

# PENNSYLVANIA BULLETIN

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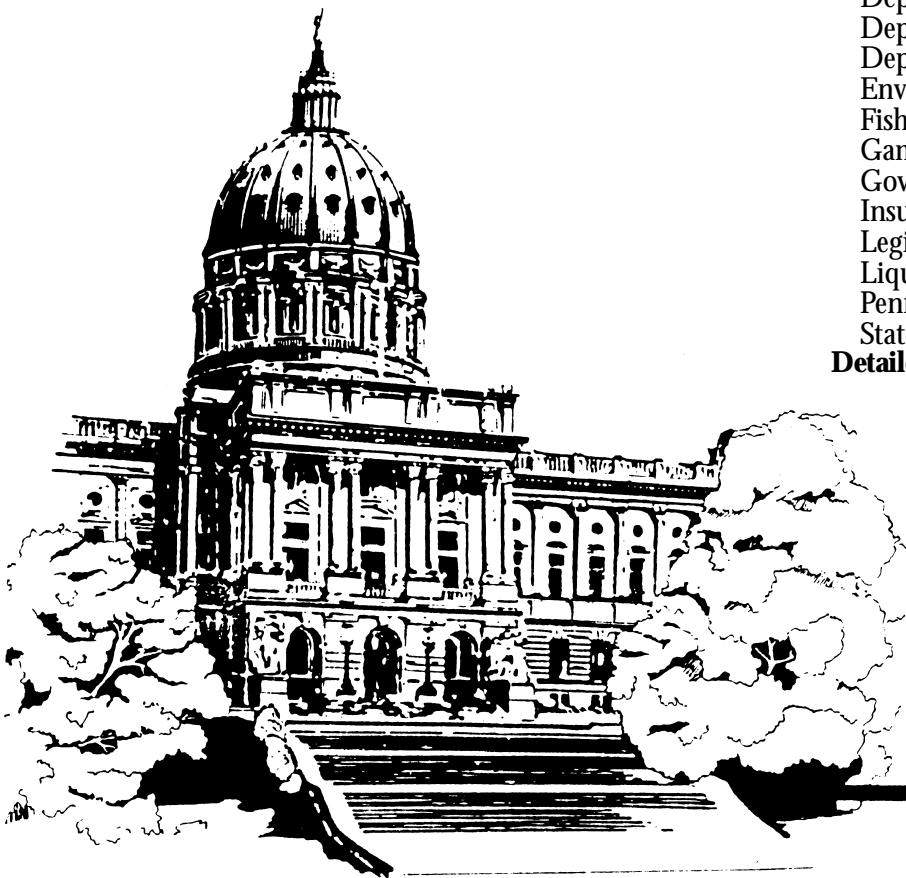
See Part II page 7035 for  
the Environmental Quality Board's  
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and Safe Drinking Water (Stage 2 Disin-  
fectants and Disinfection Byproducts Rule)

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Legislative Reference Bureau  
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Pennsylvania Public Utility Commission  
State Athletic Commission

**Detailed list of contents appears inside.**



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

## ***Pennsylvania Bulletin***

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

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

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

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

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

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

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

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

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

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

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

### ***Pennsylvania Code***

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

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

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

### **How to Find Documents**

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

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

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

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### Printing Format

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

### Fiscal Notes

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

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

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# List of Pa. Code Chapters Affected

The following numerical guide is a list of the chapters of each title of the *Pennsylvania Code* affected by documents published in the *Pennsylvania Bulletin* during 2008.

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 1910 ..... 1447, 3617, 5591, 6689, 6693  
 1915 ..... 3614, 6689  
 1920 ..... 6689  
 2950 ..... 3236  
 3000 ..... 3650, 5591  
 4000 ..... 1814

**234 Pa. Code (Rules of Criminal Procedure)**

**Adopted Rules**

1 ..... 745, 3971, 5425  
 2 ..... 3651  
 4 ..... 5425  
 5 ..... 3971, 5425, 5429  
 6 ..... 4506, 4606  
 8 ..... 5429  
 9 ..... 5425

**Proposed Rules**

1 ..... 61, 865  
 4 ..... 6878  
 5 ..... 5747, 6878  
 6 ..... 1816

**237 Pa. Code (Juvenile Rules)**

**Adopted Rules**

1 ..... 2360  
 2 ..... 2360  
 5 ..... 3238  
 11 ..... 2360  
 13 ..... 2360  
 100 ..... 1142  
 150 ..... 1146  
 300 ..... 1142  
 600 ..... 1146  
 800 ..... 1142

**Proposed Rules**

1 ..... 1349, 5592, 5594, 6262, 6598  
 2 ..... 6598  
 3 ..... 6598  
 4 ..... 6598  
 5 ..... 63, 5594, 6598  
 11 ..... 477, 1349  
 13 ..... 477  
 16 ..... 5594  
 18 ..... 477

**246 Pa. Code (Minor Court Civil Rules)**

**Adopted Rules**

200 ..... 5163, 5843, 5844  
 300 ..... 5164  
 400 ..... 3356  
 500 ..... 3239, 3355  
 1000 ..... 2040

**Proposed Rules**

200 ..... 1817, 2046, 2151

**249 Pa. Code (Philadelphia Rules)**

Unclassified . . . . . 223, 868, 1241, 2046, 2049, 2481, 3896,  
4071, 4072, 4077, 6883

**252 Pa. Code (Allegheny Rules)**

Unclassified . . . . . 64, 3483, 3488, 5947

**255 Pa. Code (Local Court Rules)**

Unclassified . . . . . 72, 223, 225, 338, 481, 482, 596, 748,

975, 1037, 1241, 1354, 1449, 1458, 1466, 1583, 1702,  
1704, 1819, 1931, 2050, 2152, 2240, 2242, 2363, 2364,  
2483, 2484, 2652, 3240, 3652, 3790, 3791, 3793, 4082,  
4354, 4506, 4507, 4739, 4740, 4741, 5032, 5165, 5267,  
5431, 5432, 5432, 5595, 5596, 5845, 5847, 5950, 5951,  
6143, 6145, 6147, 6148, 6265, 6360, 6457, 6601, 6726,  
6729, 6884, 6885, 6899, 6900, 6901

# THE COURTS

## Title 234—RULES OF CRIMINAL PROCEDURE

[ 234 PA. CODE CHS. 4 AND 5 ]

Proposed Amendments to Pa.R.Crim.P. 409 (Guilty Pleas), 414 (Guilty Pleas), 424 (Guilty Pleas), 460 (Notice of Appeal), 462 (Trial De Novo), and 550 (Pleas of Guilty Before Magisterial District Judge in Court Cases)

### Introduction

The Criminal Procedural Rules Committee is planning to recommend that the Supreme Court of Pennsylvania amend Rules 409, 414, 424, 460, 462 and 550 to provide, in summary and court cases in which a defendant withdraws a plea or appeals for a trial de novo, for the reinstatement of charges dismissed as a result of a plea agreement. This proposal has not been submitted for review by the Supreme Court of Pennsylvania.

The following explanatory *Report* highlights the Committee's considerations in formulating this proposal. Please note that the Committee's Report 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 explanatory *Reports*.

The text of the proposed amendments to the Rules precedes the *Report*. Additions are shown in bold; deletions are in bold and brackets.

We request that interested persons submit suggestions, comments, or objections concerning this proposal in writing to the Committee through counsel,

Anne T. Panfil, Chief Staff Counsel  
 Supreme Court of Pennsylvania  
 Criminal Procedural Rules Committee  
 5035 Ritter Road, Suite 100  
 Mechanicsburg, PA 17055  
 fax: (717) 795-2106  
 e-mail: criminal.rules@pacourts.us

no later than Friday, January 23, 2009.

By the Criminal Procedural Rules Committee

D. PETER JOHNSON,  
*Chair*

### Annex A

#### TITLE 234. RULES OF CRIMINAL PROCEDURE

#### PART I. GENERAL

#### CHAPTER 4. PROCEDURES IN SUMMARY CASES

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

#### Rule 409. Guilty Pleas.

\* \* \* \* \*

(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) when a plea agreement has been reached between the Commonwealth and the defendant to withdraw one or more of the original summary offenses in exchange for a plea to one or more other summary charges, advise the defendant that, if the defendant withdraws the plea or appeals for a trial de novo, the original charges will be reinstated and the case will proceed on the original charges;

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

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

[(4)] (5) 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)] (6) 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

\* \* \* \* \*

Paragraph (C) [(4)] (5) 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. Paragraph (D) would permit the issuing authority to delay proceedings until the defendant's eligibility has been determined.

\* \* \* \* \*

**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 ] 75. 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 [ August ] February 1, [ 2007 ] 2008; amended , 2009, effective , 2009.

*Committee Explanatory Reports:*

\* \* \* \* \*

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] 2008).

**Report explaining the proposed amendments concerning procedures related to plea agreements published at 38 Pa.B. 6882 (December 20, 2008).**

**PART B(2). Procedures When Citation Filed**

**Rule 414. Guilty Pleas.**

\* \* \* \* \*

(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) when a plea agreement has been reached between the Commonwealth and the defendant to withdraw one or more of the original summary offenses in exchange for a plea to one or more other summary charges, advise the defendant that, if the defendant withdraws the plea or appeals for a trial de novo, the original charges will be reinstated and the case will proceed on the original charges;**

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

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

[ (4) ] (5) 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) ] (6) 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.

\* \* \* \* \*

Paragraph (C) [ (4) ] (5) 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. Paragraph (D) would

permit the issuing authority to delay proceedings until the defendant's eligibility has been determined.

\* \* \* \* \*

**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 ] 84. 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; **amended** , **2009, effective** , **2009.**

*Committee Explanatory Reports:*

\* \* \* \* \*

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).

**Report explaining the proposed amendments concerning procedures related to plea agreements published at 38 Pa.B. 6882 (December 20, 2008).**

**PART C. Procedures in Summary Cases When Complaint Filed**

**Rule 424. Guilty Pleas.**

\* \* \* \* \*

(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) when a plea agreement has been reached between the Commonwealth and the defendant to withdraw one or more of the original summary offenses in exchange for a plea to one or more other summary charges, advise the defendant that, if the defendant withdraws the plea or appeals for a trial de novo, the original charges will be reinstated and the case will proceed on the original charges;**

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

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

[ (4) ] (5) 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) ] (6) 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) ] (5) 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.

\* \* \* \* \*

**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, [ 2007 ] 2008; amended , 2009, effective , 2009.

*Committee Explanatory Reports:*

\* \* \* \* \*

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 ] 4293 (August 30, 2003).

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

**Report explaining the proposed amendments concerning procedures related to plea agreements published at 38 Pa.B. 6882 (December 20, 2008).**

**PART F. Procedures in Summary Cases for Appealing to Court of Common Pleas for a Trial De Novo**

**Rule 460. Notice of Appeal.**

\* \* \* \* \*

(C) Within 5 days after filing the notice of appeal, a copy shall be served either personally or by mail by the clerk of courts upon the issuing authority, the affiant, and the appellee or appellee's attorney, if any.

**(D) When a defendant appeals from a summary proceeding in any case in which a plea agreement has been reached between the Commonwealth and the defendant in which any of the original summary charges is withdrawn in exchange for a plea to one or more other summary charges, the magisterial district judge shall reinstate any charges withdrawn as part of a plea agreement, and the case shall proceed upon the original charges.**

[ (D) ] (E) The issuing authority shall, within 20 days after receipt of the notice of appeal, file with the clerk of courts:

- (1) the transcript of the proceedings;
- (2) **if the charges are reinstated pursuant to paragraph (D), a statement to that effect;**
- (3) the original complaint or citation, if any;

[ (3) ] (4) the summons or warrant of arrest, if any; and

[ (4) ] (5) the bail bond, if any.

[ (E) ] (F) This rule shall provide the exclusive means of appealing from a summary guilty plea or conviction. Courts of common pleas shall not issue writs of certiorari in such cases.

[ (F) ] (G) This rule shall not apply to appeals from contempt adjudications.

**Comment**

This rule is derived from former Rule 86(A), (D), (E), (F), (H), and (I).

\* \* \* \* \*

**Paragraph (D) was added in 2009 to provide for the reinstatement of charges withdrawn as part of a plea agreement when the defendant subsequently appeals for a trial de novo.**

**This rule is not applicable to cases that originated as court cases but all misdemeanor or felony charges are withdrawn in exchange for a plea to one or more summary charges. These cases will proceed under Rule 550.**

\* \* \* \* \*

**Official Note:** Former Rule 86 adopted July 12, 1985, effective January 1, 1986; revised September 23, 1985, effective January 1, 1986; the January 1, 1986 effective dates extended to July 1, 1986; amended February 2, 1989, effective March 1, 1989; amended March 22, 1993, effective January 1, 1994; amended October 28, 1994, effective as to cases instituted on or after January 1, 1995; amended February 27, 1995, effective July 1, 1995; amended October 1, 1997, effective October 1, 1998; amended May 14, 1999, effective July 1, 1999; rescinded March 1, 2000, effective April 1, 2001, and paragraphs (A), (D), (E), (F), (H), and (I) replaced by Rule 460. New Rule 460 adopted March 1, 2000, effective April 1, 2001; amended March 3, 2000, effective July 1, 2000; amended February 6, 2003, effective July 1, 2003; Comment revised February 28, 2003, effective July 1, 2003; amended , 2009, effective , 2009.

Committee Explanatory Reports:

FORMER RULE 86:

Final Report explaining the March 22, 1993 amendments to former Rule 86 published with the Court's Order at 23 Pa.B. 1699 (April 10, 1993).

\* \* \* \* \*

**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, 2002).**

NEW RULE 460:

Final Report explaining the reorganization and renumbering of the rules and the provisions of Rule 460 published at 30 Pa.B. 1478 (March 18, 2000).

\* \* \* \* \*

**Report explaining the proposed amendments concerning plea agreements published at 38 Pa.B. 6882 (December 20, 2008).**

**Rule 462. Trial De Novo.**

\* \* \* \* \*

**(C) When a defendant appeals from a summary proceeding in any case in which a plea agreement has been reached between the Commonwealth and the defendant in which any of the original summary offenses is withdrawn in exchange for a plea to one or more other summary charges and the issuing authority has reinstated the withdrawn charges as provided in Rule 460(D), the case shall proceed upon the original charges.**

**[(C) (D)]** In appeals from summary proceedings arising under the Vehicle Code or local traffic ordinances, other than parking offenses, the law enforcement officer who observed the alleged offense must appear and testify. The failure of a law enforcement officer to appear and testify shall result in the dismissal of the charges unless:

\* \* \* \* \*

**[(D) (E)]** If the defendant fails to appear, the trial judge may dismiss the appeal and enter judgment in the court of common pleas on the judgment of the issuing authority.

**[(E) (F)]** If the defendant withdraws the appeal, the trial judge shall enter judgment in the court of common pleas on the judgment of the issuing authority.

**[(F) (G)]** The verdict and sentence, if any, shall be announced in open court immediately upon the conclusion of the trial.

**[(G) (H)]** At the time of sentencing, the trial judge shall:

\* \* \* \* \*

**[(H) (I)]** After sentence is imposed by the trial judge, the case shall remain in the court of common pleas for the execution of sentence, including the collection of any fine and restitution, and for the collection of any costs.

**Comment**

This rule is derived from former Rule 86(G) and former Rule 1117(c).

The procedures for conducting the trial de novo in the court of common pleas set forth in paragraphs (B), **[(F) (G)]**, and **[(G) (H)]** are comparable to the summary case trial procedures in Rule 454 (Trial in Summary Cases).

\* \* \* \* \*

The provisions of paragraph **[(C) (D)]** that permit the court to continue the case if there is good cause for the officer's unavailability were added in response to *Commonwealth v. Hightower*, 438 Pa. Super. 400, 652 A.2d 873 (1995).

Paragraph **[(D) (E)]** makes it clear that the trial judge may dismiss a summary case appeal when the judge determines that the defendant is absent without cause from the trial de novo. If the appeal is dismissed, the trial judge should enter judgment and order execution of any sentence imposed by the issuing authority.

Pursuant to paragraph **[(G) (H)]**, if the defendant is convicted, the trial judge must impose sentence, and advise the defendant of the payment schedule, if any, and the defendant's appeal rights. See Rule 704(A)(3) and Rule 720(D). 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).

Once sentence is imposed, paragraph **[(H) (I)]** makes it clear that the case is to remain in the court of common pleas for execution of the sentence and collection of any costs, and the case may not be returned to the magisterial district judge. The execution of sentence includes the collection of any fines and restitution.

**Official Note:** Former Rule 86 adopted July 12, 1985, effective January 1, 1986; revised September 23, 1985, effective January 1, 1986; the January 1, 1986 effective dates extended to July 1, 1986; amended February 2, 1989, effective March 1, 1989; amended March 22, 1993, effective January 1, 1994; amended October 28, 1994, effective as to cases instituted on or after January 1, 1995; amended February 27, 1995, effective July 1, 1995; amended October 1, 1997, effective October 1, 1998; amended May 14, 1999, effective July 1, 1999; rescinded March 1, 2000, effective April 1, 2001, and paragraph (G) replaced by Rule 462. New Rule 462 adopted March 1, 2000, effective April 1, 2001; amended February 28, 2003, effective July 1, 2003; Comment revised March 26, 2004, effective July 1, 2004 amended January 18, 2007, effective August 1, 2007; **amended** , **2009, effective** , **2009.**

\* \* \* \* \*

NEW RULE 462:

Final Report explaining the reorganization and renumbering of the rules and the provisions of Rule 462 published at 30 Pa.B. 1478 (March 18, 2000).

\* \* \* \* \*

**Report explaining the proposed amendments concerning procedures following plea agreements published at 38 Pa.B. 6882 (December 20, 2008).**

**CHAPTER 5. PRETRIAL PROCEDURES IN COURT CASES**

**PART D. Proceedings in Court Cases Before Issuing Authorities**

**Rule 550. Pleas of Guilty Before Magisterial District Judge in Court Cases.**

(A) In a court case in which a magisterial district judge is specifically empowered by statute to exercise jurisdiction

tion, or in which a plea agreement has been reached between the Commonwealth and the defendant and all misdemeanor or felony charges are withdrawn in exchange for a plea to one or more summary charges, a defendant may plead guilty before a magisterial district judge at any time up to the completion of the preliminary hearing or the waiver thereof.

\* \* \* \* \*

(D) A defendant who enters a plea of guilty under this rule may, within 10 days after sentence, change the plea to not guilty by so notifying the magisterial district judge in writing. In such event, the magisterial district judge shall vacate the plea and judgment of sentence, shall reinstate any charges withdrawn as part of a plea agreement, and the case shall proceed in accordance with Rule 547, as though the defendant had been held for court.

(E) Ten days after the acceptance of the guilty plea and the imposition of sentence, the magisterial district judge shall,

(1) in a court case in which a magisterial district judge is specifically empowered by statute to exercise jurisdiction, certify the judgment, and shall forward the case to the clerk of courts of the judicial district for further proceedings[ . ] ; or

(2) in a court case in which a plea agreement has been reached between the Commonwealth and the defendant and all misdemeanor or felony charges are withdrawn in exchange for a plea to only summary charges, the magisterial district judge shall enter a final disposition.

Once the case has been forwarded to the court of common pleas, the case shall not be remanded to the issuing authority.

**Comment**

In certain cases, what would ordinarily be a court case within the jurisdiction of the court of common pleas has been placed within the jurisdiction of magisterial district judges. See Judicial Code, 42 Pa.C.S. § 1515(a)(5), (5.1), (6), (6.1), and (7). This rule provides the procedures to implement this expanded jurisdiction of magisterial district judges.

\* \* \* \* \*

This rule also applies in any court case in which the Commonwealth agrees to withdraw all misdemeanor or felony charges in exchange for the defendant's plea to one or more summary charges. Even though only summary charges remain, the case still is considered a court case. The procedures for appeal for a trial de novo in summary cases set forth in Rules 460-462 are not applicable.

Once the 10-day period for withdrawal of the guilty plea has expired, the case will not be forwarded to the court of common pleas, but will have a final disposition entered in the magisterial district court. However, if the guilty plea takes place after the case is held for court, the case shall remain in the court of common pleas and thereafter would proceed in the same manner as any other court case, which would include, for example, the collection of restitution, fines, and costs; the establishment of time payments; and the supervision of probation.

\* \* \* \* \*

**Official Note:** Rule 149 adopted June 30, 1977, effective September 1, 1977; Comment revised January 28, 1983, effective July 1, 1983; amended November 9, 1984, effective January 2, 1985; amended August 22, 1997, effective January 1, 1998; renumbered Rule 550 and amended March 1, 2000, effective April 1, 2001; amended December 9, 2005, effective February 1, 2006; **amended** , **2009, effective** , **2009.**

*Committee Explanatory Reports:*

Final Report explaining the August 22, 1997 amendments that clarify the procedures following a district justice's acceptance of a guilty plea and imposition of sentence in a court case published with the Court's [ **order** ] **Order** at 27 Pa.B. 4549 (September 6, 1997).

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 December 9, 2005 changes to the rule clarifying the magisterial district judges' exercise of jurisdiction published with the Court's Order at 35 Pa.B. 6896 (December 24, 2005).

**Report explaining the proposed amendments concerning procedures following plea agreements published at 38 Pa.B. 6882 (December 20, 2008).**

**REPORT**

*Proposed Amendments to Pa.Rs.Crim.P. 409, 414, 424, 460, 462 and 550*

**SUMMARY PLEA AGREEMENTS**

The Committee recently examined the procedures when a court case<sup>1</sup> is brought before an magisterial district judge, presumably for a preliminary hearing or other proceeding, and the defendant enters into a plea agreement with the Commonwealth. The defendant enters a guilty plea before the magisterial district judge to one or more summary offenses in exchange for the withdrawal of the misdemeanor or felony charges, and subsequently appeals the summary conviction to the court of common pleas. In this procedural posture, the issue is whether an appeal for a trial de novo should be permitted and what charges should go forward.

The Committee believes that it would be unfair for the defendant to enjoy the benefit of a bargain of reduced charges that was premised upon the entry of a guilty plea and then attempt to defeat the reduce charge on appeal. If the defendant desires to withdraw his or her plea, there should be a mechanism to reinstate the original charges.

The Committee concluded that, since these types of cases initially included misdemeanors or felonies, the cases should be treated as court cases throughout. This is consistent with the definition of "court case" in Rule 103 that states that a "court case is a case in which one or more offenses **charged** is a misdemeanor, felony, or murder of the first, second, or third degree (emphasis added)." Therefore, the defendant should not be permitted to appeal for a trial de novo. Rather, these cases should be treated as being akin to the acceptance of a third degree misdemeanor guilty plea as provided in Rule 550.

The Committee is proposing amendments to Rule 550 that would broaden the types of cases that would be covered by the Rule 550 procedures to include the acceptance by the magisterial district judges of guilty pleas to summary charges in cases that originally in-

<sup>1</sup>The case originates by charging misdemeanor, felony or murder offenses.



cluded felony or misdemeanor charges. If the defendant subsequently withdraws his or her plea, as is currently provided in Rule 550(D), the magisterial district judge must reinstate the charges withdrawn as part of the plea agreement, and thereafter the case will proceed in accordance with Rule 547, as though the defendant had been held for court.

As a procedural point, the Committee noted that Rule 550(E) requires that, if the defendant has not withdrawn his or her guilty plea within ten days of its entry, the magisterial district judge is required to certify the judgment and forward the case to the clerk of courts. The Committee recognized that the purpose of this procedure was to ensure the subsequent supervision by the probation department in a misdemeanor case and was therefore unnecessary in the situation of a plea to summary charges. Therefore, language has been added to Rule 550(E) that would provide, in cases involving the entry of a summary plea pursuant to a plea agreement, that once the period for withdrawal of the plea has passed, the case would remain with the magisterial district judge.

Recognizing that the approach set forth in the proposed procedure could be confusing, especially when the case is sent to the court of common pleas, the Committee also is proposing an addition to the Comment to Rule 460 explaining that the Rule 460 procedures are not applicable to a plea taken under Rule 550 in the context of a court case with a plea agreement to summary offenses only.

The Committee also examined the situation in which the case originates entirely as a summary case and one or more summary offenses are dismissed or reduced based upon an agreement to plead to one or more other summary charges.

The Committee believes that these cases should be treated in the same manner as the court cases discussed previously. If the defendant subsequently withdraws the plea or appeals for a trial de novo, the original charges should be reinstated. This would be consistent with the holding in *Commonwealth v. Rose*, 820 A.2d 164 (Pa. Super. 2003), a case in which the Superior Court found that the Commonwealth's voluntary withdrawal of three Motor Vehicle Code citations against the defendant in exchange for a guilty plea to two remaining citations did not constitute a dismissal, and therefore, the original citations could be reinstated when the defendant filed a summary appeal. The proposal includes language to be added to Rules 460 and 462 that would require the magisterial district judge to reinstate the original charges if the charges had been withdrawn as part of a plea agreement that the defendant subsequently abrogates by withdrawing his or her plea or filing an appeal for a trial de novo. The proposal also adds a requirement to the summary guilty plea rules, Rules 409, 414, and 424, that the defendant be given notice of the consequences of a withdrawal from such a plea agreement at the time of the entry of the plea.

[Pa.B. Doc. No. 08-2278. Filed for public inspection December 19, 2008, 9:00 a.m.]

## Title 249—PHILADELPHIA RULES

### PHILADELPHIA COUNTY

#### Amendment of Philadelphia Civil Rule \*205.4 and Adoption of Philadelphia Civil Rule \*204.1.; General Court Regulation No. 2008-03

##### Order

*And Now*, this 1st day of December, 2008, the Board of Judges of Philadelphia County having voted at the Board of Judges' meeting held on November 20, 2008, to amend Philadelphia Civil Rule \*205.4 and to Adopt Philadelphia Civil Rule \*204.1, *It Is Hereby Ordered* that Philadelphia Civil Rule \*205.4 is amended, and that Philadelphia Civil Rule \*204.1 is adopted as followed.

This General Court Regulation is issued in accordance with Pa.R.C.P. No. 239 and the previous-referenced rule changes shall become effective on January 5, 2009. The original General Court Regulation shall be filed with the Prothonotary in a Docket maintained for General Court Regulations issued by the President Judge of the Court of Common Pleas of Philadelphia County, shall be published in the *Pennsylvania Bulletin*, and copies shall be submitted to the Administrative Office of Pennsylvania Courts, and the Civil Procedural Rules Committee. Copies of the General Court Regulation shall also be submitted to *American Lawyer Media*, *The Legal Intelligencer*, Jenkins Memorial Law Library, and the Law Library for the First Judicial District of Pennsylvania, and shall be posted on the web site of the First Judicial District of Pennsylvania: courts.phila.gov/regs, and, as required by Pa.R.C.P. No. 239.9(d) and 239.8(b)—(d), Philadelphia Civil Rule \*205.4 shall be posted on the Pennsylvania Judiciary's Web Application Portal: ujsportal.pacourts.us/Rules/Rules Selection.aspx.

HONORABLE PAMELA PRYOR DEMBE,  
*President Judge*  
*Court of Common Pleas*

##### November 20, 2008 Board of Judges' Meeting

#### Rule \*205.4. Electronic Filing of Legal Papers Filed in the Civil Trial Division.

##### ~~(a) (1) -- Authorization for Electronic Filing.~~

~~(i) Commencing on a specific date as established by the Administrative Judge of the Trial Division by the issuance of an Administrative Order, parties may electronically file all legal papers and exhibits with the Prothonotary.~~

~~(ii) Commencing on a specific date as established by the Administrative Judge of the Trial Division by the issuance of an Administrative Order, parties shall electronically file all legal papers and exhibits with the Prothonotary.~~

~~**Note:** Electronic Filing will be implemented in 2008; however, the exact date is not known at this time. The Administrative Judge of the Trial Division will announce the implementation dates of discretionary and mandatory electronic filing by order issued as required by Pa.R.C.P. No. 239.~~

**(a) Commencing at 9:00 AM on January 5, 2009, parties shall electronically file all "legal papers," as defined in Pa.R.C.P. No. 205.4(a)(2), with the Prothonotary through the Civil Trial Division's Electronic**

**Filing System as more specifically provided in Pennsylvania Rule of Civil Procedure No. 205.4 and Philadelphia Civil Rule \*205.4.**

*Explanatory Note:* The term “legal paper” as defined in Pa.R.C.P. No. 205.4(a)(2) encompasses **all** pleadings and other papers filed with the Prothonotary—even if the legal papers are not adversarial in nature and do not require the non-filing party or parties to respond (such as Notices of Tax Liens).

\* \* \* \* \*

**(d)(3) Electronic Filing Fees and Costs.** As authorized by Act 81 of 2006, the Prothonotary shall collect an electronic filing fee for each legal paper or exhibit filed as established by the Prothonotary with the approval of the President Judge of the Court of Common Pleas. In addition to such electronic filing fee, commencing on date provided in subsection (a)(1)(ii) **January 5, 2009**, the Prothonotary is authorized to charge the sum of \$1.00 per page for each page of a legal paper or exhibit which is filed in a hard copy format and which must be converted by the Prothonotary to a *portable document format*. All fees collected pursuant to this rule shall be set aside by the Prothonotary and remitted monthly to the First Judicial District’s Procurement Unit. All such fees and costs collected will be used for the implementation and maintenance of the electronic filing system and additional development, enhancements and training.

\* \* \* \* \*

**(f) Local Procedures.** As authorized by Pa.R.C.P. No. 205.4(f), the following administrative procedures are adopted:

\* \* \* \* \*

**(7) If a legal paper is electronically filed, the Civil Electronic Filing System will automatically serve all persons who have previously submitted electronic filings in the same case, pursuant to Philadelphia Civil Rule \*205.4 and Pa.R.C.P. No. 205.4(g), but the filing party must serve all others as required by rules of court. All legal papers filed in a hard-copy format must be served by the filing party as required by rules of court.**

#### **New Rule**

#### **Rule \*204.1. Pleadings and Other Legal Papers. Format.**

**(a) In order to accommodate the filing of documents in an electronic format as authorized by Philadelphia Civil Rule \*205.4, all “legal papers,” as defined in Pa.R.C.P. No. 205.4(a)(2), must conform to the following requirements:**

**(1) All files must be no larger than 3MB each. If an electronic file exceeds this limit, then it must be split into multiple files;**

**(2) All PDF pages must be 8 and 1/2 inches in size exactly. Other file sizes may be incompatible with electronic filing;**

**(3) No security, passwords or other restrictions may be placed on electronic files. If an electronic file contains passwords or other security devices, it will be rejected; and**

**(4) After an electronic file is created, it must not be modified in any way. If an electronic filing is modified, it may be incompatible with the electronic filing system and will be rejected.**

**(b) In order to accommodate the scanning of legal papers presented in hard-copy format and saving in an electronic format as provided by Philadelphia Civil Rule \*205.4(b)(1), in addition to the requirements of Pa.R.C.P. No. 204.1, all hard-copy “legal papers” must conform to the following requirements:**

**(1) all legal papers must be printed on only one side of the paper;**

**(2) all orders must contain a 3-inch space from the top of the page for all electronic court stampings, filing notices, etc.;**

**(3) legal papers must not be stapled or permanently bound, but must be secured by binder clips or other fasteners which do not puncture or otherwise interfere with scanning;**

**(4) bar codes on any page of the legal paper interfere with scanning and must therefore be crossed out or otherwise redacted; and**

**(5) to avoid scanning errors, Exhibit separator pages must be used instead of Exhibit tabs.**

*Explanatory Note:* The source of this rule is Administrative Docket No. 01-2008, issued by Administrative Judge D. Webster Keogh on July 16, 2008.

***Adopted by the Board of Judges on November 20, 2008; effective on January 5, 2009.***

[Pa.B. Doc. No. 08-2279. Filed for public inspection December 19, 2008, 9:00 a.m.]

## **Title 255—LOCAL COURT RULES**

### **BEAVER COUNTY**

#### **Local Rules of Civil Procedure; No. 10130 of 2001**

#### **Order**

*And Now*, this 10th day of November, 2008, Local Rule of Civil Procedure 212.2 is amended to read as follows. This Order and Amended Local Rule 212.2, as well as adoption of Local Rule 212.4, shall be effective 30 days after publication in the *Pennsylvania Bulletin* and publication on the Pennsylvania Judiciary’s web application portal. All Local Rules inconsistent with the foregoing amended and new Local Rules are suspended upon the effective date of the foregoing amended and new Local Rules.

In accordance with Pa.R.C.P. No. 239, the Court Administrator of Beaver County shall file or distribute copies of this Order and the amended and new Local Rules as follows:

1. Seven (7) certified copies to the Administrative Office of Pennsylvania Courts;

2. Two (2) certified copies and a computer diskette containing the texts of the amended and new Rules to the Legislative Reference Bureau for publication in the *Pennsylvania Bulletin*.

3. One (1) certified copy to the Civil Procedure Rules Committee of the Supreme Court of Pennsylvania;

4. One (1) copy to the Prothonotary of Beaver County to be kept continuously available for public inspection and copying;

5. One (1) copy to the Law Library of Beaver County.

In addition, the Court Administrator of Beaver County shall cause the foregoing Rules to be published on the web site of the Administrative Office of Pennsylvania Courts and on the Beaver County web site.

*By the Court*

JOHN D. MCBRIDE,  
*President Judge*

**Rule L 212.2. Pre-Trial Conference and Pre-Trial Statements.**

A. Unless otherwise directed by the court, a Pre-Trial Conference shall be Scheduled by the Court Administrator for every case certified for jury trial. Pre-Trial Conferences shall be scheduled on those dates designated for that purpose on the court calendar and on such other dates as may from time to time be designated by the court.

(1) Prior to the Pre-Trial Conference, a party shall provide the opposing party with a copy of all documents or records secured through an authorization of the opposing party. Any such documents or records not so provided may not be used at trial for any purpose.

(2) Pre-Trial statements which comply with Pa.R.C.P. No. 212. Shall be submitted to the judge assigned to conduct the Pre-Trial Conference not later than five (5) business days prior thereto seven (7) days prior thereto. Failure to file a timely pre-trial statement may result in continuance of the Pre-Trial Conference and sanctions in the form of counsel fees payable to opposing counsel. In addition, to the requirements of Pa.R.C.P. No. 212.2, the Pre-Trial Statement shall contain:

(a) A statement of legal and evidentiary issues which are anticipated to arise together with a citation to authority;

(b) An itemized statement of all medical and hospital and other bills and expenses claimed;

(c) An itemized statement of lost earnings and impairment of earning power together with the basis therefore;

(d) A statement, if applicable, as to the plaintiff's selection of the limited or full tort option. If a limited tort option applies, a statement to support eligibility for recovery of non-economic damages shall be included;

**Note:** Although Pa.R.C.P.No. 212.2(5) requires the inclusion of an expert report or proper answer to interrogatory and the note thereto permits physician notes or records in lieu of a report, neither copies of hospital records nor illegible office notes are to be included.

All trial exhibits are to be marked for identification but need not be attached to the Pre-Trial Statement.

(3) Unless excused by the court upon cause shown, the Pre-Trial Conference shall be attended by trial counsel as well as the plaintiff, a representative of the defendant's insurance carrier who has settlement authority, a representative of the CAT **MCARE** Fund and any defendant whose personal approval of a settlement offer is required and has not been given.

**Note:** Where a liability insurance carrier, the CAT **MCARE** Fund or a party has given counsel written authority to settle in an amount deemed by the court to be reasonable, the court will probably excuse attendance

at the Pre-Trial Conference. All requests to be excused should be by formal motion or petition setting forth the reasons for the request.

If trial counsel is excused by the court from attending, substitute counsel shall be equally familiar with the case and its issues or sanction may be imposed.

(b) After the Pre-Trial Conference has concluded, no Supplemental Pre-Trial Statement may be filed without leave of court for cause shown.

**Rule L212.4. Case Management Conferences and Complex Cases.**

A. At any time after the initial pleadings have closed (e.g. Complaint, Answer and New Matter and Reply to New Matter), any party may move the Court to schedule a case management conference, without the need for consent from the other party or parties.

B. After receiving the motion, the Court shall schedule a case management conference, at which the Court will set a discovery schedule, date for filing of dispositive motions, date for exchange of expert reports, and a date for a pretrial conference. Said dates will only be extended for good cause shown.

C. If the case is a complex case (one that involves significant legal and factual issues, has multiple experts, will take more than several days to try and requires significant attention of the Court in connection with pretrial and trial motions), the party filing the motion for a case management conference should advise the Court of that fact in the motion so that a special schedule and trial date can be set.

[Pa.B. Doc. No. 08-2280. Filed for public inspection December 19, 2008, 9:00 a.m.]

**ERIE COUNTY**

**In the Matter of the Revision and Restatement of the Rules of Civil Procedure; Civil Division; No. 90052 Court Order 2008**

**Order**

*And Now*, this 21st day of October, 2008, amended Rules 212.1, 212.4, 1301 and 1302 of the Rules of Civil Procedure for the Court of Common Pleas of Erie County, Pennsylvania are as follows and they shall be effective upon publication on the Unified Judicial System portal.

*By the Court*

ELIZABETH K. KELLY,  
*President Judge*

**2008 Civil Rules Committee**

Hon. Ernest J. DiSantis, Jr.; Gary Eiben; Kenneth J. Gamble; Marcia H. Haller; James P. Lay, III; Craig A. Markham; John W. McCandless; Daniel J. Pastore; Thomas S. Talarico; Joseph A. Yochim

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**Rule 212.1. Pretrial Procedure.**(a) *Scope.*

This Rule shall encompass all civil actions, except actions where jurisdiction lies in the Family/Orphans Court Division.

(b) *Case Management Orders (CMO).*1. *Case Management Orders—General.*

(A) At the time of judicial assignment, the Office of Court Administration shall issue a CMO designating dates for the close of discovery, the filing of pretrial statements, and a proposed trial term.

(B) At any time prior to judicial assignment, the parties may agree to the entry of a CMO by filing a stipulation with the Office of Court Administration and the Prothonotary.

(C) Following the entry of the CMO, any request for modification shall be done by motion filed with the Prothonotary and mailing or delivering a copy to the assigned judge.

2. *Case Management Orders—Time Limitations.*

(A) All CMOs, except those requested by stipulation, which are issued by the Office of Court Administration, shall provide the following time limitations:

(i) Close of discovery within two hundred forty (240) days of the issuance of the CMO.

(ii) Plaintiff's pretrial statement filed within thirty (30) days of the close of discovery.

(iii) Defendant's pretrial statement filed within sixty (60) days of the close of discovery.

(iv) The proposed trial term which will be the next available trial term for which the case can be certified.

(B) If a case has been accepted by the Court as "complex," all CMOs shall designate dates consistent with the following time limitations:

(i) Close of discovery is five hundred forty (540) days from the issuance of the CMO.

(ii) Plaintiff's pre-trial statement filed within forty five (45) days of the close of discovery.

(iii) Defendant's pretrial statement filed within ninety (90) days of the close of discovery.

(iv) The proposed trial term which will be the next available trial term for which the case can be certified.

(C) If a case has been accepted by the Court as "expedited," all CMOs shall designate dates consistent with the following time limitations:

(i) Close of discovery is ninety (90) days from the issuance of the CMO.

(ii) Plaintiff's pretrial statement filed within fifteen (15) days of the close of discovery.

(iii) Defendant's pretrial statement filed within thirty (30) days of the close of discovery.

(iv) The proposed trial term which will be the next available trial term for which the case can be certified.

(D) A party may request that a case be designated as complex or expedited by the filing of a stipulation or motion.

(E) All cases where the amount in controversy is within the limits for mandatory arbitration shall be designated as "expedited" cases and CMOs issued accordingly.

(c) *Settlement Conference.*

A party may request that the assigned judge conduct a settlement conference at any time after the filing of the last responsive pleading.

(d) *Mediation.*

Mediation is available upon agreement of all parties. The Prothonotary, upon request for appointment of a mediator, may appoint a mediator to conduct the process. Other alternatives for locating a trained mediator include the Erie County Bar Association's Mediation Service.

The following procedure shall guide the mediation process when requested by parties:

1. A mediator may be selected through the Prothonotary's Office from a list supplied by the Court, through the Erie County Bar Association's Mediation Program or by other means agreed upon by the parties.

2. The mediator shall designate the time for hearing with written notice to each party or their counsel. Hearings may be held at the mediator's office or elsewhere upon agreement of the parties.

3. All parties, including counsel, may attend the mediation.

4. The parties/counsel shall immediately notify the mediator if the matter has been resolved prior to the scheduled hearing.

5. Upon completion of the mediation, the mediator shall file a report with the Court, with copies to the parties or, if represented, to their counsel, stating only whether the case has settled. If the case has not settled, it shall proceed to arbitration or trial.

\*(e) *Certification For Trial.*

1. These certification procedures apply to all civil jury and non-jury cases.

2. In order to have a case assigned to a particular trial term, all counsel or parties must certify the case as ready for trial by filing with the Prothonotary and serving upon the Court Administrator a certification in substantially the form contained herein and designated "Certification I."

3. If a party has failed to comply with the timetables established in the CMO or has failed to sign a Certification I after being requested to do so in writing, a party wishing to place the case on the trial list must file a certification in substantially the same form contained herein and designated "Certification II."

4. A Certification I or II indicating readiness for trial shall be filed with the Office of Court Administration and the Prothonotary no later than the last Friday of the calendar month that precedes the month immediately before the beginning of the proposed trial term, unless a

different deadline is established by notice published in the Erie County Legal Journal.

5. All "Certification II's" shall be forwarded to the assigned judge for disposition.

\*Comment: To comply with this Rule, all counsel must certify that they have "met and discussed settlement of this matter." (See the Form for Certification I). One preferred method of alternative dispute resolution which would satisfy the requirements of this Rule is mediation. The Erie County Bar Association has established a Mediation Program; guidelines and forms can be obtained from the ECBA offices at (814) 459-3111, or on-line at [www.eriebar.com](http://www.eriebar.com).

**Rule 212.4. Trial Lists and Continuances.**

(a) After the deadline for certification has passed, the Office of Court Administration, in coordination with the assigned judge, shall list all certified cases for trial.

(b) When a case is listed for trial, it shall not be continued except for just cause. Except in the case of exigent circumstances, all motions for continuance must be made at least ten (10) days before the start of the trial in non-jury cases. All motions for continuance must include the reasons for the request and must be presented to the assigned judge.

(c) Motions for continuance which are being made with the agreement of all counsel must be signed by all counsel or parties.

**Rule 1301. Scope.**

(a) Compulsory arbitration of matters as authorized by the Judicial Code, 42 Pa.C.S. § 7361 as amended, shall apply to all cases at issue where the aggregate amount in controversy shall be Fifty Thousand Dollars (\$50,000.00), or less, regardless of the number of parties, except those cases involving title to real estate or which seek equitable or declaratory relief.

(b) In all cases where a party has obtained a judgment by default under Pa.R.C.P. No. 1037, the party obtaining said judgment by default may elect to have unliquidated damages assessed at a trial by arbitration with the issues limited to the amount of damages which shall not exceed \$50,000.00. The election to assess damages by arbitration shall constitute a waiver by the party making such election of any damages in excess of \$50,000.00.

(c) Discovery shall be allowed in all cases.

**Explanatory Comment—2008**

The monetary limits for arbitration are being increased from \$35,000.00 to \$50,000.00 and this change shall apply to those civil actions which are filed after the effective date of this rule change. This change is being made on a trial basis and shall be subject to a three year sunset provision. By the end of the three year period which begins on the effective date of this rule change, the court, with the assistance of the Erie County Bar Association, shall analyze the results and the effect of the increase in the arbitration limits to make a determination as to whether to maintain the limits at that level.

**Rule 1302. List of Arbitrators. Appointment to Board.**

(a)(1) The Board of Arbitrators in any case shall be selected in accordance with one of the procedures set forth below, from a list of attorneys admitted to practice in Erie County, who have filed their consent to act with the Prothonotary.

Those attorneys having practiced for three (3) years or more who wish to be Chairman of Boards of Arbitration shall so inform the Prothonotary of their eligibility.

(i) Selection by Praecipe: Upon the filing of a Praecipe for Arbitration, the Prothonotary shall nominate a Board of potential Arbitrators consisting of three (3) attorneys plus one (1) attorney for each attorney of record and unrepresented party. Not more than two (2) of the potential Arbitrators shall have been admitted to the practice of law for less than three (3) years. The list of attorneys so nominated shall be sent by the Prothonotary to each attorney of record and the unrepresented party. Each attorney of record and unrepresented party may strike off one (1) nominated attorney and return the list to the Prothonotary within five (5) days. A failure to respond within five (5) days constitutes a waiver of the right to strike one (1) name from the list. The three remaining names will make up the Board. If no name of the same name is stricken from the list, the first three (3) remaining names will make up the Board.

Upon the expiration of five (5) days, the Prothonotary shall notify all parties of the names of the Arbitration Panel and designate as Chair the first Arbitration Panel and designate as Chair the first Arbitrator, so selected, who has been admitted to the practice of law for at least three (3) years.

(ii) Selection by agreement: By agreement of counsel, the Prothonotary shall nominate a list of nine (9) attorneys selected at random from the entire list of potential arbitrators with an additional three (3) attorneys for each additional party with an adverse interest. Each party shall have the right to strike off attorneys so named, one at a time and alternately. If, after the striking of Arbitrators, the selection will result in a panel of members none of whom are eligible to be Chairman, the Prothonotary at the request of either counsel, shall select three (3) additional attorneys for consideration. The selection shall continue until a panel is agreed upon. If none of the three (3) chosen Arbitrators have been practicing for more than three (3) years, the counsel shall be deemed to waive this requirement. The Chairman shall be selected by counsel.

(iii) Selection of sole arbitrator: In any case within the limits of compulsory arbitration, a sole Arbitrator may be selected to adjudicate the case by agreement of counsel. The award shall have the same effect as that of a three (3) person panel. The Prothonotary shall nominate a list of five (5) attorneys selected at random from the entire list with an additional two (2) attorneys for each additional party with an adverse interest. Each party shall then have the right to strike off two so named, one at a time and alternately. The remaining attorney shall comprise the Board of Arbitration and shall be considered the Chairman.

(2) In the event an arbitrator selected pursuant to the above procedures is unavailable to attend the hearing for any reason, that arbitrator shall give the parties written notice of his or her unavailability five (5) days before the hearing date, so as to allow the parties time to agree on selection of a replacement arbitrator and have said replacement available to attend the hearing so as not to cause the need for rescheduling of the same. If the arbitrator fails to comply with the five (5) day notice requirement, at the time of the regularly scheduled arbitration hearing the parties shall notify the Prothonotary of the arbitrator's failure. Thereafter, the arbitrator shall automatically be stricken from the list of arbitrators maintained by the Prothonotary with leave to reapply for inclusion on the list upon petition to the Court and cause

shown.

: IN THE COURT OF COMMON PLEAS
: OF ERIE COUNTY, PENNSYLVANIA
: NO.

ORDER OF COURT

You \_\_\_\_\_, are ORDERED to appear in person in the CUSTODY CONCILIATION OFFICE, Room 307, Third Floor, Erie County Courthouse, 140 West Sixth Street, Erie, Pennsylvania on \_\_\_\_\_ at \_\_\_\_\_ o'clock a.m./p.m. for an Intake Conference.

