40 CFR Part 75 (relating to continuous emission monitoring) unless the alternative system, method or requirement is approved, in writing, by the Administrator in accordance with 40 CFR Part 75, Subpart E (relating to alternative monitoring systems).

(l) An owner or operator of an affected EGU may not operate the EGU so as to discharge or allow to be discharged mercury emissions to the atmosphere without accounting for all of the emissions in accordance with the applicable provisions of this section, §§ 123.211—123.215 and Chapter 139, Subchapter C.

(m) An owner or operator of an affected EGU may not disrupt the continuous emission monitoring system or

portion of it or other approved emission monitoring method to avoid monitoring and recording mercury mass emissions discharged into the atmosphere, except for periods of recertification or periods when calibration, quality assurance testing or maintenance is performed in accordance with the applicable provisions of this section, §§ 123.211—123.215 and Chapter 139, Subchapter C.

(n) An owner or operator of an affected EGU may not retire or permanently discontinue use of the continuous emission monitoring system or component of it or other approved monitoring system required under this section and §§ 123.211—123.215, except under either of the following circumstances:

(1) The owner or operator is monitoring emissions from the affected EGU with another certified monitoring system that has been approved by the Department, in writing, for use at that EGU and that provides emission data for the same pollutant or parameter as the retired or discontinued monitoring system, in accordance with the applicable provisions of this section, §§ 123.211—123.215 and Chapter 139, Subchapter C.

(2) The owner or operator submits notification of the date of certification testing of a replacement monitoring system for the retired or discontinued monitoring system in accordance with § 123.211(a)(5)(i) and a complete certification application in accordance with § 123.211(a)(5)(ii).

(3) The owner or operator of an EGU that is using a continuous emission monitoring system or a sorbent trap system to continuously monitor mercury emissions under § 123.210(c)(1) (relating to general monitoring and reporting requirements) and 40 CFR 75.81(a), may elect to comply with the methodology specified in § 123.210(c)(2) and 40 CFR 75.81(b)—(f).

§ 123.211. Initial certification and recertification procedures for emissions monitoring.

(a) By the applicable deadline specified in § 123.210 (f)—(h) (relating to general monitoring and reporting requirements), the owner or operator of an affected EGU shall comply with the following initial certification and recertification procedures for a continuous monitoring system (continuous emission monitoring system) and an excepted monitoring system (sorbent trap monitoring system) as required under 40 CFR 75.15 (relating to special provisions for measuring Hg mass emissions using the excepted sorbent trap monitoring methodology) and Chapter 139 (relating to sampling and testing):

(1) The owner or operator of the EGU shall ensure that each continuous monitoring system required by the applicable provisions of § 123.210 successfully completes all of the initial certification testing required under 40 CFR 75.80(d) (relating to general provisions) and Chapter 139.

(2) If the owner or operator of the EGU installs a monitoring system to meet the requirements of this section and §§ 123.210 and 123.212—123.215 in a location where no monitoring system was previously installed, initial certification testing is required in accordance with the applicable provisions of 40 CFR 75.80(d) and Chapter 139.

(3) If the owner or operator of the EGU makes a replacement, modification or change to a certified continuous emission monitoring system or excepted monitoring system (sorbent trap monitoring system) required by § 123.210 that may significantly affect the ability of the system to accurately measure or record mercury mass emissions or heat input rate or to meet the quality-

assurance and quality-control requirements of 40 CFR 75.81 (relating to monitoring of Hg mass emissions and heat input at the unit level) or 40 CFR Part 75, Appendix B (relating to quality assurance and quality control procedures), the monitoring system for the EGU shall be recertified in accordance with 40 CFR 75.20(b) (relating to initial certification and recertification procedures) and Chapter 139.

(4) If the owner or operator of the EGU makes a replacement, modification or change to the flue gas handling system or the operation of the EGU that may significantly change the stack gas flow or concentration profile, the owner or operator shall recertify each continuous emission monitoring system and each excepted monitoring system (sorbent trap monitoring system) whose accuracy is potentially affected by the change in accordance with 40 CFR 75.20(b) and Chapter 139.