Both parents are further ORDERED to attend a custody seminar entitled "CHILDREN COPE WITH DIVORCE" prior to the Intake Conference.

\_\_\_\_\_ must attend the seminar on \_\_\_\_\_.

\_\_\_\_\_ must attend the seminar on \_\_\_\_\_.

THE DATES OF ATTENDANCE WILL NOT BE CHANGED EXCEPT FOR AN EMERGENCY.

FAILURE TO APPEAR AT THE INTAKE CONFERENCE OR FAILURE TO ATTEND THE SEMINAR WILL

BE BROUGHT TO THE ATTENTION OF THE COURT AND MAY RESULT IN A FINDING OF CONTEMPT AND THE IMPOSITION OF A FINE, IMPRISONMENT OR BOTH.

If you fail to appear as provided by this Order, an Order for custody may be entered against you or the Court may issue a warrant for your arrest.

BY THE COURT:

John A. Bozza, Judge

YOU SHOULD TAKE THIS PAPER TO YOUR LAWYER AT ONCE. IF YOU DO NOT HAVE A LAWYER OR CANNOT AFFORD ONE, GO TO OR TELEPHONE THE OFFICE SET FORTH BELOW TO FIND OUT WHERE YOU CAN GET LEGAL HELP.

Lawyer Referral & Information Service
P. O. Box 1792
Erie, Pennsylvania 16507
(814) 459-4411
Hours: 8:30 a.m. - 3:00 p.m.

If you are eligible for accommodation under the Americans With Disabilities Act, please contact us immediately so arrangement may be made.

FORM 2

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Revised through July 16, 2007. Any corrections and/or additions should be brought to the attention of the Erie County Bar Association.

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[Pa.B. Doc. No. 08-2281. Filed for public inspection December 19, 2008, 9:00 a.m.]

**MONTGOMERY COUNTY**

**Amendment of Montgomery County Local Rule of Civil Procedure 1915.3\*—Seminar for Separated and Divorced Parents No. 08-00001**

**Order**

And Now, this 3rd day of December, 2008, the Court amends Montgomery County Local Rule of Civil Procedure 1915.3\*—Seminar for Separated and Divorced Parents. This amended Rule 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 Civil 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 1915.3\*. Seminar for Separated and Divorced Parents.**

(a) In an action for custody, partial custody or visitation, **[if a case is not resolved by the custody conciliator and must therefore proceed to a hearing before a Judge,]** both parents shall attend an approved education seminar on the general responsibilities of separated and divorced parents.

(b) \* \* \*

(c) Seminar attendance **[ may also be required upon motion of either party, by agreement of the parties, upon recommendation by the Custody Conciliator or upon the Court's own motion, ]** is not required in connection with any petition to modify custody**[ , any petition for contempt or a custody order or any other matter relating to child custody or visitation ]** where the parties have already attended the seminar within the past two (2) years.

(d) \* \* \*

(e) \* \* \*

(f) \* \* \*

[Pa.B. Doc. No. 08-2282. Filed for public inspection December 19, 2008, 9:00 a.m.]

**SOMERSET COUNTY**

**Consolidated Rules of Court; No. 63 Miscellaneous 2008**

**Adopting Order**

Now, this 24th day of November, 2008, it is hereby Ordered:

The following designated Somerset County Rule of Criminal Procedure (Som.R.Crim.P.), as follows, is adopted as an amendment to Som.R.Crim.P. 522, adopted October 30, 2008, and effective thirty (30) days after publication in the *Pennsylvania Bulletin*:

The Somerset County Court Administrator shall:

A. File ten (10) certified copies of this order and the attached Rules with the Administrative Office of Pennsylvania Courts:

B. Distribute two (2) certified copies of this Order and the attached Rule to the Legislative Reference Bureau for publication in the *Pennsylvania Bulletin*.

C. File one (1) certified copy of this Order and the attached Rule with the Pennsylvania Criminal Procedural Rules Committee; and

D. File proof of compliance with this Order in the docket for these Rules, which shall include a copy of each transmittal letter.

By the Court

JOHN M. CASCIO,  
President Judge

**Rules of Court**

**Som.R.Crim.P. 552. Administrative Processing and Identification**

(A) In all cases in which a defendant has been charged with an offense graded as a misdemeanor or greater, the defendant shall be required to appear either at the Pennsylvania State Police Barracks, if arrested by the a member of the Pennsylvania State Police, or, if arrested by an arresting authority other than the Pennsylvania State Police, at the Somerset County Regional Booking Center (RBC), located in the Somerset Borough Police Department or at such other location designated, in writing, by the President Judge of the Somerset County Court of Common Pleas, for fingerprinting and processing.

(B) Pursuant to 18 Pa.C.S.A. § 9112, an arresting authority shall be responsible for taking the fingerprints of persons arrested for misdemeanors, felonies or summary offenses which become misdemeanors on a second arrest after conviction of that summary offense. The Regional Booking Center shall serve as the designated fingerprinting and processing site for all arresting authorities in Somerset County other than the Pennsylvania State Police. The State Police Barracks shall serve as the designated fingerprinting site for the Pennsylvania State Police.

(C)(1) In cases in which a defendant has been arraigned before a Magisterial District Judge and fails to post bond, the defendant shall be fingerprinted and photographed at either the RBC or the State Police Barracks, prior to his or her commitment at the Somerset County Jail.

(2) In cases in which a defendant has been arrested during night, weekend or holiday hours, unless the charges proceed by summons, the defendant shall be taken to an appropriate facility for video arraignment and then taken directly to the RBC or the State Police Barracks for the booking procedure, or be taken directly to the RBC or the State Police Barracks for a video arraignment and booking procedure, before being committed to the Somerset County Jail if bond is not posted. If the defendant posts bond, the Magisterial District Judge shall either include a bond condition that directs the Defendant to appear at the State Police Barracks or the **[ SBC ] RBC**, as appropriate, within 48 hours for processing or may direct the arresting officer to take the defendant directly to the appropriate facility for processing prior to his or her release.

(3) In cases of private prosecutions, the defendant may only be fingerprinted and photographed after conviction of a misdemeanor, felony or summary offense which becomes a misdemeanor on a second arrest after conviction of that summary offense. An order shall be issued from the Court of Common Pleas after such conviction directing the Defendant to report to the RBC to be fingerprinted and photographed.

(4) In cases which proceed by issuance of a summons, the Magisterial District Judge presiding at the scheduled Preliminary Hearing shall order the defendant to submit to the RBC within five (5) days following the date of issuance of such order.

(D) A booking fee of one hundred dollars (\$100.00) shall be assessed and collected by the Somerset County Clerk of Courts after sentencing upon conviction of or plea to a misdemeanor or felony offense or acceptance into the Accelerated Rehabilitative Disposition Program.

(E) This fee will not apply to those Defendants whose cases are dismissed by the Magisterial District Judge, withdrawn or nolle prossed by the Commonwealth or who enter a guilty plea to a summary offense at the time of the preliminary hearing.

(F) The [SBC] RBC shall also serve as a processing center for all parties required to be registered and processed under the provisions of 42 Pa.C.S.A. § 9791, et. seq., commonly known as "Megans Law," pursuant to 42 Pa.C.S.A. § 9795.2 (d), if determined by the Pennsylvania State Police to be an "approved registration site" pursuant to 42 Pa.C.S.A. § 9799.1.

[Pa.B. Doc. No. 08-2283. Filed for public inspection December 19, 2008, 9:00 a.m.]

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## WAYNE COUNTY

### Local Rule 117.1; No. 169-2006-Misc. Criminal

#### Order

*And Now*, to wit, this 1st day of December, 2006, Wayne County Local Rule 117.1 is *Hereby Adopted*. In accordance with Pa.R.J.A. 103(c), this Order and the following Rule shall be effective 30 days after publication in the *Pennsylvania Bulletin*. The Court Administrator of Wayne County is *Ordered* and *Directed* to submit seven (7) certified copies of this Order and the following Rule to the Administrative Office of Pennsylvania Courts, two (2) certified copies and one (1) diskette, to be distributed to the Legislative Reference Bureau for publication in the *Pennsylvania Bulletin*, one (1) certified copy to the Criminal Procedure Rules Committee, one (1) certified copy to the Wayne County Law Library and keep continuously available for public inspection and copying, one (1) copy in the Office of the Clerk of Courts of Wayne County.

*By the Court*

ROBERT J. CONWAY,  
*President Judge*

### Local Rule 117.1

#### (A) Magisterial District Judges—Coverage

All Magisterial District Judge Offices shall be open for regular business hours from 8:30 a.m. to 4:30 p.m. Monday through Friday, except for county holidays. A Magisterial District Judge shall be available twenty-four hours per day, every day to provide continuous coverage pursuant to a schedule of specified times for after-hours coverage, approved by the Court, when the "on duty" issuing authority will be available to conduct business. Any addition or amendments to the schedule shall be requested in writing, on forms prescribed by the Court.

#### (B) Officials Designated to Accept Bail

In addition to those persons who are authorized by statute or the Pennsylvania Rules of Criminal Procedure to admit an arrestee to bail, the Warden or the Wayne County Prison or the designee of the Warden shall have the authority to do the same in accordance with and subject to the limitations of the Pennsylvania Rules of Criminal Procedure.

During regular business hours, payment of Bail shall be posted at the appropriate Magisterial District Judge's Office or at the Clerk of Court's Office. Monetary bail and surety bonds may be posted outside of regularly scheduled work hours at the Wayne County Prison. The Warden or his designee is authorized to accept such bail and to witness a defendant's signature on the bail bond at any time. The defendant and surety shall be given a copy of the bail bond. The Warden shall then forward the appropriate bail information and any money posted to the Clerk of Courts office on the next business day.

[Pa.B. Doc. No. 08-2284. Filed for public inspection December 19, 2008, 9:00 a.m.]

# RULES AND REGULATIONS

## Title 10—BANKS AND BANKING

### DEPARTMENT OF BANKING

#### [ 10 PA. CODE CH. 46 ]

#### Proper Conduct of Lending and Brokering in the Mortgage Loan Business

The Department of Banking (Department), under its authority under 7 Pa.C.S. § 6138(a)(4) (relating to authority of department) and section 12 of the Consumer Discount Company Act (CDCA) (7 P.S. § 6212), adopts Chapter 46 (relating to the proper conduct of lending and brokering in the mortgage loan business) to read as set forth in Annex A.

#### *Purpose of Final-Form Rulemaking*

The Department is adopting these regulations because in the past decade the mortgage loan business has significantly increased in complexity and competitiveness, resulting in a drastically changed borrowing landscape. Unfortunately, because of this complexity and competitiveness, borrowers may not understand the loan products offered to them or the process of obtaining a loan. The Department also believes that there are individuals and entities in the mortgage loan business who take advantage of borrowers by placing them in loan products they are not reasonably capable of repaying. Therefore, the Department has adopted these regulations to govern the proper conduct of lending and brokering to persons and entities operating in the mortgage loan business under 7 Pa.C.S. Chapter 61 (relating to mortgage loan industry licensing and consumer protection) (Mortgage Act) and the Consumer Discount Company Act (7 P.S. §§ 6201—6219) (jointly referenced hereafter as the “acts”).

#### *Explanation of Final Regulatory Requirements*

This final-form rulemaking provides rules for the proper conduct of lending and brokering in the mortgage loan business for licensee brokers and lenders under the Mortgage Act and all licensees under the CDCA.

Section 46.2(a) (relating to proper conduct of lending and brokering in the mortgage loan business) addresses licensee conduct when advertising by specifically prohibiting false or misleading advertising.

Section 46.2(b)—(f) requires licensees to issue a one-page disclosure form prescribed by the Department within 3 business days after the application is received or prepared by the licensee. The form will disclose: (1) if the lender providing the loan will escrow the applicable taxes and hazard insurance; (2) if the licensee is a lender with the ability to directly lock-in a loan interest rate; (3) whether the loan contains a variable interest rate or balloon payment feature; (4) whether the loan includes a prepayment penalty; and (5) whether the loan has a negative amortization feature. Licensees are also required to have applicants sign and date the disclosure form, retain the disclosure form for their records and reissue the disclosure form if the licensee knows or reasonably should know the initial disclosure form is inaccurate.

Section 46.2(g) requires licensees to perform an ability to repay analysis when offering a loan to applicants. Licensees must reasonably determine, based upon the

documents and information provided, that an applicant will have the ability to repay the offered loan in accordance with the loan terms and conditions by final maturity at the fully indexed rate, assuming a fully amortized repayment schedule. Additionally, licensees: (1) are required to verify and document the income and the fixed expenses of the applicants; (2) are not permitted to primarily rely upon the sale or refinancing of the applicants' loan collateral to repay the loan; and (3) may not ignore facts or circumstances that it knows or reasonably should know would indicate that the applicant does not have the ability to repay the offered loan. Licensees are permitted to consider other factors in addition to income and fixed expenses when performing the ability to repay analysis and licensees are only required to verify and document the income that the applicant intends to rely upon in repaying the loan. Lastly, the subsection sets forth a presumption of ability to repay for certain loans and provides a framework for an analysis of loans with balloon payment features.

Section 46.2(h) exempts reverse mortgage products from certain regulation subsections that are inconsistent with the features of a reverse mortgage loan.

Section 46.2(i) addresses the continuing responsibility of licensees in performing the ability to repay analysis when there is a material change in facts or circumstances that a licensee knows or reasonably should know would substantially affect the applicant's ability to repay the offered loan.

Section 46.2(j) sets forth a series of loan transaction prohibitions addressing specific conduct of licensees that is prohibited.

Section 46.2(k) requires licensee lenders to fund closed loans and prohibits licensees from delaying or failing to fund a loan based upon postclosing underwriting or quality control. A licensee lender may refuse to fund a closed loan only if there is fraud committed by the applicant. In any administrative action brought by the Department under this subsection, a licensee may raise applicant fraud as an affirmative defense; however, the subsection does not relieve or limit the liability of a licensee against any claims of borrowers based upon a refusal or failure to fund a loan based upon an allegation of fraud.

Section 46.2(l) requires licensees, upon request, to provide an applicant or an authorized representative of the applicant with copies or originals of documents associated with the loan transaction, so long as the licensee is permitted to under State and Federal law and has the documents in its possession.

Section 46.2(m) requires a licensee that holds or services a loan to provide a borrower with pay-off statements or statements of mortgage reinstatement, as applicable, within 7 business days of a request by a borrower or authorized representative of the borrower.

Section 46.3 (relating to enforcement) provides that violations of the regulations are considered violations of the acts. The section also provides that if a loan is made in good faith in conformity with an interpretation of this chapter by the Department or the courts of the Commonwealth, no penalty for a violation shall apply, notwithstanding the relied upon interpretation may subsequently change.

*Summary of Major Comments and Responses on the Proposed Rulemaking*

Under section 5(a) of the Regulatory Review Act (71 P. S. § 745.5(a)), on July 5, 2007, the Department submitted a copy of the proposed rulemaking and a copy of the Regulatory Analysis Form to the Independent Regulatory Review Commission (IRRC) and the Chairperson of the House Commerce Committee and the Senate Committee on Banking and Insurance. A copy of this material is available to the public upon request. Notice of proposed rulemaking was published at 27 Pa.B. 3416 (July 21, 2007).

The Department received over 50 comments to the proposed regulations. The Department prepared a Comment and Response Document, a copy of which is available on the Department's web site at [www.banking.state.pa.us](http://www.banking.state.pa.us). The following is a discussion of the major comments received during the public comment period.

*Coverage of the Regulation Regarding Ssubsidiaries of Federal and State-chartered Banking Institutions.*

Under the Mortgage Act, subsidiaries of Federal and State-chartered banks are statutorily exempted from coverage and, accordingly, from the regulation also. Under the CDCA, although the plain language does not exempt subsidiaries of Federal and State-chartered banks, the Department recognizes Federal preemption as a result of cases such as *Watters v. Wachovia Bank, N.A.*, 550 U.S. 1, 127 S.Ct. 1559, 167 L.Ed.2d 389, 75 USLW 4167 (2007). Therefore, the Department will not enforce or administer the CDCA against entities that set forth a valid claim of Federal preemption. The Department also will not enforce or administer the CDCA against subsidiaries of State-chartered banks that have availed themselves of similar treatment through the parity provisions of section 201(c) of the Banking Code of 1965 (7 P. S. § 201(c)). The Department took the same position under precursors to the Mortgage Act, Chapter 3 of the Mortgage Bankers and Brokers and Consumer Equity Protection Act (63 P. S. §§ 456.101—456.524), and 7 Pa. Code Chapter 61 (relating to mortgage loan industry licensing and consumer protection).

As to affiliates of Federal and State-chartered banks, the Mortgage Act and the CDCA do not provide exemptions for the entities and the Department is not aware of any assertion or ruling of preemption regarding these entities. Therefore, the regulation will apply to the affiliates. The Department believes that the exclusion of these entities would seriously hinder the Department's efforts to address improper lending practices in this Commonwealth by creating a significant regulatory vacuum, which would lead to risk and exposure to borrowers in this Commonwealth. The Department is also concerned that by exempting affiliates, a relatively easy method for evasion of the regulation would be created and large lending entities which provide a great deal of borrowing services in this Commonwealth would become affiliates of banks to avoid the regulation. This would also create a competitive imbalance with licensees that would not be able to affiliate themselves with banks. Lastly, since all affiliates of Federal and State chartered banks are covered by the regulations, the Department does not believe that State affiliates are at any substantial disadvantage compared with Federal affiliates based on the regulation.

*Necessity of the Ability to Repay Provisions of the Regulations.*

Many commentators have asserted the ability to repay provisions are not needed because market conditions in

the mortgage industry are correcting the deficiencies that the Department is primarily seeking to address, specifically, the practice of lenders and brokers providing mortgage loans to borrowers who did not have the ability to repay the loans they were given. The Department agrees that current mortgage market conditions have seriously restricted mortgage lending in the United States and, specifically, the use of stated income or no documentation loan products. The current market constrictions regarding these loan products are based in large part upon the dangerous lending and brokering practices that evolved over the last 10 years, in particular, the practice of ignoring whether borrowers have any reasonable ability to repay the loans they were offered. Indeed, the comments that market conditions are correcting for these unsound practices tacitly acknowledge that there were a great deal of imprudent decisions and improper conduct on the part of lenders, brokers and consumers in the mortgage loan arena. The past several months since the public comment period ended clearly highlight, in the most dramatic fashion, the excess and unsound practices in the mortgage industry that contributed to the current distress in the housing market and the economy as a whole.

The Department does not believe that the response to this crisis, and the harm caused, should be that of inaction. Instead, the Department believes that unless the practices of lending and brokering without regard to an applicant's ability to repay are addressed now, through responsible regulation, these practices will only return when market conditions permit. To ignore what has led up to the current crisis in the mortgage industry and hope that "market corrections" will instill in mortgage professionals a degree of prudence and responsibility in mortgage loan transactions would be unwise. In fact, it is the Department's belief that the regulations' ability to repay provisions will provide a future stabilizing force in the market by providing a degree of assurance to investors and lenders in the secondary market that licensees in this Commonwealth gave due consideration to an applicant's ability to repay the offered loan.

*Effect of the Regulation on Stated Income and No Documentation Loan Products.*

Many commentators have asserted that the requirement to verify income and fixed income expenses in the regulations will eliminate loan products such as stated income and no documentation loans, which are asserted to be useful and appropriate products. These commentators are correct that the verification requirements of the ability to repay provisions of the regulations will prohibit licensees from offering a loan without verifying the income and fixed expenses of applicants. The policy goal of the ability to repay provisions of the regulations is to ensure that licensees conduct a reasonable analysis of the borrower's financial situation to determine if the borrower has the ability to repay the offered loan. In drafting the provisions, two factors stood out as having the most direct impact on an applicant's ability to repay: income and fixed expenses. Because of the importance of these two factors, the regulations require their verification. As a result, a licensee's loan product that currently does not require a licensee to verify income and fixed expenses will be effectively prohibited. Therefore, although there may still be true "no-doc" and "stated income" product loans offered in this Commonwealth by entities not covered by the regulations, licensees will still be required to perform the verification requirements of the regulation which effectively eliminates the purpose of these loans. The Department believes that the convenience of these types

of loans, even for those individuals who use the products appropriately, is far outweighed by the larger potential for abuse and the catastrophic harm caused to families who end up in homes they cannot afford and face serious credit risk as well as foreclosure when they are unable to make their loan payments.

On a related note, commentators have also in various comments mentioned "low-documentation" loans, a broad type of loan product that is purported to require minimal documentation. Under the regulations, these loans will also be affected to the extent that the minimal documentation loans do not include verification of income and fixed expenses. It should also be noted that if other information in addition to income and fixed expenses is considered as part of a licensee's analysis, under § 46.2(g)(4) of the final-form regulations, the other information must be documented by the licensee in the loan file. Therefore, it is possible that the documentation of additional information other than income and fixed expenses may require more documentation than certain lenders currently require for their loan products.

*Stated Income and No Documentation Products and the Reasons for Foreclosures.*

Commentators also have asserted that the main reasons for foreclosures continue to be traditional reasons such as the loss of a job, medical emergencies and divorce and that stated income or no documentation loans are not a problem or that there is no certainty that stated income or no documentation loan products are responsible for increased foreclosures. The Department recognizes that much has changed in the past several months since the time of the submission of these comments. It is now clear that the proliferation of loan products that were offered without any consideration of the borrowers' ability to repay was, and is, a substantial reason for foreclosures in the United States and the single most cited factor when discussing the collapse of the subprime mortgage market, which has had a cascading effect throughout the economy. The practice of providing loans without prudent underwriting was driven by the use of products such as stated income and no documentation loans. Borrowers, lenders, brokers and investors were able to manipulate and abuse stated income and no documentation products to the detriment of the entire country. While in limited circumstances these products may have been useful for certain borrowers, the Department believes that the potential for abuse outweighs any convenience the products offer. As discussed as follows, the Department does not believe the verification of the required factors presents a significant hurdle to borrowers or licensees.

*Other Factors to Consider when Performing the Ability to Repay Analysis.*

One commentator has questioned what other factors licensees may consider when performing an ability to repay analysis, other than income and fixed expenses. Section 46.2(g)(4) was drafted to give licensees flexibility in considering factors other than income and fixed expenses when performing an ability to repay analysis. This provision is intended to permit licensees to document information in addition to income and fixed expenses such as: payment history, family gifts, noncollateral assets, seasonal business considerations, business history with lender/broker, new job start date, job relocations, and the like. So long as the other considerations are reasonably related to an applicant's ability to repay and documented by the licensee, so that the Department can review the analysis, licensees may consider the additional information.

As a corollary to this comment, many commentators have stated that under the ability to repay provision, certain factors now considered when offering a loan will no longer be able to be utilized, such as payment history, seasonal income and the averaging of income for seasonal or commissioned workers. To the contrary, all of those factors may be considered when assessing the applicant's reasonable ability to repay the loan being offered by the licensee. Initially, it should be noted that the new definition of "income" includes virtually any income that an applicant may receive, whether or not it is seasonal, commissioned, rent payments, and the like. The Department believes that in analyzing the income that an applicant receives, a licensee is entirely justified in also considering additional factors such as the seasonal nature of the income, debt payment history, commission history, and if used prudently, census and wage information by profession to anticipate reasonable increases of income over time. However, licensees must be able to articulate the reasoning and basis for the use of the other information to the Department and how it was used when considering the applicant's ability to repay.

*Summary of Major Changes from the Proposed Rule-making*

*Authority:*

The regulations are being promulgated under the Department's authority under 7 Pa.C.S. § 6138(a)(4) and section 12 of the CDCA. The regulations began the promulgation process under the Department's authority under section 310(a) of the Mortgage Bankers and Brokers and Consumer Equity Protection Act (63 P. S. § 456.310(a)) (MBBCEPA), section 16(1) of the Secondary Mortgage Loan Act (7 P. S. § 6616(1)) (SMLA) and section 12 of the CDCA. However, with the passage of the Mortgage Act, the provisions of Chapter 3 of the MBBCEPA were combined with the provisions of the SMLA, creating a single consolidated act that regulates the mortgage loan business in this Commonwealth. The Mortgage Act became effective on November 5, 2008, at which time Chapter 3 of the MBBCEPA and the SMLA were repealed by operation of law.

*§ 46.1:*

Section 46.1 was revised to include the following definitions: "balloon payment," "debt obligation," "fixed expenses," "fully amortized payment schedule," "fully indexed rate," "hazard insurance," "index rate," "material change," "Mortgage Act," "mortgage loan," "margin," "property taxes," "reverse mortgage and variable rate loan." The definitions for "first mortgage loan," "MBBCEPA," "secondary mortgage loan" and "SMLA" were deleted as a result of the passage of the Mortgage Act.

*§ 46.2(b)—(d):*

Section 46.2(b)—(d) sets forth the requirements for issuing a one-page disclosure form provided by the Department. These sections were revised and are now § 46.2(b)—(f) in the final-form regulation. The final-form regulation clarifies who must deliver the disclosure statement, the timing of the issuance of the disclosure by the licensee and the requirements relating to the applicant's signature. The revised scheme also clarifies that a licensee broker, who would otherwise be required to issue the disclosure form, may defer the issuance of the form to a lender, provided that the lender issues the form in accordance with the regulation.

§ 46.2(e):

The proposed regulation's ability to repay analysis requirements were revised and are now § 46.2(g)—(i) in the final-form regulation. Revisions include the following:

(1) Definitions were drafted for "balloon payment," "debt obligation," "fixed expenses," "fully amortized payment schedule," "fully indexed rate," "hazard insurance," "index rate," "material change," "margin," "property taxes," "reverse mortgage" and "variable rate loan." See § 46.1.

(2) Licensees are only required to verify the income that the applicant is going to rely upon to pay back the loan. See § 46.2(g)(3).

(3) A presumption of ability to repay was included for loans that are insured by the Federal Housing Authority, guaranteed by the United States Department of Veterans Affairs, originated or approved for purchase by the Housing Finance Agency or subject to a written finding by a United States Department of Housing and Urban Development approved counseling agency that there is a reasonable expectation of the ability to repay. See § 46.2(g)(8).

(4) Additional guidance relating to an ability to repay analysis with loans that have a balloon payment feature and reverse mortgage loans. See § 46.2(g)(9) and (h).

(5) Clarification of the licensee's continuing obligation under the ability to repay provisions. See § 46.2(i).

§ 46.2(f):

The loan transition prohibitions contained in the proposed regulation under § 46.2(f) are now set forth in § 46.2(j) in the final-form regulation. Based upon comments received, the Department removed from the final-form regulation § 46.2(f)(10) and (12), regarding to charging fees for legally required notices and the rendering of legal advice.

§ 46.2(g):

Section 46.2(g) of the proposed regulation addressed loan funding by licensee lenders. Loan funding is now addressed in § 46.2(k) in the final-form regulation. Section 46.2(k) was revised to provide an exception to the funding requirement in cases when the applicant has committed fraud upon the licensee lender. However, any claim of fraud must be raised as an affirmative defense by the licensee in any administrative action brought by the Department and claiming fraud under this subsection does not relieve the licensee of any liability from borrower claims.

§ 46.2(h):

Section 46.2(h) of the proposed regulation is now § 46.2(l) in the final-form regulation. The subsection was revised to require licensee compliance when the applicant requests the documents and if the licensee has the requested documents in its possession.

§ 46.2(i):

Section 46.2(i) of the proposed regulation is now § 46.2(m) in the final-form regulation. This subsection was revised to only cover a licensee lender who holds or services the applicant's loan.

§ 46.3:

The final-form regulation adds an additional provision to § 46.3 relating to the interpretation of the chapter. The provision provides that if a loan is made in good faith in conformity with an interpretation of this chapter by the

Department or the courts of this Commonwealth, no penalty for a violation of this chapter shall apply, notwithstanding the relied upon interpretation subsequently may change.

*Entities Affected*

Existing and future licensee brokers and lenders under the Mortgage Act and all licensees under the CDCA will be affected by the final-form rulemaking.

*Costs and Paperwork Requirements*

The final-form rulemaking will have no fiscal impact on the Department, the Commonwealth and its political subdivisions. The final-form rulemaking will fiscally impact licensees under the acts to the extent licensees may need to incur costs to alter or revise current business practices to comply with the regulations.

*Effectiveness/Sunset Date*

Section 46.2(b)—(i) of the final-form rulemaking will be effective March 20, 2009. All remaining provisions of the rulemaking will be effective immediately upon publication in the *Pennsylvania Bulletin*.

*Regulatory Review*

Under section 5(a) of the Regulatory Review Act, on July 5, 2007, the Department submitted a copy of the proposed rulemaking and a copy of the Regulatory Analysis Form to the Independent Regulatory Review Commission (IRRC) and the Chairpersons of the House Committee on Commerce and the Senate Committee on Banking and Insurance (Committees). A copy of this material is available to the public upon request.

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

Under section 5.1(j.2) of the Regulatory Review Act (71 P. S. § 745.5a(j.2)), on November 5, 2008, the final-form rulemaking was deemed approved by the House and Senate Committees. Under section 5.1(e) of the Regulatory Review Act (71 P. S. § 745.5a(e)), IRRC met on November 6, 2008, and approved the final-form rulemaking.

*Findings*

The Department 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 the regulations thereunder, 1 Pa. Code §§ 7.1 and 7.2.

(2) A public comment period was provided as required by law, and all comments received during the public comment period were considered.

(3) The regulations do not enlarge the purpose of the proposed rulemaking published at 37 Pa.B. 3416.

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

*Order*

The Department, acting under the acts, orders that:

(a) The regulations of the Department, 10 Pa. Code, are amended by adding §§ 46.1—46.3 to read as set forth in Annex A.

(b) The Secretary of Banking 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 Secretary of Banking shall submit this order and Annex A to IRRC and the Senate and House Committees as required by the Regulatory Review Act.

(d) The Secretary of Banking shall certify this order and Annex A and deposit them with the Legislative Reference Bureau, as required by law.

(e) Section 46.2(b)—(i) will be effective March 20, 2009. The remaining provisions shall take effect immediately upon publication in the *Pennsylvania Bulletin*.

STEVEN KAPLAN,  
Secretary

(*Editor's Note:* For the text of the order of the Independent Regulatory Review Commission relating to this document, see 38 Pa.B. 6429 (November 22, 2008).)

**Fiscal Note:** Fiscal Note 3-43 remains valid for the final adoption of the subject regulations.

### Annex A

## TITLE 10. BANKS AND BANKING

### PART IV. BUREAU OF CONSUMER CREDIT AGENCIES

#### CHAPTER 46. PROPER CONDUCT OF LENDING AND BROKERING IN THE MORTGAGE LOAN BUSINESS

Sec.	
46.1.	Definitions.
46.2.	Proper conduct of lending and brokering in the mortgage loan business.
46.3.	Enforcement.

#### § 46.1. Definitions.

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

*Advertising*—As defined in 12 CFR 226.2(a)(2) (relating to definitions and rules of construction).

*Applicant*—A person who submits an application for a loan.

*Application*—As defined in 24 CFR 3500.2(b) (relating to definitions).

*Balloon payment*—A scheduled loan payment that is more than twice as large as the average of earlier scheduled monthly payments.

*CDCA*—The Consumer Discount Company Act (7 P. S. §§ 6201—6219).

*Consummation*—As defined in 12 CFR 226.2(a)(13).

*Covered loan*—A covered loan as defined in section 503 of the Mortgage Bankers and Brokers and Consumer Equity Protection Act (63 P. S. § 456.503).

*Debt obligation*—Any amount owed for funds borrowed including interest requirements.

*Fixed expenses*—Any debt obligations, revolving charge accounts, alimony payments, child support payments, payments under a separate maintenance agreement, housing association fees and property taxes and hazard insurance on the property to be mortgaged, whether or not the property taxes and hazard insurance are required to be escrowed.

*Fully amortized payment schedule*—An amortizing payment schedule based on the term of the loan.

*Fully indexed rate*—The index rate plus the margin for the offered loan.

*Hazard insurance*—Insurance that covers property damage caused by fire, wind, storms and other similar risks.

*Income*—Gross income as defined in 26 U.S.C. § 61 (relating to definitions).

*Index rate*—A published interest rate to which the interest rate on a variable rate loan is tied.

*Licensee*—A licensee broker or lender under the Mortgage Act or CDCA or a partially exempt entity under the Mortgage Act.

*Loan*—

(i) A mortgage loan or a loan involving a mortgage by a licensee under the CDCA, or both, as the context may require.

(ii) The term does not include a covered loan.

*Material change*—A change of fact or circumstance that the licensee knows or reasonably should know would substantially affect an applicant's ability to repay the offered loan, including an increase in the interest rate which would require a disclosure under 12 CFR 226.17(f)(2) (relating to general disclosure requirements).

*Margin*—The number of percentage points a lender adds to the index rate to calculate the interest rate at each adjustment period on variable rate loans.

*Mortgage Act*—7 Pa.C.S. §§ 6101—6153 (relating to mortgage loan industry licensing and consumer protection).

*Mortgage loan*—As defined in section 6102 of the Mortgage Act (relating to definitions).

*Mortgage loan business*—The mortgage loan business as defined in section 6102 of the Mortgage Act and any kind of mortgage lending or brokering activity conducted by a licensee under the CDCA.

*Person*—A person as defined in section 6102 of the Mortgage Act and section 2 of the CDCA (7 P. S. § 6202), as applicable.

*Property taxes*—The taxes assessed, or a reasonable estimate of the taxes to be assessed, on the property being mortgaged based upon the full value of the property and any improvements thereon.

*Reverse mortgage*—A loan that is a reverse mortgage transaction as defined in 12 CFR 226.33(a) (relating to requirements for reverse mortgages).

*Variable rate loan*—A loan where the interest rate varies over the term of the loan.

#### § 46.2. Proper conduct of lending and brokering in the mortgage loan business.

(a) *Advertising.* A licensee may not engage in false or misleading advertising.

(b) *Disclosures to applicant.* On a form prescribed by the Department, a licensee who takes an application shall disclose the following to the applicant:

(1) If the lender providing the loan will escrow the applicable property taxes and hazard insurance.

(2) If the licensee is a lender with the ability to directly lock-in a loan interest rate.

(3) Whether the loan contains a variable interest rate or balloon payment feature.



(4) Whether the loan includes a prepayment penalty.

(5) Whether the loan has a negative amortization feature.

(c) *Timing and issuance of disclosure form.* A licensee issuing the disclosure form required by subsection (b) shall sign and date the disclosure form and deliver or place in the mail the disclosure form within 3 business days after the application is received or prepared by the licensee.

(d) *Required redisclosures.* A licensee who has issued the disclosure form required by subsection (b) shall issue an updated disclosure form at the time the licensee knows or reasonably should know that the initial disclosure form is inaccurate.

(e) *Applicant acknowledgment and retention of disclosure form.* A licensee shall require an applicant to sign and date the disclosure form required by subsections (b) and (d) within 10 business days after delivery or mailing and retain the original executed disclosure form in the applicant's loan file.

(f) *Duplication.* A licensee broker taking an application is not required to provide the disclosure form required by subsections (b) and (d) if the lender making the loan elects to provide the required disclosure form in accordance with this section.

(g) *Evaluation of applicant ability to repay.*

(1) A licensee may not offer a loan without having reasonably determined, based on the documents and information provided under this subsection, that the applicant will have the ability to repay the loan in accordance with the loan terms and conditions by final maturity at the fully indexed rate, assuming a fully amortized repayment schedule.

(2) In performing an analysis to determine whether an applicant will have the ability to repay an offered loan, a licensee shall consider, verify and document:

- (i) The income of the applicant.
- (ii) The fixed expenses of the applicant.

(3) When performing the income verification required by paragraph (2), a licensee is only required to verify the income that the applicant chooses to rely upon to repay the offered loan.

(4) In performing an evaluation of an applicant's ability to repay, a licensee may consider and document supplemental information provided by the applicant in addition to income that demonstrates that the applicant has the ability to repay the offered loan, provided that the supplemental information is reasonably related to an applicant's ability to repay.

(5) A licensee may not primarily rely upon the sale or refinancing of an applicant's collateral in determining an applicant's ability to repay an offered loan.

(6) All records, worksheets and supporting documentation used in the licensee's ability to repay analysis shall be maintained in the applicant's loan file.

(7) In determining an applicant's ability to repay an offered loan under this subsection, a licensee may not ignore facts or circumstances that it knows or reasonably should know which would indicate that an applicant does not have the ability to repay the offered loan.

(8) An applicant may be presumed to have the ability to repay an offered loan if the offered loan has one of the following characteristics:

(i) Is insured by the Federal Housing Administration.

(ii) Is guaranteed by the United States Department of Veterans Affairs.

(iii) Is originated or approved for purchase by the Pennsylvania Housing Finance Agency.

(iv) Is the subject of a written finding by a United States Department of Housing and Urban Development approved counseling agency that there is a reasonable expectation that the borrower will be able to repay the offered loan.

(9) For an offered loan with a balloon payment, a licensee:

(i) May consider the sale or refinance of the applicant's collateral when evaluating an applicant's ability to make the balloon payment.

(ii) Shall base the fully amortized payment schedule on the full term the borrower chooses when calculating the amortization period for a loan containing a borrower option for an extended amortization period.

(iii) Shall consider the due date of the balloon payment and if there is a reasonable expectation the applicant will have sufficient equity in the property to make the balloon payment through a sale or refinance of the residence.

(h) *Reverse mortgages.* A licensee offering or making a reverse mortgage to an applicant is not required to comply with subsections (b), (g), (i) and (j)(3).

(i) *Material changes and ability to repay.* If there is a material change after a licensee has performed the ability to repay calculation required by subsection (g), a licensee shall immediately:

(1) Send a notice to the applicant disclosing the material change and that the material change may affect the applicant's ability to repay the offered loan, if the licensee is a broker.

(2) Perform another ability to repay analysis in accordance with subsection (g), if the licensee is a lender.

(j) *Loan transaction prohibitions.* A licensee may not:

(1) Advise or imply to an applicant that the applicant's income is not relevant to the loan transaction.

(2) Recommend or imply that an applicant default on any existing contract or financial obligation.

(3) Advise or induce an applicant to refinance an existing loan or otherwise enter into a new financial obligation without performing the ability to repay analysis required by subsection (g).

(4) Offer to the applicant a covered loan without advising the applicant that the applicant qualifies for a loan other than a covered loan, if an applicant qualifies for a loan offered by the licensee.

(5) Advise or imply that an applicant should ignore any required disclosures or suggest that a document or the execution of any document is unimportant or of no consequence.

(6) Direct, encourage, permit or otherwise be involved with the improper execution of any document, including:

(i) Requesting or allowing an applicant to sign documents that contain blank spaces where material information regarding the loan transaction is required.

(ii) Permitting the execution of documents where signatures are required to be witnessed without the witnesses being physically present.

(iii) Permitting someone other than the required signatory to execute a document unless otherwise authorized by law.

(7) Knowingly submit or permit or encourage an applicant or third party to submit, false or misleading information, or information that the licensee reasonably should know is false or misleading, to any party to a loan transaction.

(8) Improperly influence, or attempt to improperly influence:

(i) An appraiser by committing any act or omission that is intended to:

(A) Compromise the independent judgment of an appraiser.

(B) Ensure that an appraisal matches a requested or target value.

(ii) Any other entity related to the mortgage loan business, such as notaries, title companies, real estate agents, builders and sellers of properties.

(9) Obtain hazard insurance required for a loan for an applicant at loan consummation without providing the applicant with the opportunity to secure or provide evidence of the applicant's own hazard insurance.

(10) Pay compensation to or receive compensation from, contract with, or employ any person engaged in the mortgage loan business who is not licensed or otherwise exempt from licensure.

(k) *Loan funding.*

(1) A licensee lender may not refuse or fail to fund a consummated loan, other than when an applicant rescinds the loan in accordance with 12 CFR 226.15 or 226.23 (relating to the right of rescission), as applicable except as provided in paragraph (4).

(2) A licensee lender shall fund a consummated loan in a reasonable time period after consummation of the loan or in accordance with any commitment or agreement with the applicant; provided that, if an applicant has a right of rescission under 12 CFR 226.15 or 226.23, a licensee lender is not required to fund a consummated loan in accordance with this subsection until after the applicable rescission period has ended.

(3) A licensee shall disburse loan funds to third parties in accordance with any commitment or agreement with the applicant.

(4) Any postclosing underwriting or quality control review conducted by a licensee lender after the consummation of a loan may not delay the funding of a loan or result in a failure or refusal to fund the loan in accordance with this subsection unless the applicant has committed fraud against the licensee, which may be raised as an affirmative defense in any proceeding brought by the Department based upon a violation of this subsection.

(5) Nothing in this subsection relieves or limits the liability of a licensee against a claim of a borrower based upon a licensee's refusal or failure to fund a loan based upon an allegation of consumer fraud.

(l) *Licensee responsibility to provide documents.* Upon request, a licensee shall provide to an applicant or authorized representative of an applicant, unless prohibited by Federal or State law, copies or originals of the documents associated with a loan that an applicant has paid for or signed, such as loan applications, appraisals, surveys, loan documents, disclosures and any fee agree-

ment executed by the applicant and the licensee, to the extent the documents are in the licensee's possession.

(m) *Payoff statement or statement of mortgage reinstatement.* A licensee lender that holds or services a loan shall provide a borrower with payoff statements or statements of mortgage reinstatement, as applicable, for the borrower's loan within 7 business days of receipt of a written request by a borrower or a person authorized by the borrower.

#### § 46.3. Enforcement.

(a) *Violations.* Violations of this chapter shall be violations of the Mortgage Act and CDCA, as applicable.

(b) *Interpretation of chapter.* If a loan is made in good faith in conformity with an interpretation of this chapter by the Department or the courts of this Commonwealth, a penalty for a violation of this chapter will not apply, notwithstanding that after the loan is consummated, the interpretation, rule or regulation is amended, rescinded or determined by a judicial or other authority to be invalid for any reason.

[Pa.B. Doc. No. 08-2285. Filed for public inspection December 19, 2008, 9:00 a.m.]

## Title 52—PUBLIC UTILITIES

### PENNSYLVANIA PUBLIC UTILITY COMMISSION

#### [ 52 PA. CODE CH. 75 ]

[L-00060180/57-252]

#### Implementation of the Alternative Energy Portfolio Standards Act of 2004

The Pennsylvania Public Utility Commission (Commission) on September 25, 2008, adopted a final rulemaking order which codifies prior Commission interpretations of the Alternative Energy Portfolio Standards Act (AEPS Act (73 P. S. §§ 1648.1—1648.8)) and resolves issues relevant to its implementation.

#### *Executive Summary*

On July 20, 2006, the Commission entered an order soliciting comments on establishing regulations implementing the general requirements of the Alternative Energy Portfolio Standards Act which promotes the development and use of renewable energy resources in this Commonwealth. The regulations would apply primarily to all electric distribution companies (EDCs) and active electric generation suppliers (EGSs). Order entered July 25, 2006 at Docket No. L-00060180. The proposed order was published at 36 Pa.B. 6289 (October 14, 2006). Twenty-five comments were filed and Independent Regulatory Review Commission (IRRC) also filed comments.

Following the amendment of the act by Act 35 of 2007 (September 13, 2007), the Commission issued a Secretarial Letter reopening the comment period. Ten comments were filed on or before October 11, 2007. The Commission issued its final rulemaking order on September 29, 2008.

The regulations in 52 Pa. Code §§ 75.61—75.70 codify the compliance schedule for EDCs and EGSs which will be measured in quantities of alternative energy credits, each of which shall represent one MWh of qualified alternative electric generation or conservation, whether self-generated, purchased along with the electric commod-

ity or separately through a tradable instrument. Compliance will be measured against total sales of electricity to retail customers for the reporting period.

The regulations also set standards and processes for force majeure determinations, and their relationship to alternative compliance payments. The act requires the Commission to provide for a force majeure mechanism as part of the true-up period. This special force majeure section would only need to be used during those reporting periods when the Commission had declined to make a general force majeure determination for one or more of the compliance obligations.

Under the act, EDCs and EGSs may fully recover the reasonable and prudently incurred costs of complying with the AEPS Act from ratepayers. This includes the costs for purchases of alternative energy or alternative energy credits, payments to credit program administrators and costs levied by regional transmission organizations to ensure that alternative resources are reliable. The regulations provide for costs and revenues for alternative energy compliance to be reconciled on an annual basis as well as for the annual audit of these costs by the Commission.

Public Meeting held  
September 25, 2008

*Commissioners Present:* James H. Cawley, Chairperson; Tyrone J. Christy, Vice Chairperson, Statement attached; Robert F. Powelson; Kim Pizzingrilli; Wayne E. Gardner

*Implementation of the Alternative Energy Docket No. L-00060180 Portfolio Standards Act of 2004*

**Final Rulemaking Order**

The Commission is required to carry out the provisions of the Alternative Energy Portfolio Standards Act of 2004 (AEPS Act), 73 P. S. § 1648.1, et seq. Pursuant to this obligation, the Commission issued proposed regulations at this docket on July 20, 2006. The initial public comment period for this rulemaking proceeding concluded on January 13, 2007. On July 19, 2007, Governor Rendell signed into law Act 35 of 2007, which amended multiple provisions of the AEPS Act. The Commission reopened the public comment period to allow interested parties to file comments regarding these amendments. This second comment period ended on October 11, 2007. The Commission has completed its review of these comments and now issues final-form regulations. This final-form regulations codifies prior Commission interpretations of the AEPS Act and resolves other issues relevant to its implementation. These final-form regulations will be effective upon publication in the *Pennsylvania Bulletin*.

*Background*

The AEPS Act, which became effective February 28, 2005, establishes an alternative energy portfolio standard for this Commonwealth. The Pennsylvania General Assembly charged the Commission with implementing and enforcing this mandate, with the assistance of Department of Environmental Protection (Department) 73 P. S. § 1648.7(a) and (b). The Commission determined that the Act is in pari materia with the Public Utility Code, and that it would develop the necessary regulations to be codified in Title 52. 1 Pa.C.S. § 1932.

The Commission initiated an implementation proceeding for the AEPS Act on January 7, 2005, at Docket No. M-00051865. Subsequently, the Commission established

an Alternative Energy Portfolio Standards Working Group (AEPS WG) to provide a forum for input by consumers and their advocates, electric distribution companies (EDC), electric generation suppliers (EGS), State agencies, and other interested parties. The AEPS WG held its first meeting on March 2, 2005. The Commission tasked the AEPS WG with the development of the rules necessary for the participation of customer-generators in this market, as required by the AEPS Act. 73 P. S. § 1648.5.

The Commission has completed the following tasks necessary to the implementation of the AEPS Act.

- The Commission has issued final, uniform net metering regulations for customer-generators. Final Rulemaking Re Net Metering for Customer-generators pursuant to section 5 of the Alternative Energy Portfolio Standards Act (73 P. S. § 1648.5), L-00050174 (Final-form rulemaking Order entered June 23, 2006). These regulations were approved by the Independent Regulatory Review Commission (IRRC) and became legally effective on December 16, 2006. The Commission approved revisions to all EDC customer tariffs that implemented this regulation in February and March of 2007.
- The Commission issued final, uniform interconnection regulations for customer-generators. Final Rulemaking Re Interconnection Standards for Customer-generators under section 5 of the Alternative Energy Portfolio Standards Act (73 P. S. § 1648.5), L-00050175 (final-form rulemaking Order entered August 22, 2006, as modified on Reconsideration September 19, 2006). These regulations were approved by IRRC and became legally effective on December 16, 2006.
- Identification of the fifteen year reporting period schedule. Implementation of the Alternative Energy Portfolio Standards Act, Doc. No. M-00051865 (Order entered March 23, 2005) (First Implementation Order).
- Identification of the compliance exemption period for each EDC service territory. Implementation of the Alternative Energy Portfolio Standards Act, Doc. No. M-00051865 (entered March 23, 2005); as modified in Implementation of the Alternative Energy Portfolio Standards Act, Doc. No. M-00051865 (Order entered July 18, 2005) (Second Implementation Order).
- Establishment of general standards and processes for tracking and verifying demand side management and energy efficiency measures. Implementation of the Alternative Energy Portfolio Standards Act: *Standards for the Participation of Demand Side Management Resources*, Doc. No. M-00051865 (Final Order entered September 29, 2005).
- Designation of the alternative energy credit registry. Implementation of the Alternative Energy Portfolio Standards Act: *Designation of the Alternative Energy Credit Registry*, Doc. No. M-00051865 (Final Order entered January 31, 2006) (Credit Registry Order). The Commission designated PJM Environmental Information Systems, Inc.'s (PJM-EIS) Generation Attribute Tracking System (GATS) as the credit registry. The Commission has executed a subscriber agreement with PJM-EIS to use GATS.
- Completion, with the Department, of an interim alternative energy system qualification process. (Secretarial Letters of December 20, 2005, and January 30, 2006). An application form developed as part of this process is available through the Commission's

web site. More than 500 alternative energy systems have been qualified and registered with GATS.

- Selected Clean Power Markets as the independent alternative energy credit program administrator on November 30, 2006. A services contract has been executed and CPM has assumed the duties of the program administrator identified in these rules.
- The Commission has resolved litigation on the ownership of alternative energy attributes for contracts entered into pursuant to the Federal Public Utility Regulatory Policies Act of 1978 (PURPA), which required electric utilities to enter into long-term contracts with independently owned electric generation facilities, some of which relied on alternative energy sources to generate electricity. The Commission held that, where the contract language was silent, the alternative energy attributes was conveyed with the energy to the purchasing EDC. Petition for Declaratory Order Regarding Ownership of Alternative Energy Credits and any Environmental Attributes Associated with Non-Utility Generation Facilities Under Contract to Pennsylvania Electric Company and Metropolitan Edison Company, Doc. No. P-00052149 (Order entered February 12, 2007). The Commission denied reconsideration of this Order, on the merits, at the Public Meeting of May 30, 2007.<sup>1</sup>
- The Commission adopted a policy statement on the nonpublic utility status of some alternative energy systems in late 2005. Implementation of the Alternative Energy Portfolio Standards Act, Doc. No. M-00051865 (Final Order entered December 5, 2006). This policy statement became effective as of January 6, 2007, and codified at 52 Pa. Code § 69.1401.
- The Commission addressed the recovery of alternative energy costs in the context of the default service rulemaking. Rulemaking Re Electric Distribution Companies' Obligation to Serve Retail Customers at the Conclusion of the Transition Period Pursuant to 66 Pa.C.S. § 2807(e)(2), Doc. No. L-00040169 (Final Rulemaking Order entered May 10, 2007). These regulations became effective on September 15, 2007.
- The Commission revised the net metering regulations to be consistent with the Act 35 of 2007 amendments to AEPS through a final omitted rulemaking. Implementation of Act 35 of 2007; Net Metering and Interconnection, Doc. No. L-00050174 (Final Omitted Rulemaking Order entered July 2, 2008).

Certain other matters related to the AEPS Act's implementation remain open before the Commission:

- Standards for the receipt, custody and disbursement of alternative compliance payments are in the process of being developed by the Pennsylvania Sustainable Energy Board (PASEB), which is the entity that the AEPS Act delegated primary responsibility to for managing these moneys.

The Commission commenced this rulemaking by issuing a proposed rulemaking order at its public meeting of July 20, 2006. The proposed rule was published at 36 Pa.B. 6289. Comments to the proposed rule were submitted on or before December 13, 2006, by the following parties: ARIPPA, Citizens for Pennsylvania's Future (PennFuture), Citizen Power, Clean Air Council (CAC), Community Energy, Constellation NewEnergy (Constellation), Dominion Retail, Inc. (Dominion), the Energy Association

of Pennsylvania (EAP), the Electric Power Generation Association (EPGA), FirstEnergy,<sup>2</sup> FPL Energy (FPL), LLC, Fat Spaniel Technologies, the Industrial Energy Consumers of Pennsylvania (IEC), the Mid-Atlantic Solar Industries Association (MASIA), the Office of Consumer Advocate (OCA), the Office of Small Business Advocate (OSBA), the Department the Pennsylvania Waste Industries Association (PWIA), PPM Energy, Inc. (PPM), PV Now, PECO Energy Company (PECO), Reliant Energy, Inc. (Reliant), the Reinvestment Fund, and the U.S. Steel Corporation. The IRRC submitted its comments on January 12, 2007.

On July 19, 2007, Governor Rendell signed Act 35 into law. Act 35 amended multiple provisions of the AEPS Act. As a result, this Commission issued a Secretarial Letter on September 13, 2007, reopening the public comment period at this docket to provide interested parties an opportunity to advise the Commission on how the Act 35 amendments should be reflected in the final form rule. Comments in response to this secretarial letter were submitted on or before October 11, 2007 by the following parties: ARIPPA, Citizens for Pennsylvania's Future (PennFuture), the EAP, the MASIA, OCA, OSBA, the Office of Consumer Advocate, the Office of Small Business Advocate, the Department Protection, PECO Energy Company, U.S. Steel Corporation, and the York County Solid Waste and Refuse Authority (York). Comments are available at the Commission's public internet domain.

#### *Summary of Changes*

The final-form regulation has been changed in response to comments submitted by the IRRC and interested parties, and also in response to the amendments to the AEPS Act due to Act 35. Key substantive changes include:

- Clarification of solar photovoltaic (solar pv) obligation (e.g., all sales vs. Tier I sales).
- Revision of the 15 year schedule for solar pv requirements.
- Revision of the geographic scope standard for resource eligibility.
- Revision of the alternative compliance payment standard for solar pv.
- Revision of the process and standard of review for force majeure determinations.
- Revision of the alternative energy market integrity provision.
- Revision of the alternative energy credit certification verification process.
- Deletion of certain provisions relating to alternative energy system qualification.

The Commission has made other changes based on its experience in implementing the AEPS Act over the last year and in response to comments from the IRRC and other parties that are intended to clarify or otherwise improve the final-form regulation.

#### *Discussion*

The Commission has reviewed the comments filed at each stage of this proceeding. The following sections identify changes from the proposed version of the rule and the Commission's rationale.

<sup>1</sup> This matter is currently on appeal at the Commonwealth Court of Pennsylvania.

<sup>2</sup> Including the Metropolitan Edison Company, the Pennsylvania Electric Company, and the Pennsylvania Power Company.

A. *§ 75.61. EDC and EGS obligations.*

This section codifies the compliance schedule for EDCs and EGSs. This section acknowledges that compliance will be measured in quantities of alternative energy credits, each of which shall represent one MWh of qualified alternative electric generation or conservation, whether self-generated, purchased along with the electric commodity or separately through a tradable instrument. Compliance will be measured as a percentage of total sales of electricity to retail customers for the reporting period.

PennFuture, CAC, MASIA, Department, PV Now, and Reinvestment Fund all commented that the solar pv share requirement should be a percent of total retail sales. Section 75.61(b) (relating to EDC and EGS obligations) has been revised in two ways in regard to the solar pv requirement. The Commission agreed with the public comments that asserted that the solar pv requirement is a percentage of all sales, and not just Tier I sales. This issue was ultimately resolved by the passage of Act 35, which removed any ambiguity that the solar pv requirement was a percentage of all retail sales. Act 35 also changed the AEPS Act to increase the solar pv requirement every year, as opposed to every 4 years.

Section 75.61(b) has also been supplemented to clarify the annual alternative energy credit (AEC) obligation. When an EDC or EGS's AEC obligation is calculated for a particular reporting period, it will likely be expressed as a fraction. The AEPS Act does not provide for the creation of fractional AECs. The rule has therefore been revised to reflect that an EDC or EGS's AEC obligation for a reporting period will be rounded to the nearest whole number.

OSBA comments that § 75.61(d) appears to be inconsistent with the act's section 3(b)(1) (73 P. S. § 1648.3(b)(1)), requirement that Tier I compliance by both EDCs and EGSs based upon retail sales in the certificated service territory. OSBA specifically notes that this regulation allows EGSs to measure compliance on a Statewide basis while EDCs measure compliance only within the EDC's service territory. The Commission disagrees that such disparate treatment is inconsistent with the act. First, the section referred to by OSBA specifically states that "at least 8% of the electric energy sold by an [EDC] or [EGS] to retail electric customers in that certificated territory . . ." This section of the act does not refer to only an EDC's "service territory" as OSBA seems to assert. This section of the act in fact refers to the total Commonwealth territories of both EDCs and EGSs. In fact, these regulations do measure compliance of EDCs and EGSs on a Statewide basis, based on the territories both are certificated to serve. Second, neither the Tier II nor solar pv requirements sections reference an EDC or EGS territory. As all EDCs and EGSs have Tier II and solar pv requirements, OSBA's assertion could result in different sales figures for Tier I than for Tier II and solar pv. Lastly, there would only be minimal differences between the accounting proposed by OSBA and the method outlined in the regulations. These differences, if any, would simply be due to rounding differences.

Finally, Constellation, EAP, FirstEnergy, OCA, and PECO all expressed concern about meeting the monthly retail sales report obligations outlined in § 75.61(f) of these proposed regulations. We have deleted § 75.61(f) in its entirety. The IRRC and other commentators had questioned its need and the cost of complying with the provision. Based on our experience with verifying compliance for the first reporting period, we have developed

methods for the timely collection of sales information that do not require a regulatory provision. We will work closely with stakeholders on this issue. Accordingly, this section is unnecessary and is being deleted.

B. *§ 75.62. Fuel and technology standards for alternative energy sources.*

This section was originally included to define the fuel and technology standards for alternative energy sources identified in the AEPS Act at 73 P. S. § 1648.2. IRRC questioned the Commission's authority to include this provision in its regulation. It suggested that these issues are more properly within the jurisdiction of the Department. It therefore recommended removing this provision, and addressing the matter through a Memorandum of Understanding. Other parties offered comments expressing disagreement with or asking for clarification of the proposed standards.

The Commission respectfully disagrees with IRRC's analysis. The Commission has been expressly charged with carrying out the provisions of the AEPS Act. 73 P. S. § 1648.7(a). There is no statutory language that divests the Commission of authority over the qualification of alternative energy systems. The Department is assigned some responsibility in this area, but we do not agree that they have been given the exclusive authority to determine whether a particular source qualifies for alternative energy system status.

In the interest of bringing this proceeding to a timely conclusion and producing a rule that will obtain IRRC's approval, the Commission will remove this section.<sup>3</sup> The proposed rule would have provided a measure of regulatory certainty about the eligibility of resources for alternative energy system status. The Department has not issued any final rule or policy statement identifying uniform criteria for alternative energy system qualification. So far, the absence of a regulatory provision on this issue does not appear to have been an impediment to the effective implementation of the AEPS Act. The Department and the Commission have jointly qualified over 500 alternative energy systems since the effective date of the AEPS Act. We will continue to review applications on a case by case basis.

C. *§ 75.62. Alternative energy system qualification.*

This section identifies processes and standards for alternative energy system qualification to produce Tier I nonsolar pv, Tier II and solar pv alternative energy credits.

In its initial comment on this section of the proposed rule, IRRC asked that the Commission specify in more detail the timeline and process for review of alternative energy system applications. The time for application review is specified in § 75.64(b)(5) of the final rule. The program administrator will notify the applicant of the qualification decision within 30 days of the receipt of a complete application. Accordingly, the Commission, the Department and the third party administrator must coordinate their reviews within 30 days. We believe that this is a reasonable time, and our experience over the last two years is that most qualification decisions will take substantially less than 30 days.

At IRRC's request, § 75.62(b) has been supplemented to require that the Department be copied on alternative energy system applications. Also at the request of the IRRC, the wording of § 75.62(c), (e) and (f) has been

<sup>3</sup> The subsequent sections of the final rule have been renumbered consistent with the deletion of proposed § 75.62.

revised to more clearly reflect that these provisions are a requirement for qualification. Section 75.62(e) and (f) have been revised, and (g) and (h) deleted, consistent with IRRC's and the Department's comments.

Citizen Power, Dominion, EAP, EPGA, FirstEnergy and IEC all commented that the proposed regulations were too restrictive regarding the use of credits from alternative energy systems located in another RTO. Act 35 clarified this issue. Section 75.62(c) and (d) have been revised consistent with Act 35's amendments to 73 P. S. § 1648.4. The General Assembly, with these amendments, resolved certain issues that had arisen due to the ambiguity of the previous language of this provision. The revised wording of subsection (d) is copied almost in its entirety from Act 35, excepting a few nonsubstantive changes.

The revised 73 P. S. § 1648.4 of the AEPS Act reflects the General Assembly's preference for PJM located resources. Alternative energy systems located in the PJM control area, whether in this Commonwealth or not, may be used by all by Commonwealth EDCs for compliance purposes, even those that are not PJM members (such as, the Pennsylvania Power Company and Pike County Light & Power Company). Section 73 P. S. § 1648.4 reflects the limited availability of MISO located resources. Alternative energy systems located outside of the Commonwealth, but within MISO, may only be used in the areas of Pennsylvania that overlap MISO's service territory. This effectively limits out of state MISO resources to use by either the Pennsylvania Power Company or any EGSs operating in its service territory. A resource located in this Commonwealth can continue to be used by all EDCs and EGSs for compliance purposes.

Section 75.62(g) and (h) relate to verification of compliance with environmental regulations. EAP, OSBA, PWIA and PECO all comment that the proposed subsection (h) should be prospective in nature and should establish force majeure for any EDC or EGS that contracted with the alternative energy system that loses certification due to an environmental regulation violation. The Commission declines to establish such an automatic declaration of force majeure. As will be discussed as follows, any EDC and EGS may request that the Commission declare force majeure. Upon such a request the Commission must consider all relevant factors as outlined in the act, not just this one factor, in determining whether force majeure should be so declared.

IRRC questions whether the Commission has authority to require an alternative energy system to provide information to the Department or enforce subsection (g). IRRC also questions the Commission's authority to determine major violations of environmental regulations that cause significant harm outlined in subsection (h). IRRC further notes that this proposed subsection does not delineate when the Commission will act in relation to Department's actions and suggests that the Commission and Department cooperate in establishing their roles through a memorandum of understanding.

As with the section relating to fuel and technology standards previously, the Commission respectfully disagrees with IRRC's analysis. The Commission has been expressly charged with carrying out the provisions of the AEPS Act. 73 P. S. § 1648.7(a). There is no statutory language that divests the Commission of authority over the qualification of alternative energy systems. The Department is assigned some responsibility in this area, but we do not agree that they have been given the exclusive

authority to determine whether a particular source qualifies for alternative energy system status.

Again, in the interest of bringing this proceeding to a timely conclusion and producing a rule that will obtain IRRC's approval, the Commission will remove subsections (g) and (h). The proposed rule would have provided a measure of regulatory certainty about the continuing eligibility of resources for alternative energy system status. The Department has not issued any final rule or policy statement identifying uniform criteria for determining the applicable environmental standards that alternative energy systems must meet. So far, the absence of a regulatory provision on this issue does not appear to have been an impediment to the effective implementation of the AEPS Act. The Department and the Commission have jointly qualified over 500 alternative energy systems since the effective date of the AEPS Act. We will continue to review applications on a case by case basis.

#### D. § 75.63. *Alternative energy credit certification.*

This section identifies the processes and standards for alternative energy credit certification for use to meet the requirements of the Act. We have made the following changes to this section. (1) We added the phrase "demand-side management" to § 75.63(b), at the suggestion of IRRC. (2) We eliminated the requirement for consumption or delivery of electricity into this Commonwealth or an RTO that serves this Commonwealth. (3) We added language clarifying ownership rights to alternative energy credits, consistent with the Act 35 amendments. And, (4) we revised the alternative energy system meter requirements to balance the need for verifiable alternative energy production against the need to reduce barriers to the development and participation of small alternative energy systems.

The IRRC asked us to explain why credits for conservation activities may be certified beginning on November 30, 2004. This is required by the plain language of § 1648.3(e)(10) of the AEPS Act. This section addressed energy efficiency and demand-side management activities, and when discussing credit creation stated: "All verified reductions shall accrue credits starting with the passage of this act." The AEPS Act was "passed" on November 30, 2004.

Credits for generation were allowed to be banked "... after the effective date of this act." 73 P. S. § 1648.3(e)(7). The effective date of the AEPS Act was 90 days later, February 28, 2005. For whatever reason, the General Assembly provided that credits for energy efficiency and demand side management would begin to accrue at the date of the AEPS Act's "passage," rather than its "effective date." These regulations reflect this disparate treatment by the General Assembly.

EAP suggested that a reference to demand-side management be added to subsection (b). As indicated previously, the Commission agrees and has added this phrase.

Citizen Power noted that the Act speaks of where energy comes from, not where it is used. The Commission agrees. In § 75.63(d), the language relating to where the alternative energy systems electric generation is consumed or delivered has been deleted. Upon further review of the statute, the Commission has determined that there is no requirement that the energy associated with an AEC be consumed within or delivered to the distribution system of an EDC in this Commonwealth or the control area of an RTO that manages a portion of this Commonwealth's transmission system. The Commission finds it significant that 73 P. S. § 1648.3(e)(4)(ii) specifically

states that “one alternative energy credit shall represent one megawatt hour of qualified alternative electric generation, whether self-generated, purchased along with the electric commodity or separately through a tradable instrument . . .” (Emphasis added.) This definition does not delineate where the electric commodity is to be used. Requiring that the electric commodity be consumed or delivered into this Commonwealth or a specific RTO would in effect tie the AEC directly to the electric commodity, preventing the ability to trade the AEC separate from the commodity. Furthermore, it is not possible to track where the electricity is ultimately used or delivered.

In addition, 73 P. S. § 1648.4 of the AEPS Act specifically states that energy *derived* from alternative energy sources located within this Commonwealth and the service territory of an RTO that manages the transmission system within this Commonwealth shall only be eligible to meet the compliance requirements. The AEPS Act did not state that energy consumed within or delivered to this Commonwealth and the service territory of an RTO that manages the transmission system within this Commonwealth shall only be eligible to meet the compliance requirements. Therefore, we have deleted any reference to a requirement that the actual electricity from an alternative energy system be consumed in or delivered to an EDC in this Commonwealth or an RTO that manages a portion of this Commonwealth’s transmission system.

PennFuture, CAC, Community Energy, Native Energy, Department and the Reinvestment Fund suggest that language be added to subsection (c) noting that an AEC may not be certified if it has already been used to satisfy a voluntary alternative energy purchase. The Commission agrees to the extent that they cannot be certified if they are not sold to an EDC or EGS. New language has been added to § 75.63(d) regarding EDCs or EGSs use of AECs already purchased by individuals, businesses or government bodies. This language is consistent with Act 35’s amendment to 73 P. S. § 1648.4 of the AEPS Act.

Section 75.63(f) has been revised in response to a comment by IRRRC as well as the Commission staff’s experience in implementing the act. We recognize that IRRRC has a standing objection to the use of words like “standards,” where the standards are not detailed in the body of the regulation or otherwise referenced. Accordingly, the reference to “standards” developed by the Commission will be dropped from this subsection. In practice, the Commission will largely be relying on PJM market settlement data to verify cumulative electric production of alternative energy systems.

Fat Spaniel Technologies suggests that specific metering requirements must be established in the regulations for all types and sizes of qualifying alternative energy systems. PV Now supports the use of metered data or other approved technology for all solar applications regardless of size. PV Now also suggests that there should be two separate processes for small and large solar systems. The Commission declines to follow Fat Spaniel Technologies suggestion. As the verification data may come from an RTO, the credits registry or the program administrator, the metering requirements of these different sources will control. This metered data is recorded in PJM Environmental Information Services, Inc.’s GATS, which the Commission has designated to serve as the credits registry.

The Commission agrees with PV Now, to the extent that there should be separate processes for small and large solar applications. Experience in implementing the

AEPS Act has revealed that requiring separate metering of small behind-the-meter solar pv alternative energy systems may pose a financial impediment to the development and deployment of these systems. As there are other reasonably reliable methods for verifying solar pv system output, such as inspections, self-certification, and the like, the Commission will not require metered verification of solar pv systems with a nameplate capacity of 15 kilowatts or less. Accordingly, subsection (f) was revised to delineate what systems must be metered and where the metered data can be obtained. In addition, a new subsection (g) was inserted to address verification of solar pv systems with a nameplate capacity of 15 kilowatts or less.

York suggests that language should be added noting that ownership of AECs are vested with the alternative energy system owner. We agree only to the extent that this clarification of ownership rights does not conflict with this Commission’s decision in Petition for Declaratory Order Regarding Ownership of Alternative Energy Credits Associated with Non-Utility Generating Facilities Under Contract to Pennsylvania Electric Company and Metropolitan Edison Company at Doc. No. P-00052149, per section 3.1 of Act 35. As such, previous subsection (g) has been redesignated as subsection (h) and revised consistent with Act 35’s amendment to the definition of “alternative energy credit” in § 1648.2 of the AEPS Act. This subsection now states that the alternative energy credit is the property of the alternative energy system owner until it is voluntarily transferred. Moreover, we are also aware that ARIPPA has sought judicial review of our decision in that docket. *ARIPPA v. Public Utility Commission*, Case No. 1198 C.D. 2007. That appeal is currently pending before the Commonwealth Court.

*E. § 75.64. Alternative energy credit program administrator.*

This section identifies the powers and duties of the program administrator under 73 P. S. § 1648.3(e)(2). We had previously designated Clean Power Markets as the program administrator.

EPGA, IEC, PWIA, PECO and U.S. Steel Corporation all comment that while Department has a role in identifying systems not in compliance with environmental regulations, the Commission has the ultimate responsibility and authority to make to determine whether the system should be qualified under the act. The Department commented that the program administrator should only refer system applications to Department for environmental regulation compliance determination if the administrator believes that the applicant does not meet the standards. The Department also noted its role of determining environmental regulation compliance through the Environmental Hearing Board.

This section has been revised consistent with IRRRC’s general objection on the proposed rule’s treatment of the qualification process, and the Department’s role in it. The Commission maintains that its proposed rule was a reasonable, lawful approach for resource qualification that provided a measure of regulatory certainty. As IRRRC notes, the proposed rule was criticized by some for providing for too much involvement by the Department, and alternatively by the IRRRC as providing for too little or incorrect levels of involvement. That the successful, timely completion of this rulemaking not be delayed by this issue, we will delete § 75.64(b)(4)—(6) that IRRRC and others have expressed a concern about.<sup>4</sup> The Commission, the Department, and the Commission’s third party ad-

<sup>4</sup> The subsequent subsections have been renumbered as § 75.64(b)(4) and (5).

ministrator will continue to manage the resource qualification process. As stated previously, several hundred alternative energy systems have already been qualified without the benefit of a rule on this issue.

EAP and PECO comment that the reporting periods contained in § 75.64(c) should be revised. The Commission declines to make the revisions requested because the driving force for the periods is the act's requirement that there must be a final determination of compliance by the end of the true-up period. Language was added to subsection (c)(1) and (2) regarding their application to an initial assessment and a final assessment.

As with § 75.63(d) the language in § 75.64(d)(1), relating to where an alternative energy systems electric generation is consumed or delivered, has been deleted for the same reasons stated previously.

As in the previous section, PennFuture, CAC, Community Energy, FPL, Native Energy, OCA, Department and the Reinvestment Fund suggest that language be added to this section noting that an AEC may not be certified if it has already been used to satisfy a voluntary alternative energy purchase. The Commission agrees to the extent that AECs cannot be certified if they are not sold to an EDC or EGS. New language has been added to § 75.64(d)(1) regarding EDCs or EGSs use of AECs already purchased by individuals, businesses or government bodies. This language is consistent with the Act 35's amendment to 73 P. S. § 1648.4 of the AEPS Act. This language also addresses IRRC's comment on § 75.65(d) regarding a response to commenters' concerns about double counting of AECs purchased in the voluntary market.

*F. § 75.65. Alternative compliance payments.*

This section identifies standards for determining alternative compliance payments, consistent with the provisions of the act, as amended. 73 P. S. § 1648.3(f) and (g).

PennFuture, EAP, FPL, MASIA, Department, PV Now and the Reinvestment Fund all comment that the solar pv ACP should include the levelized value of the up-front rebates given in other states for installing solar pv systems. EAP and PECO comment that any such levelized value must be spread out over the useful life of the solar energy system. PV Now proposed a sample calculation for determining the levelized value that spread the up-front rebates over the 20 year life span of a solar energy system.

The formula for calculating the solar pv alternative compliance payment in § 75.65(b)(1) was modified to include the levelized up-front rebates provided to sellers of solar renewable energy credits in PJM, as required by the Act 35 amendments. While most of those providing supplemental comments in response to the September 13, 2007, Secretarial letter acknowledged that the solar photovoltaic ACP must include a levelized value of up-front rebates, several noted that the rebates should be spread out over the useful life of the average solar energy system. This Commission agrees. Up-front rebates provide an incentive that increases the number of installations that, in turn, affects the price of solar alternative energy credits over the useful life of that system. Current industry standards show that solar pv panels lose on average 0.05% of production each year such that the cumulative loss is 10% of production after 20 years. While the solar pv panels may continue to produce electricity for an additional 5 to 10 years, the loss of productivity makes them significantly less useful, especially in systems designed primarily to offset a significant portion of annual

usage. This Commission is also cognizant of the fact that not all states within the PJM service territory provide up-front rebates. Therefore, we believe it prudent to only apply the levelized value to the percentage of total solar AECs sold during the reporting period, equal to the percentage of solar AECs used that were generated within the jurisdictions that provide rebates.

The OSBA and PECO suggested that the third party administrator be compensated under a fee system as authorized by 73 P. S. § 1648.3(e)(9) of the AEPS Act. It expressed concern that EGSs would not share in the costs of the program administrator if the Commission recovers administration costs through its utility assessment mechanism under 66 Pa.C.S. § 510(a). IRRC asked why the Commission did not elect to use a fee based system. This section provides:

The commission may impose an administrative fee on an alternative energy credit transaction. The amount of this fee may not exceed the actual direct cost of processing the transaction by the alternative energy credits administrator. The commission is authorized to utilize up to 5% of the alternative compliance fees generated under subsection (f) for administrative expenses directly associated with this act.

73 P. S. § 1648.3(e)(9)

This section identifies two ways for the Commission to collect fees, at its discretion, to recover the costs of administrative expenses. The first involves an administrative fee on an "alternative energy credit transaction." The second involves the Commission retaining 5% of the ACPs made by EDCs and EGSs. Initially, we note that language in this section allows the Commission to utilize these mechanisms, but does not mandate it. The Commission "may" or is "authorized" to assess fees, but is not required to do so. Given the manner in which the Commission has decided to implement the AEPS Act, and the way this section is written, the fee option is not an appropriate model to use at this time.

The Commission finds it significant that the first two sentences of this section envision a credit program model in which the Commission or its administrator is providing a trading platform or credit transaction services to EDCs or EGSs. In such a model, the Commission could attempt to assess a fee for the "direct cost" of these credit transactions. The Commission has not adopted this approach to administer the program. Rather, alternative energy credit creation and transactions are managed through the PJM Environmental Information Services, Inc. GATS, which the Commission has designated to serve as the alternative energy credit registry required by 73 P.S. § 1648.3(e)(8) of the AEPS Act, and § 75.70 of the final rule. The use of GATS is free to nontransacting governmental agencies such as the Commission and its designated agents.

Qualified alternative energy systems, EDCs and EGSs are required to have GATS accounts, consistent with a prior Commission order and § 75.70 of the final-form regulations. GATS will create one certificate for each MWh of generation from a qualified alternative energy system, based upon PJM market settlement data. This certificate will be considered the equivalent of an alternative energy credit by the Commission and its administrator. Certificates will be transferred from the accounts of alternative energy systems to the accounts of EDCs and EGSs when credit transactions occur. Because the Commission and its administrator are not a party and do not process these transactions, the Commission does not have



the legal authority to assess a fee on them. The Commission does not see itself taking on this role in the foreseeable future, so the final rule does not incorporate this power.

The final regulations do reflect the fact that the Commission may retain up to 5% of the ACPs collected from EDCs and EGSs to recover its administrative costs, consistent with 73 P.S. § 1648.3(e)(9). However, the Commission does not plan on using this provision to recover its program administrator costs at this time. The primary reason is that there is no way to predict what the level of ACPs will be, if any, for a given reporting period. If there were no ACPs, or relatively few, the Commission would be unable to pay the program administrator. Accordingly, the Commission cannot reasonably rely on the use of ACPs to recover its administrative costs. We would also prefer, for policy reasons, that all ACPs be used to fund new alternative energy development.

At the request of IRRC, we have added a cross-reference to the Commission docket for the Pennsylvania Sustainable Energy Board (PASEB) at § 75.65(e). This docket, M-00031715, is directly referenced in 73 P.S. § 1648.3(g)(1) of the AEPS Act. The AEPS Act requires that the ACPs be made available "under procedures and guidelines approved" by this board. The Commission issues orders relating to the duties of the PASEB at this docket. For example, On March 1, 2007, the Commission approved best practices for the sustainable energy funds that will be the recipient of the ACPs.<sup>5</sup> These guidelines address issues that will have bearing on how ACPs will be used, and included topics relating to applications for funding and the process for reconsidering the denials of funding requests. Any additional policies or orders that are adopted by the Commission on this topic will be issued at this docket, as required by 73 P.S. § 1648.3(g)(1) of the AEPS Act.

IRRC also asked whether the ACP funds will be used to comply with 73 P.S. § 1648.3(g). This question was prompted by comments suggesting that the ACPs be used to subsidize projects relating to the Tier for which the ACP was assessed. The Commission declines to establish such a restriction. The reasons for assessing ACPs are retrospective in nature. They only indicate that, for whatever reason, a particular EDC or EGS did not meet one or more of the Act's mandates during the prior reporting period. Whereas, projects funded by ACPs should be prospective in nature and subsidize projects that will assist in alleviating more substantial future shortcomings. For example, assume that ACPs were assessed in a reporting period on an EDC for failure to meet its Tier I requirement. Also assume that the reason the EDC failed to meet this requirement was due to a 1 year delay in the completion of a wind farm that the EDC contracted with to provide Tier I credits. Finally, assume that there is a projected shortfall of solar pv AECs within 3 years. The restriction that some commentators would like imposed would force the utilization of sustainable energy funds to fund Tier I related projects at the expense of solar pv projects. The funding would alleviate a Tier I shortfall that is already anticipated to be resolved through a previously funded program at the expense of an under-funded solar pv project. This Commission believes it would be more prudent to allow the sustainable energy funds to use the ACP funds to subsidize projects that would alleviate projected shortfalls that are under-funded, regardless of the Tier.

<sup>5</sup> Order entered on March 6, 2007.

*G. § 75.66. General force majeure and § 75.67. Special force majeure.*

This section establishes the processes and standards for force majeure determinations, and their relationship to alternative compliance payments. The Commission is combining §§ 75.66 and 75.67 (relating to general force majeure; and special force majeure) into one section titled force majeure.<sup>6</sup>

This is being done in response to IRRC's observation that the proposed regulations imposed limitations on the Commission that are not contained in the act. As written, the proposed regulations only permitted the Commission to declare force majeure during two brief periods before and after the conclusion of a reporting period. In addition, while the intent of the special force majeure section was to provide an opportunity for force majeure during the true-up period, no separate type of force majeure is required, as the factors to be considered are identical.

PennFuture, FPL, Community Energy and the Reinvestment Fund comment that the Commission should not declare force majeure on its own initiative. But, as IRRC points out, per the act's definition of force majeure, 73 P.S. § 1648.2, the Commission, an EDC or EGS may begin the process for declaring force majeure for any reporting and true-up period. The only limitation contained in the Act is that the Commission must make its determination within 60 days. Id. It is apparent from this short time limitation that the General Assembly recognized that the AEC market is a relatively fast moving and evolving market, such that any delayed action could frustrate or complicate future compliance efforts. As such, the commission has limited the period for declaring force majeure for any particular compliance period from 60 days prior to the beginning of the compliance period to 60 days after the end of the true-up period. This window will allow EDCs and EGSs ample opportunity to request a declaration for force majeure, but, also limits the period such that it requires proactive action by EDCs and EGSs. In addition, by preventing a determination earlier than 60 days prior to the beginning of a compliance period and no later than 60 days after the true-up period, any determination will be based on the current state of the market.

EAP and PECO comment that the ability of the Commission to modify compliance requirements should not be limited to solar pv requirements. The Commission agrees and is adding language to § 75.66(e)(1) that provides the Commission with the option of reducing the required level of Tier I nonsolar pv and Tier II credits for a particular compliance period. The proposed regulations had given the Commission this option for solar pv requirements only. As the act did not limit this option to solar photovoltaic requirements, the Commission declines to impose such a limit.

Citizen Power commented that EDCs and EGSs should be required to bank credits during a period when force majeure is declared equivalent to the compliance requirements, for future use. The Commission notes that it has added § 75.66(e)(5), which allows the Commission to increase future compliance requirements whenever it modifies a requirement. This section is being added to make the regulations consistent with the Act 35 amendments. This new section permits the Commission to increase future compliance requirements by an equivalent type (Tier I nonsolar photovoltaic, Tier II or solar pv) and

<sup>6</sup> The subsequent sections of the final rule have been renumbered consistent with the deletion of proposed § 75.67.

equivalent amount, if it determines, in a subsequent year, that there are sufficient AECs available.

IRRC noted that commentators had concerns about the effect force majeure declarations will have on long-term contracts and recoverability of costs associated with AECs purchased prior to any declaration. The Commission does not believe that a declaration of force majeure will have a negative impact on long-term contracts or cost recovery. First, the Commission notes that per § 75.66(e)(4), an EDC or EGS with sufficient AECs must use those AECs, for which they will be able to recover costs. Second, per § 75.66(e)(3), an EDC or EGS must verify that it was unable to acquire sufficient AECs to meet its obligations. Third, an EDC and EGS may bank AECs created in 1 year for use in the 2 subsequent years. 73 P. S. § 1648.3(e)(6). Finally, an EDC or EGS may be able to sell any excess AECs for use by other EDCs or EGSs for future Pennsylvania compliance or another State's compliance. Thus, depending on the circumstances, the EDC or EGS may be required to use, bank or sell any AECs during a force majeure declaration. In any case, a force majeure determination should not affect the ability of EDCs or EGSs to enter into long-term contracts or recover the costs associated with previously purchased AECs.

The Commission also added language to § 75.66(e)(3) and (g) referencing the definition of force majeure contained in § 75.1.<sup>7</sup> This definition of force majeure contains factors the Commission must consider in determining whether force majeure should be declared. These factors are consistent with those contained in the Act 35 amendments.

The Commission declines to set forth additional, more specific factors at this time. Those commentators advocating for a more specific list of factors for declaring force majeure are in essence asking this Commission to assume facts and circumstances that may or may not materialize. For example, PV Now comments that “[g]iven the realities of developing a new industry and market in the state, and especially given the prudent long-term contracting mechanism we have proposed, failure of the spot or short-term market to supply a party with the allocated number of SRECs should not be considered an event outside the default provider's reasonable control.” This comment essentially asks this Commission to assume that long-term contracts will always be available at reasonable prices. It also assumes that long-term contracts will always be available and provide for all of an EDC's or EGS's AEPS requirements. With that said, per the Act 35 amendments, this Commission must consider an EDC's and EGS's efforts in seeking to purchase AECs through long-term contracts prior to granting force majeure.

Other commentators, such as PennFuture, Community Energy, MASIA, FPL, DEP, PPM, PV Now and the Reinvestment Fund advocate for the application of very narrow and specific circumstances to be met before force majeure is declared. Specifically, PennFuture, proposed a list of more than 25 items that must be met prior to determining whether force majeure is to be declared. All of these comments assume that the AEC market will develop in a certain way. The Commission declines to make these assumptions at this time without additional facts. With that said, the concerns raised by these commenters can be addressed during any on the record proceeding regarding a declaration of force majeure.

<sup>7</sup> This references the definition of force majeure in 52 Pa. Code § 75.1 as modified by the Final Omitted Rulemaking Order at Docket No. L-00050174, adopted on May 22, 2008 and entered on July 2, 2008.

PennFuture, Citizen Power, CAC, Community Energy, FPL, and the Reinvestment Fund comment in opposition to the Commission using the \$45 ACP payment figure for nonsolar photovoltaic Tier I and Tier II AECs as a trigger for force majeure. This Commission disagrees with their assessment of such a regulation. PennFuture comments that “[f]ree enterprise markets operate according to the laws of supply and demand.” PennFuture goes on to comment that to cap the AEC price at \$45 would “thwart” the market signal for more supply. PennFuture seems to be referring to Adam Smith's invisible hand theory of the free market.<sup>8</sup> What PennFuture fails to acknowledge is that the hand moving this market is not invisible. The hand moving this market is that of the very visible General Assembly. Without this visible hand, the market would not likely have materialized. The General Assembly, for very prudent policy reasons, created an artificial demand for these alternative energy sources. The General Assembly also recognized that due to this artificial demand, there was an opportunity for those on the supply side to take advantage of that artificial demand. Thus, the General Assembly determined that it would be equally prudent to establish a reasonable limit to the market price for AECs by setting the ACP at \$45.

Furthermore, as PennFuture points out, the definition of force majeure specifically requires this Commission to determine if “alternative energy resources are *reasonably available* in the marketplace in sufficient quantities . . . .” 73 P. S. § 1648.2 (emphasis added). Contrary to PennFuture's assertion, this Commission believes that price is a factor in determining reasonableness, especially when the costs associated with the purchase of AECs are passed on to the consumers of this Commonwealth. While the General Assembly determined that it was prudent to establish this market, it did not state that it was prudent to create it at all costs. Therefore, as this Commission must always balance the needs of the consumers and the utilities to ensure safe and reliable service at reasonable rates and protect the public interest, the Commission declines to modify section 75.66(d).

#### H. § 75.67. *Alternative energy cost-recovery.*

As we noted in our order commencing this proceeding, EDCs<sup>9</sup> may fully recover the reasonable and prudently incurred costs of complying with Act 213 from ratepayers. This includes the costs for purchases of alternative energy or alternative energy credits, payments to credit program administrators, and costs levied by regional transmission organizations to ensure that alternative resources are reliable. 73 P. S. § 1648.3(a)(3). These costs are to be recovered “pursuant to an automatic energy adjustment clause under 66 Pa.C.S. § 1307” and are considered “a cost of generation supply under 66 Pa.C.S. § 2807.” 73 P. S. § 1648.3(a)(3). Section 2807(3) of the Public Utility Code includes the legal standard governing the acquisition of and recovery for costs for electricity provided to an EDC's retail electric customers at the conclusion of the transition period. 66 Pa.C.S. § 2807(e)(3). We found that the alternative energy delivered to retail customers after the conclusion of the stranded cost recovery period is a component of the default service provided by EDCs. This section sets forth the standards for such recovery.

Both OCA and IRRC urge us to ensure that there be consistency between the cost recovery mechanisms used for alternative and traditional sources of energy pur-

<sup>8</sup> Adam Smith, *An Inquiry into the Nature and Causes of the Wealth of Nations* (Methuen and Co., Ltd., ed. Edwin Cannan, 1904) (1776).

<sup>9</sup> In this section, we substitute the term “default service provider” for EDC. The proposed default service regulations use this term for any party, EDC or otherwise, that provides default service after the conclusion of the transition period.

chased to meet the default service load. They state that this will avoid complication and ensure that the cost procurement processes are not conducted along separate tracks. They ask that we make these cost recovery mechanisms comparable.

We agree with both comments and have inserted a reference to 52 Pa. Code § 54.187; our regulation governing default service rate design and the recovery of reasonable costs. However, we must note that these regulations must currently be used by EDCs which are still under generation rate caps. Insofar as this affects the recovery of costs for energy, whether traditional or alternative, our rules must reflect the current reality and can be revisited in the future when rate caps have expired. PECO urges us to more closely follow the language of the act with respect to the nature of costs to be recovered. PECO Comments, p. 23. We believe that the regulation as proposed is adequate in that regard, but, in the event of a conflict, the language of the law itself shall control what costs may be recovered.

I. § 75.68. *Alternative energy market integrity.*

This section is intended to preserve the viability of the voluntary market for alternative or renewable energy in this Commonwealth. This section proposes certain requirements for the marketing of alternative energy sources by EDCs and EGSs. These restrictions are similar to the requirements for green energy marketing found at 52 Pa. Code § 54.6(c).

A number of commentators, MASIA, EAP and PECO, among others, have pointed out that AECs that are purchased by customers should not automatically be included in the EDC's or EGS's AEPS compliance unless those AECs have been sold to the EDC or EGS. We agree that this change brought about through Act 35 should be recognized in our regulation. Therefore, we have amended the regulation to provide that sales of electricity by EDCs and EGSs to retail electric customers marketed as deriving from alternative energy sources shall be tracked and counted separately from AECs used to support compliance with the requirements of § 75.61 (relating to EDC and EGS obligations).

J. § 75.69. *Banking of alternative energy credits.*

This section codifies prior interpretations of the AEC banking provisions of the act from the First and Second Implementation Orders. PennFuture suggests that we allow all market participants to bank AECs as do EDCs and EGSs.<sup>10</sup> Penn Future comments, pp. 21-22. Penn Future also stated that providing for this through a regulation would improve cost effectiveness and efficiency for consumers.

We understand Penn Future's concern, but do not believe it is necessary to amend the proposed regulation as requested. The AECs were created as a means of measuring EDC and EGS compliance with the AEPS Act. No other entity is required to comply with the act. Therefore, the AECs are only of value to the EDCs and EGSs for compliance with the act. The act and these regulations permit EDCs and EGSs to bank AECs created in one reporting year for use in either or both of the two subsequent reporting periods. 73 P. S. § 1648.3(e)(6). In essence, this provision of the act creates a 3 year useful life span for an AEC, the compliance year in which it was produced and the 2 subsequent reporting years. For example, per the act, an EDC or EGS can purchase an AEC created in the prior or current reporting year and

use it in either the current or subsequent reporting year, provided that the EDC or EGS met its compliance requirements in the year the AEC was generated and it was not previously used for compliance with the AEPS Act or in another state. Thus, once an EDC or EGS can no longer use the AECs they would have no value to the EDC or EGS, as they would not be able to recover the cost of purchasing the AEC. In short, the value of an AEC is based on its ultimate sale to an EDC or EGS for compliance with the act. There is no need for any one else to bank an AEC since it can be sold at any time by its owner prior to it being retired.

PennFuture has also asked that we extend the life of AECs associated with the generation of power through solar energy. *Id.* It states that it makes this suggestion because it anticipates that EDCs and EGSs will have difficulty meeting their requirements relating to solar power as the solar share ramps up. Again, we are sympathetic to PennFuture's concern; however, the AEPS act leaves us no room to make such an allowance. The act is clear that AECs created in 1 reporting year may be banked for use in the reporting year it was created and in the 2 succeeding reporting years. 73 P. S. § 1648.3(e)(6). The act makes no differentiation among the various means by which alternative power is generated. Therefore, neither can the Commission.

IRRC and some other parties, including OSBA, have sought clarification of how generation from periods immediately prior to passage of the AEPS Act should be accounted for with regard to banking during the cost recovery period. We shall decline to do that here. By and large, the question became moot for EDCs and EGSs with the passage of time. Also, after the comments were filed, this Commission addressed this issue in some detail in the matter of the *Petition of PECO Energy Company for Approval Of (1) A Process to Procure Alternative Energy Credits during the AEPS Banking Period and (2) A Section 1307 Surcharge and Tariff to Recover AEPS Costs*, Docket No. P-00072260. See the Tentative Opinion and Order entered December 6, 2006, at 11. Furthermore, the need for any regulations addressing this particular issue will dissolve in the near future as the cost-recovery period for the last EDCs and EGSs will expire on December 31, 2010. Given the limited scope of this issue, we feel it is best addressed on a case-by-case basis.

On a related matter, the Commission has eliminated subsection (b)(1) and (2). Subsection (b)(1) was incorporated into subsection (b). Subsection (b)(2) was eliminated in its entirety. Subsection (b)(2) was originally proposed to deal with a situation where an EDC or EGS exited its cost-recovery period prior to having any AEPS requirements. As the Act's initial compliance requirements have already begun, all EDCs and EGSs exiting cost-recovery will have immediate compliance requirements. Therefore, it is not necessary to reference the precompliance requirement period, and we have eliminated subsection (b)(2) as we believe its retention would cause unnecessary confusion.

Finally, PECO asks us to be more specific with respect to the life of the AEC. PECO Comments, pp. 27-29. We believe that the regulation is sufficiently detailed and complies with the act. A credit is valid and is not retired unless used in the compliance period in which it is generated or in the two succeeding compliance periods. This is adequately stated within the regulations.

K. § 75.70. *Alternative energy credit registry.*

This section codifies the Commission's authority to designate a credit registry. 73 P. S. § 1648.3(e)(8). We

<sup>10</sup> Community Energy makes a similar suggestion. Community Energy Comments, p. 3.

have designated PJM-EIS's GATS as the credit registry required by the act. Some commentators, such as the EAP and Constellation, are in agreement with this.

The Commission does not plan to permanently designate GATS as the credits registry, as the Commonwealth's needs may change over time, and better credit registry options may become available. IRRC requested clarification of the subsection (b), which requires compliance with the registry's . . . rules, policies, and procedures. As stated earlier in this order, the Commission has designated PJM-EIS's GATS system to serve as the credits registry. EDCs and EGSs have been directed to obtain GATS accounts so that the Commission can track credit transaction and verify compliance with the AEPS Act. Subscribers must agree to abide by the GATS "Terms of Use" and "Operating Rules."<sup>11</sup> Accordingly, the Commission has declined to use this rule to specifically name the GATS as the registry, or directly reference its rules. We have attempted to clarify this regulation at the suggestion of IRRC by adding a reference to subscriber agreements or terms of use.

EDCs and EGSs are required to make all information within the registry available to the Commission and the program administrator so that they can carry out their responsibilities under the act, including verification of compliance and the tracking of credit prices. As the needs of the Commission in regards to implementing the act may change over time, as will available technologies, we will not permanently designate any particular party or technology as the credit registry in this rulemaking.

#### *Regulatory Review*

Under section 5.1 of the Regulatory Review Act (71 P. S. § 745.5a), the agency submitted a copy of the final rulemaking, which was published as proposed at 36 Pa.B. 6289 (October 14, 2006), to IRRC and the Chairperson of the House Committee on Consumer Affairs and the Senate Committee on Consumer Protection and Professional Licensure for review and comment. In compliance with section 5(c) of the Regulatory Review Act (71 P. S. § 745.5(c)), the agency also provided the Commission and the Committees with copies of all comments received, as well as other documentation.