(5) This subsection applies to both the initial certification and recertification procedures of a continuous monitoring system required by § 123.210. For recertifications, replace the words "certification" and "initial certification" with the word "recertification," replace the word "certified" with the word "recertified," and follow the procedures required under 40 CFR 75.20(b)(5) or Chapter 139, Subchapter C (relating to requirements for source monitoring for stationary sources) as directed by the Department instead of the following procedures:

(i) The owner or operator shall submit to the Department written notice of the dates of certification testing.

(ii) The owner or operator shall submit to the Department a certification application for each monitoring system. A complete certification application must include the information specified in Chapter 139, Subchapter C.

(iii) If the Department issues a notice of disapproval of a certification application or a notice of disapproval of certification status, the owner or operator shall:

(A) Substitute, for each disapproved monitoring system, for each hour of EGU operation during the period of invalid data specified under 40 CFR 75.20(a)(4)(iii) or 75.21(e) (relating to quality assurance and quality control requirements) and continuing until the applicable date and hour specified under 40 CFR 75.20(a)(5)(i), either the following values or, if approved by the Department in writing, an alternative emission value that is more representative of actual emissions that occurred during the period:

(I) For a disapproved mercury pollutant concentration monitor and disapproved flow monitor, respectively, the maximum potential concentration of mercury and the maximum potential flow rate, as defined in 40 CFR Part 75, Appendix A, Sections 2.1.4.1 and 2.1.7.1 (relating to specifications and test procedures).

(II) For a disapproved moisture monitoring system and disapproved diluent gas monitoring system, respectively, the minimum potential moisture percentage and either the maximum potential CO₂ concentration or the minimum potential O₂ concentration (as applicable), as defined in 40 CFR Part 75, Appendix A, Sections 2.1.3.1, 2.1.3.2 and 2.1.5.

(III) For a disapproved excepted monitoring system (sorbent trap monitoring system) under 40 CFR 75.15 and disapproved flow monitor, respectively, the maximum potential concentration of mercury and maximum potential flow rate, as defined in 40 CFR Part 75, Appendix A, Sections 2.1.4.1 and 2.1.7.1.

(B) Submit a notification of certification retest dates and a new certification application in accordance with subparagraphs (i) and (ii).

(C) Repeat all certification tests or other requirements that were failed by the monitoring system, as indicated in the Department's notice of disapproval, within the time period specified by the Department in the notice of disapproval.

(b) The owner or operator shall submit a certification application to the Department within 45 calendar days after completing all initial certification or recertification tests required under this section.

§ 123.212. Out-of-control periods for emissions monitors.

(a) If an emissions monitoring system fails to meet the quality-assurance and quality-control requirements or data-validation requirements of Chapter 139, Subchapter C (relating to requirements for source monitoring for stationary sources), data for the demonstration of compliance with § 123.207 (relating to annual emission limitations for coal-fired EGUs) shall be substituted using the applicable missing data procedures in the *Continuous Source Monitoring Manual* (DEP 274-0300-001). If a mass emissions monitoring system fails to meet a quality-assurance or quality-control requirement, mass emissions data shall be substituted using the missing data procedures in 40 CFR Part 75, Subpart I (relating to Hg mass emission provisions).

(b) If both an audit of a monitoring system and a review of the initial certification or recertification application reveal that a monitoring system should not have been certified or recertified because it did not meet a particular performance specification or other requirement under § 123.210 (relating to general monitoring and reporting requirements) or the applicable provisions of 40 CFR Part 75 (relating to continuous emission monitoring), both at the time of the initial certification or recertification application submission and at the time of the audit, the Department will issue a notice of disapproval of the certification status of the monitoring system.

(1) For the purposes of this subsection, an audit must be either a field audit or an audit of information submitted to the Department.

(2) By issuing the notice of disapproval, the Department revokes prospectively the certification status of the monitoring system. The data measured and recorded by the monitoring system will not be considered valid quality-assured data from the date of issuance of the notification of the revoked certification status until the date and time that the owner or operator completes subsequently approved initial certification or recertification tests for the monitoring system.

(3) The owner or operator shall follow the applicable initial certification or recertification procedures in § 123.210 for each disapproved monitoring system.