These final-form regulations were deemed approved by the Committees and was approved by IRRC on November 6, 2008, in accordance with section 5.1(e) of the Regulatory Review Act.

#### *Conclusion*

Accordingly, under 66 Pa.C.S. §§ 501 and 2807(e), sections 7(a) and 8.3(e)(2) of the Alternative Energy Portfolio Standards Act of 2004 (73 P. S. §§ 1648.7(a) and 1648.3(e)(2)); sections 201 and 202 of the act of July 31, 1969 (45 P. S. §§ 1201 and 1202) and the regulations promulgated hereunder at 1 Pa. Code §§ 7.1, 7.2 and 7.5, the Commission proposes adoption of the final-form regulations pertaining to the obligations of EDCs and EGSs to comply with the alternative energy portfolio standard obligation, as noted and set forth in Annex A; *therefore*,

#### *Statement of Vice Chairperson Tyrone J. Christy*

I first would like to commend the Law Bureau for its excellent work product in this proceeding. The final regulations presented to us for consideration reflect sound judgment and legal analysis, and sensitivity to the cost of these requirements that will be borne by Pennsylvania's customers.

Although I am voting today to approve these final regulations, I do so somewhat reluctantly due to concern that rest more with the AEPS<sup>12</sup> Act itself, as opposed to our implementing regulations. Specifically, my concern lies with the broad geographic area encompassed by the 13-state PJM control area, and the ability of an alternative energy project located hundreds of miles from Pennsylvania to qualify under our AEPS and receive revenues from Pennsylvania. I believe that it is incumbent upon us to ensure, as best we are able, that the benefits provided by alternative energy projects inure to the benefit of the Pennsylvania customers that are bearing the substantial costs that have been created by the AEPS. Since it is unlikely that Pennsylvania customers will realize any significant economic or environmental benefits from an alternative energy project located outside of the Commonwealth, I believe that this Commission should support a legislative amendment to the AEPS Act to add a reciprocity requirement for out-of-State projects.

If a reciprocity requirement were added to the AEPS Act, the AECs produced by an alternative energy facility located in, for example, Illinois, would qualify in Pennsylvania only if credits produced by a similar facility in Pennsylvania, using the same fuel source, would qualify in Illinois. Such reciprocity requirement would help ensure that Pennsylvania receives the benefits for which it is paying, and would encourage other states within PJM to enact their own renewable/alternative energy portfolio standard, and to open their borders to Pennsylvania. This would encourage the development of alternative energy in PJM states other than Pennsylvania.

I note with interest a letter dated 2/28/06 to the Commission from three of the prime sponsors of the AEPS Act in the General Assembly. The purpose of this letter was to clarify the legislative intent underlying the Act. A portion of this letter stated the follows:

The General Assembly passed Act 213 to diversify the electric generation technologies and fuels that serve electricity customers located *in Pennsylvania*; to increase economic development *within Pennsylvania* by attracting investment *to Pennsylvania* to build alternative energy projects; to speed the commercialization *within Pennsylvania* of the technologies listed in Tier 1 and Tier 2 of the AEPS; and to reduce the pollution of *Pennsylvania air; water and land resources* caused by electronic generation.

TYRONE J. CHIRSTY,  
*Vice Chairperson*

Letter of February 28, 2006 (emphasis supplied).

There is an element of fairness in a reciprocity requirement that I believe is important and that should be incorporated into the AEPS Act. Pennsylvania should not be in the position of being required to export its dollars to other states and getting nothing in return. As things stand, Pennsylvania's electric costumers are required to subsidize the development of alternative energy projects in states that either do not have an alternative energy portfolio, or that have a portfolio but have restricted eligibility in such a way that projects in Pennsylvania cannot participate. I would ask my fellow commissioners to support such a legislative amendment to the AEPS Act, which I believe would further promote its legislative intent as described above in the letter of 2/28/06 from three of its prime sponsors.

<sup>11</sup> Available at [www.pjm-eis.com/documents/documents.html](http://www.pjm-eis.com/documents/documents.html).

<sup>12</sup> The Alternative Energy Portfolio Standards Act of 2004, 73 P. S. §§ 1648.1 et seq.

*It Is Ordered that:*

1. The Commission hereby adopts final regulations, 52 Pa. Code Chapter 75, by adding §§ 75.61—75.70 to read as set forth in Annex A.

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

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

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

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

6. Regulations embodied in Annex A shall become effective upon publication in the *Pennsylvania Bulletin*.

7. The contact person for technical issues related to this rulemaking is Calvin Birge, Supervisor, Conservation, Economics and Energy Planning, (717) 787-2139. That the contact person for legal issues related to this rulemaking is Kriss Brown, Assistant Counsel, Law Bureau, (717) 787-4518. Alternate formats of this document are available to persons with disabilities and may be obtained by contacting Sherri Delbiondo, Regulatory Coordinator, Law Bureau, (717) 772-4597.

*By the Commission*

JAMES J. MCNULTY,  
*Secretary*

*(Editor’s Note: For the text of the order of the Independent Regulatory Review Commission relating to this document, see 38 Pa.B. 6429 (November 22, 2008).)*

**Fiscal Note:** 57-252. (1) General Fund; (2) Implementing Year 2008-09 is \$552,000; (3) 1st Succeeding Year 2009-10 is \$640,000; 2nd Succeeding Year 2010-11 is \$777,000; 3rd Succeeding Year 2011-12 is \$1,100,000; 4th Succeeding Year 2012-13 is \$1,100,000; 5th Succeeding Year 2013-14 is \$1,100,000; (4) 2007-08 Program—\$311,000; 2006-07 Program—\$41,000; 2005-06 Program—\$0; (7) General Government Operations; (8) recommends adoption.

**Annex A**

**TITLE 52. PUBLIC UTILITIES**

**PART I. PUBLIC UTILITY COMMISSION**

**Subpart C. FIXED SERVICE UTILITIES**

**CHAPTER 75. ALTERNATIVE ENERGY PORTFOLIO STANDARDS**

**Subchapter D: ALTERNATIVE ENERGY PORTFOLIO REQUIREMENT**

Sec.	
75.61.	EDC and EGS obligations.
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**§ 75.61. EDC and EGS obligations.**

(a) EDCs and EGSs shall comply with the act through the acquisition of certified alternative energy credits, each of which shall represent one MWh of qualified alternative electric generation or conservation, whether self-generated, purchased along with the electric commodity or separately through a tradable instrument.

(b) For each reporting period, EDCs and EGSs shall acquire alternative energy credits in quantities equal to a percentage of their total retail sales of electricity to all retail electric customers for that reporting period, as measured in MWh. The credit obligation for a reporting period shall be rounded to the nearest whole number. The required quantities of alternative energy credits for each reporting period are identified in the following schedule:

(1) For June 1, 2006, through May 31, 2007: The Tier I requirement is 1.5% of all retail sales, of which at least 0.0013% of all retail sales are to come from solar photovoltaic sources and the remaining from nonsolar photovoltaic Tier I sources, and the Tier II requirement is 4.2% of all retail sales.

(2) For June 1, 2007, through May 31, 2008: The Tier I requirement is 1.5% of all retail sales, of which at least 0.0030% of all retail sales are to come from solar photovoltaic sources and the remaining from nonsolar photovoltaic Tier I sources, and the Tier II requirement is 4.2% of all retail sales.

(3) For June 1, 2008, through May 31, 2009: The Tier I requirement is 2% of all retail sales, of which at least 0.0063% of all retail sales are to come from solar photovoltaic sources and the remaining from nonsolar photovoltaic Tier I sources, and the Tier II requirement is 4.2% of all retail sales.

(4) For June 1, 2009, through May 31, 2010: The Tier I requirement is 2.5% of all retail sales, of which at least 0.0120% of all retail sales are to come from solar photovoltaic sources and the remaining from nonsolar photovoltaic Tier I sources, and the Tier II requirement is 4.2% of all retail sales.

(5) For June 1, 2010, through May 31, 2011: The Tier I requirement is 3% of all retail sales, of which at least 0.0203% of all retail sales are to come from solar photovoltaic sources and the remaining from nonsolar photovoltaic Tier I sources, and the Tier II requirement is 6.2% of all retail sales.

(6) For June 1, 2011, through May 31, 2012: The Tier I requirement is 3.5% of all retail sales, of which at least 0.0325% of all retail sales are to come from solar photovoltaic sources and the remaining from nonsolar photovoltaic Tier I sources, and the Tier II requirement is 6.2% of all retail sales.

(7) For June 1, 2012, through May 31, 2013: The Tier I requirement is 4% of all retail sales, of which at least 0.0510% of all retail sales are to come from solar photovoltaic sources and the rest from nonsolar photovoltaic Tier I sources, and the Tier II requirement is 6.2% of all retail sales.

(8) For June 1, 2013, through May 31, 2014: The Tier I requirement is 4.5% of all retail sales, of which at least 0.0840% of all retail sales are to come from solar photovoltaic sources and the remaining from nonsolar photovoltaic Tier I sources, and the Tier II requirement is 6.2% of all retail sales.

(9) For June 1, 2014, through May 31, 2015: The Tier I requirement is 5% of all retail sales, of which at least

0.1440% of all retail sales are to come from solar photovoltaic sources and the rest from nonsolar photovoltaic Tier I sources, and the Tier II requirement is 6.2% of all retail sales.

(10) For June 1, 2015, through May 31, 2016: The Tier I requirement is 5.5% of all retail sales, of which at least 0.25% of all retail sales are to come from solar photovoltaic sources and the remaining from nonsolar photovoltaic Tier I sources, and the Tier II requirement is 8.2% of all retail sales.

(11) For June 1, 2016, through May 31, 2017: The Tier I requirement is 6% of all retail sales, of which at least 0.2933% of all retail sales are to come from solar photovoltaic sources and the remaining from nonsolar photovoltaic Tier I sources, and the Tier II requirement is 8.2% of all retail sales.

(12) For June 1, 2017, through May 31, 2018: The Tier I requirement is 6.5% of all retail sales, of which at least 0.3400% of all retail sales are to come from solar photovoltaic sources and the remaining from nonsolar photovoltaic Tier I sources, and the Tier II requirement is 8.2% of all retail sales.

(13) For June 1, 2018, through May 31, 2019: The Tier I requirement is 7% of all retail sales, of which at least 0.3900% of all retail sales are to come from solar photovoltaic sources and the remaining from nonsolar photovoltaic Tier I sources, and the Tier II requirement is 8.2% of all retail sales.

(14) For June 1, 2019, through May 31, 2020: The Tier I requirement is 7.5% of all retail sales, of which at least 0.4433% of all retail sales are to come from solar photovoltaic sources and the remaining from nonsolar photovoltaic Tier I sources, and the Tier II requirement is 8.2% of all retail sales.

(15) For June 1, 2020, through May 31, 2021, and each successive 12 month period thereafter: The Tier I requirement is 8% of all retail sales, of which at least 0.5% of all retail sales are to come from solar photovoltaic sources and the remaining from nonsolar photovoltaic Tier I sources, and the Tier II requirement is 10% of all retail sales.

(c) EDCs are exempt from these requirements for the duration of their cost-recovery period. An EDC shall be required to comply with the requirements in effect during the reporting period, as identified in subsection (b), in which its exemption expires.

(d) EGSs are exempt from these requirements in the service territories of EDCs in their cost-recovery period. EGS compliance shall be measured against their total MWh sales to all retail electric customers in all EDC service territories that have exited their cost-recovery periods.

(e) A 90-day true-up period shall commence at the end of each reporting period. EDCs and EGSs not in compliance with this chapter at the end of a reporting period, as determined by the program administrator under § 75.64(c)(2) (relating to alternative energy credit program administrator), may acquire additional alternative energy credits during the true-up period to satisfy the requirements of this chapter.

#### § 75.62. Alternative energy system qualification.

(a) An application for alternative energy system status shall be submitted on a form developed and made available by the Commission. A copy of the application form will be made available on the Commission's public

internet domain. An application shall be verified by oath or affirmation as required in § 1.36 (relating to verification).

(b) A completed application and supporting attachments shall be filed with the alternative energy credit program administrator, the Department of Environmental Protection and any other parties that may be designated by the Commission.

(c) A facility, to be qualified for alternative energy system status, shall demonstrate that it is physically located in either:

(1) This Commonwealth.

(2) The control area of an RTO that manages a portion of the electric transmission system in this Commonwealth.

(d) Alternative energy credits derived from alternative energy sources located outside the geographical boundaries of this Commonwealth but within the control area of an RTO that manages the transmission system in any part of this Commonwealth shall only be eligible to meet the compliance requirements of EDCs or EGSs located within the service territory of the same RTO. For purposes of compliance with the act, alternative energy sources located in the control area of the PJM Interconnection, LLC RTO or its successor shall be eligible to fulfill compliance obligations of all Pennsylvania EDCs and EGSs.

(e) A facility, to be qualified for alternative energy system status, shall demonstrate that it generates electricity from or conserves electricity through a Tier I or Tier II alternative energy source.

(f) A facility may not be qualified unless the Department has verified compliance with applicable environmental regulations, and the standards set forth in section 2 of the act (73 P. S. § 1648.2).

#### § 75.63. Alternative energy credit certification.

(a) An alternative energy credit may be certified by the Commission for each MWh of electricity generated by qualified alternative energy systems on or after February 28, 2005.

(b) An alternative energy credit may be certified by the Commission for each MWh of electricity conserved by qualified alternative energy systems or demand side management on or after November 30, 2004.

(c) An alternative energy credit may not be certified for a MWh of electricity generation or electricity conservation that has already been used to satisfy another state's renewable energy portfolio standard, alternative energy portfolio standard or other comparable standard.

(d) An alternative energy credit already purchased by individuals, businesses or government bodies that do not have a compliance obligation under the act may not be certified for a MWh of electricity generation or electricity conservation unless the individual, business or government body sells those credits to the EDC or EGS.

(e) When an alternative energy system relies on more than one fuel source or technology, alternative energy credits shall be certified for that portion of the electric generation that is derived from an alternative energy fuel source or technology.

(f) For all alternative energy systems except solar photovoltaic systems with a nameplate capacity of 15

kilowatts or less, alternative energy credit certification shall be verified by metered data obtained from or by one of the following:

- (1) An RTO.
- (2) The credits registry designated under § 75.71 (relating to alternative energy credit registry).
- (3) The administrator designated under § 75.64 (relating to alternative energy credit program administrator).
- (g) For solar photovoltaic alternative energy systems with a nameplate capacity of 15 kilowatts or less, alternative energy credit certification shall be verified by the administrator designated under § 75.64.

(h) An alternative energy credit represents the attributes of 1 MWh of electric generation that may be used to satisfy the requirements of § 75.61 (relating to EDC and EGS obligations). The alternative energy credit shall remain the property of the alternative energy system until voluntarily transferred. A certified alternative energy credit does not automatically include environmental, emissions or other attributes associated with 1 MWh of electric generation. Parties may bundle the attributes unrelated to compliance with § 75.61 with an alternative energy credit, or, alternatively, sell, assign, or trade them separately.

**§ 75.64. Alternative energy credit program administrator.**

(a) The Commission may select an independent entity to act as a program administrator and perform administrative functions necessary to the implementation of this chapter. If an independent entity is not selected to act as a program administrator, the Commission will perform the functions identified in this section.

(b) The program administrator will have the following powers and duties in regard to alternative energy system qualification:

- (1) Distribute, receive and review applications for alternative energy system qualification.
- (2) Reject applications that are incomplete or do not adhere to the application instructions.
- (3) Determine whether an application satisfies the geographic eligibility standard in § 75.62(c) (relating to alternative energy system qualification) and reject applications that fail this standard.
- (4) Qualify applicants for alternative energy system status who have filed a complete application, adhered to application instructions, satisfied the geographic eligibility standard, complied with environmental regulations and utilized an alternative energy fuel source or technology.

(5) The program administrator will provide written notice to applicants of its qualification decision within 30 days of receipt of a complete application form.

(c) The program administrator shall have the following powers and duties regarding the verification of compliance with this chapter:

- (1) At the end of each reporting period, the program administrator shall verify EDC and EGS compliance with § 75.61 (relating to EDC and EGS obligations), and provide written notice to each EDC and EGS of an initial assessment of their compliance status within 45 days of the end of the reporting period.
- (2) At the end of each true-up period, the administrator shall verify compliance with § 75.61 for EDCs and EGS

who were in violation of § 75.61 at the end of the reporting period. The administrator will provide written notice to each EDC and EGS of a final assessment of their compliance status within 15 days of the end of the true-up period.

(3) EDCs and EGSs shall provide all information to the program administrator necessary to verify compliance with § 75.61.

(4) The program administrator shall provide a report to the Commission within 45 days of the end of each reporting period and true-up period that identifies the compliance status of all EDCs and EGSs. The report provided after the end of the true-up period shall propose alternative compliance payment amounts for each EDC and EGS that is noncompliant with § 75.61 for that reporting period. As part of this report, the administrator shall identify the average market value of alternative energy credits derived from solar photovoltaic energy sold in the reporting period for each RTO that manages a portion of this Commonwealth's transmission system.

(d) The program administrator shall have the following powers and duties relating to alternative energy credit certification:

(1) The program administrator may not certify an alternative energy credit already purchased by individuals, businesses or government bodies that do not have a compliance obligation under the act unless the individual, business or government body sells those credits to the EDC or EGS.

(2) The program administrator may not certify an alternative energy credit for a MWh of electricity generation or electricity conservation that has already been used to satisfy another state's renewable energy portfolio standard, alternative energy portfolio standard or other comparable standard.

(e) A decision of the program administrator may be appealed consistent with § 5.44 (relating to petitions for appeal from actions of the staff).

(f) The Commission may delegate other responsibilities to the program administrator as may be necessary for the implementation of the act.

**§ 75.65. Alternative compliance payments.**

(a) Within 15 days of receipt of the report identified in § 75.64(c)(4) (relating to alternative energy credit program administrator), the Commission will provide written notice to each EDC and EGS that was noncompliant with § 75.61 (relating to EDC and EGS obligations) of their alternative compliance payment for that reporting period.

(b) Each EDC and EGS shall be assessed an alternative compliance payment according to the following formula:

(1) For noncompliance with the solar photovoltaic requirements identified in § 75.61, an EDC and EGS shall make an alternative compliance payment equal to the following:

(i) The average market value for solar photovoltaic alternative energy credits sold during the reporting period in the RTO control area where the noncompliance occurred.

(ii) Add to value in subparagraph (i), the levelized up-front rebates received by sellers of solar renewable energy credits, (calculated as follows: total amount of rebates paid within the previous 20 years, divided by the total kilowatt capacity for which rebates were given in the previous 20 years, divided by 20 (the useful life of a

solar photovoltaic system), multiplied by the percentage of alternative energy used during the reporting period originating from jurisdictions where rebates were given.

(iii) Multiply the value in subparagraph (ii) by 200%.

(2) For noncompliance with all other requirements identified in § 75.61, an EDC and EGS shall make an alternative compliance payment equal to \$45 times the number of additional alternative energy credits necessary for compliance in that reporting period.

(3) The costs of alternative compliance payments made under this section may not be recoverable from ratepayers.

(c) EDCs and EGSs shall advise the Commission in writing within 15 days of the issuance of this notice of their acceptance of the alternative compliance payment determination or, if they wish to contest the determination, file a petition to modify the level of the alternative compliance payment. The petition must include documentation supporting the proposed modification. The Commission will refer the petition to the Office of Administrative Law Judge for further proceedings as may be necessary. Failure of an EDC or EGS to respond to the Commission within 15 days of the issuance of this notice shall be deemed an acceptance of the alternative compliance payment determination.

(d) EDCs and EGSs shall send their alternative compliance payments to a special fund designated by the Commission within 30 days of acceptance of their payment determination, or the conclusion of proceedings before the Commission regarding the modification of the level of payment.

(e) Alternative compliance payments shall be made available to the sustainable energy funds established through the Commission's orders entered under 66 Pa.C.S. § 2806(f) (relating to Commission review of restructuring filings), under procedures and standards proposed by the Pennsylvania Sustainable Energy Board and approved by the Commission at Docket M-00031715. See 33 Pa.B. 4263 (August 23, 2003).

(f) Alternative compliance payments made available to the sustainable energy funds shall be utilized solely for projects that increase the amount of electric energy generated from alternative energy resources for purposes of compliance with § 75.61.

(g) The Commission may utilize up to 5% of alternative compliance payments made by EDCs and EGSs for administrative expenses directly associated with the implementation of this chapter, including the costs of the program administrator.

#### § 75.66. Force majeure.

(a) No earlier than 60 days prior to the beginning of a reporting period and no more than 60 days after the conclusion of the true-up period, the Commission, upon its own initiative or upon the request of an EDC or EGS, may issue an order declaring that force majeure exists for some or all EDCs and EGSs for that reporting period. The order will include separate force majeure determinations for the Tier I alternative energy source, Tier II alternative energy source and solar photovoltaic requirements of § 75.61 (relating to EDC and EGS obligations).

(b) The Commission will provide public notice of all requests for force majeure determination.

(c) The Commission may find that force majeure exists if there are insufficient alternative energy credits to satisfy the aggregate Tier I alternative energy source,

Tier II alternative energy source or solar photovoltaic obligation for all EDCs and EGSs under § 75.61 for that reporting period.

(d) The Commission may find that force majeure exists for the nonsolar photovoltaic requirement of § 75.61 if the average price for a nonsolar photovoltaic alternative energy credit purchased by a Pennsylvania EDC and EGS exceeds \$45 in the 6-month period preceding the issuance of the order referenced in subsection (a).

(e) If the Commission determines that force majeure exists for a reporting period, EDCs and EGSs shall have the option of making alternative compliance payments in lieu of compliance with § 75.61 for that reporting period.

(1) This payment must equal \$45 for each alternative energy credit needed to satisfy the Tier I nonsolar photovoltaic and Tier II requirements of § 75.61 or the Commission may choose to reduce the required level of Tier I nonsolar photovoltaic and Tier II compliance for the reporting period.

(2) For the solar photovoltaic requirement, EDCs and EGSs shall have the option of making an alternative compliance payment equal to the market value of solar photovoltaic credits in the applicable RTO service territory, or the Commission may choose to reduce the required level of solar photovoltaic compliance for that reporting period.

(3) A payment shall be accompanied by a statement with supporting facts, filed with the Commission and verified by oath or affirmation, consistent with § 1.36 (relating to verification), that the EDC or EGS has made a good faith effort to comply with this chapter as outlined in subparagraph (i) of the definition of "force majeure" in § 75.1 (relating to definitions), that they are unable to acquire a sufficient quantity of alternative energy credits to meet their obligations under § 75.61 as outlined in subparagraph (ii) of the definition of "force majeure" in § 75.1, and that an alternative compliance payment is the least cost method of compliance.

(4) The option to make an alternative compliance payment in lieu of compliance with § 75.61 may not be available to EDCs and EGSs that have already acquired sufficient alternative energy credits for compliance with the requirements of that reporting period.

(5) If the Commission modifies any compliance requirements, the Commission may increase the compliance requirements of an equivalent type and amount in subsequent years when the Commission determines that sufficient alternative energy credits of an equivalent type exist in the marketplace.

(f) Alternative compliance payments made by EDCs under subsection (e) shall be deemed a cost of compliance with this chapter and may be recovered under § 75.67 (relating to alternative energy cost-recovery).

(g) EDCs and EGSs shall provide the Commission all information necessary for it to render a force majeure determination, as outlined in the definition of "force majeure" in § 75.1.

#### § 75.67. Alternative energy cost-recovery.

(a) A default service provider may recover from default service customers the following reasonable and prudently incurred costs for compliance with the act:

(1) The costs of electricity generated by an alternative energy system, purchased by a default service provider,



and delivered to default service customers for purposes of compliance with § 75.61 (relating to EDC and EGS obligations).

(2) The costs of alternative energy credits purchased and used within the same reporting period for purposes of compliance with § 75.61.

(3) The costs of alternative energy credits purchased in one reporting period and banked for use in later reporting periods, consistent with § 75.69 (relating to banking of alternative energy credits).

(4) The costs of alternative energy credits purchased in the true-up period to satisfy compliance obligations for the most recently concluded reporting period, consistent with § 75.61(e)

(5) Payments to the alternative energy credits program administrator for its costs of administering an alternative energy credits program, consistent with § 75.64 (relating to alternative energy credit program administrator).

(6) Payments to a third party for its costs in operating an alternative energy credits registry, consistent with § 75.70 (relating to the alternative energy credit registry).

(7) The costs levied by a regional transmission organization to ensure that alternative energy sources are reliable.

(8) The costs of alternative compliance payments made under § 75.66 (relating to force majeure).

(b) A default service provider shall demonstrate compliance with the requirements of § 75.61 and the default service provisions of Chapter 54 (relating to electricity generation customer choice) by identifying a competitive procurement process for acquiring alternative energy credits in default service implementation plans filed with the Commission.

(c) A competitive procurement process for alternative energy and alternative energy credits shall comply with the standards for competitive procurement processes identified in the default service provisions in Chapter 54.

(d) The costs of compliance with the alternative energy portfolio standards act shall be recovered through an automatic adjustment clause within the meaning of 66 Pa.C.S. § 1307 (relating to sliding scale of rates; adjustments) and consistent with § 54.187 (relating to default service rate design and the recovery of reasonable costs) according to the following standards:

(1) Costs incurred by a default service provider during the cost-recovery period shall be deferred as a regulatory asset and fully recovered with a return on the unamortized balance during the first full 12-month reporting period after the expiration of the cost-recovery period in the EDC service territory where it is acting as the default service provider.

(2) Costs incurred by a default service provider after the expiration of a cost-recovery period shall be recovered during the reporting period in which they are incurred, except as provided for in paragraph (7).

(3) The default service implementation plan shall include a schedule of rates for the recovery of these costs as required under 66 Pa.C.S. § 1307(a).

(4) A default service provider shall file a report with the Commission within 30 days of the conclusion of each reporting period that includes the information identified in 66 Pa.C.S. § 1307(e)(1).

(5) The Commission will hold public hearings on the substance of these reports, and other matters pertaining to this subject, as required by 66 Pa.C.S. § 1307(e)(2).

(6) The Commission will order the default service provider to provide refunds to or recover additional costs from default service customers consistent with 66 Pa.C.S. § 1307(e)(3).

(7) The costs of alternative energy credits purchased by the default service provider during the true-up period under section 3(e)(5) of the act (73 P.S. § 1648.3(e)(5)) shall be recovered during the reporting period in which these costs are incurred.

(e) The Commission will perform fuel costs audits, on at least an annual basis, of each default service provider that recovers costs using the automatic adjustment clause provided for under this section.

**§ 75.68. Alternative energy market integrity.**

(a) Sales of electricity by EDCs and EGSs to retail electric customers marketed as deriving from alternative energy sources shall be tracked and counted separately from alternative energy credits used to support compliance with § 75.61 (relating to EDC and EGS obligations).

(b) When EDCs and EGSs market their generation as deriving from alternative energy sources, they shall include information to substantiate their claims. Disclosure of alternative energy sources shall be traceable to specific alternative energy sources by an auditable contract trail or equivalent, such as a tradable commodity system, that provides verification that the alternative energy source claimed has been sold only once to a retail customer.

**§ 75.69. Banking of alternative energy credits.**

(a) An EDC and EGS may bank alternative energy credits certified in one reporting period for use in either or both of the two immediately following reporting periods.

(b) An EDC and EGS may bank alternative energy credits certified during a cost-recovery period for use in the reporting period in which the cost-recovery period expires, and the reporting period that immediately follows.

(c) Alternative energy credits acquired by EDCs and EGSs not used within the time limits identified in subsections (a) and (b) shall be retired within the alternative energy credits registry and not available for the compliance requirements of this chapter.

(d) EDCs and EGSs shall satisfy the requirements of this chapter for the present reporting period before banking alternative energy credits produced in that same reporting period for use in either or both of the two subsequent reporting periods.

(e) The Commission will determine the volume of sales, measured in MWh, by EDCs and EGSs to retail customers in the 12-month period that immediately preceded the effective date of the act derived from specific alternative energy systems. EDCs and EGSs may bank credits during the cost-recovery period for the generation output of qualified alternative energy systems that exceed their volume of alternative energy sales to retail customers during this 12-month period.

**§ 75.70. Alternative energy credit registry.**

(a) The Commission will designate an alternative energy credit registry to track the creation and transfer of certified alternative energy credits among qualified alternative energy systems, EDCs, and EGSs. EDCs and EGSs

shall record the price paid for each alternative energy credit in the alternative energy credit registry.

(b) The Commission may direct EDCs and EGSs to enter into agreements with an alternative energy credit registry to verify compliance with this chapter and for compliance with section 3(e)(8) of the act (73 P.S. § 1648.3(e)(8)). EDCs and EGSs shall comply with the rules, policies and procedures of the designated alternative energy credit registry identified in the registry's terms of use, subscriber agreement or other comparable document.

(c) EDCs and EGSs shall provide the Commission and the program administrator with access to information in this registry necessary to verify compliance with this chapter and for compliance with section 3(e)(8) of the act.

(d) The prices paid for individual credits will be treated as confidential information by the Commission. Aggregate pricing data on alternative energy credits will be made available to the public by the Commission or the program administrator on a regular basis.

[Pa.B. Doc. No. 08-2286. Filed for public inspection December 19, 2008, 9:00 a.m.]

## PENNSYLVANIA PUBLIC UTILITY COMMISSION [ 52 PA. CODE CH. 63 ]

[ L-2008-2020165/57-261 ]

### Telecommunications Relay Service System and Relay Service Fund

The Pennsylvania Public Utility Commission (Commission) on August 21, 2008, adopted a final-form regulation order which ensures adequate Telecommunications Relay Service (TRS) Fund balances, timely remittance of TRS Fund revenues and cooperation with TRS Fund audits.

#### *Executive Summary*

On January 25, 2008, at Docket No. L-2008-2020165, the Commission entered a proposed rulemaking order soliciting comments on changing, clarifying and codifying provisions of the existing policy statements in 52 Pa. Code §§ 69.511—69.513 relating to the operation of the TRS-System and the Relay Service Fund. Interested persons were provided with 30 days from the date the order was published in the *Pennsylvania Bulletin* to submit comments regarding the proposed regulation.

The Commission is codifying existing reporting and remitting obligations of the wireline carriers, which have been the operative norm for a number of years, under both the Commission's 1990 orders at M-00900239 and the existing policy statements. Voluntary compliance with the policy statements have been spotty, leading to extended collection efforts, estimated surcharges and inequitable allocations of the costs of the funded programs. The regulation will not create any significant new burdens on affected wireline carriers. The reporting and remitting forms will stay the same, but the filing dates and filing destinations will change. The Annual Access Line Summary Report (number of lines in service as of a particular day) will be due 2 months earlier than under the existing policy statements. The Annual Tracking Report (list of monthly remittances for a prior 12-month period) will be due 1 month earlier than under the existing policy statements. Both forms would be filed with the Commission's Secretary's Bureau.

The Commission views the regulation as a tool to ensure timely, accurate and equitable funding of the programs mandated by the Universal Telecommunications and Print Media Access Act (35 P.S. §§ 6701.1—6701.4).

Public Meeting held  
August 21, 2008

*Commissioners Present:* James H. Cawley, Chairperson; Robert F. Powelson; Tyrone J. Christy; Kim Pizzingrilli; Wayne E. Gardner

*Rulemaking to Amend 52 Pa. Code Chapter 63 (relating to Telephone Service) regarding Operation of Telecommunications Relay Service System and Relay Service Fund; Doc. No. L-2008-2020165*

### Final Rulemaking Order

*By the Commission:*

On January 25, 2008, the Commission entered a Proposed Rulemaking Order to codify provisions of existing policy statements<sup>1</sup> so as to ensure adequate Telephone Relay Service (TRS) fund balances, timely remittance of TRS fund revenues, and cooperation with TRS fund audits. The January 25, 2008, Order was served on all local exchange carriers (LECs) in this Commonwealth and the Pennsylvania Telephone Association, was published at 38 Pa.B. 2056 (May 3, 2008), and provided for a 30-day comment period. No comments from parties affected by the regulation were received. On July 2, 2008, the Commission received written confirmation from the Independent Regulatory Review Commission (IRRC) that IRRC had no objections, comments or recommendation to offer and that if the IRRC were to deliver the final-form regulation without revision and the committees take no action, the regulation will be deemed approved. This final-form regulation order delivers the final-form regulation without revision as set forth in Annex A.

#### *Background*

On May 24, 1990, at Docket No. M-00900239, the Commission approved the implementation of the Pennsylvania TRS<sup>2</sup> and established a funding mechanism. The TRS assists people with hearing and/or speech disabilities to use the telephone and seeks to ensure equivalent access to telecommunications services. In 1996, the Telecommunications Device Distribution Program (TDDP) was implemented to provide assistive customer premises equipment based upon income-level criteria. In 2005, the Print Media Access System Program (PMASP) was added to provide newspaper reading services for persons who are blind. These three programs are now collectively codified in the Universal Telecommunications and Print Media Access Act.

Costs associated with the intrastate operations of the three programs are recovered from residential and business wireline access line end-users by a monthly surcharge (TRS Surcharge) on local service telephone bills. The TRS Surcharge is recalculated annually and adjusted as necessary, effective July 1, based upon projected costs of the various programs and the number of wireline access lines in service as of December 31 of the preceding year. LECs remit the TRS Surcharge collection revenues monthly to the TRS Fund Administrator. See annual orders at TRS, Docket No. M-00900239.

In 1999, to ensure the successful operation of the TRS fund, the Commission, at Docket No. M-00900239,

<sup>1</sup> The Commission's Policy Statement at 52 Pa. Code §§ 69.511—69.513 became effective on April 17, 1999, upon publication at 29 Pa.B. 2034. The Policy Statement establishes parameters for collecting information necessary to manage the TRS fund.

<sup>2</sup> See [http://www.puc.state.pa.us/telecom/telecom\\_relay\\_service.aspx](http://www.puc.state.pa.us/telecom/telecom_relay_service.aspx) for complete information on TRS. The traditional TRS program is also known as PA Relay.

adopted the existing policy statements. The intent of the policy statement was to address the difficulties that the Commission was experiencing in collecting the surcharge revenues and to foster cooperation from the LECs in submitting the documentation required to conduct annual audits of the TRS fund.

The existing policy statements provide that LECs submit their annual access line summary reports<sup>3</sup> to the Bureau of Fixed Utility Services (FUS) by April 30. The Commission uses the annual summary line count information to establish adjustments to the TRS Surcharge by June 1, and the LECs implement any required TRS Surcharge changes by July 1. The existing policy statements also provide that the LECs submit their annual tracking reports to FUS by April 30, tallying the monthly collected TRS surcharge revenues. The tracking reports cover a 12-month period from April through March. The tracking information is used by the Commission to reconcile the TRS Fund. 52 Pa. Code §§ 69.511—69.513.<sup>4</sup>

Under 66 Pa.C.S. § 3015(e)(3) and (6), the Commission is expressly authorized to require the submission of annual access line summary reports and annual tracking reports.

<sup>3</sup> The Annual Access Line Summary Report and the Annual Tracking Report forms may be downloaded from the Commission's web site at: <http://www.puc.state.pa.us/general/onlineforms.aspx#Telecommunications%20Forms>.

<sup>4</sup> The Policy Statement may be found online at <http://www.pacode.com/secure/data/052/chapter69/s69.511.html>; <http://www.pacode.com/secure/data/052/chapter69/s69.512.html>, and <http://www.pacode.com/secure/data/052/chapter69/s69.513.html>. It provides as follows: **§ 69.511. General.**

(a) On May 24, 1990, at Docket M-900239, entitled "Pennsylvania Telecommunications Relay Services," the Commission granted approval of the implementation of the Pennsylvania Telecommunications Relay Service (TRS) for people with hearing or speech, or both, disabilities. A Relay Service Fund (Fund) was established to recover charges associated with the operation of the TRS. The Commission established a mechanism to adequately compensate the Fund through a monthly end-user billing surcharge, based on access lines, collected by Pennsylvania's Incumbent Local Exchange Carriers (ILECs) and Competitive Local Exchange Carriers (CLECs). These revenues are to be remitted on a monthly basis.

(b) To effectively monitor and evaluate the revenue data, the Commission established a tracking schedule for the filing of tracking reports. All ILECs and CLECs are required to file an Annual Tracking Report and an Annual Access Line Summary Report by April 30th. These reports require that the ILECs and CLECs break out the requisite data consistent with the current report forms. Further, the Annual Tracking Report requires that the data be broken out on a monthly basis beginning with April of the previous year and ending with March of the current year. The surcharge revenue collections data for each month includes the actual surcharge revenues collected from a company's end-users that month and remitted to the Fund by the 20th of the following month. The Commission directed the Bureau of Audits to conduct an annual audit of the TRS in its order dated September 3, 1992.

**§ 69.512. Timely remittance of revenues.**

(a) Under existing Commission Orders, Incumbent Local Exchange Carriers (ILECs) and Competitive Local Exchange Carriers (CLECs) which collect revenues owed to the Relay Service Fund (Fund) are to remit these revenues to the Fund by the 20th of each month for revenues collected during the prior month. Delays in remitting revenues to the Fund result in lost earnings. The Commission intends to ensure that the Fund is properly funded through a reimbursement by the companies which fail to timely remit revenues.

(b) To properly reimburse the Fund, each company which is late in remitting surcharge revenues will be required to calculate for lost earnings based upon the base rate on corporate loans posted by at least 75% of the Nation's 30 largest banks, also known as the "prime rate," beginning at the date of the occurrence of the error and continue until the revenues are properly remitted to the Fund.

**§ 69.513. Filing of Telecommunications Relay Service (TRS) reports.**

(a) *Annual tracking report.* Incumbent Local Exchange Carriers (ILECs) and Competitive Local Exchange Carriers (CLECs) are currently required to submit an Annual Tracking Report to the Bureau of Fixed Utility Services by April 30th which delineates the monthly revenues collected based upon the number of each company's access lines. A company's failure to submit its Annual Tracking Report by April 30th impairs the Bureau of Audits' ability to complete the required annual audit of the Fund. The Annual Tracking Reports effectively include revenues actually collected during the prior 12-month period. The timely filing of the tracking reports is essential to avoid underfunding the Relay Service Fund (Fund) by the surcharge revenue and related investment income which the revenues would have earned.

(b) *Annual Access Line Summary Report.* ILECs and CLECs are currently required to submit an Annual Access Line Summary Report to the Bureau of Fixed Utility Services by April 30th detailing each company's access line count. A company's failure to submit its Annual Access Line Summary Report or to correctly report its access line information, [sic] impairs the ability of the Bureau of Fixed Utility Services to establish the proper TRS surcharge rates. The receipt of a timely and correct Annual Access Line Summary Report is essential to avoid underfunding the TRS Fund.

(c) An ILEC or CLEC which fails to timely remit an Annual Tracking Report may need to reimburse the Fund under § 69.512 (relating to timely remittance of revenues). The Commission may also utilize all available remedies to ensure reporting and remittance compliance including fines and the revocation of Certificates of Public Convenience.

### Discussion

Our policy statements addressing filing dates, payment obligations and enforcement procedures have been in effect since 1999. This final-form regulation order will codify portions of the policy statements as a regulation in § 63.37 (relating to operation of the Telecommunications Relay Service System and Relay Service Fund). Specifically, the new regulations: (1) establish the due date for filing annual access line summary reports as March 1; (2) establish the due date for filing annual tracking reports as March 31;<sup>5</sup> (3) direct that both reports be filed with the Commission's Secretary's Bureau; and (4) establish enforcement procedures for inaccurate, late, or missing TRS reports and for inaccurate, late, or missing TRS fund payments.

Promulgating parameters for the annual reporting and monthly payments in our regulations ensures that all LECs are held to the same standards for compliance and ensure that the binding norms are properly imposed in compliance with the Regulatory Review Act (71 P. S. §§ 745.1—745.14).

The purpose for the policy statements was to ensure accurate TRS Surcharge calculations, accurate and timely remittance of TRS Surcharge revenues, and cooperation with audit procedures. These goals remain equally valid today and will be adequately served by the new regulation. The Bureau of Audits (Audits) uses the tracking report data to conduct periodic audits of the TRS fund. A LEC's failure to submit its annual tracking report on a timely and accurate basis impairs Audits' ability to complete the required audits of the Fund. Timely and accurate remittance of the TRS revenues and timely and accurate filing of the tracking reports are essential to properly capitalize the Fund by the surcharge revenue and the related investment income that the revenues would have earned.

Similarly, FUS uses the access line counts to calculate the next years' TRS surcharge. A LEC's failure to timely submit its annual access line summary report or to accurately report its access line information impairs FUS' ability to calculate the proper TRS surcharge rates. Receipt of timely and accurate annual access line summary reports is essential to avoid underfunding (or overfunding) the TRS Fund.

The new regulation addresses LEC failures to submit accurate and timely access line count reports, annual tracking reports, and payments. Under the new regulation, LECs that fail to comply with the payment obligations will be subject to reimbursement obligations.<sup>6</sup> Under 66 Pa.C.S. §§ 3301 and 3302 (relating to civil penalties for violations; and criminal penalties for violations), the Commission will utilize all available remedies to ensure compliance with the payment and reporting requirements, including interest on late payments, fines, and/or the revocation of certificates of public.

### Regulatory Review

Under section 5.1(j.2) of the Regulatory Review Act (71 P. S. § 745.1(j.2)), the Commission submitted a copy of the final-form regulation, which was published as proposed at 38 Pa.B. 2056 (May 3, 2008), and served on April 17, 2008, to IRRC and the Chairpersons of the House

<sup>5</sup> Section 63.37(a)(2) provides that the annual tracking report "delineat[es] monthly revenues collected and remittances for late payments for the preceding 12-month year." Absent further notice, the reporting year will be March through February.

<sup>6</sup> Specifically, § 63.37(b)(2) provides that LECs who are late in remitting surcharge revenues to the Fund must remit additional contributions to make up for lost Fund earnings due to the late remittance. Section 63.37(d) provides that LECs who do not comply with the reporting and payment requirements will be required to reimburse the Fund if the Fund experiences a loss due to their failure to comply.

Committee on Consumer Affairs and Senate Committee on Consumer Protection and Professional Licensure (Committees) for review and comment. In compliance with section 5(c) of the Regulatory Review Act (71 P. S. § 745.5(c)), the Commonwealth also provided the Committees with copies of all comments received, as well as other documentation.

This final-form regulation was deemed approved by the Committees on November 5, 2008, and was deemed approved by IRRC on November 6, 2008, in accordance with section 5(g) Regulatory Review Act.

#### Conclusion

Accordingly, under sections 501, 1501, 3015 and 3019 of the Public Utility Code, 66 Pa.C.S. §§ 501, 1501, 3015 and 3019; sections 201 and 202 of the act of July 31, 1968 (P. L. 769, No. 240) (45 P. S. §§ 1201 and 1202), and the associated regulations in 1 Pa. Code §§ 7.1, 7.1 and 7.5; section 204(b) of the Commonwealth Attorneys Act (71 P. S. § 732.204(b)); section 5 of the Regulatory Review Act; and section 612 of The Administrative Code of 1929 (71 P. S. § 232) and the associated regulations in 4 Pa. Code §§ 7.231—7.234, the Commission finds that the regulation to be codified in 52 Pa. Code § 63.37 should be approved as set forth in Annex A,<sup>7</sup> as follows. The Commission further find that the policy statements in §§ 69.511—69.513 should be withdrawn as of the date the regulation in § 63.37 becomes effective, which will be accomplished by a separate order entered at Doc. No. M-00900249; *Therefore*,

*It is ordered that:*

1. The regulations of the Commission, 52 Pa. Code Chapter 63, are amended by adding § 63.37 regarding the operation of the Telecommunications Relay Service System and Relay Service Fund, to read as set forth in Annex A.

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

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

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

5. The Secretary shall submit this order and Annex A for review by the designated standing committees of both houses of the General Assembly, and for review and approval by IRRC.

6. A copy of this order and Annex A shall be served upon the Pennsylvania Telephone Association and all local exchange carriers in this Commonwealth.

7. A copy of this order be filed at Docket No. M-00900239.

8. The contact persons for this rulemaking are Christopher Hepburn, Bureau of Fixed Utility Services, (717) 214-9115 (technical) and Louise Fink Smith, Assistant Counsel, Law Bureau, (717) 787-8866 (legal). Alternate formats of this document are available to persons with disabilities and may be obtained by contacting Sherri DelBiondo, Regulatory Coordinator, Law Bureau, (717) 772-4597.

<sup>7</sup> The Annex A attached hereto reflects the minor editorial changes made by the *Pennsylvania Bulletin* upon initial publication and no other changes from the originally published Annex A.

9. The final-form regulation embodied in Annex A shall become effective upon publication in the *Pennsylvania Bulletin*.

*By the Commission*

JAMES J. MCNULTY,  
*Secretary*

*(Editor's Note:* For a document rescinding statements of policy which relates to this final rulemaking, see 38 Pa.B. 6961 (December 20, 2008).)

*(Editor's Note:* For the text of the order of the Independent Regulatory Review Commission relating to this document, see 38 Pa.B. 6429 (November 22, 2008).)

**Fiscal Note:** Fiscal Note 57-261 remains valid for the final adoption of the subject regulation.

#### Annex A

### TITLE 52. PUBLIC UTILITIES

#### PART I. PUBLIC UTILITY COMMISSION

#### Subpart C. FIXED SERVICE UTILITIES

#### CHAPTER 63. TELEPHONE SERVICE

#### Subchapter C. ACCOUNTS AND RECORDS

#### § 63.37. Operation of the Telecommunications Relay Service System and Relay Service Fund.

##### (a) *General.*

(1) The Pennsylvania Telecommunications Relay Service (TRS), the Telecommunications Devices for the Deaf Program and the Print Media Access System Program are codified in the Universal Telecommunications and Print Media Access Act (35 P. S. §§ 6701.1—6701.4). The Relay Service Fund (Fund) covers eligible intrastate costs associated with the operation of the three programs. The costs are recovered from residential and business wireline access line end-users by a monthly surcharge on local service telephone bills.

(2) To permit the Commission to effectively monitor and evaluate the revenue and cost data associated with the Fund, each local exchange carrier (LEC) shall file an annual tracking report delineating monthly revenues collected and remittances for late payments for the preceding 12-month year and an annual access line summary report detailing its access line count as of December 31 of the preceding year. The tracking data are used for periodic audits of the Fund. The access line counts are used to calculate the next year's TRS surcharge.

##### (b) *Timely remittance of revenues.*

(1) LECs shall remit the TRS surcharge revenues to the Fund administrator by the 20th of each month for revenues collected during the prior month.

(2) Delays or inaccuracies in remitting revenues to the Fund result in lost earnings by the Fund. An LEC that is late in remitting surcharge revenues shall remit an additional contribution to the Fund to make up for lost Fund earnings. The additional contribution shall be based upon the published prime rate in effect at the time of the missed due date and shall cover the period beginning at the date of the occurrence of the failure to remit and continue until the surcharge revenues are properly remitted to the Fund.

##### (c) *Filing of TRS reports.*

(1) *Annual tracking report.* An LEC shall submit its annual tracking report to the Secretary's Bureau by

March 31 of each year, in the format and detail specified on the Commission's web site ([www.puc.state.pa.us](http://www.puc.state.pa.us)).

(2) *Annual access line summary report.* An LEC shall submit its annual access line summary report to the Secretary's Bureau by March 1 of each year, in the format and detail specified on the Commission's web site.

(d) *Failure to remit TRS revenues or to file TRS reports.* An LEC that fails to timely and accurately submit a tracking report or an access line summary report or that fails to timely and accurately submit TRS surcharge revenues may need to reimburse the Fund under subsection (b). The Commission will utilize all available remedies to ensure reporting and remittance compliance including fines and the revocation of Certificates of Public Convenience.

[Pa.B. Doc. No. 08-2287. Filed for public inspection December 19, 2008, 9:00 a.m.]

## Title 58—RECREATION

### GAME COMMISSION

#### [ 58 PA. CODE CH. 143 ]

#### Hunting and Furtaker Licenses

To effectively manage the wildlife resources of this Commonwealth, the Game Commission (Commission), at its October 24, 2008, meeting, adopted the following rulemaking:

Amend § 143.243 (relating to general) to expand the list of species that mentored youth are eligible to pursue to include coyotes.

The final-form regulation will have no adverse impact on the wildlife resources of this Commonwealth.

The authority for the final-form regulation is 34 Pa.C.S. (relating to Game and Wildlife Code) (code).

Notice of proposed rulemaking was published at 38 Pa.B. 4520 (August 16, 2008).

#### 1. Purpose and Authority

Since the successful implementation of the Mentored Youth Hunting Program in the fall of 2006, the Commission has been seeking input from sportsmen and sporting organizations on ways to improve this innovative new program. Towards this end, two organizations, the Governor's Youth Council for Hunting, Fishing and Conservation and the PA Fox and Coyote Hunters Association, have organized to recommend that the program could be improved with the addition of coyotes to the list of species that may be lawfully pursued by mentored youth. In its continuing interest to find new opportunities to expose youth to this State's wildlife resources and enduring hunting heritage, the Commission amended § 143.243 by expanding the list of species that mentored youth are eligible to pursue to include coyotes. On October 24, 2008, the Commission made a floor amendment to its June 24, 2008 proposal to strike its proposed replacement of the word "eligibility" with the word "ability," thus maintaining the original language.

Section 2722(g)(2) of the code (relating to authorized license-issuing agents) provides that the Commission shall adopt regulations for "The administration, control and performance of activities conducted pursuant to the provisions of this chapter." Section 2102(a) of the code

(relating to regulations) provides that "The commission shall promulgate such regulations as it deems necessary and appropriate concerning game or wildlife and hunting or furtaking in this Commonwealth, including regulations relating to the protection, preservation and management of game or wildlife and game or wildlife habitat, permitting or prohibiting hunting or furtaking, the ways, manner, methods and means of hunting or furtaking, and the health and safety of persons who hunt or take wildlife or may be in the vicinity of persons who hunt or take game or wildlife in this Commonwealth." The amendments to § 143.243 were adopted under this authority.

#### 2. Regulatory Requirements

The final-form regulation will amend § 143.243 to expand the list of species that mentored youth are eligible to pursue to include coyotes.

#### 3. Persons Affected

Mentored Youth wishing to hunt or trap within this Commonwealth may be affected by the final-form regulation.

#### 4. Comment and Response Summary

There were no official written comments received regarding this final-form regulation.

#### 5. Cost and Paperwork Requirements

The final-form regulation should not result in any additional cost or paperwork.

#### 6. Effective Date

The final-form regulation will be effective upon final-form publication in the *Pennsylvania Bulletin* and will remain in effect until changed by the Commission.

#### 7. Contact Person

For further information regarding the final-form rulemaking, contact Richard A. Palmer, Director, Bureau of Wildlife Protection, 2001 Elmerton Avenue, Harrisburg, PA 17110-9797, (717) 783-6526.

#### Findings

The Commission finds that:

(1) Public notice of intention to adopt the administrative amendments adopted by this order has been given under sections 201 and 202 of the act of July 31, 1968 (P. L. 769, No. 240) (45 P. S. §§ 1201 and 1202) and the regulations thereunder, 1 Pa. Code §§ 7.1 and 7.2.

(2) The adoption of these amendments of the Commission in the manner provided in this order is necessary and appropriate for the administration and enforcement of the authorizing statute.

#### Order

The Commission, acting under authorizing statute, orders that:

(a) The regulations of the Commission, 58 Pa. Code Chapter 143, are amended by amending § 143.243 to read as set forth in Annex A.

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

(c) This order shall become effective upon final-form publication in the *Pennsylvania Bulletin*.

CARL G. ROE,  
Executive Director

**Fiscal Note:** Fiscal Note 48-273 remains valid to the final adoption of the subject regulation.

**Annex A**

**TITLE 58. RECREATION**

**PART III. GAME COMMISSION**

**CHAPTER 143. HUNTING AND FURTKER  
LICENSES**

**Subchapter M. MENTORED YOUTH HUNTING  
PROGRAM LICENSE EXEMPTION**

**§ 143.243. General.**

(a) A mentor shall possess a valid Pennsylvania hunting license or qualify for license and fee exemptions under section 2706 of the act (relating to resident license and fee exemptions) prior to engaging in any mentored youth hunting activities.

(b) A mentored youth's hunting eligibility is restricted to the following species: squirrel, woodchuck, coyote, deer and wild turkey. A mentored youth's hunting eligibility is further limited to:

(1) Spring gobbler season only for turkey.

(2) Antlered deer only during any applicable deer seasons. However, mentored youth hunters shall be eligible for the same antler restrictions that apply to junior license holders as provided in § 131.2 (relating to definitions).

(c) A mentored youth's hunting eligibility is further constrained by all applicable hunting seasons, daily limits, field possession limits and season limits provided in § 139.4 (relating to seasons and bag limits for the license year).

(d) A mentored youth is eligible to hunt during any special youth hunting seasons that apply to any species specified in subsection (b).

(e) A mentored youth shall tag and report all big game harvested in the manner provided for in section 2323(b) of the act (relating to killings by persons without license).

[Pa.B. Doc. No. 08-2288. Filed for public inspection December 19, 2008, 9:00 a.m.]

**GAME COMMISSION  
[ 58 PA. CODE CH. 147 ]**

**Special Permits**

To effectively manage the wildlife resources of this Commonwealth, the Game Commission (Commission), at its October 24, 2008, meeting, adopted the following rulemaking:

Amend §§ 147.301—147.307 and 147.309 to update and expand wildlife rehabilitation standards.

The final-form regulation will have no adverse impact on the wildlife resources of this Commonwealth.

The authority for the final-form regulation is 34 Pa.C.S. (relating to Game and Wildlife Code) (code).

Notice of proposed rulemaking was published at 38 Pa.B. 4523 (August 16, 2008).

**1. Purpose and Authority**

The Commission has been working in consultation with the Wildlife Rehabilitation Council (Council) to update

and amend the wildlife rehabilitation regulations in an effort to redress concerns the Commission and Council share respecting the inadequacy of current permitting standards. Some notable recommendations generated include the creation of new rehabilitation facility caging and sanitation requirements for all wildlife, new requirements for the rehabilitation of rabies vector species and, finally, new application, qualification and testing standards for permit applicants. Therefore, the Commission amended §§ 147.301—147.307 and 147.309 to update and expand wildlife rehabilitation standards.

Section 2901(b) of the code (relating to authority to issue permits) provides "the commission may, as deemed necessary to properly manage the game or wildlife resources, promulgate regulations for the issuance of any permit and promulgate regulations to control the activities which may be performed under authority of any permit issued." Section 2102(a) of the code (relating to regulations) provides that "The commission shall promulgate such regulations as it deems necessary and appropriate concerning game or wildlife and hunting or furtaking in this Commonwealth, including regulations relating to the protection, preservation and management of game or wildlife and game or wildlife habitat, permitting or prohibiting hunting or furtaking, the ways, manner, methods and means of hunting or furtaking, and the health and safety of persons who hunt or take wildlife or may be in the vicinity of persons who hunt or take game or wildlife in this Commonwealth." The amendments to §§ 147.301—147.307 and 147.309 were adopted under this authority.

**2. Regulatory Requirements**

The final-form regulations will amend §§ 147.301—147.307 and 147.309 to update and expand wildlife rehabilitation standards.

**3. Persons Affected**

Persons wishing to rehabilitate game or wildlife within this Commonwealth will be affected by the final-form regulations.

**4. Comment and Response Summary**

There were no official written comments received regarding these final-form regulations.

**5. Cost and Paperwork Requirements**

The final-form regulations should not result in any additional cost or paperwork.

**6. Effective Date**

The final-form regulations will be effective upon final publication in the *Pennsylvania Bulletin* and will remain in effect until changed by the Commission.

**7. Contact Person**

For further information regarding the final-form regulations, contact Richard A. Palmer, Director, Bureau of Wildlife Protection, 2001 Elmerton Avenue, Harrisburg, PA 17110-9797, (717) 783-6526.

**Findings**

The Commission finds that:

(1) Public notice of intention to adopt the administrative amendments adopted by this order has been given under sections 201 and 202 of the act of July 31, 1968 (P. L. 769, No. 240) (45 P. S. §§ 1201 and 1202) and the regulations thereunder, 1 Pa. Code §§ 7.1 and 7.2.

(2) The adoption of these amendments of the Commission in the manner provided in this order is necessary and appropriate for the administration and enforcement of the authorizing statute.

*Order*

The Commission, acting under authorizing statute, orders that:

(a) The regulations of the Commission, 58 Pa. Code Chapter 147, are amended by amending §§ 147.301—147.307 and 147.309 to read as set forth at 38 Pa.B. 4523.

(b) The Executive Director of the Commission shall certify this order, 38 Pa.B. 4523 and Annex A and deposit them with the Legislative Reference Bureau as required by law.

(c) This order shall become effective upon final-form publication in the *Pennsylvania Bulletin*.

CARL G. ROE,  
*Executive Director*

**Fiscal Note:** Fiscal Note 48-274 remains valid for the final adoption of the subject regulations.

[Pa.B. Doc. No. 08-2289. Filed for public inspection December 19, 2008, 9:00 a.m.]

**GAME COMMISSION**  
**[ 58 PA. CODE CH. 147 ]**  
**Special Permits**

To effectively manage the wildlife resources of this Commonwealth, the Game Commission (Commission), at its October 24, 2008, meeting, adopted the following rulemaking:

Amend §§ 147.322, 147.324 and 147.325 (relating to application for deer control permit; privileges authorized under the permit; and special conditions of permit) to expand the list of authorized applicants to also include homeowners associations and nonprofit land-holding organizations.

The final-form regulations will have no adverse impact on the wildlife resources of this Commonwealth.

The authority for the final-form regulation is 34 Pa.C.S. (relating to Game and Wildlife Code) (code).

Notice of proposed rulemaking was published at 38 Pa.B. 4526 (August 16, 2008).

1. *Purpose and Authority*

In developed landscapes, lower deer populations result in fewer deer/human conflicts. Therefore, alternative herd reduction tools are necessary for communities to address growing deer populations. Although the Commission is directed by law to use hunting in managing white-tailed deer, hunting is not always feasible in an urbanized setting. Formerly, only political subdivisions could apply for a Deer Control Permit. Recognizing that urban deer issues do not always involve an entire township or borough, the Commission amended §§ 147.322, 147.324 and 147.325 to expand the list of authorized applicants to also include homeowners associations and nonprofit land-holding organizations. This does not change the requirements or review process of an application for permits. It merely makes this tool available to more groups experiencing unacceptable levels of deer/human conflicts in a developed area.

Section 2901(b) of the code (relating to authority to issue permits) provides “the commission may, as deemed

necessary to properly manage the game or wildlife resources, promulgate regulations for the issuance of any permit and promulgate regulations to control the activities which may be performed under authority of any permit issued.” Section 2102(a) of the code (relating to regulations) provides that “The commission shall promulgate such regulations as it deems necessary and appropriate concerning game or wildlife and hunting or furtaking in this Commonwealth, including regulations relating to the protection, preservation and management of game or wildlife and game or wildlife habitat, permitting or prohibiting hunting or furtaking, the ways, manner, methods and means of hunting or furtaking, and the health and safety of persons who hunt or take wildlife or may be in the vicinity of persons who hunt or take game or wildlife in this Commonwealth.” The amendments to §§ 147.322, 147.324 and 147.325 were adopted under this authority.

2. *Regulatory Requirements*

The final-form regulations will amend §§ 147.322, 147.324 and 147.325 to expand the list of authorized applicants to also include homeowners associations and nonprofit land-holding organizations.

3. *Persons Affected*

Homeowners associations and nonprofit land-holding organizations wishing to engage in deer control activities within this Commonwealth may be affected by the final-form regulations.

4. *Comment and Response Summary*

The Commission received one official written comment concerning the final-form regulations. The comment was in support of making homeowner’s associations eligible to apply for and receive deer control permits from the Commission.

5. *Cost and Paperwork Requirements*

The final-form regulations should not result in any additional cost or paperwork.

6. *Effective Date*

The final-form regulations will be effective upon final publication in the *Pennsylvania Bulletin* and will remain in effect until changed by the Commission.

7. *Contact Person*

For further information regarding the final-form regulations, contact Richard A. Palmer, Director, Bureau of Wildlife Protection, 2001 Elmerton Avenue, Harrisburg, PA 17110-9797, (717) 783-6526.

*Findings*

The Commission finds that:

(1) Public notice of intention to adopt the administrative amendments adopted by this order has been given under sections 201 and 202 of the act of July 31, 1968 (P. L. 769, No. 240) (45 P. S. §§ 1201 and 1202) and the regulations thereunder, 1 Pa. Code §§ 7.1 and 7.2.

(2) The adoption of these amendments of the Commission in the manner provided in this order is necessary and appropriate for the administration and enforcement of the authorizing statute.

*Order*

The Commission, acting under authorizing statute, orders that:

(a) The regulations of the Commission, 58 Pa. Code Chapter 147, are amended by amending §§ 147.322, 147.324 and 147.325 to read as set forth at 38 Pa.B. 4526.

(b) The Executive Director of the Commission shall certify this order and 38 Pa.B. 4526 and deposit them with the Legislative Reference Bureau as required by law.

(c) This order shall become effective upon final-form publication in the *Pennsylvania Bulletin*.

CARL G. ROE,  
Executive Director

**Fiscal Note:** Fiscal Note 48-272 remains valid for the final adoption of the subject regulations.

[Pa.B. Doc. No. 08-2290. Filed for public inspection December 19, 2008, 9:00 a.m.]

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**GAME COMMISSION**  
**[ 58 PA. CODE CH. 147 ]**  
**Special Permits**

To effectively manage the wildlife resources of this Commonwealth, the Game Commission (Commission), at its October 24, 2008, meeting, adopted the following rulemaking:

Amend §§ 147.721—147.726, 147.728 and 147.729 to update and expand nuisance wildlife control operator standards.

The final-form rulemaking will have no adverse impact on the wildlife resources of this Commonwealth.

The authority for the final-rulemaking is 34 Pa.C.S. (relating to Game and Wildlife Code) (code).

Notice of proposed rulemaking was published at 38 Pa.B. 4521 (August 16, 2008).

1. *Purpose and Authority*

Chapter 147, Subchapter T (relating to commercial wildlife pest control) provides the regulatory structure for the Commission to authorize persons to engage in nuisance wildlife control activities. The Commission has identified that these regulations have over time become inadequate to address the needs of the Commission and the public concerning the persistent problem of nuisance wildlife and therefore needed to be amended. Some notable recommendations generated by the Commission include the renaming of permit holders as “nuisance wildlife control operators” rather than the current “wildlife pest control agents,” the expansion of applicant eligibility standards to permit application from nonresidents, new requirements for the control of rabies vector species and, finally, new testing standards for permittees working in deer control. Therefore, the Commission has amended §§ 147.721—147.726 and 147.728 and 47.729 to update and expand nuisance wildlife control operator standards.

Section 2901(b) of the code (relating to authority to issue permits) provides “the commission may, as deemed necessary to properly manage the game or wildlife resources, promulgate regulations for the issuance of any permit and promulgate regulations to control the activities which may be performed under authority of any permit issued.” Section 2102(a) of the code (relating to regulations) provides that “The commission shall promulgate such regulations as it deems necessary and appropriate concerning game or wildlife and hunting or furtaking in this Commonwealth, including regulations relating to the protection, preservation and management of game or wildlife and game or wildlife habitat, permitting or prohibiting hunting or furtaking, the ways, manner,

methods and means of hunting or furtaking, and the health and safety of persons who hunt or take wildlife or may be in the vicinity of persons who hunt or take game or wildlife in this Commonwealth.” The amendments to §§ 147.721—147.726 and 147.728 and 147.729 were adopted under this authority.

2. *Regulatory Requirements*

The final rulemaking will amend §§ 147.721—147.726 and 147.728 and 147.729 and 147.728—147.72 to update and expand nuisance wildlife control operator standards.

3. *Persons Affected*

Persons wishing to engage in nuisance wildlife control activities within this Commonwealth will be affected by the final-form rulemaking.

4. *Comment and Response Summary*

There were no official written comments received regarding this final-form rulemaking.

5. *Cost and Paperwork Requirements*

The final-form rulemaking should not result in any additional cost or paperwork.

6. *Effective Date*

The final-form rulemaking will be effective upon final-form publication in the *Pennsylvania Bulletin* and will remain in effect until changed by the Commission.

7. *Contact Person*

For further information regarding the final rulemaking, contact Richard A. Palmer, Director, Bureau of Wildlife Protection, 2001 Elmerton Avenue, Harrisburg, PA 17110-9797, (717) 783-6526.

*Findings*

The Commission finds that:

(1) Public notice of intention to adopt the administrative amendments adopted by this order has been given under sections 201 and 202 of the act of July 31, 1968 (P. L. 769, No. 240) (45 P. S. §§ 1201 and 1202) and the regulations thereunder, 1 Pa. Code §§ 7.1 and 7.2.

(2) The adoption of these amendments of the Commission in the manner provided in this order is necessary and appropriate for the administration and enforcement of the authorizing statute.

*Order*

The Commission, acting under authorizing statute, orders that:

(a) The regulations of the Commission, 58 Pa. Code Chapter 147, are amended by amending §§ 147.721—147.726 and 147.728; and by adding §§ 147.724a and 147.729 to read as set forth at 38 Pa.B. 4521.

(b) The Executive Director of the Commission shall certify this order, 38 Pa.B. 4521 and Annex A and deposit them with the Legislative Reference Bureau as required by law.

(c) This order shall become effective upon final-form publication in the *Pennsylvania Bulletin*.

CARL G. ROE,  
Executive Director

**Fiscal Note:** Fiscal Note 48-275 remains valid for the final adoption of the subject regulation.

[Pa.B. Doc. No. 08-2291. Filed for public inspection December 19, 2008, 9:00 a.m.]



# PROPOSED RULEMAKING

## COAL AND CLAY MINE SUBSIDENCE INSURANCE BOARD

[ 25 PA. CODE CH. 401 ]

### Mine Subsidence Fund

The Coal and Clay Mine Subsidence Insurance Board (Board) proposes to amend Chapter 401 (relating to mine subsidence fund), regarding the administration of the Mine Subsidence Insurance Fund (Fund), to read as set forth in Annex A. The proposed amendments will clarify the regulations concerning issuance of Mine Subsidence Insurance (MSI) policies. It will also propose new regulations codifying the insurance producer program, as well as, explicitly authorizing the issuance of grants and loans to assist in developing new technologies or services.

This proposal was adopted by the Board at its meeting of September 4, 2008.

#### A. *Effective Date*

These amendments will go into effect upon publication in the *Pennsylvania Bulletin* as final-form rulemaking.

#### B. *Contact Persons*

For further information contact Lawrence Ruane, Administrator, Mine Subsidence Program, P. O. Box 8462, Rachel Carson State Office Building, Harrisburg, PA 17105-8462, (717) 783-9590; or Marc A. Roda, Assistant Counsel, Bureau of Regulatory Counsel, P. O. Box 8464, Rachel Carson State Office Building, Harrisburg, PA 17105-8464, (717) 787-7060. Information regarding submitting comments on this proposal appears in Section J of this preamble. Persons with a disability may use the AT&T Relay Service by calling (800) 654-5984 (TDD users) or (800) 654-5988 (voice users). This proposal is available electronically through the DEP web site [www.depweb.state.pa.us](http://www.depweb.state.pa.us).

#### C. *Statutory Authority*

This proposed rulemaking is being made under the authority of section 19 of the act of August 23, 1961 (P. L. 1068, No. 484) (52 P. S. § 3219) (act) which provides, inter alia, that the Board shall have the power to make rules and regulations.

#### D. *Purpose and Background*

The Fund was created in 1961 to provide a reliable source of compensation for damage to structures caused by underground coal and clay mine subsidence, a risk excluded from standard property and casualty insurance policies. This insurance pool of moneys for compensating owners of structures damaged by underground coal or clay mine subsidence is vital to the economic well being of this Commonwealth's coal mining regions.

The Fund is administered by a Board consisting of the Secretary of the Department of Environmental Protection (Department) as Chairperson, the State Treasurer and the Insurance Commissioner. See, section 3 of the act (52 P. S. § 3203). A listing of Board members is available upon request from Lawrence Ruane, whose name, address and phone number appears in Section B of this preamble. The Board's responsibilities include, inter alia approving: insurance premiums, the terms of insurance, the amount

of commission to be paid to insurance producers, approving funds for administering the MSI Program and the adoption of implementing regulations. See sections 3, 10 and 19 of the act (52 P. S. §§ 3203, 3210 and 3219). The Department is responsible for the day-to-day administration of the MSI Program. See sections 4, 10 and 22 of the act (52 P. S. §§ 3204, 3210 and 3222).

The amendments will clarify the regulations concerning issuance of MSI policies by: (1) revising some of the definitions to ensure consistency with the MSI insuring agreement; (2) codifying standards for issuing MSI policies for structures owned either as a condominium, cooperative or conventionally but having multiple units; (3) simplifying and expanding the criteria for covering multiple purpose structures at the residential rate; and (4) codifying the Board's recently adopted policy for issuing MSI policies for damaged structures. The standard for waiving the loss deductible is amended to be consistent with current practice. Finally, this proposal will establish new regulations: (1) codifying the submission of MSI applications by insurance producers; and (2) explicitly authorizing the issuance of grants and loans to foster the development of new technologies or services which can assist the Board and Department in administering the Fund.

#### E. *Summary of Regulatory Requirements*

There are no companion Federal laws or regulations that govern the provisions of mine subsidence insurance. The proposed regulatory changes are as follows.

##### *§ 401.1. Definitions.*

There will be new definitions for "association," "common elements," "commissions," "condominium," "cooperative," "insurance producers" and "units." The terms "commission" and "insurance producers" are used in proposed §§ 401.41—401.45 (relating to insurance producers). The terms "association," "common elements," "condominium," "cooperative" and "units" are used in the amendment to § 401.11 (relating to eligibility for insurance) clarifying the issuance of MSI policies covering structures owned either as a condominium, cooperative or conventionally but having multiple units.

The definitions for "mine subsidence" and "structure" are amended to ensure consistency with the MSI insuring agreement. In particular, the definition for "structure" will include appurtenances as defined in the insurance policy. At its December 2006 meeting, the Board expanded the MSI policy's coverage by amending the insuring agreement's definition of "structures" to include some of the appurtenances associated with the building to be covered. By referencing appurtenances as defined in the MSI insuring agreement, the Board is left the flexibility to modify the scope of this coverage as experience indicates.

##### *§ 401.11. Eligibility for insurance.*

Many of the amendments to this section are for the purpose of simplicity and clarity of language. However, the following amendments establish substantive changes. The amendment to subsection (b) adds new standards specifying how MSI policies are to be issued for structures owned as a condominium or cooperative. The different ownership rights associated with structures owned as a condominium or cooperative have been the source of confusion concerning to whom the policy is to be issued, that is, the condominium association, cooperative or the

individual unit owner, and what part of the structure the policy can cover. These amendments are based on 68 Pa.C.S. §§ 3101—3414 and 4101—4113 and will eliminate that confusion. It is anticipated that eliminating this confusion will facilitate the sale of MSI policies, especially by the submission of MSI applications through insurance producers.

Subsection (c) is simplified to focus on insurance rates for structures partially used for residential purposes. The requirement that there cannot be more than four units is being dropped, leaving the requirement that at least half the structure must be used for residential purposes. In the Board's experience, the key issue in determining whether such a mixed use structure is to be insured as a residential structure is the percentage of the structure used for residential purposes.

The requirement in subsection (d) that a double home is insured as one structure is deleted. This issue is now covered by the new subsection (f). Subsection (e) becomes subsection (d) and is amended to codify the Board's recently developed policy for issuing MSI policies to damaged structures. This codification provides insurance producers with clear standards for accepting MSI applications for damaged structures, and implements the Board's commitment to maximizing the availability of MSI policies.

The new subsection (e) clarifies that the Board can refuse to issue an MSI policy covering a structure that is being damaged. Until the damage event is completed it is impossible to either repair the damage or meet the requirements for issuing a policy to a damaged structure.

The new subsection (f) specifies how a conventionally owned structure comprised of multiple units can be covered. These standards will ensure a consistent approach for insuring these structures.

*§ 401.13. Coverage limits and insurance premiums.*

The amendment to subsection (a) deletes the requirement that the Board set rates for MSI policies covering individual structures. This can be read as a limitation on the Board's authority to set policy rates, which is inappropriate.

The amendment to subsection (b) deletes the requirement that the premium check must be submitted within 80 days of the filing of the MSI application. This restriction was added to ensure that the MSI policy is purchased before a structure is damaged. In the Board's experience, this restriction is unnecessary.

*§ 401.22. Loss deductible amount.*

The last sentence is rewritten to accurately state the Board's long-standing practice of waiving the loss deductible when the amount of the loss suffered exceeds the coverage limit.

*§ 401.41. Submission of applications.*

This section codifies the current practice of requiring insurance producers to submit MSI applications by means of the MSI web site.

*§ 401.42. Commission rates.*

This section restates the Board's statutory authority for annually setting the insurance producer's commission rates.

*§ 401.43. Payment of commission.*

The insurance producer will retain its commission from the MSI policy premium to be paid. This is a change from current practice, which calls for the Board to separately

pay the insurance producer its commission. It takes 3 months for the Department to pay the commission. Having the insurance producer retain its commissions from premium payments is consistent with industry practice, reduces the Department's operating costs and facilitates the insurance producer's cash flow.

*§ 401.44. Repayment of commission.*

This section addresses repayment of commissions that have become unearned due to either the MSI policy application being rejected or the MSI policy being canceled. Failure to repay an unearned commission may result in the insurance producer's exclusion from submitting MSI applications. The Board's exclusion of an insurance producer from submitting applications is an action of the Department appealable to the Environmental Hearing Board.

*§ 401.45. Confidentiality of policyholder information.*

Insurance producers are required to adhere to the Board's policy of maintaining the confidentiality of all applicant and policyholder information. Failure to maintain this confidentiality may result in the insurance producer's exclusion from submitting MSI applications. The Board's exclusion of an insurance producer from submitting MSI applications is an action of the Department appealable to the Environmental Hearing Board.

*§ 401.51. Loans and grants.*

This section gives the Board the explicit authority to make loans and grants to entities to encourage the development of technologies or services that will benefit the fund. These are technologies and services such as robotic sensing devices or geographic information systems that provide value to the MSI program's policy, application and claim investigation processes. A grant or loan, rather than a service purchase contract, is the appropriate vehicle for providing financial assistance to encourage the development of these technologies and services. The limitation on the amount of excess moneys that can be used to finance loans or grants ensures the Fund's financial integrity.

*F. Benefits, Costs and Compliance*

*Benefits*—The amendment to § 401.11(c) makes the residential rate, about 1/3 of the commercial rate, available to more structures used for both residential and commercial purposes. Section 401.43 (relating to payment of commission) benefits insurance producers because the commission is retained from the premium payment, that is, immediately paid, rather than waiting 3 months to receive a payment from the Board. Learning institutions and other entities developing technologies and services potentially valuable to the Board will benefit from the availability of grants or loans to foster those developments.

*Compliance Costs*

There are no costs associated with this proposed rulemaking.

*Compliance Assistance Plan*

The Department will notify policyholders at the time of policy renewal of the broader application of residential rates to mixed-use structures. Insurance producers registered to submit MSI applications will also be notified of changes in procedures and their obligations due to this proposed rulemaking. Finally, a link to the *Pennsylvania Bulletin* Notice of Proposed Rulemaking will be placed on the MSI web site.

*Paperwork Requirements*

This proposed rulemaking will not impose any additional paperwork requirements on MSI policyholders or insurance producers.

*G. Pollution Prevention*

The regulations affected by this proposed rulemaking address the administration of the Commonwealth's Mine Subsidence Insurance Program. They do not address pollution prevention.

*H. Sunset Review*

These regulations will be reviewed in accordance with the sunset review schedule published by the Department to determine whether the regulations effectively fulfill the goals for which they were intended.

*I. Regulatory Review*

In accordance with section 5(a) and (f) of the Regulatory Review Act (71 P. S. §§ 745.5a and (f)), the Department submitted a copy of the proposed amendments on December 10, 2008, to the Legislative Reference Bureau for publication of notice of proposed rulemaking in the *Pennsylvania Bulletin*, and to the Independent Regulatory Review Commission (IRRC). In accordance with section 5(f) of the act, the Department will submit the proposed amendments and the required material to the Chairpersons of the House Environmental Resources and Energy Committee and the Senate Environmental Resources and Energy Committee (Committees) no later than the second Monday after the date by which both Committees designations have been published in the *Pennsylvania Bulletin*. In addition to submitting the proposed amendments, the Department has provided IRRC and will provide the Committees with a copy of detailed Regulatory Analysis Form. 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, recommendation or objects raised.

*J. Public Comments*

*Written Comments*—Interested persons are invited to submit comments, suggestions or objections regarding the proposed rulemaking to the Coal and Clay Mine Subsidence Insurance Board, P. O. Box 8462, Harrisburg, PA 17105-8462 (express mail: Rachel Carson State Office Building, 5th Floor, 400 Market Street, Harrisburg, PA 17101-2301). Comments submitted by facsimile will not be accepted. Comments, suggestions or objections must be received by the Board by January 20, 2009. Interested persons may also submit a summary of their comments to the Board. The summary may not exceed one page in length and must also be received by the Board by January 20, 2009. The one-page summary will be provided to each member of the Board in the agenda packet distributed prior to the meeting at which the final regulation will be considered.

*Electronic Comments*—Comments may be submitted electronically to the Board at RegComments@state.pa.us and must also be received by the Board by January 20, 2009. A subject heading of the proposal and a return

name and address must be included in each transmission. If an acknowledgment of electronic comments is not received by the sender within 2 working days, the comments should be retransmitted to ensure receipt.

JOHN HANGER,  
*Acting Chairperson*

**Fiscal Note:** 7-424. No fiscal impact; (8) recommends adoption.

**Annex A**

**TITLE 25. ENVIRONMENTAL PROTECTION  
PART III. COAL AND CLAY MINE SUBSIDENCE  
INSURANCE BOARD  
CHAPTER 401. MINE SUBSIDENCE FUND  
GENERAL PROVISIONS**

**§ 401.1. Definitions.**

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

\* \* \* \* \*

**Association**—One of the following:

(i) **The unit owners' association organized under 68 Pa.C.S. § 3301 (relating to organization of unit owners' association) for condominiums.**

(ii) **The proprietary lessees' association organized under 68 Pa.C.S. § 4301 (relating to organization of association) for cooperatives.**

\* \* \* \* \*

**Commissions**—Fees paid to insurance producers as compensation for the applications they submit to the Board.

**Common elements**—All portions of a condominium or cooperative other than the units.

**Condominium**—Real estate, portions of which are designated for separate ownership and the remainder of which is designated for common ownership solely by the owners of those portions. Real estate is not a condominium unless the undivided interests in the common elements are vested in the unit owners. Ownership of the real estate is in accordance with 68 Pa.C.S. Subpart B (relating to Uniform Condominium Act).

**Cooperative**—Real estate owned by an association, each of whose members is entitled, by virtue of his ownership interest in the association, to exclusive possession of a unit. Ownership of the real estate is in accordance with 68 Pa.C.S. Subpart C (relating to Real Estate Cooperative Act).

\* \* \* \* \*

**Insurance producer**—A person that sells, solicits or negotiates contracts of insurance.

\* \* \* \* \*

**Mine subsidence**—The movement of the ground's surface as a result of the [ **partial or complete cave-in or the** ] collapse of underground coal or clay mine workings.

\* \* \* \* \*

**Structure**—A complete building, [ **that** ] which contains a roof, walls and a foundation [ **which** ] that firmly attaches the structure to the earth, and its appurtenances as defined in the insurance policy.

**Units—**

(i) Specific areas of a building that are separate and distinct from other areas of the building, having an individual entrance accessing either a common entry or the building's exterior.

(ii) For the purposes of the definition of "common elements" and § 401.11(b)(2) (relating to eligibility for insurance), the following apply:

(A) Units in a condominium are portions of the condominium designated for separate ownership, the boundaries of which are described in the condominium declaration.

(B) Units in a cooperative are physical portions of the cooperative designated for separate occupancy under a proprietary lease.

**INSURANCE POLICIES****§ 401.11. Eligibility for insurance.**

(a) [ To be eligible for a mine subsidence insurance policy, the insured shall be the owner of a structure within the anthracite or bituminous coal or clay mine regions, the territorial extent of which will be designated by the Board. The Board may add to, subtract from or change the territorial classifications ] Structures located within the coal and clay regions of this Commonwealth are eligible for coverage.

(b) Only [ a title ] an owner of a structure may be named as the [ insured in an insurance policy and an insurance policy will not be issued to another person ] policyholder.

(1) If there [ are several owners of one structure, they ] is more than one owner of a structure, the owners shall designate one owner whose name shall appear on the insurance policy. The other [ owners ] policyholders shall be listed in the application for insurance.

(2) If the structure is owned as a condominium or cooperative:

(i) The association is the policyholder if the policy covers all common elements and units.

(ii) The unit owner shall be the policyholder if the policy only covers the unit and there is a separate policy covering the common elements.

(iii) A unit owner may purchase coverage for the unit and common elements if the association will not purchase insurance. However, the unit association shall be the named policyholder with the unit owner being listed in the application. Renewals will be sent to the unit owner.

(c) [ An individual, corporation or group of individuals holding title to more than one structure within the anthracite or bituminous coal or clay mine regions may insure these structures. ] Structures which are at least 50% residential [ and have at most four residential units ] are eligible for residential rates. [ Other structures shall be insured at commercial rates. ]

(d) [ A double home shall be considered one structure if both sides of the home are owned by the same person.

(e) The Board, or its agents, may refuse to issue an insurance policy for ] If a structure [ previously ] is damaged by mine subsidence or by another cause, [ if this ] and the Board determines that the damage could not be separated or apportioned from subsequent damage, [ until the previous damage has been repaired to the satisfaction of the Board, or its agents. ] the Board will issue a policy if the applicant either:

(1) First repairs the damages to the Board's satisfaction.

(2) Submits to the Board an estimate, prepared by a reputable expert, of the cost to repair the damages to the Board's satisfaction. The cost to repair, adjusted for inflation, would be excluded from any damage claim settlement. However, a policy would not be issued if the cost to repair exceeded the replacement cost of the structure or the policy limit, which ever is less, because the policy would have no value.

(e) The Board may refuse to issue a policy while the structure to be covered is being damaged by mine subsidence or by another cause, until the Fund determines that the cause of damage has ceased.

(f) Multiple unit structures are insured as follows:

(1) Structures comprised of vertically stacked units are only insurable under a single policy.

(2) Other unit configurations are insurable under a single or multiple policy at the owner's discretion.

**§ 401.13. Coverage limits and premiums for insurance.**

(a) The maximum amount of insurance [ for a single covered structure ], the term or duration of the policy, and the premium rate shall be determined by the Board.

(b) An insurance policy is effective upon the date a complete application and its premium is received by the Board or its agent [ provided the premium associated with that application is received by the Board or its agent within the next 80 days ] and provided that the applicant and structure meet the eligibility requirements in the act and in § 401.11 (relating to eligibility for insurance).

**INSURANCE COVERAGE****§ 401.22. Loss deductible amount.**

Every insurance policy [ shall ] must include a loss deductible amount for which the Fund is not liable. The amount will be determined by the Board and may be changed as experience may warrant, and will be included in the schedule of premium rates adopted by the Board. [ The Fund will be liable for only a specified percentage of a loss in excess of the deductible amount as will be adopted in the schedule of premium rates. ] The loss deductible will be waived if the cost to repair the damage exceeds the amount of coverage under the policy.

**INSURANCE PRODUCERS**

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

**§ 401.41. Submission of applications.**

Insurance producers may only submit applications for mine subsidence insurance to the Board electronically from the Board's web site.

**§ 401.42. Commission rates.**

The Board will annually establish commission rates.

**§ 401.43. Payment of commissions.**

The insurance producer shall retain the commission from the premium collected. The Board may authorize other forms of payment.

**§ 401.44. Repayment of commissions.**

Commissions in excess of \$5 that are unearned due to the Board's rejection of a mine subsidence insurance application or the cancellation of a policy shall be repaid to the Board upon its demand. Failure by an insurance producer to promptly repay commissions as directed by the Board may result in exclusion from participation with the Fund.

**§ 401.45. Confidentiality of policyholder information.**

Insurance producers are responsible to safeguard all applicant and policyholder information and are responsible for the misuse of information that is under their control. Failure by an insurance producer to safeguard applicant and policyholder information may result in exclusion from participation with the Fund.

**LOANS AND GRANTS**

**§ 401.51. Loans and grants.**

Each year the Board may authorize up to 1% of the Fund's Unreserved Fund Balance, as declared by the Board under section 10(c) of the act (52 P. S. § 3210(c)), to be used to provide loans and grants to entities that develop technologies, perform services or engage in other activities that benefit the Fund by improving its ability to provide mine subsidence insurance coverage or to improve the efficiency, economy and effectiveness of the Fund's operations.

[Pa.B. Doc. No. 08-2292. Filed for public inspection December 19, 2008, 9:00 a.m.]

**FISH AND BOAT COMMISSION**

[ 58 PA. CODE CH. 61 ]

Fishing

The Fish and Boat Commission (Commission) proposes to amend Chapter 61 (relating to seasons, sizes and creel limits). The Commission is publishing this proposed rulemaking under the authority of 30 Pa.C.S. (relating to the Fish and Boat Code) (code).

*A. Effective Date*

The proposed rulemaking, if approved on final-form rulemaking, will go into effect on April 1, 2009.

*B. Contact Person*

For further information on the proposed rulemaking, contact Laurie E. Shepler, Esq., P. O. Box 67000, Harrisburg, PA 17106-7000, (717) 705-7810. This proposed rulemaking is available on the Commission's web site at [www.fish.state.pa.us](http://www.fish.state.pa.us).

*C. Statutory Authority*

The proposed amendment to § 61.2 (relating to Delaware River and River Estuary) is published under the statutory authority of section 2102(b) of the code (relating to rules and regulations).

*D. Purpose and Background*

The proposed rulemaking is designed to improve, enhance and update the Commission's fishing regulations. The specific purpose of the proposed amendment is described in more detail under the summary of proposal.

*E. Summary of Proposal*

Since 1992, during the time period when Delaware River and Estuary striped bass were in restoration mode, there has been an April and May closure to the harvest of striped bass from the spawning grounds in this Commonwealth, New Jersey and Delaware. The Commission's regulation in § 61.2 defines the segment to which the closure applies as extending from the Pennsylvania/Delaware state line upstream to the Calhoun Street Bridge, which is located just upstream from the head-of-tide and joins Morrisville, PA with Trenton, NJ.

In 1997, the Atlantic States Marine Fisheries Commission (ASMFC) declared that the Delaware River stock of striped bass had been restored to historical population levels based on high juvenile recruitment, high spawning stock biomass and low fishing mortality. Despite being restored, management of the fishery within the Basin states remained conservative with high size limits (28 inches), low creel limits (2 fish per day) and spawning ground closures to harvest. In this Commonwealth, this meant that the season downstream from Calhoun Street Bridge closed on April 1, just as the adult striped bass population was building, and reopened on June 1, just as the bulk of the adult striped bass population had emigrated from the Commonwealth. This Commonwealth's anglers were given little opportunity to harvest striped bass, and striped bass angling when fish were most abundant was discouraged by the season closure.

Delaware River and Estuary striped bass harvest has been low. During the 2002, four state creel census, only 582 striped bass were harvested in the stretch that extended from the Delaware River Memorial Bridge near Wilmington, DE upstream to the river's branches in New York. Pennsylvania's tagging data supported this observation of low harvest, particularly from this Commonwealth. Of the 2,872 striped bass that were tagged in the Delaware Estuary spawning grounds between Pennsylvania and New Jersey from 1995 through 2007, only 34 tags were returned from this Commonwealth's waters. Observations by the Commission's waterways conservation officers and biologists have been that the vast majority of striped bass caught in this Commonwealth are yearlings, 2-year old and some 3-year olds caught in late spring and summer as by-catch in other fisheries and as a targeted catch and release fishery in the tidal and nontidal river.

Male striped bass are abundant during April and May on the spawning grounds and about 90% are shorter than the 28 inch length limit. Furthermore, very few sublegal female striped bass are present on the spawning grounds. This Commonwealth's anglers desire an opportunity to take advantage of this restored striped bass population and the potentially excellent fishing that it could provide. Past regulatory and habitat protection efforts by the Commission have largely benefited coastal anglers and anglers outside of this Commonwealth.

The Commission therefore proposes that an April and May fishery be established in the seasonally closed portions of the Delaware River and Estuary that is designed to specifically target mature male striped bass. The Commission further proposes that this fishery be regulated with a 20 inch to 26 inch slot limit from which two fish per day can be harvested during April and May. There will be a 28 inch length limit and two fish per day creel limit in all other months of the year, and there will be no closed season. Regulations for the remainder of the river will remain unchanged. The Commission proposes to amend § 61.2 to read as set forth in Annex A.

The Commission coordinated this proposal with the State of Delaware, which took the lead in data analysis and reporting. The two states have made similar slot and creel limit proposals that will apply to different months of the year. Delaware's proposal will target male striped bass in summer and fall that have emigrated from the spawning grounds and taken up residency in Delaware. ASMFC's Striped Bass Management Board approved both proposals on October 20, 2008.

F. Paperwork

The proposed rulemaking will not increase paperwork and will not create new paperwork requirements.

G. Fiscal Impact

The proposed rulemaking will have no adverse fiscal impact on the Commonwealth or its political subdivisions.

The proposed rulemaking will impose no new costs on the private sector or the general public.

H. Public Comments

Interested persons are invited to submit written comments, objections or suggestions about the proposed rulemaking to the Executive Director, Fish and Boat Commission, P. O. Box 67000, Harrisburg, PA 17106-7000, within 30 days after publication of this notice in the *Pennsylvania Bulletin*. Comments submitted by facsimile will not be accepted.

Comments also may be submitted electronically by completing the form at [www.fishandboat.com/reg](http://www.fishandboat.com/reg) comments. If an acknowledgment of electronic comments is not received by the sender within 2 working days, the comments should be retransmitted to ensure receipt. Electronic comments submitted in any other manner will not be accepted.

DOUGLAS J. AUSTEN, Ph.D.,  
*Executive Director*

**Fiscal Note:** 48A-209. No fiscal impact; (8) recommends adoption.

**Annex A**  
**TITLE 58. RECREATION**  
**PART II. FISH AND BOAT COMMISSION**  
**Subpart B. FISHING**  
**CHAPTER 61. SEASONS, SIZES AND CREEL LIMITS**

**§ 61.2. Delaware River and River Estuary.**

\* \* \* \* \*

(d) The following seasons, sizes and creel limits apply to the Delaware River, West Branch Delaware River and to Delaware River tributaries, from the mouths of the tributaries upstream to the limit of the tidal influence and the Lehigh River from its mouth upstream to the first dam in Easton, Pennsylvania:

SPECIES	SEASONS	MINIMUM SIZE	DAILY LIMIT
	* * * * *		
STRIPED BASS and HYBRID STRIPED BASS	From Pennsylvania line upstream to Calhoun Street Bridge: <b>[ March 1 until March 31, and June 1 until December 31 ] January 1 until March 31 and June 1 until December 31.</b> <b>April 1 through May 31</b> From Calhoun Street Bridge upstream: open year-round	28 inches  <b>20 to 26 inches</b> <b>28 inches</b>	2
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[Pa.B. Doc. No. 08-2293. Filed for public inspection December 19, 2008, 9:00 a.m.]

# GAME COMMISSION

[ 58 PA. CODE CH. 141 ]

## Hunting and Trapping

To effectively manage the wildlife resources of this Commonwealth, the Game Commission (Commission), at its October 24, 2008, meeting, proposed the following rulemaking:

Amend §§ 141.41, 141.43, 141.44, 141.45 and 141.47 to restructure the regulatory provisions relating to big game hunting to promote consistency and clarity in the regulations and also permit the full inclusion of crossbows during the various big game seasons to expand opportunity and increase participation in big game hunting within this Commonwealth.

The proposed rulemaking will have no adverse impact on the wildlife resources of this Commonwealth.

The authority for the proposed rulemaking is 34 Pa.C.S. (relating to Game and Wildlife Code) (code).

The proposed rulemaking was made public at the October 24, 2008, meeting of the Commission. Comments can be sent to the Director, Information and Education, Game Commission, 2001 Elmerton Avenue, Harrisburg, PA 17110-9797, until January 23, 2009.

### 1. Purpose and Authority

In recent years, the Commission has been moving towards a comprehensive restructuring of the regulations attending the code. The goals of the restructuring of the regulations are primarily focused on simplifying and making the language more understandable to its users. To this end, the Commission has begun rewriting the regulatory structures relating to the big game seasons. As time progresses, the Commission intends to carry the theme set forth in these changes to other chapters of the regulations to establish clear correlations between related seasonal information. As part of this comprehensive effort, the Commission desires to address the usage of crossbows during the various big game seasons. The Commission recognizes that over the past decade there has been a growing debate concerning the full inclusion of the use of crossbows during the various big game archery seasons. The Commission has identified that there are scores of hunters on both sides of the issue and that each side staunchly supports their respective point of view. In an effort to promote consistency and clarity in the regulations pertaining to big game seasons as well as expand opportunity and increase participation in big game hunting within this Commonwealth, the Commission is proposing to amend §§ 141.41, 141.43, 141.44, 141.45 and 141.47. Some notable substantive changes include the full inclusion of crossbows during the various big game archery seasons as well as the prohibition on the usage of crossbows during the various muzzleloader deer seasons without an archery deer license.

Section 2102(d) of the code (relating to regulations) authorizes the Commission to "promulgate regulations stipulating the size and type of traps, the type of firearms and ammunition and other devices which may be used, the manner in which and the location where the devices may be used, the species the devices may be used for and the season when the devices may be used." Section 2102(a) of the code provides that "The commission shall promulgate such regulations as it deems necessary and appropriate concerning game or wildlife and hunting or furtaking in this Commonwealth, including regulations

relating to the protection, preservation and management of game or wildlife and game or wildlife habitat, permitting or prohibiting hunting or furtaking, the ways, manner, methods and means of hunting or furtaking, and the health and safety of persons who hunt or take wildlife or may be in the vicinity of persons who hunt or take game or wildlife in this Commonwealth." The amendments to §§ 141.41, 141.43, 141.44, 141.45 and 141.47 were proposed under this authority.