§ 123.213. Monitoring of gross electrical output.

The owner or operator of an EGU complying with the requirements of § 123.206(d) (relating to compliance requirements for the emission standards for coal-fired EGUs) using electrical output (Oi) shall monitor gross Oi of the associated generators and report in watt-hours per hour.

§ 123.214. Coal sampling and analysis for input mercury levels.

(a) Except as provided in § 123.210(c) (relating to general monitoring and reporting requirements), the

owner or operator of an EGU complying with this section and §§ 123.201—123.213 and 123.215 shall:

(1) Perform daily sampling of the coal combusted in the EGU for mercury content, in pounds per trillion Btu, as follows:

(i) Collect coal samples from the feeders or other representative location in accordance with 40 CFR 63.7521(c) (relating to what fuel analyses and procedures must I use?).

(ii) Composite coal samples in accordance with the requirements of 40 CFR 63.7521(d).

(2) Analyze each of the composited coal samples for mercury content in accordance with the procedures of ASTM D 6414-01 or the current revision of this method, or other alternative as approved by the Department.

(b) The owner or operator of an EGU shall use the data collected from the sampling and analysis required under subsection (a) to determine the input mercury content of the coal combusted in the EGU in terms of pounds of mercury per trillion Btu.

(c) The Department may change the frequency of the sampling and analysis of the coal combusted in the EGU for the input mercury level based on historical data provided by the owner or operator of the EGU. The change in the frequency will be approved by the Department as a minor modification to the Title V operating permit.

(d) Upon the written request of an EGU owner or operator, the Department may approve, in writing, an alternate coal sampling and analysis program submitted by the owner or operator of the EGU to demonstrate compliance with this section and §§ 123.201—123.213 and 123.215.

§ 123.215. Recordkeeping and reporting.

(a) The owner or operator of an affected EGU shall comply with the recordkeeping and reporting requirements in this section and the applicable recordkeeping and reporting requirements of 40 CFR 75.84 (relating to recordkeeping and reporting) and Chapter 139, Subchapter C (relating to requirements for source monitoring for stationary sources).

(b) The owner or operator of an affected EGU complying with this section and §§ 123.201—123.214 through the requirements of § 123.206(d) (relating to compliance requirements for the emission standards for coal-fired EGUs) by using electrical output to determine the allow-

able emissions of the EGU shall maintain the daily gross electrical output in GWhs in the file required under 40 CFR 75.84(a).

(c) The owner or operator of an affected EGU complying with this section and §§ 123.201—123.214 through the requirements of § 123.206(e) by using input mercury levels to determine the allowable emissions of the EGU shall maintain the daily mercury content of coal used in pounds of mercury per trillion Btu and the daily input mercury content in pounds in the file required under 40 CFR 75.84(a).

(d) Except as provided in § 123.210(c) (relating to general monitoring and reporting requirements), the owner or operator of an affected EGU shall maintain records as follows:

(1) Record the daily outlet mercury or output mercury data using the time period appropriate to the excepted monitoring system (sorbent trap monitoring system).

(2) If using an averaging methodology, record all other information collected on a daily basis necessary to calculate the average.

(3) Record for each control period the method through which each EGU demonstrated compliance.

(4) For an owner or operator who uses the averaging option of § 123.206(a)(2), calculate and record:

(i) The monthly actual mercury emissions within 30 days of the end of each month.

(ii) The 12-month rolling actual emissions each month.

(5) Maintain the following records onsite:

(i) The results of quarterly assessments conducted under 40 CFR Part 75, Appendix B, Section 2.2 (relating to quality assurance and quality control procedures).

(ii) Daily/weekly system integrity checks under 40 CFR Part 75, Appendix B, Section 2.6.

(iii) Quality assurance records as required by the *Continuous Source Monitoring Manual* (DEP 274-0300-001).

(6) Make available to the Department upon request the records required under paragraph (5).

(e) The owner or operator shall submit quarterly reports to the Department in accordance with the *Continuous Source Monitoring Manual* (DEP 274-0300-001).

[Pa.B. Doc. No. 07-300. Filed for public inspection February 16, 2007, 9:00 a.m.]