### 2. Regulatory Requirements

The proposed rulemaking will amend §§ 141.41, 141.43, 141.44, 141.45 and 141.47 to restructure the regulatory provisions relating to big game hunting to promote consistency and clarity in the regulations and also permit the full inclusion of crossbows during the various big game seasons to expand opportunity and increase participation in big game hunting within this Commonwealth.

### 3. Persons Affected

Persons wishing to hunt big game within this Commonwealth may be affected by the proposed rulemaking.

### 4. Cost and Paperwork Requirements

The proposed rulemaking should not result in any additional cost or paperwork. Rather, the proposed rulemaking will substantially reduce, if not eliminate, all fees, costs and paperwork associated with the disabled persons crossbow permit application process.

### 5. Effective Date

The proposed rulemaking will be effective upon final-form publication in the *Pennsylvania Bulletin* and will remain in effect until changed by the Commission.

### 6. Contact Person

For further information regarding the proposed rulemaking, contact Richard A. Palmer, Director, Bureau of Wildlife Protection, 2001 Elmerton Avenue, Harrisburg, PA 17110-9797, (717) 783-6526.

CARL G. ROE,  
Executive Director

**Fiscal Note:** 48-276. No fiscal impact; (8) recommends adoption.

## Annex A

### TITLE 58. RECREATION

### GAME COMMISSION

### CHAPTER 141. HUNTING AND TRAPPING

### Subchapter C. BIG GAME

### § 141.41. General.

#### [ (a) Permitted acts. It is lawful to take:

(1) **Bear or elk with a crossbow with a draw weight of not less than 125 pounds nor more than 200 pounds.**

(2) **Deer during any firearms season for deer with a crossbow with a draw weight of not less than 125 pounds nor more than 200 pounds.**

(3) **Deer with a crossbow with a draw weight of not less than 125 pounds nor more than 200 pounds in Wildlife Management Units 2B, 5C and 5D.**

#### (b) It is unlawful to:

(1) **Hunt for big game birds or animals with arrows or crossbow bolts other than those tipped with broadheads of a cutting-edge design.**

(2) Hunt for deer or bear through the use of a muzzleloading long gun that is not .44 caliber or larger or a muzzleloading handgun that is not .50 caliber or larger.

(3) Kill big game by mistake or accident and immediately after killing and before removing any big game from the location of the killing, fail to fully complete the proper game kill tag in compliance with the instructions printed on the tag and attach only the game kill tag to the big game.

(4) Kill big game by mistake or accident and fail to report the killing to the appropriate Commission regional office as soon as possible but no later than 12 hours after the time of kill.

(5) Within 10 days of the kill, fail to complete the report card supplied with the hunting license for reporting big game killed and mail the report card to the Commission at Harrisburg or by any other method designated by the Director.

(6) Receive a DMAP permit without reporting in the manner prescribed on the permit. ]

It is unlawful to:

(1) Kill big game by mistake or accident and immediately after killing and before removing any big game from the location of the killing, fail to fully complete the proper game kill tag in compliance with the instructions printed on the tag and attach only the game kill tag to the big game.

(2) Kill big game by mistake or accident and fail to report the killing to the appropriate Commission regional office as soon as possible but no later than 12 hours after the time of kill.

(3) Fail, within 10 days of the kill, to complete the report card supplied with the hunting license for reporting big game killed and mail the report card to the Commission at Harrisburg or by any other method designated by the Director.

(4) Receive a DMAP permit without reporting in the manner prescribed on the permit.

#### § 141.43. Deer.

[ (a) *Archery season.* It is unlawful while hunting deer with a bow and arrow or crossbow during the archery season to:

(1) Possess a firearm, except during the overlaps of the early archery and muzzleloader seasons and the late archery and flintlock muzzleloading seasons, when a person may use and possess both a bow and arrow or crossbow and a muzzleloading firearm only if that person is in possession of both a valid archery license and a valid muzzleloader license and meets the greater protective material requirements for the muzzleloader season, if applicable.

(2) Take a deer with a device not provided for in the act or this title.

(3) Except in Wildlife Management Units 2B, 5C and 5D, hunt or take deer with a crossbow without a valid disabled persons crossbow permit.

(b) *Flintlock muzzleloading season.* Firearms lawful for use are original muzzleloading single-barrel firearms manufactured prior to 1800, or similar reproductions of original muzzleloading single-barrel firearms which:

(1) Are .44 caliber or larger long guns or .50 caliber or larger handguns.

(2) Propel single-projectile ammunition.

(c) *Ignition.* Flintlock mechanisms shall consist of a hammer containing a naturally occurring stone which is spring propelled onto an iron or steel frizzen which, in turn, creates sparks to ignite a priming powder.

(d) *Prohibitions.* While hunting deer during the flintlock muzzleloading season it is unlawful to:

(1) Use manmade materials attached to the hammer or frizzen to create sparks.

(2) Use telescopic sights.

(3) Use or possess single projectile ammunition other than specified in subsection (b)(2) and in section 2322(a)(4) of the act (relating to prohibited devices and methods).

(4) Unless otherwise provided in this chapter, hunt, take or attempt to take deer through the use of a device not specifically described in subsection (b) or (c).

(e) *Muzzleloading season.* Firearms lawful for use are muzzleloading single-barrel firearms which:

(1) Are .44 caliber or larger long guns or .50 caliber or larger handguns.

(2) Propel single projectile ammunition.

(f) *Prohibitions.* While hunting deer during muzzleloading season it is unlawful to:

(1) Use or possess single projectile ammunition other than specified in subsection (e)(2) and in section 2322(a)(4) of the act.

(2) Hunt, take or attempt to take deer through the use of a device not specifically described in subsection (e).

(g) Cooperating while hunting during any deer season. Holders of any of the appropriate licenses or stamps may cooperate while hunting antlered or antlerless deer if pertinent provisions of this section and the act are met.

(h) *.22 caliber or less rimfire required for furbearers.* When using a firearm only a rimfire rifle or handgun .22 caliber or less may be used to dispatch legally trapped furbearers during the regular or special firearms deer seasons. ]

(a) *Archery deer season.*

(1) *Permitted devices.* It is lawful to hunt deer during the archery deer season with any of the following devices:

(i) *A bow and arrow.* A bow must have a peak draw weight of at least 35 pounds. An arrow must be equipped with a broadhead that has an outside diameter or width of at least 7/8 inch with at least two fixed cutting edges located on the same plane throughout the cutting surface.

(ii) *A crossbow and bolt.* A crossbow must have a peak draw weight of at least 125 pounds. A bolt must be equipped with a broadhead that has an outside diameter or width of at least 7/8 inch with at least two fixed cutting edges located on the same plane throughout the cutting surface.



(2) *Prohibitions.* While hunting deer during the archery deer season, it is unlawful to:

(i) Use or possess a firearm. Exceptions:

(A) A person may possess certain firearms during the archery deer season pursuant to the authorizations of section 2525 of the act (relating to possession of a firearm for protection of self or others).

(B) A person may possess and use both a bow or crossbow and a muzzleloading firearm during the overlaps of the early archery and muzzleloader deer seasons and the late archery and flintlock muzzleloading deer seasons if that person is in possession of both a valid archery deer license and a valid muzzleloader deer license and meets the greater protective material requirements for the muzzleloader deer season, if applicable.

(ii) Use a device not provided for in the act or in this subsection.

(b) *Flintlock muzzleloading deer season.*

(1) *Permitted devices.* It is lawful to hunt deer during the flintlock muzzleloading deer season with a flintlock muzzleloading firearm.

(i) *A flintlock muzzleloading firearm.* The firearm must be an original or similar reproduction of muzzleloading firearm manufactured prior to 1800. The firearm's ignition mechanism must consist of a hammer containing a naturally occurring stone that is spring propelled onto an iron or steel frizzen which, in turn, creates sparks to ignite a priming powder. The firearm must have open sights and be a .44 caliber or larger single-barrel long gun or a .50 caliber or larger single-barrel handgun that propels single-projectile ammunition.

(2) *Prohibitions.* While hunting deer during the flintlock muzzleloading deer season, it is unlawful to:

(i) Use manmade materials attached to the hammer or frizzen to create sparks.

(ii) Use telescopic sights.

(iii) Use or possess multiple projectile ammunition or ammunition other than required by section 2322 (a)(4) of the act (relating to prohibited devices and methods).

(iv) Use a device not provided for in the act or in this subsection.

(c) *Muzzleloading deer season.*

(1) *Permitted devices.* It is lawful to hunt deer during the muzzleloading deer season with a muzzleloading firearm:

(i) A muzzleloading firearm. The firearm's ignition mechanism must consist of a percussion cap, primer or flintlock fired design. The firearm must be a .44 caliber or larger single-barrel long gun or a .50 caliber or larger single-barrel handgun that propels single-projectile ammunition.

(2) *Prohibitions.* While hunting deer during the muzzleloading deer season, it is unlawful to:

(i) Use or possess multiple projectile ammunition or ammunition other than required by section 2322 (a)(4) of the act (relating to prohibited devices and methods).

(ii) Use a device not provided for in the act or in this subsection.

(d) *Regular and special firearms deer seasons.*

(1) *Permitted devices.* It is lawful to hunt deer during the regular and special firearms deer seasons with any of the following devices:

(i) A manually operated, centerfire firearm.

(ii) A bow and arrow as permitted under subsection (a)(1)(i).

(iii) A crossbow and bolt as permitted under subsection (a)(1)(ii).

(iv) A muzzleloading firearm as permitted under subsection (b)(1) or (c)(1).

(2) *Prohibitions.* While hunting deer during the regular and special firearms deer seasons, it is unlawful to:

(i) Use or possess multiple projectile ammunition or ammunition other than required by section 2322 (a)(4) of the act (relating to prohibited devices and methods).

(ii) Use a device not provided for in the act or in this subsection.

(e) *Cooperating while hunting during any deer season.* Holders of any of the appropriate licenses or stamps may cooperate while hunting antlered or antlerless deer if pertinent provisions of the act and this season are met.

(f) *.22 caliber or less rimfire required for furbearers.* When using a firearm only a rimfire rifle or handgun .22 caliber or less may be used to dispatch legally trapped furbearers during the regular or special firearms deer seasons.

§ 141.44. Bear.

[ It is unlawful to:

(1) Disturb, wound or kill a bear in a den.

(2) Assist, conspire or use a device to locate a bear to which a transmitter has been attached. ]

(a) *Archery bear season.*

(1) *Permitted devices.* It is lawful to hunt bear during the archery bear season with any of the following devices:

(i) *A bow and arrow.* A bow must have a peak draw weight of at least 35 pounds. An arrow must be equipped with a broadhead that has an outside diameter or width of at least 7/8 inch with at least two fixed cutting edges located on the same plane throughout the cutting surface.

(ii) *A crossbow and bolt.* A crossbow shall have a peak draw weight of at least 125 pounds. A bolt must be equipped with a broadhead that has an outside diameter or width of at least 7/8 inch with at least two fixed cutting edges located on the same plane throughout the cutting surface.

(2) *Prohibitions.* While hunting bear during the archery bear season, it is unlawful to:

(i) Use or possess a firearm or while in possession of a firearm, except as otherwise authorized by section 2525 of the act (relating to possession of a firearm for protection of self or others).

(ii) Use a device not provided for in the act or in this subsection.

(iii) Disturb, wound or kill a bear in a den.

(iv) Assist, conspire or use a device to locate a bear to which a transmitter has been attached.

(b) *Regular and extended firearms bear seasons.*

(1) *Permitted devices.* It is lawful to hunt bear during the regular and extended firearms bear seasons with any of the following devices:

(i) A manually operated, centerfire firearm.

(ii) A bow and arrow as permitted under subsection (a)(1)(i).

(iii) A crossbow and bolt as permitted under subsection (a)(1)(ii).

(iv) *A muzzleloading firearm.* The firearm's ignition mechanism must consist of a percussion cap, primer or flintlock fired design. The firearm must be a .44 caliber or larger single-barrel long gun or a .50 caliber or larger single-barrel handgun that propels single-projectile ammunition.

(2) *Prohibitions.* While hunting for bear during the regular and extended firearms bear seasons, it is unlawful to:

(i) Use or possess multiple projectile ammunition or ammunition other than required by section 2322 (a)(4) of the act (relating to prohibited devices and methods).

(ii) Use a device not provided for in the act or in this subsection.

(iii) Disturb, wound or kill a bear in a den.

(iv) Assist, conspire or use a device to locate a bear to which a transmitter has been attached.

#### § 141.45. Turkey.

[ (a) While hunting wild turkey it is unlawful to:

(1) Possess or use a live turkey as a decoy.

(2) Use drives or electronic callers.

(3) Use shot larger than # 4 lead, # 4 Bismuth/tin or # 2 steel.

(4) Use or possess rifles or single projectile ammunition, except arrows, in Wildlife Management Units 1A, 1B, 2A, 2B, 5B, 5C and 5D.

(5) Use anything other than rimfire, centerfire or muzzleloading rifles and handguns or shotguns, bows or crossbows.

(b) While hunting turkey during the spring gobbler season it is:

(1) Lawful to use bows, crossbows and shotguns with shot no larger than # 4 lead, # 4 Bismuth/tin and # 2 steel and mouth or hand operated callers.

(2) Unlawful to use or possess rifles or single projectile ammunition, except arrows.

(3) Unlawful to hunt spring gobbler by a method other than calling. ]

(a) *Fall turkey season.*

(1) *Permitted devices.* It is lawful to hunt turkey during the fall turkey season with any of the following devices:

(i) Except as otherwise prohibited in paragraph (2)(i), a manually operated centerfire, rimfire or muzzleloading firearm using single projectile ammunition.

(ii) A manually operated or semiautomatic, centerfire shotgun or muzzleloading shotgun using shot ammunition no larger than # 4 lead, # 4 Bismuth/tin or # 2 steel.

(iii) *A bow and arrow.* A bow must have a peak draw weight of at least 35 pounds. An arrow must be equipped with a broadhead that has an outside diameter or width of at least 7/8 inch with at least two fixed cutting edges located on the same plane throughout the cutting surface.

(iv) *A crossbow and bolt.* A crossbow must have a peak draw weight of at least 125 pounds. A bolt shall be equipped with a broadhead that has an outside diameter or width of at least 7/8 inch with at least two fixed cutting edges located on the same plane throughout the cutting surface.

(2) *Prohibitions.* While hunting turkey during the fall turkey season, it is unlawful to:

(i) Use a manually operated centerfire, rimfire or muzzleloading firearm using single projectile ammunition in Wildlife Management Units 1A, 1B, 2A, 2B, 5B, 5C and 5D.

(ii) Use drives or any method other than hand or mouth calling.

(iii) Use or possess an electronic caller or a live turkey as a decoy.

(iv) Use a device not provided for in the act or in this subsection.

(b) *Spring turkey season.*

(1) *Permitted devices.* It is lawful to hunt turkey during the spring turkey season with any of the following devices:

(i) A manually operated or semiautomatic, centerfire shotgun or muzzleloading shotgun using shot ammunition no larger than # 4 lead, # 4 Bismuth/tin or # 2 steel.

(ii) A bow and arrow as permitted under subsection (a)(1)(iii).

(iii) A crossbow and bolt as permitted under subsection (a)(1)(iv).

(2) *Prohibitions.* While hunting turkey during the spring turkey season, it is unlawful to:

(i) Use a centerfire, rimfire or muzzleloading firearm using single projectile ammunition.

(ii) Use or possess single projectile ammunition, except arrows or bolts.

(iii) Use drives or any method other than hand or mouth calling.

(iv) Use or possess an electronic caller or a live turkey as a decoy.

(v) Use a device not provided for in the act or in this subsection.

#### § 141.47. Elk.

[ It is unlawful while hunting elk to:

(1) Use any centerfire firearm less than .27 caliber or that propels a single-projectile less than 130 grains.

(2) Use any muzzleloading firearms less than .50 caliber or that propels a single-projectile less than 210 grains.

(3) Use any shotgun less than 12 gauge.

(4) Use any bow with a draw weight less than 45 pounds.

(5) Use any arrow that is not equipped with a broadhead that has an outside diameter or width of at least 1 inch with no less than 2 fixed, steel cutting edges and each cutting edge must be in the same plane throughout the length of the cutting surface.

(6) Use any crossbow with a draw weight less than 125 pounds or more than 200 pounds.

(7) After lawfully killing an elk, fail to mark the kill sight under Commission instructions provided at the orientation.

(8) Act or conspire to act as a guide for any person without first securing a permit from the Commission and attending an orientation program sponsored by the Commission.

(9) Act or conspire to act as a client for any guide who has not secured a permit from the Commission and attended an orientation program sponsored by the Commission.

(10) Drive or herd elk.

(11) Hunt within 150 yards from the center line of Route 555, from the intersection of Routes 255 and 555, to the intersection of Huston Hill Road and Route 555.

(12) Hunt within the Hick's Run no hunt zone, this being the area immediately adjacent to and north of Route 555, between Hick's Run Road and Huston Hill Road and within .3 mile of Route 555. ]

(a) *Permitted devices.* It is lawful to hunt elk during the elk season with any of the following devices:

(1) *A manually operated, centerfire rifle or handgun.* The firearm must be a .27 caliber or larger firearm that propels single-projectile ammunition 130 grains or larger.

(2) *A manually operated, centerfire shotgun.* The firearm must be a 12 gauge or larger firearm.

(3) *A muzzleloading firearm.* The firearm must be .50 caliber or larger firearm that propels single-projectile ammunition 210 grains or larger.

(4) *A bow and arrow.* A bow must have a peak draw weight of at least 45 pounds. An arrow must be equipped with a broadhead that has an outside diameter or width of at least 1 inch with at least two fixed cutting edges located on the same plane throughout the cutting surface.

(5) *A crossbow and bolt.* A crossbow must have a peak draw weight of at least 125 pounds. A bolt must be equipped with a broadhead that has an outside diameter or width of at least 1 inch with at least two fixed cutting edges located on the same plane throughout the cutting surface.

(b) *Prohibitions.* While hunting elk during the elk season, it is unlawful to:

(1) Use or possess multiple projectile ammunition or ammunition other than that required under section 2322 (a)(4) of the act (relating to prohibited devices and methods).

(2) Use a device not provided for in the act or in this section.

(3) Fail to mark the kill site after lawful harvest in accordance with Commission instructions provided during the elk season orientation.

(4) Act or conspire to act as a guide for any person without first securing a permit from the Commission and attending an orientation program sponsored by the Commission.

(5) Act or conspire to act as a client for any guide who has not secured a permit from the Commission and attended an orientation program sponsored by the Commission.

(6) Drive or herd elk.

(7) Hunt within 150 yards from the center line of Route 555, from the intersection of Routes 255 and 555, to the intersection of Huston Hill Road and Route 555.

(8) Hunt within the Hick's Run no hunt zone, this being the area immediately adjacent to and north of Route 555, between Hick's Run Road and Huston Hill Road and within .3 mile of Route 555.

[Pa.B. Doc. No. 08-2294. Filed for public inspection December 19, 2008, 9:00 a.m.]

## [ 58 PA. CODE CH. 147 ] Special Permits

To effectively manage the wildlife resources of this Commonwealth, the Game Commission (Commission), at its October 24, 2008, meeting, proposed the following rulemaking:

Amend § 147.783 (relating to permit) to authorize the limited use of electronic calls for all hunting and taking activities conducted under a snow goose conservation hunt permit.

The proposed rulemaking will have no adverse impact on the wildlife resources of this Commonwealth.

The authority for the proposed rulemaking is 34 Pa.C.S. (relating to Game and Wildlife Code) (code).

The proposed rulemaking was made public at the October 24, 2008, meeting of the Commission. Comments can be sent to the Director, Information and Education, Game Commission, 2001 Elmerton Avenue, Harrisburg, PA 17110-9797, until January 23, 2009.

### 1. Purpose and Authority

In recent years, continental snow goose populations have experienced a rapid growth in their numbers. This dramatic increase in population size has in turn resulted in extensive, possibly irreversible, damage to arctic and subarctic breeding habitats of the continental snow goose, as well as other bird populations dependant on these habitats. In January 2008, the Commission, working in conjunction with the Federal government, created Subchapter W (relating to snow goose conservation hunt permit) in Chapter 147 (relating to special permits) to define and create the regulatory structure necessary to

implement the new snow goose conservation hunt program within this Commonwealth. However, since the adoption of this rulemaking, the Commission has continued to receive extensive public input from various sources including the Susquehanna River Waterfowling Association, hunters and guides on ways to improve the program. In particular, these sources have strongly encouraged the permitted use of electronic calls during the snow goose conservation hunt, a proven method that is effective in increasing harvest rates. In light of the Commission's continued recognition to dramatically increase the harvest of snow geese in this Commonwealth to assist in the reduction of the overall continental populations, the Commission is proposing to amend § 147.783 (relating to permit) to authorize the limited use of electronic calls for all hunting and taking activities conducted under a snow goose conservation hunt permit.

Section 2901(b) of the code (relating to authority to issue permits) provides "the commission may, as deemed necessary to properly manage the game or wildlife resources, promulgate regulations for the issuance of any permit and promulgate regulations to control the activities which may be performed under authority of any permit issued." Section 2102(a) of the code (relating to regulations) provides that "The commission shall promulgate such regulations as it deems necessary and appropriate concerning game or wildlife and hunting or furtaking in this Commonwealth, including regulations relating to the protection, preservation and management of game or wildlife and game or wildlife habitat, permitting or prohibiting hunting or furtaking, the ways, manner, methods and means of hunting or furtaking, and the health and safety of persons who hunt or take wildlife or may be in the vicinity of persons who hunt or take game or wildlife in this Commonwealth." The amendment to § 147.783 was proposed under this authority.

#### 2. *Regulatory Requirements*

The proposed rulemaking will amend § 147.783 to authorize the limited use of electronic calls for all hunting and taking activities conducted under a snow goose conservation hunt permit.

#### 3. *Persons Affected*

Persons wishing to hunt snow geese under a snow goose conservation hunt permit within this Commonwealth may be affected by the proposed rulemaking.

#### 4. *Cost and Paperwork Requirements*

The proposed rulemaking should not result in any additional cost or paperwork.

#### 5. *Effective Date*

The proposed rulemaking will be effective upon final publication in the *Pennsylvania Bulletin* and will remain in effect until changed by the Commission.

#### 6. *Contact Person*

For further information regarding the proposed rulemaking, contact Richard A. Palmer, Director, Bureau of Wildlife Protection, 2001 Elmerton Avenue, Harrisburg, PA 17110-9797, (717) 783-6526.

CARL G. ROE,  
*Executive Director*

**Fiscal Note:** 48-277. No fiscal impact; (8) recommends adoption.

### Annex A

#### TITLE 58. RECREATION

#### CHAPTER 147. SPECIAL PERMITS

#### PART III. GAME COMMISSION

#### Subchapter W. SNOW GOOSE CONSERVATION HUNT PERMIT

#### § 147.783. Permit.

\* \* \* \* \*

(c) [ Except as provided for in § 141.4 (relating to hunting hours), the permittee shall comply with all applicable state and federal regulations relating to the hunting and taking of snow geese during regular seasons as adopted by the United States Secretary of the Interior as published in the *Federal Register* each year. ] Except as otherwise provided in this subchapter, all State and Federal requirements and limitations relating to the hunting and taking of snow geese during regular open seasons apply to any activities conducted pursuant to the authorizations of a snow goose conservation hunt permit. The following specific exceptions apply:

(1) **Hunting hours.** All hunting and taking activities conducted pursuant to the authorizations of a snow goose conservation hunt permit shall be conducted in accordance with the adjusted hunting hours authorized for the snow goose conservation season provided in § 141.4 (relating to hunting hours).

(2) **Electronic calling.** Notwithstanding the general prohibition against the use of electronic calls found in section 2308 of the act (relating to unlawful devices and methods), the limited use of electronic calls shall be authorized for all hunting and taking activities conducted pursuant to the authorizations of a snow goose conservation hunt permit.

[Pa.B. Doc. No. 08-2295. Filed for public inspection December 19, 2008, 9:00 a.m.]

# STATEMENTS OF POLICY

## Title 4—ADMINISTRATION

### GOVERNOR'S OFFICE

#### [ 4 PA. CODE CH. 1 ]

#### Index of Issuances—Directives Management System

The Index of Issuances is being updated to reflect changes since 36 Pa.B. 4205 (August 5, 2006). This amendment adds new issuances, amends and rescinds others. Recipients of publications listed in this index should be kept informed of the status of these publications.

The Directives Management System provides comprehensive statements of policy and procedure on matters that affect employees in all agencies under the Governor's jurisdiction. This amendment updates the index for all Executive Orders, Management Directives, and Manuals issued, amended and rescinded by the Directives Management System after publication of the last Index dated July 13, 2006.

This Index and all documents listed herein can be accessed on the OA Enterprise AquaLogic Portal at [www.oa.state.pa.us](http://www.oa.state.pa.us). Click on "Directives Management." Click on the respective category. Note that all documents preceded by the letter "M" are manuals. Documents with a strike-through line have been rescinded.

Title 4 of the *Pennsylvania Code* § 1.2 specifies that:

"Issuances from the Governor's Office and from agencies under the Governor's jurisdiction, except proclamations and press releases, that are intended for distribution to two or more agencies are to be issued through the Directives Management System in one of four types of publications:

- (1) Numbered Executive Orders, signed by the Governor, announcing broad policies, programs, and responsibilities that are relatively permanent.
- (2) Numbered Management Directives announcing detailed policies, programs, responsibilities, and procedures that are relatively permanent. Management Directives are to be signed by the Governor, Lieutenant Governor, Secretary of Administration, Budget Secretary, or the head of a department or independent board, commission, or council under the Governor's jurisdiction.
- (3) Numbered Administrative Circulars containing either informational material or instructions that are one-time or temporary in nature. Administrative Circulars are to be signed the same as Management Directives.
- (4) Numbered procedural issuances containing detailed information and guidelines for relatively restricted, well-defined operations, or sets of operations. Procedural issuances may be manuals, handbooks, catalogs, guides, or similar publications. Manuals are to be signed the same as Management Directives."

Management Directives and Manuals are numbered in sequence by category (e.g., Financial Management) and subcategory (e.g., Payroll).

Changes to Executive Orders, Management Directives, and Manuals (catalogs, handbooks, bulletins, etc.) may be

issued in the form of amendments. Amendments are complete documents incorporating all changes since the last complete issuance. Dots are placed in the margins to show the new or revised text. Some older documents have revisions, which are generally pen and ink changes or replacement pages and affect only those parts of an issuance being changed. (Revisions are no longer being issued; changes are now made in the document and it is reissued as an Amended version of the document.) Additionally, when a document has been amended, the previous document should be removed from the file and recycled.

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**CWOPA Account:** For Commonwealth Employees Under the Governor's Jurisdiction: When logging in from your desktop, you should automatically be logged into the portal. If not, check [Log In] in the left navigation. If it is set to [Log In], click it. You will be taken back to the OA Home page. Click on e-Alerts Subscriptions. If you are logged in, you will see the "e-Alert Self Management" at the bottom of the page. Quick way to tell if you are logged in is see if the [Log In] link reads [Log Off].

**MUSER Account:** For Business Partners or Commonwealth Employees Not Under the Governor's Jurisdiction That Use SAP (examples: Attorney General, Auditor General, Pennsylvania Treasury Department and Commonwealth Courts):

Click on [Log In] located at the bottom of the left navigation. If after clicking on [Log In], you see the Windows Challenge Response (i.e., Windows Login Pop-up), click on the "cancel" button of the Windows Login Pop-up and you should be redirected to the Enterprise Portal Login Page.

Enter [MUSER\user name] for your MUSER account, then enter your [password]. Once you submit the login form you will be taken to the Enterprise Portal Information Site. In the right navigation, click on [OA Home]. At the bottom of the left navigation, select the "e-Alert Subscriptions" link to return to this page. You should see the "e-Alert Self Management" portlet at the bottom of the page.

**USER Account:** For Citizens or Commonwealth Employees Not Under the Governor's Jurisdiction who do not use SAP: Click on [Log In] in the left navigation located at the bottom of the left navigation underneath "My Account." Enter your [username] from your PA Login Registration then the [password] you created when you registered through PA Login.

Once you submit the login form you will be taken to the Enterprise Portal Information Site. In the right navigation, click on [OA Home]. At the bottom of the left navigation, select the "e-Alert Subscriptions" link to return to this page. You should see the "e-Alert Self Management" portlet at the bottom of the page. If you do not have a PA Login Account, please register following the instructions below:

**PA Login Registration:**

1) If you do not have an account, please visit the <<https://www.state.pa.us/papower/guestaccount/login.asp?>> PA PowerPort. (Instructions: Place your mouse pointer over the name PA PowerPort and click on the name).

2) Once you are at the PA Login Site you may register for a new account.

3) Once registered, the new account will be activated within an hour. If you are having trouble logging in with your account, please visit the <<https://www.state.pa.us/papower/guestaccount/login.asp?>> PA PowerPort

**VERY IMPORTANT:** After you create a USER Account using PA Login, you need to wait at least 2 hours for PA Login and the Enterprise Portal to synchronize before logging into the Enterprise Portal and accessing the e-Alert Subscription Service.

Logging in from home or non-government site: Open a browser, go to <<http://www.portal.state.pa.us/>> www.portal.state.pa.us, enter the appropriate user name, password for either CWOPA, USER, or MUSER from the Authentication Source drop down.

Originators of all proposed documents, excluding *Executive Orders*, are to send documents by e-mail, in Word format, to Directives Management Resource Account, OA, EB-DMS. All *Executive Orders* should be sent by e-mail, in Word format, to the Governor’s General Counsel.

All agency contact recipients receiving electronic notification are responsible for notifying affected offices in their agencies of new documents listed out on the OA website.

Marginal dots indicate new, amended, revised, or rescinded documents since publication of the last issuance of this Index.

For any questions regarding Directives Management, contact ra-eb-dms@state.pa.us or 717/783-5055.

**This manual replaces, in its entirety, *Manual M210.3* dated July 13, 2006.**

**This manual includes all new and amended issuances through June 30, 2008.**

NAOMI WYATT,  
*Secretary of Administration*

**Fiscal Note:** GOV 2008-210.3. No fiscal impact; (8) recommends adoption.

*(Editor’s Note:* This Index of Issuances is published under 1 Pa. Code § 3.1(a)(9) (relating to contents of *Code*). This document meets the criteria of 45 Pa.C.S. § 702(7) as a document general and permanent in nature which shall be codified in the *Pennsylvania Bulletin*.)

**Annex A**

**TITLE 4. ADMINISTRATION**

**CHAPTER 1. AGENCY OPERATION AND ORGANIZATION**

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M210.7	State Records Management Manual . . . . .	6/8/2004	
M210.8	Vital Records Disaster Planning . . . . .	5/9/1995	
M210.9	General Administrative Records Retention and Disposition Schedule for Records Common to Most Agencies . . . . .	2/27/2008	
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215.10	Offset Provision for Commonwealth Contracts . . . . .	Rescinded by 215.9—4/16/1999	
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215.12	Provisions for Commonwealth Contracts Concerning the <i>Americans With Disabilities Act</i> . . . . .	1/16/2001	
215.13	Contract Provision for Donation of Excess Prepared Food . . . . .	6/21/1994	
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215.16	Contract Compliance Program . . . . .	6/30/1999	
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M215.1	Contracting for Services . . . . .	Rescinded by M215.3—8/20/1999	
M215.2	Commonwealth Contract Compliance Program Guidelines . . . . .	Rescinded by M210.3—4/8/1997	
M215.3*	Field Procurement Handbook . . . . .	* * * *	
	(Updates ongoing—current publication available at: <a href="http://www.dgs.state.pa.us/Proc-handbook/site/default.asp?procurementNav">http://www.dgs.state.pa.us/Proc-handbook/site/default.asp?procurementNav</a> )		
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220.3	Mail Delivery Between Harrisburg and the Philadelphia and Pittsburgh State Office Buildings . . . . .	1/10/2006	
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220.9	Graphic Design, Typesetting, Reproduction, and Printing Services . . . . .	6/4/1987	
220.10	Processing Automated Mail . . . . .	Rescinded/Obsolete 5/8/2006	
220.11	Preservation of Commonwealth Deeds . . . . .	5/3/2006	
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230.9	Acquisition and Payment of Travel Services . . . . .	12/18/2006	
230.10	Travel and Subsistence Allowances . . . . .	2/15/2007	
230.11	Use of Pittsburgh and Erie Convention Centers by State Agencies . . . . .	Rescinded/Obsolete 2/10/2006	
230.13	Commonwealth Corporate Card Program . . . . .	9/18/2007	
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240.11	Commonwealth Wireless Communication Policy . . . . .	10/8/2004	
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245.13	Strategic Direction for Information Technology Investments . . . . .	2/8/2006	
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245.15	Statewide Public Safety Radio System . . . . .	3/7/2006	
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245.17	Commonwealth of Pennsylvania Public Safety Communications Council . . . . .	12/19/2006	
245.18	IT Administrator Acceptable Use, Auditing and Monitoring, Incident Notification, and Response Policies and Procedures . . . . .	2/7/2006	
245.19	Enterprise Technology Security Council . . . . .	5/3/2006	
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M245.2	State Computer Maintenance Contract for Terminals, Microcomputers, Printers, and Other Related Peripheral Equipment . . . . .	Rescinded/Obsolete	10/18/2005
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305.8	Commonwealth Bank Accounts and Special Banking Services . . . . .	6/11/1997	
305.9	Use of Forms STD-419/419L, Refund of Expenditures, and STD-420/C420/420L, Transmittal of Revenue, When Unaccompanied by Remittances . . . . .	11/5/1999 . . . . .	1-2
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305.13	Use of Forms STD-419/419L, Refund of Expenditures, and STD-420/C420/420L, Transmittal of Revenue, When Accompanied by Remittances . . . . .	4/4/2000 . . . . .	1

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305.18	Obtaining Authority for Electronic Approval of Commonwealth Voucher Transmittals .....	Rescinded/Obsolete—8/24/2006	
305.19	Identification of Boards, Commissions, and Councils.....	8/15/1997	
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310.7	Report of Lapse (STD-292).....	Rescinded/Obsolete 2/10/2006	
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315.14 Charges for State Employees Residing or Subsisting in Commonwealth Facilities .....	5/29/1997	
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\*Revision Nos. 1, 2, 4, 5, 6, and 7 to 315.20 have been rescinded



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580.8	Classified Service Probationary Periods.....	10/5/2004	
580.10	Rights of Certified Eligibles in the Classified Service .....	5/16/1986	
580.11	Documentation of Classified Service Personnel Actions .....	6/27/2006	
580.12	Recruitment for Classified Service Positions .....	3/28/2007	
580.13*	Report of Personnel Transactions for Non-State Employees .....	8/18/1987	
580.15	Selective Certification of Classified Service Eligibles.....	6/26/1990	
580.16	Provisional Employment in the Classified Service .....	11/16/2006	
580.17	Performance Evaluations to Determine Order of Furlough for Classified Service Employees .....	Rescinded by M580.2—10/16/1997	

<b>Management Directives and Manuals.</b>		<b>Date of or Latest Amendment</b>	<b>Current Revisions</b>
580.18	Pennsylvania Residency Requirements for the Classified Service . . . . .	2/15/2005	
580.19	Promotion in the Classified Service Without Examination . . . . .	12/4/2001	
580.20	Classified Service Furlough and Reemployment . . . . .	Rescinded by M580.2—10/16/1997	
580.21	Veterans' Preference on Classified Service Employment Lists . . . . .	5/5/2008	
580.23	Resignation From and Reinstatement to the Classified Service . . . . .	3/12/1990	
580.24	Promotion of Employees in Unskilled Positions Into the Classified Service . . . . .	9/14/2006	
580.25	Political Activities of Classified Service Employees . . . . .	9/30/1992	
580.26	Transfer or Reassignment of Classified Service Employees . . . . .	2/28/1990	
580.27	Limited Appointments to Positions Exempted from the Classified Service Pursuant to <i>Section 3(c)(4), Civil Service Act.</i> . . . . .	2/18/1988	
580.28	Reallocation to a Lower Class in the Classified Service . . . . .	2/27/1990	
580.29	Rapid Promotion Examinations in the Classified Service . . . . .	Rescinded/Obsolete 5/17/2006	
580.30	Classified Service Leave Without Pay and Return Rights . . . . .	3/24/1986	
580.31	Classified Service Temporary Appointments . . . . .	8/14/2006	
<b>*Special Distribution</b>			
<b>Civil Service</b>			
580.32	Substitute Employment in the Classified Service . . . . .	10/24/2006	
580.33	Reproductions of Documents for Classified Service Personnel Actions . . . . .	9/14/1990	
580.34	Removal of Eligibles for Certification or Appointment in the Classified Service . . . . .	5/20/2002	
580.35	Employees Placed in the Classified Service by Position Reallocation . . . . .	3/29/1988	
580.36	Engineering Intern Program . . . . .	1/14/1994	
580.37	Promotion by Appointment of Unclassified Service Employees Into the Classified Service . . . . .	5/5/2008	
580.38	Use of Intern Job Titles in the Classified Service . . . . .	10/8/2004	
<b>Manuals.</b>			
M580.1	Certification of Eligibles for the Classified Service . . . . .	4/7/1997	
M580.2	Furlough of Classified Service Employees Not Covered by Labor Agreements . . . . .	6/22/2007	
<b>Labor Relations</b>			
590.1	Labor Relations . . . . .	11/27/2007	
590.2	Confidential Positions and Employees . . . . .	3/8/2006	
590.3	Deduction of Union Dues/Fair Share Fees . . . . .	5/22/2006	
590.5	Guidelines to be Followed During Legal or Illegal Strikes . . . . .	5/25/2006	
590.6	Information Needed to Obtain Injunctions Against Illegal Strikes . . . . .	Rescinded by 590.5—5/13/1997	
590.7	Labor Relations—Grievance Administration . . . . .	6/8/2006	
590.8	Classification Grievance Processing . . . . .	3/30/2006	
<b>Manual.</b>			
M590.2	Digest of Commonwealth Employee Classification Arbitration Cases . . . . .	Rescinded/Obsolete 11/25/2005	
<b>SUPPLIES, SERVICES, AND EQUIPMENT</b>			
<b>Supplies and Equipment Acquisition/Disposition</b>			
610.2	Release and Receipt of Surplus State Property . . . . .	Rescinded by M215.3—8/20/1999	
610.3	Transfer or Sale of Surplus State Property . . . . .	Rescinded by M215.3—8/20/1999	
610.4	Procedures for Purchasing Goods and Services Not Exceeding \$1,500 Through Advancement Accounts . . . . .	11/17/1983	

<b>Management Directives and Manuals.</b>	<b>Date of or Latest Amendment</b>	<b>Current Revisions</b>
610.5	Disposition of Personal Property and Equipment Purchased with GSA Bond Moneys .....	Rescinded by M215.3—8/20/1999
610.7	Acquisition of Surplus Federal Personal Property .....	Rescinded by M215.3—8/20/1999
<b>Supplies and Equipment Acquisition/Disposition</b>		
610.9	Recovery of Precious Metals .....	Rescinded by M215.3—8/20/1999
610.11	Equipment Lease Renewals.....	Rescinded by M215.3—8/20/1999
610.12	Renewal of Multiyear Equipment Leases Containing Purchase Options .....	Rescinded by M215.3—8/20/1999
610.13	Local Bids and Local Awards for Goods Costing \$1,500 to \$10,000 .....	Rescinded by M215.3—8/20/1999
610.14	Review of Sole Source Purchase Requisitions for Equipment and Supplies.....	Rescinded by M215.3—8/20/1999
610.15	Master Lease Program .....	Rescinded by 610.15 Rev. 1—7/26/2004
(Revision No. 1 to 610.15 is rescinded upon publication of M210.3, Index of Issuances dated 3/18/2005)		
<b>Manuals.</b>		
M610.1	General Services Commodity Distribution Center Catalog.....	Rescinded/Obsolete 7/14/2005
M610.5	Field Purchasing Manual.....	Rescinded by M215.3—8/20/1999
<b>Automotive Services</b>		
615.1	Temporary Assignment of Commonwealth Automotive Fleet Vehicles... ..	1/6/2006
615.2	Motor Vehicle Liability Insurance and Accident Reporting.....	6/17/1996
615.3	Rates and Billing for Motor Vehicles of the Commonwealth Automotive Fleet.....	10/12/2005
615.6	License Plates for Commonwealth-Owned Vehicles .....	6/30/1997
615.7	Repairs, Maintenance, and Payment for Services.....	10/12/2005
615.8	Use of State Automobiles .....	3/26/1980
615.9	Permanent Assignment of Commonwealth Automotive Fleet Vehicles ..	10/12/2005
615.11	Use and Condition Inspections of Commonwealth-Owned Motor Vehicles.....	Rescinded/Obsolete 04/28/2006
615.12	Motor Vehicle Authorization List.....	5/1/2006
615.13	Emission Control Program—Commonwealth Automotive Fleet Vehicles.....	9/26/1997
615.14	Repairs and Maintenance, Commonwealth Automotive Fleet .....	Rescinded/Obsolete 10/13/2005
615.15	Vehicle Parking License Agreements .....	10/26/2006
<b>Commodity Standards</b>		
620.1	Coal Sampling and Reporting.....	10/4/2005
<b>Buildings, Property, and Real Estate</b>		
625.1	Repairs, Alterations, and Improvements to Commonwealth Buildings Under the Direct Supervision of the Department of General Services ..	10/4/2004
625.2	Inventory of Commonwealth Real Property .....	5/22/2006
625.3	Moving Employee Household Goods and Commonwealth Property.....	3/14/1996
<b>Buildings, Property, and Real Estate</b>		
625.4	Enforcement of Fire and Panic Regulations .....	3/27/1991
625.5	Reporting Surplus Real Property.....	5/6/1996
625.6	Lease Amendment Exceptions for Leasehold Construction Improvements Costing Less than \$10,000.....	2/28/2001
625.7	Use of Form STD-291, Request for Lease Action and Budget Approval ..	11/6/1997
625.8	Contracting for Bargaining Unit Work.....	2/25/1994
625.9	Payment of Contractors and Design Professionals for Agency-Funded Construction Projects Undertaken by the Department of General Services.....	3/9/2001

<b>Management Directives and Manuals.</b>		<b>Date of or Latest Amendment</b>	<b>Current Revisions</b>
625.10	Card Reader and Emergency Response Access to Certain Capitol Complex Buildings and Other State Office Buildings .....	1/30/2008	
<b>Bonds and Insurance</b>			
630.1	Agency Insurance Coordinators .....	10/2/1987	
630.2	Reporting of Employee Liability Claims .....	4/28/1998	
<b>COMMONWEALTH PROGRAMS</b>			
<b>Protection and Safety</b>			
720.2	Wage Standards Picketing .....	2/3/1977	
720.3	Emergency Evacuation Plans at Commonwealth Facilities .....	12/3/2004	
720.4	Safety and Loss Prevention Program .....	10/2/1987	
720.5	Energy Conservation and Electrical Devices in Commonwealth-Owned or Leased Buildings .....	1/3/2008	
720.6	Call Trace Procedures for Threatening, Harassing, and Nuisance Telephone Calls .....	9/28/2005	
720.7	Bomb Threats and Suspicious Packages .....	11/1/2004	

[Pa.B. Doc. No. 08-2296. Filed for public inspection December 19, 2008, 9:00 a.m.]

## Title 52—PUBLIC UTILITIES

### PENNSYLVANIA PUBLIC UTILITY COMMISSION

[ 52 PA. CODE CH. 69 ]

#### Operation of Telecommunications Relay Service System and Relay Service Fund; Rescission of Policy Statement

Public Meeting held  
August 21, 2008

*Commissioners Present:* James H. Cawley, Chairperson; Robert F. Powelson; Tyrone J. Christy; Kim Pizzingrilli; Wayne E. Gardner

*Rescission of Policy Statements in 52 Pa. Code §§ 69.511—69.513 regarding Operation of Telecommunications Relay Service System and Relay Service Fund;*  
*Doc. No. M-00900239 (1121115)*

#### Order

*By the Commission:*

The Pennsylvania Public Utility Commission (Commission) is rescinding its policy statement in 52 Pa. Code §§ 69.511—69.513 (relating to operation of Telecommunications Relay Service System and Relay Service Fund). The rescission shall take effect immediately upon publication of this order in the *Pennsylvania Bulletin*.

#### Background

The Commission's policy statements in §§ 69.511—69.513 became effective at 29 Pa.B. 2034 (April 17, 1999). The purpose for the policy statements was to ensure accurate Telecommunications Relay Service (TRS) surcharge calculations, accurate and timely remittance of

TRS charge revenues, and cooperation with audit procedures. On August 21, 2008, at L-2008-2020165, the Commission adopted a final-form regulation order codifying provisions of the subject policy statements to ensure adequate TRS fund balances, timely remittance of TRS fund revenues and cooperation with TRS fund audits.

#### Discussion

The policy statements are being rescinded by the Commission to remove obsolete material from the *Pennsylvania Code*. The rescission of this obsolete material will eliminate any confusion regarding which provisions control the management and operation of the TRS Fund. Simultaneous to the publication of this rescission, the Commission is publishing a final-form TRS Fund management regulation that incorporates the provisions of the policy statements and therefore renders the policy statements obsolete.

#### Conclusion

Accordingly, under sections 501, 1501, 3015 and 3019 of the Public Utility Code, 66 Pa.C.S. §§ 501, 1501, 3015 and 3019; sections 201 and 202 of the act of July 31, 1968 (45 P.S. §§ 1201 and 1202), and the associated regulations in 1 Pa. Code §§ 7.1, 7.2 and 7.5; section 204(b) of the Commonwealth Attorneys Act (71 P.S. § 732.204(b)); section 5 of the Regulatory Review Act (71 P.S. § 745.5); and section 612 of The Administrative Code of 1929 (71 P.S. § 232), and the associated regulations in 4 Pa. Code §§ 7.231—7.234, the Commission finds that rescinding the policy statements in §§ 69.511—513 should be approved as set forth in Annex A; therefore,

#### *It Is Ordered That:*

1. Title 52 of Pa. Code Chapter 69 is amended by the rescission of the policy statements in §§ 69.511—69.513 as set forth in Annex A.

2. The Secretary shall certify this Order and Annex A and deposit them with the Legislative Reference Bureau for publication in the *Pennsylvania Bulletin*.

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

4. A copy of this Order and Annex A shall be served upon the Pennsylvania Telephone Association and all local exchange carriers in this Commonwealth and that a copy be filed at the related rulemaking Doc. L-2008-202165.

5. The contact persons for this matter are Christopher Hepburn, Bureau of Fixed Utility Services, (717) 214-9115 (technical), and Louise Fink Smith, Assistant Counsel, Law Bureau, (717) 787-8866 (legal). Alternate formats of this document are available to persons with disabilities and may be obtained by contacting Sherri DelBiondo, Regulatory Coordinator, Law Bureau, (717) 772-4597.

6. The effective date of this rescission coincides with the effective date of the final-form regulation in § 63.37 which was adopted at 38 Pa.B. 6908 (December 20, 2008), and was effective upon publication.

*By the Commission*

JAMES J. MCNULTY,  
*Secretary*

**Annex A**

**TITLE 52. PUBLIC UTILITIES**

**PART I. PUBLIC UTILITY COMMISSION**

**Subpart C. FIXED SERVICE UTILITIES**

**CHAPTER 69. GENERAL ORDERS, POLICY  
STATEMENTS AND GUIDELINES ON FIXED  
UTILITIES**

**§§ 69.511—69.513. [ Reserved ].**

[Pa.B. Doc. No. 08-2297. Filed for public inspection December 19, 2008, 9:00 a.m.]



# NOTICES

## DEPARTMENT OF BANKING

### Actions on Applications

The Department of Banking (Department), under the authority contained in the act of November 30, 1965 (P. L. 847, No. 356), known as the Banking Code of 1965; the act of December 14, 1967 (P. L. 746, No. 345), known as the Savings Association Code of 1967; the act of May 15, 1933 (P. L. 565, No. 111), known as the Department of Banking Code; and the act of December 9, 2002 (P. L. 1572, No. 207), known as the Credit Union Code, has taken the following action on applications received for the week ending December 9, 2008.

Under section 503.E of the Department of Banking Code (71 P. S. § 733-503.E), any person wishing to comment on the following applications, with the exception of branch applications, may file their comments in writing with the Department of Banking, Corporate Applications Division, 17 North Second Street, Suite 1300, Harrisburg, PA 17101-2290. Comments must be received no later than 30 days from the date notice of the application is published in the *Pennsylvania Bulletin*. The nonconfidential portions of the applications are on file at the Department and are available for public inspection, by appointment only, during regular business hours. To schedule an appointment, contact the Corporate Applications Division at (717) 783-2230. Photocopies of the nonconfidential portions of the applications may be requested consistent with the Department's Right-to-Know Law Records Request policy.

### BANKING INSTITUTIONS

#### Section 112 Applications

<i>Date</i>	<i>Name of Individual</i>	<i>Location</i>	<i>Action</i>
12-9-2008	William Kronenberg, III, to acquire up to 16.67% of preferred stock of New Century Bank, Phoenixville	Phoenixville	Approved
12-9-2008	Kenneth B. and Moira F. Mumma to acquire up to 16.67% of preferred stock of New Century Bank, Phoenixville	Phoenixville	Approved
12-9-2008	John J. and Doris Sickler to acquire up to 13.33% of preferred stock of New Century Bank, Phoenixville	Phoenixville	Approved
12-9-2008	T. Lawrence Way to acquire up to 16.67% of preferred stock of New Century Bank, Phoenixville	Phoenixville	Approved

#### Holding Company Acquisitions

<i>Date</i>	<i>Name of Corporation</i>	<i>Location</i>	<i>Action</i>
12-5-2008	Harleysville National Corporation, Harleysville, acquired 100% of Willow Financial Bancorp, Inc., Wayne, and thereby indirectly acquired Willow Financial Bank, Wayne, which merged with and into The Harleysville National Bank and Trust Company, Harleysville, a wholly-owned subsidiary of Harleysville National Corporation	Harleysville	Effective

#### Branch Applications

##### De Novo Branches

<i>Date</i>	<i>Name of Bank</i>	<i>Location</i>	<i>Action</i>
12-4-2008	Allegheny Valley Bank of Pittsburgh Pittsburgh Allegheny County	333 Allegheny Avenue Oakmont Allegheny County	Approved
12-4-2008	Graystone Bank Lancaster Lancaster County	2325 South Market Street Elizabethtown Lancaster County	Approved

**Branch Discontinuances**

<i>Date</i>	<i>Name of Bank</i>	<i>Location</i>	<i>Action</i>
12-4-2008	Mid Penn Bank Millersburg Dauphin County	3763 Peters Mountain Road Halifax Dauphin County	Approved

**Articles of Amendment**

<i>Date</i>	<i>Name of Institution</i>	<i>Purpose</i>	<i>Action</i>
12-4-2008	Colonial American Bank West Conshohocken Montgomery County	Amend Articles II, V, VI, VII and XII of the Articles of Incorporation	Filed
	Amendment to Article II provides for a change of the principal place of business of the institution <i>From</i> : 300 Conshohocken State Road, Suite 160, West Conshohocken, PA 19428 <i>To</i> : 300 Welsh Road, Building 4, Suite 100, Horsham, PA 19044.		
	Amendment to Articles V and VI provides for the issuance of common stock and preferred stock.		
	Amendment to Article VII provides for a change of the authorized number of directors <i>From</i> : not less than five nor more than nine <i>To</i> : not less than five nor more than 15.		
	Amendment to Article XII clarifies provisions relating to the acquisition of voting control of the institution.		
12-5-2008	DM Trust Company Philadelphia Philadelphia County	Amend the First Article of the Articles of Incorporation	Approved and Effective
	Amendment to the First Article provides for a change of the name of the institution <i>From</i> : "DM Trust Company" <i>To</i> : "Everest Trust Company."		

**SAVINGS INSTITUTIONS**

No activity.

**CREDIT UNIONS****Branch Applications****De Novo Branches**

<i>Date</i>	<i>Name of Credit Union</i>	<i>Location</i>	<i>Action</i>
12-1-2008	Glatco Credit Union Spring Grove York County	Spring Grove High School 1490 Roth's Church Road Spring Grove York County	Filed

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

STEVEN KAPLAN,  
*Secretary*

[Pa.B. Doc. No. 08-2298. Filed for public inspection December 19, 2008, 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 Environmental Protection Agency (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 Services at (800) 654-5984.

## **I. NPDES Renewal Applications**

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

<i>NPDES No. (Type)</i>	<i>Facility Name &amp; Address</i>	<i>County &amp; Municipality</i>	<i>Stream Name (Watershed #)</i>	<i>EPA Waived Y/N ?</i>
PA0023264 (Sew)	Twin Boroughs Sanitary Authority P. O. Box 118 Mifflin, PA 17058	Juniata County Mifflin Borough	Juniata River 12-A	Y
PA0087921 (Sew)	Berwick Township 85 Municipal Road Hanover, PA 17331-8992	Adams County Berwick Township	UNT Pine Run 7-F	Y
PA0008427 (IW)	NRG Energy Center Harrisburg, LLC 100 North 10th Street Harrisburg, PA 17101-3357	Dauphin County Harrisburg City	Paxton Creek 7-C	Y

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

<i>NPDES No. (Type)</i>	<i>Facility Name &amp; Address</i>	<i>County &amp; Municipality</i>	<i>Stream Name (Watershed #)</i>	<i>EPA Waived Y/N ?</i>
PA0024091 SP	Millville Borough P. O. Box 30 Millville, PA 17846-0030	Columbia County Millville Borough	Little Fishing Creek 5C	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.*

**PA0031208**, Sewage, SIC 4952, **Garnet Valley School District**, 80 Station Road, Glen Mills, PA 19342. This proposed facility is located in Concord Township, **Delaware County**.

Description of Proposed Activity: Renewal of an NPDES permit to discharge treated sewage from Garnet Valley HS STP.

The receiving stream, Green Creek, is in the State Water Plan Watershed 3G and is classified for: CWF, aquatic life, water supply and recreation. The nearest downstream public water supply intake for Aqua PA Main System is located on Chester Creek and is 5.7 miles below the point of discharge.

The proposed effluent limits for Outfall 001 are based on a design flow of 0.0222 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>Instantaneous Maximum (mg/l)</i>
CBOD <sub>5</sub>				
(5-1 to 10-31)	1.85		10	20
(11-1 to 4-30)	3.7		20	40
TSS	1.85		10	20
Ammonia as N				
(5-1 to 10-31)	0.56		3	6
(11-1 to 4-30)	1.67		9	18
Phosphorus Total				
Years 1 and 2			Monitor and Report	Monitor and Report
Years 3—5				
(5-1 to 10-31)	0.18		1.0	2.0
(11-1 to 4-30)	0.37		2.0	4.0
Fecal Coliform			# 200/100 ml	# 1,000/100 ml
Dissolved Oxygen				5.0 (Instantaneous Minimum)
TRC			1.0	1.5
pH			6.0 to 9.0 Standard Units at all times	

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

1. Operator Notification.
2. Abandon STP When Municipal Sewers Available.
3. Remedial Measures if Unsatisfactory Effluent.
4. No Stormwater.
5. Acquire Necessary Property Rights.
6. Dry Stream Discharge.
7. Change of Ownership.
8. Chlorine Minimization.
9. Proper Sludge Disposal.
10. I-max Limitation.
11. 2/Month Monitoring.
12. Fecal Coliform Reporting.

**PA0051586**, Sewage, SIC 4952, **Clover D, Inc., Tohickon Family Campground**, 8308 Covered Bridge Road, Quakertown, PA 18951. This proposed facility is located in East Rockhill Township, **Bucks County**.

Description of Proposed Activity: renewal of an NPDES permit to discharge 25,000 gpd of treated sewage into Tohickon Creek.

The receiving stream, Tohickon Creek, is in the State Water Plan Watershed 2D and is classified for: TSF. The nearest downstream public water supply intake for PA Water Company is located on Delaware River and is 26 miles below the point of discharge.

The proposed effluent limits for Outfall 001 are based on a design flow of 25,000 gpd.

<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 <sub>5</sub>					
(5-1 to 10-31)	3.12		15		30
(11-1 to 4-30)	5.21		25		50
Total Suspended Solids	6.26		30		60
Ammonia as N					
(5-1 to 10-31)	0.63		3.0		6.0
(11-1 to 4-30)	1.88		6.0		12.0
Phosphorus as P	0.104		0.5		1.0
Fecal Coliform			200 #/100 ml		1,000 #/100 ml

Parameters	Mass (lb/day)		Concentration (mg/l)		Instantaneous Maximum (mg/l)
	Average Monthly	Maximum Daily	Average Monthly	Maximum Daily	
Total Residual Chlorine			0.5		1.2
Dissolved Oxygen			3.0 Minimum		
pH			Within limits of 6.0 to 9.0 Standard Units at all times		

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

1. Special Protection Waters.

**PA0244287**, Industrial Waste, SIC 4941, **Telford Borough Authority**, 122 Penn Avenue, Telford, PA 18969-1912. This proposed facility is located in Hilltown Township, **Bucks County**.

Description of Proposed Activity: The backwash water discharge from arsenic removal system of (Well No. 6) a potable waster system. The rate of discharge will be 256-gallon per minute for 10 minutes every 2—4 weeks.

The receiving stream, UNT to Mill Creek, is in the State Water Plan Watershed 3E and is classified for: TSF.

The proposed effluent limits for Outfall 001 are based on a design flow of 2,360 gpd.

Parameters	Concentration (mg/l)		
	Average Monthly	Maximum Daily	Instantaneous Maximum
Total Suspended Solids	30	60	75
pH (Standard Units)	Within limits of 6 to 9 Standard Units at all times		
Iron, Total	1.5	3.0	3.75
Arsenic, Total	Monitor and Report		

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

The EPA waiver is in effect

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

**Application No. PA 0247022**, CAFO, **David Sweigart, III**, 189 Ridge View Road South, Elizabethtown, PA 17022. David Sweigart, III has submitted an application to renew the existing individual NPDES permit for an existing CAFO known as the Ridge View Farm, located in Mount Joy Township, **Lancaster County**.

The CAFO is situated near a UNT to Conoy Creek, which is classified as a TSF. The CAFO includes two finishing swine barns and a dairy facility designed to maintain an animal population of approximately 981 animal equivalent units consisting of 6,200 finishing swine, 128 mature dairy cows, 50 dairy heifers and 10 dairy calves. Manure is stored in concrete and steel manure storage structures with a total capacity of approximately 2.47 million gallons. Manure produced at the operation is applied onsite or exported to local farmers in accordance with an approved Nutrient Management Plan. A release or discharge to waters of this Commonwealth under normal operating conditions is not expected. Normal operating conditions are defined as conditions below a 25-year, 24-hour storm event.

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

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

Persons wishing to comment on the proposed permit are invited to submit written comments to the previous address within 30 days from the date of this public notice. Comments received within this 30-day period will be considered in formulating the Department's final determination regarding the application. Following the 30-day comment period, the Watershed Management Program Manager will make a final determination regarding the proposed permit. Notice of this determination will be published in the *Pennsylvania Bulletin* at which time the determination may be appealed to the Environmental Hearing Board.

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

**Application No. PA 0260151**, Sewage, **Maxatawny Township Municipal Authority**, 127 Quarry Road, Kutztown, PA 19530. This facility is located in Maxatawny Township, **Berks County**.

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

The receiving stream, Sacony Creek, is in Watershed 3-B, and classified for TSF, water supply, recreation and fish consumption. The nearest downstream public water supply intake for Reading Area Water Authority is located on Maiden Creek, approximately 14 miles downstream. The discharge is not expected to affect the water supply.

The proposed effluent limits for Outfall 001 for a design flow of 0.14 mgd are:

<i>Parameter</i>	<i>Average Monthly (mg/l)</i>	<i>Average Weekly (mg/l)</i>	<i>Instantaneous Maximum (mg/l)</i>
CBOD <sub>5</sub>	25	40	50
Total Suspended Solids	30	45	60
NH <sub>3</sub> -N	20		40
Total Residual Chlorine	0.5		1.6
Total Phosphorus	Report		2.0
Dissolved Oxygen		Minimum of 5.0 at all times	
pH		From 6.0 to 9.0 inclusive	
Fecal Coliform		200/100 ml as a Geometric Average	
(5-1 to 9-30)		2,000/100 ml as a Geometric Average	
(10-1 to 4-30)			

*Lake Ontelaunee TMDL Requirements*

	<i>Mass (lbs) Annual</i>
Total Phosphorus	426
Total Suspended Solids	12,785

The Lake Ontelaunee TMDL, originally approved by U.S. Environmental Protection Agency (EPA) in August 2004, has been revised to include a point source discharge that received planning approval in June 2001 in the Maxatawny Township Phase I Act 537 Plan, and again on September 18, 2003, in the Phase II Act 537 Plan. The TMDL for the Lake Ontelaunee Watershed failed to take into account this approved discharge. The proposed revisions reallocate 0.193 metric tpy of phosphorus from the LA to the WLA and 5.8 metric tpy of sediment from the LA to the WLA to account for the discharge.

The data and all supporting documentation used to develop the proposed TMDLs are available from the Department of Environmental Protection (Department). To request a copy of the proposed TMDL amendment, contact Bill Brown, Chief, TMDL Development Section, Watershed Protection Division, Department of Environmental Protection, P. O. Box 8555, Harrisburg, PA 17105-8555, (717) 783-2951, Willbrown@state.pa.us.

The TMDLs can be accessed through the Department's web site ([www.dep.state.pa.us](http://www.dep.state.pa.us)) by clicking on the Water Topics Link, then the TMDL link. Note that attachments and appendices must be requested through paper mail. Persons with a disability may use the Pennsylvania AT&T Relay Service by calling (800) 654-5984 (TDD users) or (800) 654-5988 (voice users) and request that the call be relayed. Any person wishing to attend the meeting should contact Bill Brown at the previous address.

Written and email comments will be accepted at the previous addresses and must be received by November 24, 2008. Comments will not be accepted by facsimile or voice mail. The Department will consider all comments in developing the final TMDL, which will be submitted to EPA for approval.

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

The EPA waiver is not in effect.

**Application No. PA 0248410**, CAFO, **Meadow Valley Dairy, Inc.**, 900 Galen Hall Road, Reinholds, PA 17569.

Meadow Valley Dairy, Inc. has submitted an NPDES permit renewal application for the Meadow Valley Dairy, an existing dairy operation in West Cocalico Township, **Lancaster County**. The CAFO is situated near a UNT of Little Cocalico Creek, which is classified as a TSE. The CAFO has a target animal population of approximately 1,495 animal equivalent units consisting of 1,150 mature cows. There are two liquid manure storage facilities on the farm, an underbarn concrete storage structure and a circular concrete storage structure. A release or discharge to waters of this Commonwealth under normal operating conditions is not expected. Normal operating conditions are defined as conditions below a 25-year, 24-hour storm event.

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

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

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

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

**PA0026239**, Sewage, SIC 4952, **University Area Joint Authority**, 1576 Spring Valley Road, State College, PA 16801. This existing facility is located in Benner and College Townships, **Centre County**.

Description of Proposed Activity: Issuance of a major NPDES permit for the wastewater treatment facility including tertiary treatment, consisting of primary clarification, aeration, secondary settling with phosphorus removal, filtration, BNR and UV disinfection, along with a beneficial reuse system.

The receiving stream, Spring Creek, is in the State Water Plan Watershed 9C and is classified for: HQ-CWF. The nearest downstream public water supply intake for Pennsylvania-American Water Company is located at Milton, PA on the West Branch Susquehanna River, approximately 87.0 river miles below the point of discharge.

The proposed effluent limits for Outfall 001, based on a design flow of 9.0 mgd and a discharge flow of 6.0 mgd, are as follows:

Parameter	Concentration (mg/l)			Mass (lbs)		
	Monthly Average	Weekly Average	Daily Maximum	Instantaneous Maximum	Monthly Load	Annual Load
Flow	Not greater than 6.0 mgd as an Annual Average					
CBOD <sub>5</sub>	10.0	15.0		20.0		
Total Suspended Solids	10.0	15.0		20.0		
Total Dissolved Phosphorus	0.13			0.26		
Dissolved Oxygen	Minimum of 5.0 mg/l at all times					
Transmissivity	Report					
Total Chlorine Residual	Provide Effective Dechlorination					
Fecal Coliforms						
(5-1 to 9-30)	200 col/100 ml as a Geometric Mean					
(10-1 to 4-30)	2,000 col/100 ml as a Geometric Mean					
pH	Within the range of 6.0 to 9.0					
NH <sub>3</sub> -N						
(1-1 to 1-31)	4.5	6.7		9.0		
(2-1 to 2-29)	5.0	7.5		10.0		
(3-1 to 3-31)	5.5	8.2		11.0		
(4-1 to 4-30)	4.0	6.0		8.0		
(5-1 to 5-31)	3.0	4.5		6.0		
(6-1 to 6-30)	2.5	3.7		5.0		
(7-1 to 11-30)	1.0	1.5		2.0		
(12-1 to 12-31)	4.0	6.0		8.0		
Thallium	Report					
Total Copper	Report					
Free Cyanide	Report					
Total Cyanide	Report					
Total Mercury	Report					
Total Selenium	Report					
Effluent Temperature	Report					
Total Dissolved Solids	Report					

*Chesapeake Bay Tributary Strategy Nutrient Requirements*

Parameter	Concentration (mg/l)		Mass (lbs)	
	Monthly Average	Monthly Load	Monthly Load	Annual Load
Ammonia-N	Report	Report		Report**
Kjeldahl-N	Report	Report		
Nitrate-Nitrate as N	Report	Report		
Total Nitrogen	Report	Report		Report
Total Phosphorus	Report	Report		Report
Net Total Nitrogen		Report		164,381*
Net Total Phosphorus		Report		21,918*

\* This permit contains conditions which authorize the permittee to apply nutrient reduction credits to meet the Net Total Nitrogen and the Net Total Phosphorus effluent mass limits, under the Department of Environmental Protection's (Department) Trading of Nutrients and Sediment Reduction Credits Policy and Guidelines (Document No. 392-0900-001, December 30, 2006). The condition includes the requirement to report the application of these credits in Supplemental Discharge Monitoring Reports (DMRs) submitted to the Department.

\* The compliance date for Net Total Nitrogen and Net Total Phosphorus will begin on October 1, 2010. Since these reporting requirements are annual loads, the reporting on compliance with the annual limitations will be required to be reported on the Supplemental DMR—Annual Nutrient Summary by November 28, 2011. This facility is required to monitor and report for Net Total Nitrogen and Net Total Phosphorus from the effective date of the permit until September 30, 2010.

\*\* Total Annual Ammonia Load will be required to be reported on the Supplemental DMR—Annual Nutrient Summary by November 28, 2011.

*Outfall SW-01, SW-02, SW-03, SW-04 and SW-05—Stormwater—Best Management Practices*

In addition to the effluent limits and best management practices, the permit contains the following major permit conditions:

1. Chesapeake Bay Nutrient Requirements.
2. Operation and Implementation of a Pretreatment Program.
3. Minimum Discharge Requirements.
4. Thermal Discharge Requirements.
5. Total Dissolved Solids Requirements.
6. Requirements Applicable to Stormwater Outfalls.

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

**PA0098779**, Industrial Waste, SIC 4941, **Portage Borough Municipal Authority**, 606 Cambria Street, Portage, PA 15946. This application is for renewal of an NPDES permit to discharge treated process water from a water treatment plant in Portage Township, **Cambria County**.

The following effluent limitations are proposed for discharge to the receiving waters, Trout Run, classified as a CWF with existing and/or potential uses for aquatic life, water supply and recreation. The first existing/proposed downstream potable water supply is the Saltsburg Municipal Authority, located at Saltsburg, 90 miles below the discharge point.

*Outfall 001: existing discharge, design flow of 0.0243 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	Monitor and Report				
TSS			30		60
Aluminum			2.5		5.0
Iron			2.0		4.0
Manganese			1.0		2.0
TRC			0.5		1.0
pH	not less than 6.0 nor greater than 9.0				

The EPA waiver is in effect.

**PA0098787**, Industrial Waste, SIC 4941, **Portage Borough Municipal Authority**, 606 Cambria Street, Portage, PA 15946. This application is for renewal of an NPDES permit to discharge treated process water from the Bens Creek Water Plant in Portage Township, **Cambria County**.

The following effluent limitations are proposed for discharge to the receiving waters, Bens Creek, classified as an EV stream with existing and/or potential uses for aquatic life, water supply and recreation. The first existing/proposed downstream potable water supply is the Saltsburg Municipal Authority, located at Saltsburg, 96 miles below the discharge point.

*Outfall 001: existing discharge, design flow of 0.0121 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	Monitor and Report				
TSS			30		60
Aluminum			4.0		8.0
Iron			2.0		4.0
Manganese			1.0		2.0
TRC			0.5		1.0
pH	not less than 6.0 nor greater than 9.0				

The EPA waiver is in effect.

**PA0097268**, Sewage, **HP/Markleysburg, d/b/a Henry Clay Villa**, 5253 National Pike Road, Markleysburg, PA 15459. This application is for renewal of an NPDES permit to discharge treated sewage from Henry Clay Villa STP in Henry Clay Township, **Fayette County**.

The following effluent limitations are proposed for discharge to the receiving waters, known as UNT of Hall Run, which are classified as a WWF with existing and/or potential uses for aquatic life, water supply and recreation. The first downstream potable water supply intake from this facility is the Ohiopyle Municipal Water Works.



*Outfall 001:* existing discharge, design flow of 0.00925 mgd.

<i>Parameter</i>	<i>Concentration (mg/l)</i>			
	<i>Average Monthly</i>	<i>Average Weekly</i>	<i>Maximum Daily</i>	<i>Instantaneous Maximum</i>
CBOD <sub>5</sub>	10			20
Suspended Solids	30			60
Ammonia Nitrogen				
(5-1 to 10-31)	2.5			5.0
(11-1 to 4-30)	7.5			15.0
Fecal Coliform				
(5-1 to 9-30)	200/100 ml as a Geometric Mean			
(10-1 to 4-30)	2,000/100 ml as a Geometric Mean			
Total Residual Chlorine	0.2			0.5
Dissolved Oxygen	not less than 5.0 mg/l			
pH	not less than 6.0 nor greater than 9.0			

The EPA waiver is in effect.

**PA0203688**, Sewage, **West Pike Run Township Municipal Authority**, P. O. Box 222, Daisytown, PA 15427. This application is for renewal of an NPDES permit to discharge treated sewage from West Pike Run Township Municipal Authority STP in West Pike Run Township, **Washington County**.

The following effluent limitations are proposed for discharge to the receiving waters, known as Pike Run, which are classified as a TSF with existing and/or potential uses for aquatic life, water supply and recreation. The first downstream potable water supply intake from this facility is the Newell Municipal Water Authority.

*Outfall 001:* existing discharge, design flow of 0.063 mgd.

<i>Parameter</i>	<i>Concentration (mg/l)</i>			
	<i>Average Monthly</i>	<i>Average Weekly</i>	<i>Maximum Daily</i>	<i>Instantaneous Maximum</i>
CBOD <sub>5</sub>	25			50
Suspended Solids	30			60
Ammonia Nitrogen				
(5-1 to 10-31)	23.0			46.0
Fecal Coliform				
(5-1 to 9-30)	200/100 ml as a Geometric Mean			
(10-1 to 4-30)	2,000/100 ml as a Geometric Mean			
Total Residual Chlorine	1.4			3.3
pH	not less than 6.0 nor greater than 9.0			

The EPA waiver is in effect.

**PA0252603**, Sewage, **Cecil Township Municipal Authority**, 3599 Millers Run Road, Suite 104, Cecil, PA 15321. This application is for renewal of an NPDES permit to discharge treated sewage from Millers Run Wastewater Treatment Plant in Cecil Township, **Washington County**.

The following effluent limitations are proposed for discharge to the receiving waters, known as UNT of Millers Run, which are classified as a WWF with existing and/or potential uses for aquatic life, water supply and recreation. The first downstream potable water supply intake from this facility is the West View Borough Municipal Water Authority located on the Ohio River.

*Outfall 001:* existing discharge, design flow of 0.52 mgd.

<i>Parameter</i>	<i>Concentration (mg/l)</i>			
	<i>Average Monthly</i>	<i>Average Weekly</i>	<i>Maximum Daily</i>	<i>Instantaneous Maximum</i>
CBOD <sub>5</sub>				
(5-1 to 10-31)	20	30		40
(11-1 to 4-30)	25	37.5		50
Suspended Solids	30	45		60
Ammonia Nitrogen				
(5-1 to 10-31)	2.0	3.0		4.0
(11-1 to 4-30)	4.5	6.8		9.0
Fecal Coliform				
(5-1 to 9-30)	200/100 ml as a Geometric Mean			
(10-1 to 4-30)	2,000/100 ml as a Geometric Mean			
Dissolved Oxygen	not less than 5.0 mg/l			
pH	not less than 6.0 nor greater than 9.0			

The EPA waiver is in effect.

**PA0095087**, Sewage, **Chippewa Township Sanitary Authority**, 2811 Darlington Road, Beaver Falls, PA 15010. This application is for renewal of an NPDES permit to discharge treated sewage from Chippewa Township Sanitary Authority STP in Chippewa Township, **Beaver County**.

The following effluent limitations are proposed for discharge to the receiving waters, known as Brady's Run, which are classified as a WWF with existing and/or potential uses for aquatic life, water supply and recreation. The first downstream potable water supply intake from this facility is the Midland Borough Water Authority.

*Outfall 001*: existing discharge, design flow of 2.13 mgd.

Parameter	Concentration (mg/l)			
	Average Monthly	Average Weekly	Maximum Daily	Instantaneous Maximum
CBOD <sub>5</sub>	25	37.5		50
Suspended Solids	30	45		60
Fecal Coliform				
(5-1 to 9-30)	200/100 ml as a Geometric Mean			
(10-1 to 4-30)	2,000/100 ml as a Geometric Mean			
Total Residual Chlorine	0.5		1.6	
pH	not less than 6.0 nor greater than 9.0			

The EPA waiver is not in effect.

**PA0090832**, Sewage, **West Pike Run Township**, P. O. Box 222, Daisytown, PA 15427. This application is for renewal of an NPDES permit to discharge treated sewage from Abraham Plan of Lots Sewage Treatment Plant in West Pike Run Township, **Washington County**.

The following effluent limitations are proposed for discharge to the receiving waters, known as UNT of Pike Run, which are classified as a TSF with existing and/or potential uses for aquatic life, water supply and recreation. The first downstream potable water supply intake from this facility is the California Water Authority.

*Outfall 001*: existing discharge, design flow of 0.0035 mgd.

Parameter	Concentration (mg/l)			
	Average Monthly	Average Weekly	Maximum Daily	Instantaneous Maximum
CBOD <sub>5</sub>	25			50
Suspended Solids	30			60
Ammonia Nitrogen				
(5-1 to 10-31)	11.5			23.0
Fecal Coliform				
(5-1 to 9-30)	200/100 ml as a Geometric Mean			
(10-1 to 4-30)	2,000/100 ml as a Geometric Mean			
Total Residual Chlorine	1.3			3.0
pH	not less than 6.0 nor greater than 9.0			

The EPA waiver is in effect.

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

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

**WQM Permit No. 1508201**, Industrial, **Aqua Pennsylvania, Inc.**, 762 West Lancaster Avenue, Bryn Mawr, PA 19010. This proposed facility is located in Schuylkill Township, **Chester County**.

Description of Action/Activity: Reactivation of a terminated outfall structure.

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

**WQM Permit No. 1908201**, IW, SIC 2047, **Del Monte Corporation**, 6670 Lowe Street, Bloomsburg, PA, 17815-8613 This proposed facility is located in South Centre Township, **Columbia County**.

Description of Proposed Action/Activity: The applicant proposes to renovate their existing aerated lagoon by relining and reconfiguring.

**WQM Permit No. 01490801**, Sewage 4952, **Dennis R. Wineholt**, 851 Seitz Drive, Lewisberry, PA 17339. This proposed facility is located in Point Township, **Northumberland County**.

Description of Proposed Action/Activity: The applicant proposes to construct and operate a single-residence sewage plant. The sewage plant will be a septic tank, buried sand filter and chlorination.

*Southwest Region: Water Management Program Manager, 400 Waterfront Drive, Pittsburgh, PA 15222-4745.*

**WQM Permit No. 3091402-A2**, Sewerage, **Greensboro Monongahela Township Joint Sewage Authority**, P. O. Box 342, Greensboro, PA 15338. This existing facility is located in Monongahela Township, **Greene County**.

Description of Proposed Action/Activity: Permit amendment application for sewage treatment plant expansion.

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

**WQM Permit No. 6108403**, Sewerage, **Cranberry Venango County General Authority**, P. O. Box 378, Seneca, PA 16346-0378. This proposed facility is located in Cranberry Township, **Venango County**.

Description of Proposed Action/Activity: This new permit for an upgrade of the Hays Hollow Interceptor Sewer from a 10 inch diameter high-flow interceptor line to a 15 inch diameter high-flow interceptor line which is connected to the Oil City Sewage Treatment Plant.

**WQM Permit No. 4375201**, Industrial Waste, **Amendment No. 1, Bessemer and Lake Erie Railroad**, 85 Ohl Street, Greenville, PA 16125-2350. This proposed facility is located in Greenville Borough, **Mercer County**.

Description of Proposed Action/Activity: This amendment is for improvements to an existing system including pretreatment of stormwater associated with industrial activities, reducing stormwater flow to the wastewater treatment system, upgrading lift station capacity and improving site drainage.

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

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

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#### **VI. NPDES Individual Permit Applications for Discharges of Stormwater Associated with Construction Activities**

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

##### *NPDES*

<i>Permit No.</i>	<i>Applicant Name &amp; Address</i>	<i>County</i>	<i>Municipality</i>	<i>Receiving Water/Use</i>
PAS10-G267-R2	The Hankin Group 707 Eagleview Boulevard Exton, PA 19341	Chester	Upper Uwchlan Township	Brandywine Creek HQ-TSF-MF
PAI01 1508075	Warwick-Yoder, LP 1345 Hares Hill Road Phoenixville, PA 19460	Chester	Warwick Township	South Branch French Creek EV
PAI01 1508076	T. R. Moser, Inc. 1171 Lancaster Avenue Berwyn, PA 19312	Chester	Uwchlan Township	Shamona Creek HQ-TSF-MF
PAI01 2308009	Leslie Lynch 773 Sugartown Road Malvern, PA 19355	Delaware	Newtown Township	Crum Creek HQ-CWF
PAI01 5108005	Northern Liberties Development, LP 969 North 2nd Street Philadelphia, PA 19123	Philadelphia	City of Philadelphia	Delaware River

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

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

##### *NPDES*

<i>Permit No.</i>	<i>Applicant Name &amp; Address</i>	<i>County</i>	<i>Municipality</i>	<i>Receiving Water/Use</i>
PAI024508015	Arcadia North Assoc. No. 2, LLC 100 Gateway Drive Suite 310 Bethlehem, PA 18017	Monroe	Coolbaugh Township	Clear Run HQ-CWF

*Lehigh County Conservation District: Lehigh Agriculture Center, Suite 102, 4184 Dorney Park Road, Allentown, PA 18104, (610) 391-9583.*

##### *NPDES*

<i>Permit No.</i>	<i>Applicant Name &amp; Address</i>	<i>County</i>	<i>Municipality</i>	<i>Receiving Water/Use</i>
PAI023907001(1)	Muhlenberg College Attn: David Rabold 2400 Chew Street Allentown, PA 18104	Lehigh	City of Allentown	Cedar Creek HQ-CWF

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

## NPDES

Permit No.	Applicant Name & Address	County	Municipality	Receiving Water/Use
PAI030608022	LaFerrovia, LLC 35 Robin Lea Lane Fleetwood, PA 19522	Berks	Ruscombmanor Township	UNT to Laurel Run CWF

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

*Clinton County Conservation District: 45 Cooperation Lane, Mill Hall, PA 17751, (570) 726-3798.*

## NPDES

Permit No.	Applicant Name & Address	County	Municipality	Receiving Water/Use
PAI041808004	Department of General Services 18th and Herr Streets Harrisburg, PA 17125	Clinton	Lamar Township	UNT to Fishing Creek HQ-CWF

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

## NPDES

Permit No.	Applicant Name & Address	County	Municipality	Receiving Water/Use
PAI044108001	Robert J. Charlebois Laurel Hill Wind Energy, LLC 71 Allen Street Suite 101 Rutland, VT 05701-4570	Lycoming	Jackson and McIntyre Townships	Blockhouse Creek CWF Little Pine Creek CWF Roaring Branch Run HQ-CWF Grays Run HQ-CWF Long Run HQ-CWF Frozen Run HQ-CWF Red Run CWF Lycoming Creek CWF

*Southwest Region: Watershed Management Program Manager, 400 Waterfront Drive, Pittsburgh, PA 15222-4745.*

*Washington County Conservation District, 602 Courthouse Square, Washington, PA 15301, (724) 228-6774.*

## NPDES

Permit No.	Applicant Name & Address	County	Municipality	Receiving Water/Use
PAI056308004	North Strabane Township 1929 Route 519 South Canonsburg, PA 15317	Washington	North Strabane Township	UNT to Chartiers Creek HQ-WWF

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


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

### STATE CONSERVATION COMMISSION

#### NUTRIENT MANAGEMENT PLANS RELATED TO APPLICATIONS FOR NATIONAL POLLUTION DISCHARGE ELIMINATION SYSTEM (NPDES) PERMITS FOR CONCENTRATED ANIMAL FEEDING OPERATIONS (CAFO)

This notice provides information about agricultural operations that have submitted nutrient management plans (NMPs) for approval under the act of July 6, 2005 (Act 38 of 2005, 3 Pa.C.S. §§ 501—522) (hereinafter referred to as Act 38), and that have or anticipate submitting applications for new, amended or renewed NPDES permits, or Notices of Intent (NOIs) for coverage under a general permit, for CAFOs, under 25 Pa. Code Chapter 92. This notice is provided in accordance with 25 Pa. Code Chapter 92 and 40 CFR Part 122, implementing The Clean Streams Law (35 P. S. §§ 691.1—691.1001) and the Federal Clean Water Act.

Based upon preliminary reviews, the State Conservation Commission (SCC), or County Conservation Districts (CCD) working under a delegation agreement with the SCC, have completed an administrative review of NMPs described. These NMPs are published as proposed plans for comment prior to taking final actions. The NMPs are available for review at the CCD office for the county where the agricultural operation is located. A list of CCD office locations is available at [www.pacd.org/districts/directory.htm](http://www.pacd.org/districts/directory.htm) or can be obtained from the SCC at the office address listed or by calling (717) 787-8821.

Persons wishing to comment on an NMP are invited to submit a statement outlining their comments on the plan to the CCD, with a copy to the SCC for each NMP, within 30 days from the date of this public notice. Comments received within the respective comment periods will be considered in the final determinations regarding the NMPs. Comments should include the name, address and telephone number of the writer and a concise statement to inform the SCC of the exact basis of the comments and the relevant facts upon which they are based.

The address for the SCC is Agriculture Building, Room 407, 2301 North Cameron Street, Harrisburg, PA 17110.

Persons with a disability who require an auxiliary aid, service, including TDD users or other accommodations to seek additional information should contact the SCC through the Pennsylvania AT&T Relay Services at (800) 654-5984.

**NUTRIENT MANAGEMENT PLAN—PUBLIC NOTICE SPREADSHEET—APPLICATIONS**

<i>Agricultural Operation Name and Address</i>	<i>County</i>	<i>Total Acres</i>	<i>Animal Equivalent Units</i>	<i>Animal Type</i>	<i>Special Protection Waters (HQ or EV or NA)</i>	<i>Renewal/ New</i>
Wide Awake Farm 488 Jay Road Clearville, PA 15535	Bedford	105.3	704.3	Swine	UNT to Sidling Hill CreekEV	Renewal
Deer Stone Ag, Inc. Drew Derstein Farm 10049 Ferguson Valley Road Lewistown, PA 17044	Mifflin	22.8	716.5	Swine	WQ	Renewal
Rottmund Family Farms, LLC Jared Rottmund 1030 Girl Scout Road Stevens, PA 17578	Lancaster	344.2	606.04	Hogs, Steers	NA	Renewal
Timber Ridge Farms 9699 Timber Ridge Road Big Cove Tannery, PA 17212	Fulton	66.0	1,180	Swine	N/A—WWF	Renewal
Hillside Poultry Farm, Inc. 1849 Letterkenny Road Chambersburg, PA 17202	Franklin	455	1,210	Poultry	NA	New
New Hope Farm 23177 Back Road Concord, PA 17217 CVFF 6360 Flank Drive Suite 100 Harrisburg, PA 17112	Franklin	130	1,319.9	Swine	NA	Renewal

**PUBLIC WATER SUPPLY (PWS) PERMIT**

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

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

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

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

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

**SAFE DRINKING WATER**

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

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

**Application No. 0908513**, Public Water Supply.

Applicant	<b>Warminster Municipal Authority</b>
Township	Warminster
County	<b>Bucks</b>

Responsible Official Timothy D. Hagey  
415 Gibson Avenue  
Warminster, PA 18974

Type of Facility PWS

Consulting Engineer CKS Engineers, Inc.  
88 South Main Street  
Doylestown, PA 18901

Application Received Date October 17, 2008

Description of Action Install an air stripper tower for the removal of VOC's.

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

**Permit No. 3608523**, Public Water Supply.

Applicant **West Earl Water Authority**

Municipality West Earl Township

County **Lancaster**

Responsible Official Russell Ressler  
Chairperson  
157 West Metzler Road  
Brownstown, PA 17508

Type of Facility Public Water Supply

Consulting Engineer Matthew D. Warfel  
The ARRO Group, Inc.  
270 Granite Run Drive  
Lancaster, PA 17601-6804

Application Received November 18, 2008

Description of Action Replacement and capacity increase of booster pumps at the Oregon Pike Booster Pump Station.

**Permit No. 3608524**, Public Water Supply.

Applicant **City of Lancaster**

Municipality Manheim Township

County **Lancaster**

Responsible Official Charlotte Katzenmoyer  
Public Works Director  
120 North Duke Street  
Lancaster, PA 17608-1559

Type of Facility Public Water Supply

Consulting Engineer Matthew D. Warfel  
The ARRO Group, Inc.  
270 Granite Run Drive  
Lancaster, PA 17601-6804

Application Received November 18, 2008

Description of Action Installation of a new chlorine booster station at Hess Boulevard.

**Permit No. 3108506**, Public Water Supply.

Applicant **Broad Top City Water Authority**

Municipality Wood Township

County **Huntingdon**

Responsible Official Kayedon O'Neal  
Chairperson  
P. O. Box 125  
Broad Top City, PA 16621-0125

Type of Facility Public Water Supply

Consulting Engineer Mark V. Glenn, P. E.  
Gwin, Dobson & Foreman, Inc.  
3121 Fairway Drive  
Altoona, PA 16602-4475

Application Received November 5, 2008

Description of Action Installation of the Trough Creek Well Field with disinfection.

**Permit No. 5008505**, Public Water Supply.

Applicant **Airy View Heights, Inc.**

Municipality Centre Township

County **Perry**

Responsible Official W. R. Unger, President  
P. O. Box 248  
Carlisle, PA 17013

Type of Facility Public Water Supply

Consulting Engineer Max E. Stoner, P. E.  
Glance Associates, Inc.  
3705 Trindle Road  
Camp Hill, PA 17011

Application Received November 5, 2008

Description of Action A new community water system.

**Permit No. 2908502**, Public Water Supply.

Applicant **Forbes Road School District**

Municipality Taylor Township

County **Fulton**

Responsible Official Merrill S. Arnold, M. D.  
Superintendent  
159 Redbird Drive  
Waterfall, PA 16689

Type of Facility Public Water Supply

Consulting Engineer Aaron P. Keirn, P. E.  
The EADS Group, Inc.  
1126 8th Avenue  
Altoona, PA 16602

Application Received November 10, 2008

Description of Action Installation of treatment for arsenic removal for the existing well source at the high school.

**MINOR AMENDMENT**

*Southwest Region: Water Supply Management Program Manager, 400 Waterfront Drive, Pittsburgh, PA 15222-4745.*

**Application No. 0208518MA**, Minor Amendment.

Applicant **Pennsylvania American Water Company**  
800 West Hersheypark Drive  
P. O. Box 888  
Hershey, PA 17033

Township or Borough Union Township

Responsible Official	Pennsylvania American Water Company 800 West Hersheypark Drive P. O. Box 888 Hershey, PA 17033
Type of Facility	Water storage tank
Consulting Engineer	
Application Received Date	December 3, 2008
Description of Action	Blasting and painting of the interior and exterior of the 100,000 gallon standpipe known as the Finleyville Tank No. 1.

#### WATER ALLOCATIONS

#### Applications received under the Act of June 24, 1939 (P. L. 842, No. 365) (35 P. S. §§ 631—641) relating to the Acquisition of Rights to Divert Waters of the Commonwealth

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

**E67-860: Catholic Diocese of Harrisburg,** Manchester Township, **York County,** United States Army Corps of Engineers, Baltimore District.

To install and maintain: 1) a 10.0-inch sanitary sewer line crossing in a UNT to Little Conewago Creek (TSF) and associate PEM/PFO wetlands; and 2) a 10.0-inch sanitary sewer line crossing in a UNT to Little Conewago Creek for the purpose of constructing a 65-unit residential subdivision. The project will temporarily impact 0.04 acre of PEM/PFO wetlands and approximately 36.0 linear feet of stream channel. The project is located between the existing Holy Savior Cemetery and the south side of Raintree Road (Dover, PA Quadrangle N: 6.2 inches; W: 0.75 inch, Latitude: 40° 1' 57.9" N; Longitude: 76° 45' 21.1" W) in Manchester Township, York County.

#### RESIDUAL WASTE GENERAL PERMITS

#### 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 Residual Waste Regulations for a General Permit to Operate Residual Waste Processing Facilities and the Beneficial Use of Residual Waste other than Coal Ash.

*Central Office: Division of Municipal and Residual Waste, Rachel Carson State Office Building, 14th Floor, 400 Market Street, Harrisburg, PA 17105-8472.*

**General Permit Application Number WMGR046. Hyponex Corporation,** 311 Reedville Road, Oxford, PA 19363-2505. General Permit Number WMGR046 authorizes the processing and beneficial use of the following wastes: drinking water treatment sludges, yard waste, bark ash, coal ash, agricultural residues, waste cardboard and paper, sludge generated by paper or pulp mills (SIC Code 2621 and 2611), waste from vegetable food processing, unused sands and spent mushroom substrate. The processing is limited to separation, size reduction (grinding), mixing, windrow composting, static composting and screening prior to beneficial use as manufactured soil or soil amendments. The application was determined to be administratively complete by Central Office on December 8, 2008.

The applicant has requested a major modification to General Permit Number WMGR046. This requested modification would allow acceptance of dredged material exceeding the Department of Environmental Protection's (Department) clean fill standards in the Management of Fill Policy ((258-2182-773, April 24, 2004) to be used in the manufactured soil and soil amendments.

Comments concerning the application or proposed amendment should be directed to Ronald C. Hassinger, Chief, General Permits/Beneficial Use Section, Division of Municipal and Residual Waste, Bureau of Waste Management, P. O. Box 8472, Harrisburg, PA 17105-8472, (717) 787-7381. TDD users may contact the Department through the Pennsylvania AT&T Relay Service (800) 654-5984. Public comments must be submitted within 60 days of this notice and may recommend revisions to, and approval or denial of the application.

#### DETERMINATION OF APPLICABILITY FOR RESIDUAL WASTE GENERAL PERMITS

#### Application for Determination of Applicability Received under the Solid Waste Management Act (35 P. S. §§ 6018.101—6018.1003); the Municipal Waste Planning, Recycling and Waste Reduction Act (53 P. S. §§ 4000.101—4000.1904); and Residual Waste Regulations for a General Permit to Operate Residual Waste Processing Facilities and/or the Beneficial Use of Residual Waste Other Than Coal Ash

*Southeast Region: Regional Solid Waste Manager, 2 East Main Street, Norristown, PA 19401.*

**General Permit Application No. WMGR028 SE001B. Allan A. Myers, LP, d/b/a Independence Construction Material,** 638 Lancaster Avenue, Malvern, PA 19355. This application is for a determination of applicability under the conditions of the existing General Permit WMGR028 for the beneficial use of baghouse fines generated from the Coatesville Asphalt Plant as an aggregate in roadway construction, an ingredient or component in cement or asphalt products, a soil additive or a soil conditioner. The Coatesville Asphalt Plant is a hot-mix asphalt batch plant located at 410 Doe Run Road, Coatesville, PA 19320-4294, East Fallowfield Township, **Chester County.** The application for determination of applicability was accepted by the Southeast Regional Office on December 8, 2008.

#### 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 Services 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.**

*Northwest Region: Air Quality Program, 230 Chestnut Street, Meadville, PA 16335-3481, George Monasky, New Source Review Chief, (814) 332-6940.*

**20-301A: Universal Well Services, Inc.** (13549 South Mosiertown Road, Meadville, PA 16335) to install a spray paint booth at their Meadville Fabrication Shop in the City of Meadville, **Crawford County**.

**24-012I: C/G Electrodes LLC—St. Mary's Plant** (800 Theresia Street, St. Mary's, PA 15857-1898) for replacement of an existing baghouse in the Bake Department during sagger can loading, sagger can cleaning and screening systems for baking of electrodes in St. Mary's City, **Elk County**. This is a Title V facility.

**Intent to Issue Plan Approvals and Intent to Issue or Amend Operating Permits under the Air Pollution Control Act (35 P. S. §§ 4001–4015) and 25 Pa. Code Chapter 127, Subchapter B. These actions may include the administrative amendments of an associated operating permit.**

*Southeast Region: Air Quality Program, 2 East Main Street, Norristown, PA 19401, Sachin Shankar, New Source Review Chief, (484) 250-5920.*

**09-0084A: Grand View Hospital** (700 Lawn Avenue, Sellersville, PA 18960) for replacement of the current

burners in three boilers with “low NOx” burners, which will result in a decrease in the amount of NOx emissions from their medical facility in West Rockhill Township, **Bucks County**. As a result of potential emissions of NOx, the facility is a State-only facility. The Plan Approval and Operating Permit will contain recordkeeping requirements and operating restrictions designed to keep the facility operating within all applicable air quality requirements.

*Southcentral Region: Air Quality Program, 909 Elmerton Avenue, Harrisburg, PA 17110, William R. Weaver, New Source Review Chief, (717) 705-4702.*

**67-03154A: Service Tire Truck Center, Inc.** (2800 Concord Road, York, PA 17402) for installation of a truck retreading process in Springettsbury Township, **York County**. The plan approval will include monitoring, recordkeeping, reporting and work practice standards designed to keep the facility operating within all applicable air quality 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, Janine Tulloch-Reid, Facilities Permitting Chief, (484) 250-5920.*

**46-00079: Naval Air Station-Joint Reserve Base—Willow Grove** (Intersection of Route 611 and Township Line Roads) for renewal of the Title V Operating Permit No. 46-00079 in Horsham Township, **Montgomery County**. The original Title V operating permit was issued on December 27, 2001. The facility's major emission points include: Boilers, emergency generators, paint booths and engine test cells. The renewed Title V operating permit will contain sufficient monitoring, recordkeeping, reporting and work practice standards to keep the facility operating within all applicable air quality requirements. No sources at this facility are subject to CAM (40 CFR Part 64).

**46-00031: SmithKline Beecham Research Co.** (1250 South Collegeville Road, Collegeville, PA) for renewal of the Title V Operating Permit in Upper Providence, **Montgomery County**. The initial permit was issued on December 28, 2001. As a result of potential emissions of VOCs, the facility is a major stationary source as defined in Title I, Part D of the Clean Air Act Amendments, and is therefore subject to the Title V permitting requirements adopted in 25 Pa. Code Chapter 127, Subchapter G. The Department has determined that the facility is subjected to CAM only for the VOCs and the applicable requirements have been added to the permit. Otherwise, the proposed Title V Operating Renewal does not adopt any new regulations and does not reflect any change in air emissions from the facility. The renewal contains all applicable requirements including monitoring, recordkeeping and reporting.

*Southcentral Region: Air Quality Program, 909 Elmerton Avenue, Harrisburg, PA 17110, William R. Weaver, New Source Review Chief, (717) 705-4702.*

**06-05024: Reliant Energy Mid-Atlantic Power Holdings, LLC** (121 Champion Way, Canonsburg, PA 15317) for a de minimis emission increase of 0.08 ton of P/PM10 per year resulting from the construction of a Flyash Lime Addition System controlled by various bin



vent collectors on or about April 30, 2009, at the Titus Generating Station in Cumru Township, **Berks County**.

**06-05064: Sunoco Partners Marketing and Terminals, LP** (515 Fritztown Road, Sinking Spring, PA 19608) for their bulk liquid petroleum fuel storage and loading operation at their Montello Terminal in Spring Township, **Berks County**. This is a renewal of a Title V operating permit issued in 2003.

*Southwest Region: Air Quality Program, 400 Waterfront Drive, Pittsburgh, PA 15222-4745, Barbara Hatch, Facilities Permitting Chief, (412) 442-4174.*

**65-00181: Chestnut Ridge Foam, Inc.** (P. O. Box 781, Latrobe, PA 15650-0781) for operation of a foam manufacturing facility at their Latrobe Plant in Derry Township, **Westmoreland County**. This is a renewal of the Title V operating permit issued in 2004.

**65-00634: Dominion Transmission, Inc.** (445 West Main Street, Clarksburg, WV 26301-2886) for operation of a natural gas compressor station at their J. B. Tonkin Compressor Station in Murrysville Borough, **Westmoreland County**. This is a renewal of the Title V operating permit issued in 2004.

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**Intent to Issue Operating Permits under the Air Pollution Control Act (35 P. S. §§ 4001—4015) and 25 Pa. Code Chapter 127, Subchapter F.**

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*Southeast Region: Air Quality Program, 2 East Main Street, Norristown, PA 19428, Janine Tulloch-Reid, Facilities Permitting Chief, (484) 250-5920.*

**09-00107: Oldcastle Retail, Inc., d/b/a Bonsal American** (1214 Hayes Boulevard, Bristol, PA 19007) for a renewal of State-only (Natural Minor) Operating Permit No. 09-00107, which was originally issued on July 1, 2002 in **Bucks County**. The State-only Operating Permit (SOOP) is for the operation of a fluidized bed dryer, two concrete mix production/packaging lines, and a sand packaging line (part of Source ID 101 in the original SOOP), as well as numerous bin vents and dust collectors to control PM emissions from each of these sources. The requirements of Plan Approval No. 09-0107 will be incorporated into the renewed SOOP. The renewed SOOP will include monitoring, recordkeeping, reporting and work practice requirements designed to keep the facility operating within all applicable air quality requirements.

**46-00050: Rohm & Haas Chemicals, LLC** (727 Norristown Road, Spring House, PA 19477-1015), for renewal of a Synthetic Minor Operating Permit in Lower Gwynedd Township, **Montgomery County**. The facility has the potential to exceed major thresholds for NOx emissions but will maintain a synthetic minor status by limiting NOx emissions to below 24.99 tpy. The facility's primary sources are industrial boilers. The permit will include monitoring, recordkeeping and reporting requirements designed to address all applicable air quality requirements.

**46-00052: Pottstown Memorial Medical Center** (1600 East High Street, Pottstown, PA 19464) for operation of three boilers and five emergency generators in Pottstown, **Montgomery County**. This action is a renewal of the original State-only Operating Permit (Synthetic Minor), which was issued on October 14, 2003. Several typographical changes have been made to the permit. An emergency generator was added to the facility. The facility shall continue to remain a synthetic minor. The permit includes monitoring, recordkeeping and re-

porting requirements designed to keep the facility operating within all applicable air quality requirements.

**46-00171: John Evans' Sons, Inc.** (1 Spring Avenue, Lansdale, PA 19446) for renewal of a Non-Title V Facility, State-only, Natural Minor Permit in Lansdale Borough, **Montgomery County**. John Evans' Sons, Inc. operates a boiler, a parts washer and a number of spring forming machines. The facility has a potential to emit 3 tons of HAPs per year, 2.17 tons of NOx per year and 3.15 tons or VOCs per year. Monitoring, recordkeeping and reporting requirements have been added to the permit to address applicable limitations.

**09-00082: Quakertown Veterinary Clinic, PC** (2250 North Old Bethlehem Pike, Quakertown, PA 18951), for operation of one unit of animal crematorium in Milford Township, **Bucks County**. This action is a renewal of a State-only Operating Permit (Natural Minor), which was originally issued on July 30, 2004. Plan Approval, No. 09-0082 (the replacement of the animal crematorium), has been incorporated in to the permit. The renewal contains monitoring, recordkeeping and reporting requirements designed to keep the facility operating within all applicable air quality requirements.

*Northeast Region: Air Quality Program, 2 Public Square, Wilkes-Barre, PA 18711-0790, Ray Kempa, New Source Review Chief, (570) 826-2507.*

**45-00010: H. G. Smith Wilber Vault Co.** (2120 North 5th Street, Stroudsburg, PA 18360) for operation of a funeral service and crematory facility in Stroudsburg Borough, **Monroe County**. This is a State-only Natural Minor operating permit.

*Southcentral Region: Air Quality Program, 909 Elmerton Avenue, Harrisburg, PA 17110, William R. Weaver, New Source Review Chief, (717) 705-4702.*

**06-03089: Reading Materials, Inc.** (P. O. Box 196, Skippack, PA 19474) for their nonmetallic mineral crushing plant operation at their Pottstown Traprock Quarry in Douglass Township, **Berks County**. This is a renewal of a State-only operating permit issued in 2003.

**22-03040: Advanced Communications** (3000 Canby Street, Harrisburg, PA 17103) for operation of a printing facility in Pennbrook Borough, **Dauphin County**. This is a renewal of the State-only operating permit issued in September 2003.

**22-03045: Homestat Farm, Ltd.** (201 Race Street, Highspire, PA 17034) for their breakfast cereal manufacturing facility in Highspire Borough, **Dauphin County**. This is a renewal of the State-only operating permit issued in July 2003.

**22-03055: Kimmel's Coal & Packaging** (Machamer Avenue, P. O. Box 1, Wiconisco, PA 17097) for operation of a coal preparation facility located in Wiconisco Township, **Dauphin County**. This is a renewal of the State-only operating permit issued in February 2004 and amended in March 2006.

**28-05033: Appalachian Mill Collection** (11427 Church Hill Road, Mercersburg, PA 17236) located in Mercersburg Borough, **Franklin County**. This is a renewal of the State-only operating permit issued in October 2003.

**67-05111: York International Corporation—Johnson Controls** (1499 East Philadelphia Street, York, PA 17403) for their sheet metal fabrication operation at their East York Plant in Spring Garden Township, **York County**. The State-only operating permit will include

monitoring, work practices, recordkeeping and reporting requirements designed to keep the fabrication shop operating within all applicable air quality requirements.

*Northcentral Region: Air Quality Program, 208 West Third Street, Williamsport, PA 17701, David Aldenderfer, Program Manager, (570) 327-3637.*

**18-00024: Excel Homes, LLC** (P. O. Box 420, Avis, PA 17721) for renewal of a State-only Operating Permit for operation of a modular home manufacturing facility in Pine Creek Township, **Clinton County**.

The facility incorporates various work stations/areas in which VOC-emitting materials (paints, adhesives, and the like) are used as well as woodworking operations, 68 natural gas-fired furnaces and space heaters (with a total combined heat input of 10.33 mmBtu/hr), three propane-fired space heaters (with a total combined heat input of .18 mmBtu/hr), two No. 2 fuel oil-fired furnaces (with a total combined heat input of .25 mmBtu/hr), 20 kerosene-fired salamander heaters (with a total combined heat input of 2.2 mmBtu/hr), an 85 horsepower diesel fuel-fired sprinkler system pump and a solvent parts washer.

The PM emissions from the facility's woodworking operations are controlled by two outside-exhausting fabric collectors/cartridge collectors and five inside-exhausting fabric collectors/cartridge collectors and the PM emissions from two paint spray booths are controlled by spray booth filters.

The facility is not expected to emit more than 22.29 tons of VOCs, 12.98 tons of PM/PM10, 9.25 tons of SO<sub>x</sub>, 5.93 tons of NO<sub>x</sub> and 4.22 tons of CO per year.

The facility is not a major (Title V) facility for any air contaminant.

The Department of Environmental Protection (Department) proposes to renew State-only Operating Permit 18-00024. The Department intends to incorporate into the renewal all conditions currently contained in State-only Operating Permit 18-00024 with these additions, changes and exceptions:

1. Condition requiring a monthly inspection of the facility for the presence of excessive visible air contaminants, excessive visible fugitive air contaminants and malodorous air contaminants, and the maintenance of records of these inspections, have been removed from the permit as the facility does not incorporate the types of sources that are likely to produce these emissions.

2. Conditions requiring the permittee to obtain a fuel certification report, or perform a sulfur analysis, for each load of No. 2 fuel oil delivered to the facility, and to maintain records of this information, have been removed from the permit as the only sources that use No. 2 fuel oil in the facility are two extremely small furnaces with a total combined heat input of only .25 mmBtu/hr.

3. A condition limiting the sulfur content of the diesel fuel used in the facility to .5%, by weight, has been removed from the permit as there is no regulatory basis for this limitation.

4. A condition requiring malfunctions to be reported to the Department has been revised to exclude the reporting of malfunctions which do not result in, or potentially result in, air contaminant emissions in excess of an applicable air contaminant emission limitation and/or do not result in, or potentially result in, noncompliance with any operating permit condition.

5. Conditions requiring the maintenance of records of the HAP content, density and VOC (minus water) content

of the VOC-containing materials used at the facility are being removed from the permit as the respective information is not needed to determine compliance with any permit condition.

6. Conditions requiring the maintenance, and semi-annual reporting, of "supporting calculations used to verify compliance" with the applicable facility-wide VOC emission limit have been replaced with conditions requiring the maintenance, and annual reporting, of records of the identity, VOC content and amount of each VOC-containing material used at the facility each month as well as the amount of VOCs emitted from the facility each month.

7. Nebulous conditions requiring the maintenance of records of the VOC-containing materials used in the facility's two paint spray booths, paint area D and adhesive operations "to verify compliance with the VOC content restrictions" specified for the respective sources have been replaced with more specific conditions requiring the maintenance of records of the identity, VOC content and amount of each VOC-containing material used in each of the sources each month, as well as records of the component mix ratio for each batch of paint or adhesive to which an additive is added or which is mixed from multiple components.

8. A condition has been added to the permit requiring the maintenance of records of the identity, VOC content and amount of each VOC-containing material used in the facility's miscellaneous solvent usage operations each month as well as records of what each such VOC-containing material was used for.

9. A condition has been added to the permit requiring the maintenance of records of the identity, VOC content and amount of each VOC-containing material used in the facility's foamseal operations each month.

10. A condition requiring the pressure differential across the fabric collector associated with the facility's outside mill woodworking operations to be reported at least once per month has been removed from the permit as this is too infrequent to be of any value and the source isn't large enough to warrant the burden of more frequent reporting.

11. Conditions have been added to the permit requiring the maintenance of records of the amount of solvent added to the facility's parts washer each month and prohibiting the use, in the parts washer, of any solvent containing methylene chloride, perchloroethylene, trichloroethylene, 1,1,1 trichloroethane, carbon tetrachloride, chloroform or any combination of these in excess of 5%, by weight.

*Southwest Region: Air Quality Program, 400 Waterfront Drive, Pittsburgh, PA 15222-4745, Barbara Hatch, Facilities Permitting Chief, (412) 442-4174.*

**04-00504: Mitsui Zinc Powder, LLC** (302 Frankfort Road, Monaca, PA 15061-2210) for operation of an alloyed zinc powder manufacturing facility at their High Purity Zinc Powder Plant in Potter Township, **Beaver County**. This is a renewal of the State-only operating permit issued in 2003.

**04-00695: Norfolk Southern Railway Company** (110 Franklin Road SE, Roanoke, VA 24042-0003) for operation of a railcar maintenance facility at their Conway Yard in Conway Borough, **Beaver County**. This is a renewal of the State-only (synthetic minor) operating permit issued in 2004.

**11-00052: Department of Labor and Industry** (727 Goucher Street, Johnstown, PA 15905) for operation of natural gas/fuel oil boilers and propane and fuel oil emergency generators at their Hiram Andrews Rehab Center in Upper Yoder Township, **Cambria County**. This is a renewal of the State-only operating permit issued in 2004.

**65-00596: St. Clair Cemetery Association** (944 Saint Clair Way, Greensburg, PA 15601) for operation of a crematory at their facility at St. Clair Cemetery in Hempfield Township, **Westmoreland County**. This is a renewal of the State-only operating permit issued in 2004.

*Northwest Region: Air Quality Program, 230 Chestnut Street, Meadville, PA 16335-3481, Matthew Williams, New Source Review Chief, (814) 332-6940.*

**20-00094: Dad's Products Co., Inc.** (18746 Mill Street, Meadville, PA 16335) for issuance of a Natural Minor Operating Permit to operate a facility that manufactures pet food in Vernon Township, **Crawford County**. The facility's primary emission sources include two natural gas fired boilers, two natural gas fired space heaters, miscellaneous natural gas combustion for space heating, pneumatic conveying, three natural gas fired dryers, two coolers and ingredient receiving, milling and transfer equipment.

**24-00158: Rosebud Mining Co.—Little Toby Coal Preparation Plant** (301 Market Street, Kittanning, PA 16201) to re-issue the referenced permit for this coal mining and coal processing operation in Horton Township, **Elk County**.

*Department of Public Health, Air Management Services: 321 University Avenue, Philadelphia, PA 19104, Edward Brawn, Chief, (215) 685-9476.*

**S08-003: Delavau, LLC** (10101 Roosevelt Boulevard, Philadelphia, PA 19154-2105) for operation of a pharmaceutical products manufacturing facility in the City of Philadelphia, **Philadelphia County**. The facility's air emissions sources include two boilers less than 10 mmBtu/hr firing natural gas, two 1 mmBtu/hr ovens firing natural gas, two 2 mmBtu/hr ovens firing natural gas, four dust collectors and three baghouses.

The operating permit will be issued under the 25 Pa. Code, Philadelphia Code Title 3 and Air Management Regulation XIII. Permit copies and other supporting information are available for public inspection at AMS, 321 University Avenue, Philadelphia, PA 19104. For further information, contact Edward Wiener at (215) 685-9426.

Persons wishing to file protest or comments on the previous operating permit must submit the protest or comments within 30 days from the date of this notice. Any protests or comments filed with AMS must include a concise statement of the objections to the permit issuance and the relevant facts upon which the objections are based. Based upon the information received during the public comment period, AMS may modify the operating permit or schedule a public hearing. The hearing notice will be published in the *Pennsylvania Bulletin* and a local newspaper at least 30 days before the hearing.

## 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 Act (52 P. S. §§ 30.51—30.66); The Bituminous Mine Subsidence and Land Conservation Act (52 P. S. §§ 1406.1—1406.21). Mining activity permits issued in response to such 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 the application is available for inspection at the District Mining Office indicated above each 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 the certification.

Written comments or objections, or requests for an informal conference, or a public hearing, as applicable, on a mining permit application 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 address of the district mining office indicated above each 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—34.

Written comments or objections related to a mining permit application should contain the name, address and telephone number of persons submitting comments or objections; 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, or a public hearing, as applicable, on a mining permit application, as provided by 25 Pa. Code §§ 77.123 or 86.34, must contain the name, address and telephone number of the 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 desires to have the conference conducted in the locality of the proposed mining activities.

Where a National Pollutant Discharge Elimination System (NPDES) number is listed, the mining activity permit application was accompanied by an application for an individual NPDES permit. The Department has made a tentative determination to issue the NPDES permit in conjunction with the mining activity permit, but the issuance of the NPDES permit is contingent upon the approval of the associated mining activity permit.

For coal mining activities, NPDES permits, when issued, will contain effluent limits that do not exceed the technology-based effluent limitations. The proposed limits are listed in Table 1.

For noncoal mining activities, the proposed limits are found in Table 2. Discharges from noncoal mines located in some geologic settings (for example, in the coal fields) may require additional effluent limits. If additional effluent limits are needed for an NPDES permit associated with a noncoal mining permit, then the permit description below specifies the parameters. The limits will be in the ranges specified in Table 1.

More restrictive effluent limitations, restrictions on discharge volume, or restrictions on the extent of mining that may occur, will be incorporated into an NPDES permit when necessary for compliance with water quality standards and antidegradation requirements (in accordance with 25 Pa. Code Chapters 91–96).

The procedures for determining the final effluent limits, using a mass-balance equation or model, are found in Technical Guidance Document 362-0600-001, NPDES Program Implementation-Memorandum of Understanding Concerning Water Quality Management, NPDES Program Implementation and Related Matters. Other specific factors to be considered include public comments and Total Maximum Daily Loads (TMDLs).

Persons wishing to comment on an NPDES permit application should submit a statement to the Department at the address of the district mining office indicated previously each application within 30 days of this public notice. Comments received within the comment period will be considered in the final determinations regarding the NPDES permit applications. Comments must 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 or petitions for a public hearing on NPDES permit applications, as provided in 25 Pa. Code § 92.61. The request or petition for a public hearing shall be filed within 30 days of this public notice and shall contain the name, address, telephone number and the interest of the party filing the request, and shall state the reasons why a hearing is warranted. A public hearing may be held if the Department considers the public interest significant. If a hearing is scheduled, a notice of the hearing on the NPDES permit application will be published in the *Pennsylvania Bulletin* and a newspaper of general circulation within the relevant geographical area. In the case where a public hearing is held, the Department will consider comments from the public hearing in the final determination on the NPDES permit application.

#### *Coal Applications Received*

*Effluent Limits*—The following range of effluent limits will apply to NPDES permits issued in conjunction with the associated coal mining activity permit and, in some cases, noncoal mining permits:

Parameter	30-Day Average	Daily Maximum	Instantaneous Maximum
Iron (Total)	1.5 to 3.0 mg/l	3.0 to 6.0 mg/l	3.5 to 7.0 mg/l
Manganese (Total)	1.0 to 2.0 mg/l	2.0 to 4.0 mg/l	2.5 to 5.0 mg/l
Suspended solids	10 to 35 mg/l	20 to 70 mg/l	25 to 90 mg/l
Aluminum (Total)	0.75 to 2.0 mg/l	1.5 to 4.0 mg/l	2.0 to 5.0 mg/l
pH <sup>1</sup>		greater than 6.0; less than 9.0	
Alkalinity greater than acidity <sup>1</sup>			

<sup>1</sup> The parameter is applicable at all times.

A settleable solids instantaneous maximum limit of 0.5 ml/l applied to: 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 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.*

**17031301 and NPDES Permit No. PA0235571, Parkwood Resources, Inc.**, (511 Railroad Avenue, Homer City, PA 15748), to renew the permit and related NPDES permit and to revise the permit for the Cherry Tree Mine in Burnside Township, **Clearfield County** and Montgomery Township and Cherry Tree Borough, **Indiana County** to add underground and subsidence control plan area acres to the permit, Underground Acres Proposed 145, Subsidence Control Plan Acres Proposed 1,278. No additional discharges. Application received November 4, 2008.

*Cambria District Mining Office: 286 Industrial Park Road, Ebensburg, PA 15931, (814) 472-1900.*

**17773075 and NPDES No. PA0127949. Black Oak Development, Inc.**, P. O. Box 176, Glen Campbell, PA 15742, permit renewal for reclamation only of a bituminous surface mine in Banks, Bell and Burnside Town-

ships, **Indiana and Clearfield Counties**, affecting 343.0 acres. Receiving streams: Martin Run and two UNTs to West Branch Susquehanna River to Susquehanna River classified for the following uses: CWF and WWF. There are no potable water supply intakes within 10 miles downstream. Application received November 25, 2008.

*Greensburg District Mining Office: Armbrust Professional Center, 8205 Route 819, Greensburg, PA 15601, (724) 925-5500.*

**03080105 and NPDES Permit No. PA0251534. Thomas J. Smith, Inc.** (2340 Smith Road, Shelocta, PA 15774). Application for commencement, operation and reclamation of a bituminous surface mine, located in Plumcreek Township, **Armstrong County**, affecting 63.9 acres. Receiving streams: UNTs to Cherry Run, classified for the following use: CWF. There is no potable water supply intake within 10 miles downstream from the point of discharge. Application received December 1, 2008.

**65080101 and NPDES Permit No. PA0251526. V.P. Smith Company, Inc.** (3435 Route 30 East, Latrobe, PA 15650). Application for commencement, operation and reclamation of a bituminous surface mine, located in Derry Township, **Westmoreland County**, affecting 14.6 acres. Receiving streams: UNTs to Stony Run, classified for the following use: CWF. There is no potable water supply intake within 10 miles downstream from the point of discharge. Application received December 1, 2008.

*Knox District Mining Office: P. O. Box 669, 310 Best Avenue, Knox, PA 16232-0669, (814) 797-1191.*

**10080204 and NPDES Permit No. PA0258687. U.S. Operating Services Company** (29405 Arrowpoint Boulevard, Charlotte, NC 28273-8110). Commencement, operation and restoration of a coal refuse reprocessing and beneficial use of coal ash operation in Clinton Township, **Butler County** affecting 99.6 acres. Receiving streams: UNT to Lardintown Run, classified for the following use: TSF. There are no potable surface water supply intakes within 10 miles downstream. Application received November 25, 2008.

*Moshannon District Mining Office: 186 Enterprise Drive, Philipsburg, PA 16866, (814) 342-8200.*

**17000109 and NPDES No. PA0242985. Kenneth K. Rishel & Sons, Inc.** (1229 Turnpike Avenue, Clearfield, PA 16830), permit renewal for the continued operation and restoration of a bituminous surface mine 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. There are no potable water supply intakes within 10 miles downstream. Application received November 7, 2008.

**17814000 and NPDES No. PA0608769. TDK Coal Sales, Inc.** (34 Kelley Way, Brilliant, OH 43913), permit

renewal for the continued operation and restoration of a bituminous surface mine in Penn Township, **Clearfield County**, affecting 206.9 acres. Receiving stream: Irish Run, classified for the following use: CWF. There are no potable water supply intakes within 10 miles downstream. Application received November 25, 2008.

*Pottsville District Mining Office: 5 West Laurel Boulevard, Pottsville, PA 17901, (570) 621-3118.*

**40880101R4. Silverbrook Anthracite, Inc.**, (1 Market Street, Laflin, PA 18702), renewal of an existing anthracite surface mine operation in Newport Township, **Luzerne County** affecting 144.2 acres, receiving stream: none. Application received December 4, 2008.

**54683045T2. Penn Equipment Corp.**, (15 Main Street, Port Carbon, PA 17965), transfer of an existing anthracite surface mine operation from Blaschak Coal Corp. in Union, Butler and West Mahanoy Townships, **Schuylkill County** affecting 743.0 acres, receiving stream: none. Application received December 5, 2008.

#### *Noncoal Applications Received*

*Effluent Limits*—The following effluent limits will apply to NPDES permits issued in conjunction with a noncoal mining permit:

<i>Parameter</i>	<i>Table 2</i>		
	<i>30-day Average</i>	<i>Daily Maximum</i>	<i>Instantaneous Maximum</i>
Suspended solids	10 to 35 mg/l	20 to 70 mg/l	25 to 90 mg/l
Alkalinity exceeding acidity* pH*		greater than 6.0; less than 9.0	

\* The parameter is applicable at all times.

A settleable solids instantaneous maximum limit of 0.5 ml/l applied to surface runoff resulting from a precipitation event of less than or equal to a 10-year 24-hour event. If coal will be extracted incidental to the extraction of noncoal minerals, at a minimum, the technology-based effluent limitations identified under coal applications will apply to discharges of wastewater to streams.

*Moshannon District Mining Office: 186 Enterprise Drive, Philipsburg, PA 16866, (814) 342-8200.*

**1479401 and NPDES Permit No. PA0118001. Graymont (PA) Inc.**, 965 East College Avenue, Pleasant Gap, PA 16823, renewal of NPDES permit, in Spring and Benner Townships, **Centre County**. Receiving streams: Logan Branch to Spring Creek to Bald Eagle Creek to West Branch, classified for the following uses: CWF, HQ-CWF; CWF. There are no potable water supply intakes within 10 miles downstream. NPDES renewal application received October 28, 2008.

*Pottsville District Mining Office: 5 West Laurel Boulevard, Pottsville, PA 17901, (570) 621-3118.*

**67870301C7 and NPDES Permit No. PA0010235. York Building Products Co., Inc.**, (P. O. Box 1708, York, PA 17405), renewal of NPDES Permit for discharge of treated mine drainage from a quarry operation in West Manchester Township and City of York, **York County**, receiving stream: Willis Run, classified for the following use: WWF. Application received November 21, 2008.

**66880301C2 and NPDES Permit No. PA0594229. Reading Materials, Inc.**, (P. O. Box 1467, Skippack, PA

19474), renewal of NPDES Permit for discharge of treated mine drainage from a quarry operation in Falls Township, **Wyoming County**, receiving stream: Buttermilk Creek, classified for the following use: CWF. Application received December 1, 2008.

**06820601C4 and NPDES Permit No. PA0612791. Allan A. Myers, LP, d/b/a Independence Construction Materials**, (P. O. Box 98, Worcester, PA 19490), renewal of NPDES Permit for discharge of treated mine drainage from a quarry operation in New Morgan Borough, **Berks County**, receiving stream: UNT to East Branch of Conestoga River, classified for the following use: WWF. Application received December 1, 2008.

## FEDERAL WATER POLLUTION CONTROL ACT, SECTION 401

The following permit applications, requests for Environmental Assessment approval and requests for 401 Water Quality Certification have been received by the Department of Environmental Protection (Department). Section 401 of the Federal Water Pollution Control Act (FWPCA) (33 U.S.C.A. § 1341) requires the State to certify that the involved projects will not violate the applicable provisions of sections 301—303, 306 and 307 of the FWPCA (33 U.S.C.A. §§ 1311—1313, 1316 and 1317) as well as relevant State requirements. Persons objecting to approval of a request for certification under section 401 of the FWPCA or to the issuance of a Dam Permit, Water Obstruction and Encroachment Permit or the approval of an Environmental Assessment must submit comments,

suggestions or objections within 30 days of the date of this notice, as well as questions, to the regional office noted before the application. Comments should contain the name, address and telephone number of the person commenting, identification of the certification request to which the comments or objections are addressed and a concise statement of comments, objections or suggestions including the relevant facts upon which they are based.

The Department may conduct a fact-finding hearing or an informal conference in response to comments if deemed necessary. Individuals will be notified, in writing, of the time and place of a scheduled hearing or conference concerning the certification request to which the comment, objection or suggestion relates. Maps, drawings and other data pertinent to the certification request are available for inspection between 8 a.m. and 4 p.m. on each working day at the regional office noted before the application.

Persons with a disability who wish to attend a hearing and require an auxiliary aid, service or other accommodation to participate in the proceedings should contact the specified program. TDD users should contact the Department through the Pennsylvania AT&T Relay Services 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 Floodplain 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.*

**E15-790. 505 Eagleview Boulevard Associates, LP**, 707 Eagleview Boulevard, P. O. Box 562, Exton, PA 19341, Uwchlan Township, **Chester County**, United States Army Corps of Engineers, Philadelphia District.

To amend the permit No. 15-790 (No. E15-602), to include the construction and maintenance of the proposed 50-foot long, 12-foot span and 3.5-foot rise bridge across a UNT to Shamona Creek (HQ-TSF) impacting 0.031 acre of wetlands (PEM) associated with access to the proposed development. The project is located approximately 3,000 feet southwest of the Pottstown Pike (SR 0100) Interchange of Turnpike (Downingtown, PA USGS Quadrangle North: 11.5 inches; West: 7.1 inches).

**E46-1033. PECO Energy Company**, 2301 Market Street, S 9-1, Philadelphia, PA 19101, Hatfield Township, **Montgomery County**, United States Army Corps of Engineers, Philadelphia District.

To expand, construct and maintain an existing PECO substation impacting 0.17 acre of wetland (PEM) associated with the power demand for PA, NJ and DE. The project proposes to construct 0.18 acre of replacement wetlands onsite.

The site is located near the intersection of Derstine and Elroy Roads (Telford, PA USGS Quadrangle N: 5.00 inches; W: 10.00 inches).

**E09-932. Department of Transportation**, 7000 Geerdes Boulevard, King of Prussia, PA 19406, Warrington, New Britain and Doylestown Townships, **Bucks County**, United States Army Corps of Engineers, Philadelphia District.

This application is part of an overall project for associated impacts, to construct and maintain the proposed approximately 9-mile segment of SR 6202 Parkway. This project has been divided into three design/construction sections (701, 711 and 721). The limit for the entire project is between Welsh Road (SR 0063) in Montgomery Township, Montgomery County (Ambler, PA USGS Quadrangle N: 17.0 inches; W: 14.75 inches) and the existing SR 0611 Bypass in Doylestown Township, Bucks County (Doylestown, PA USGS Quadrangle N: 7.5 inches; W: 2.5 inches) and traverses through Montgomery Township in Montgomery County and Warrington, New Britain and Doylestown Townships in Bucks County. The Parkway includes a four-lane roadway between Welsh and Horsham Roads (SR 0463) and a two-lane roadway between Horsham Road and the SR 0611 Bypass. In addition, a 12-foot-wide shared-use path will be constructed within the right-of-way of the Parkway. The project proposes to permanently impact a total of approximately 6.33 acres of wetland (PEM/PSS/PFO). The construction of a total of 9.30 acres of wetland replacement is proposed at the Kansas Road mitigation site located near the intersection of County Line and Kansas Roads in Warrington Township, Bucks County.

This permit is for Section 721 and it is the third submission for SR 6202 construction project. The limit of work for this 3.34-mile section extends between Pickertown Road, in Warrington Township to the existing SR 0611 Bypass in Doylestown Township, Bucks County.

The construction work in Section 721 includes the following water obstruction and encroachment activities:

1. To excavate for a stormwater management basin and place fill for an earth berm and provide conveyance to maintain surface runoff and wetland hydrology by installing 36 feet of 18-inch RCP within a UNT to Neshaminy Creek at Station 102+50 (Doylestown, PA Quadrangle N: 4.4 inches; W: 8.7 inches, Latitude: 40° 16' 28"; Longitude: 75° 11' 12"). Permanent impact of 152 linear feet and temporary impact of 70 linear feet of intermittent channel (WUSD-22).

2. To place fill for the Parkway and an earth berm and provide conveyance to maintain surface runoff and wetland hydrology by installing a diversion channel across a UNT to Neshaminy Creek at Station 103+75 (Doylestown, PA Quadrangle N: 4.5 inches; W: 8.7 inches, Latitude: 40° 16' 30"; Longitude: 75° 11' 12"). Permanent impact of 288 linear feet of intermittent channel (WUSD-23).

3. To cross a perennial stream and impact a forested wetland and provide conveyance to maintain surface hydrology and wetland hydrology by installing 55 feet of 36-inch RCP that will be depressed 0.5 feet and installing a 28-foot by 10-foot bottomless precast concrete arch culvert with a length of 56 feet 6 inches, partially embedded resulting in a hydraulic opening (width) 28 feet upstream, 28 feet downstream and (height) 7.03 feet upstream, 6.73 feet downstream with a UNT to Neshaminy Creek at Station 105+00 (Doylestown, PA Quadrangle N: 4.6 inches; W: 8.6 inches, Latitude: 40° 16' 31"; Longitude: 75° 11' 10"). Permanent impact of 40 linear feet of intermittent stream channel (WUS-NT1C3); temporary impact of 105 linear feet of perennial stream channel (WUS-NT1C); permanent impact of 0.13 acre and temporary impact of 0.09 acre of forested wetland (NTIC). The proposed crossing will result in the discharge (that is, placement) of 564 SY and 2,727 CY of fill in the 100-year floodplain of the UNT to Neshaminy Creek.

4. To provide conveyance to maintain surface runoff and wetland hydrology by installing a diversion channel across a UNT to Neshaminy Creek and installing 130 feet each of two 18-inch RCP under the Parkway at Station 119+50 (Doylestown, PA Quadrangle N: 5.2 inches; W: 8.2 inches, Latitude: 40° 16' 42"; Longitude: 75° 10' 59"). Permanent impact of 323 linear feet of intermittent channel (WUSD-24).

5. To place fill for the Parkway and impact an emergent wetland which drains to a UNT to Neshaminy Creek at Station 119+75 (Doylestown, PA Quadrangle N: 5.1 inches; W: 8.1 inches, Latitude: 40° 16' 41"; Longitude: 75° 10' 58"). Permanent impact of 0.09 acre and temporary impact of 0.05 acre of emergent wetland (R-4).

6. To provide conveyance to maintain surface runoff and wetland hydrology by installing a diversion channel across a UNT to Neshaminy Creek and installing 130 feet each of two 18-inch RCP under the Parkway at Station 121+85 (Doylestown, PA Quadrangle N: 5.3 inches; W: 8.1 inches, Latitude: 40° 16' 44"; Longitude: 75° 10' 58"). Permanent impact of 120 linear feet of intermittent channel (WUSD-25).

7. To place fill for the Parkway and impact an emergent wetland and provide conveyance to maintain surface runoff and wetland hydrology by installing 27 feet of 18-inch RCP within a UNT to Neshaminy Creek at Station 123+50 (Doylestown, PA Quadrangle N: 5.3 inches; W: 8.0 inches, Latitude: 40° 16' 44"; Longitude: 75° 10' 55"). Permanent impact of 42 linear feet of intermittent channel (WUSD-27); permanent impact of 0.29 acre and temporary impact of 0.12 acre of emergent wetland (R-4A).

8. To excavate for Bristol Road and impact an emergent wetland and provide conveyance to maintain surface hydrology by installing a parallel drainage channel at Station 19+63 (Doylestown, PA Quadrangle N: 5.4 inches; W: 7.8 inches, Latitude: 40° 16' 47"; Longitude: 75° 10' 49"). Permanent impact of 204 linear feet of intermittent channel (WUSD-29) and permanent impact of 0.01 acre of emergent wetland (R-4B).

9. To cross Neshaminy Creek and impact a forested wetland and provide conveyance to maintain surface hydrology and wetland hydrology by installing a 524-foot, four-span composite prestressed concrete PA Bulb-Tee bridge with a width of 48 feet 9 inches resulting in a hydraulic opening (width) 98.7 feet, 150 feet, 150 feet, and 98.7 feet from span 1-4, respectively on both the upstream and downstream ends and minimum under clearance of 626' located at the eastern abutment within Neshaminy Creek at Station 152+00 (Doylestown, PA Quadrangle N: 6.0 inches; W: 7.0 inches, Latitude: 40° 16' 58"; Longitude: 75° 10' 27"). Permanent impact of 124 linear feet and temporary impact of 117 linear feet of perennial stream channel (WUS-MS1); temporary impact of 144 linear feet of intermittent stream channel (WUS-MS1-3); permanent impact of 0.03 acre and temporary impact of 0.26 acre of forested wetland (MS-1). The proposed crossing will result in the discharge (that is, placement) of 300 SY and 930 CY of permanent fill in the 100-year floodplain of Neshaminy Creek. A temporary partial causeway and bridge will be used at the upstream face of the bridge during construction. A temporary access road leading from SR 6202 to the temporary causeway is also proposed. The temporary causeway will result in the discharge (that is, placement) of 2,680 SY and 1,950 CY of temporary fill in the 100-year floodplain of Neshaminy Creek.

10. To place fill for the Parkway and impact a forested wetland which drains to Neshaminy Creek at Station 156+75 (Doylestown, PA Quadrangle N: 6.0 inches; W: 6.8 inches, Latitude: 40° 16' 59"; Longitude: 75° 10' 22"). Permanent impact of 0.07 acre of forested wetland (R-5).

11. To cross a perennial stream and impact a forested/scrub-shrub wetland and provide conveyance to maintain surface hydrology and wetland hydrology by installing 57-feet each of three 36-inch RCP that will be depressed 0.5 feet and installing a 42-foot by 11-foot bottomless precast concrete arch culvert with a length of 56 feet 0 25 inch, partially embedded resulting in a hydraulic opening (width) 28 feet upstream, 28 feet downstream and (height) 12.23 feet upstream, 12.73 feet downstream with a UNT to Neshaminy Creek at Station 181+00 (Doylestown, PA Quadrangle N: 6.5 inches; W: 5.7 inches, Latitude: 40° 17' 08"; Longitude: 75° 09' 55"). Temporary impact of 122 linear feet of perennial stream channel (WUS-NT4A); permanent impact of 0.23 acre and temporary impact of 0.32 acre of forested/scrub-shrub wetland (NT4A). The proposed crossing will result in the discharge (that is, placement) of 1,371 SY and 6,766 CY of fill in the 100-year floodplain of the UNT of Neshaminy Creek. A temporary stream crossing will also be used during construction. The crossing will consist of one 64-inch by 43-inch corrugated steel pipe arch with a length of 43 feet.

12. To place fill for the Parkway and provide conveyance to maintain surface runoff and wetland hydrology by installing 35 feet of 18-inch RCP within a UNT to Neshaminy Creek at Station 209+75 (Doylestown, PA Quadrangle N: 7.3 inches; W: 4.7 inch, Latitude: 40° 17' 25"; Longitude: 75° 09' 28"). Permanent impact of 233 linear feet of intermittent channel (WUSD-33).

13. To cross a perennial stream and impact a forested/emergent wetland and provide conveyance to maintain surface hydrology and wetland hydrology by installing 59-feet each of four 36-inch RCP that will be depressed 0.5 feet and installing a 118-foot, single-span composite prestressed concrete PA Bulb-Tee bridge with a width of 48 feet 9 inches resulting in a hydraulic opening (width) 64 feet 10 1/4 inches upstream, 64 feet 10 1/4 inches downstream and (height) 10.17 feet upstream, 10.52 feet downstream within a UNT to Neshaminy Creek at Station 230+50 (Doylestown, PA Quadrangle N: 7.2 inches; W: 3.7 inches, Latitude: 40° 17' 22"; Longitude: 75° 09' 02"). Temporary impact of 234 linear feet of perennial stream channel (WUS-NT5A); permanent impact of 0.52 acre and temporary impact of 0.08 acre of forested/emergent wetland (NT5A). The proposed crossing will result in the discharge (that is, placement) of 1,193 SY and 9,197 CY of fill in the 100-year floodplain of a UNT to Neshaminy Creek.

14. To place fill for Ramp Q and provide conveyance to maintain surface runoff by installing 158 feet of 18-inch RCP and installing 52 feet of 18-inch RCP and installing 104 feet of 18-inch RCP and installing 153 feet of 24-inch RCP at Station 13+20 (Doylestown, PA Quadrangle N: 76 inches; W: 22 inches, Latitude: 40° 17' 31"; Longitude: 75° 08' 25"). Permanent impact of 534 linear feet of intermittent channel (WUSD-35) and permanent impact of 57 linear feet of intermittent channel (WUSD-35A) and permanent impact of 104 linear feet of intermittent channel (WUSD-35B) and permanent impact of 21 linear feet of intermittent channel (WUSD-35C) and permanent impact of 221 linear feet of intermittent channel (WUSD-36).



**E09-933. Department of Transportation, 7000 Geerdes Boulevard, King of Prussia, PA 19406, Warrington, New Britain Townships, Bucks County, United States Army Corps of Engineers, Philadelphia District.**

This application is part of an overall project for associated impacts, to construct and maintain the proposed approximately 9-mile segment of SR 6202 Parkway (Parkway). This project has been divided into three design/construction sections (701, 711 and 721). The limit for the entire project is between Welsh Road (SR 0063) in Montgomery Township, Montgomery County (Ambler, PA USGS Quadrangle N: 17.0 inches; W: 14.75 inches) and the existing SR 0611 Bypass in Doylestown Township, Bucks County (Doylestown, PA USGS Quadrangle N: 7.5 inches; W: 2.5 inches) and traverses through Montgomery Township in Montgomery County and Warrington, New Britain and Doylestown Townships in Bucks County. The Parkway includes a four-lane roadway between Welsh and Horsham Roads (SR 0463) and a two-lane roadway between Horsham Road and the SR 0611 Bypass. In addition, a 12-foot-wide shared-use path will be constructed within the right-of-way of the Parkway. The project proposes to permanently impact a total of approximately 6.33 acres of wetland (PEM/PSS/PFO). The construction of a total of 9.30 acres of wetland replacement is proposed at the Kansas Road mitigation site located near the intersection of County Line and Kansas Roads in Warrington Township, Bucks County.

This permit is for Section 711 and is the second submission for the SR 6202 construction project. The limit of work extends between County Line and Pickertown Roads, in Warrington Township, Bucks County.

The construction work in Section 711 includes the following water obstruction and encroachment activities:

1. To place fill and impact a UNT to Mill Creek (WWF, MF) at Station 25+59 (Doylestown, PA Quadrangle N: 1.7 inches; W: 11.0 inches, Latitude: 40° 02' 34.749" North; Longitude: 75° 12' 14.011" West). Fill for the Parkway will result in a permanent impact of 165 linear feet.

2. To place fill and impact a UNT to Mill Creek (WWF, MF) at Station 25+59 (Doylestown, PA Quadrangle N: 1.7 inches; W: 11.0 inches, Latitude: 40° 15' 34.767" North; Longitude: 75° 12' 13.553" West). Fill for the Parkway will result in a permanent impact of 184 linear feet.

3. To place fill and provide conveyance of hydrology with 138 feet of 48-inch RCP and 75 feet of 48-inch RCP that will be depressed 0.5 feet and impacted a UNT to Mill Creek (WWF, MF) at Station 26+58 (Doylestown, PA Quadrangle N: 1.7 inches; W: 11.0 inches, Latitude: 40° 15' 35.412" North; Longitude: 75° 12' 14.244" West). Plastic utility conduit will be installed inground above the pipes. Fill for Parkway will result in a permanent impact of 374 linear feet.

4. To place fill and provide conveyance of hydrology with 105 feet of 48-inch RCP that will be depressed 0.5 feet and impact a UNT to Mill Creek (WWF, MF) at Station 26+58 (Doylestown, PA Quadrangle N: 1.7 inches; W: 11.0 inches, Latitude: 40° 15' 35.412" North; Longitude: 75° 12' 14.224" West). Fill for the Parkway will result in a permanent impact of 82 linear feet and temporary impact of 25 linear feet.

5. Temporary disturbance of an intermittent tributary to Mill Creek (WWF, MF) for the construction of SUP at Station 18+74 (Doylestown, PA Quadrangle N: 2.4 inches;

W: 11.0 inches, Latitude: 40° 15' 43.168" North; Longitude: 75° 12' 3.986" West) will temporarily impact 25 linear feet.

6. To place fill and impact a UNT to Mill Creek (WWF, MF) at Station 20+02 (Doylestown, PA Quadrangle N: 2.4 inches; W: 11.0 inches, Latitude: 40° 15' 43.709" North; Longitude: 75° 12' 5.648" West). Fill for the Parkway will result in a permanent impact of 145 linear feet.

7. Crossing of existing stream and forested wetland by installing a 48-foot by 12-foot bridge with a length of 102 feet with a minimum underclearance of 12 feet within an unnamed intermittent tributary to Mill Creek (WWF, MF) at Station 39+88 (Doylestown, PA Quadrangle N: 2.4 inches; W: 10.8 inches, Latitude: 40° 15' 46.698" North; Longitude: 75° 12' 6.522" West). Plastic utility conduit will be installed on the structure. The proposed structure and adjacent fill will not result in permanent impacts; however, 0.06 acre of wetland will have functional loss due to serial cover of the bridge. The proposed crossing will result in the discharge (that is, placement) of 2,750 ft<sup>2</sup> and 1,935 cy<sup>3</sup> of fill in the 100-year floodplain of the UNT to Mill Creek.

8. To place fill and impact a forested wetland tributary to Mill Creek (WWF, MF) at Station 24+24 (Doylestown, PA Quadrangle N: 2.4 inches; W: 11.0 inches, Latitude: 40° 15' 46.661" North; Longitude: 75° 12' 9.284" West). Fill for the Parkway will result in a permanent impact of 0.03 acre and temporary impact of 0.01 acre.

9. To place fill and impact a UNT to Mill Creek (WWF, MF) at Station 54+58 (Doylestown, PA Quadrangle N: 3.1 inches; W: 10.5 inches, Latitude: 40° 15' 59.865" North; Longitude: 75° 11' 59.024" West). Fill for the Parkway will result in a permanent impact of 2,035 linear feet.

10. To place fill and impact a UNT to Mill Creek (WWF, MF) at Station 56+30 (Doylestown, PA Quadrangle N: 3.1 inches; W: 10.4 inches, Latitude: 40° 15' 58.646" North, Longitude: 75° 11' 56.342" West). Fill for the Parkway will result in a permanent impact of 2,132 linear feet.

11. To place fill and impact a UNT to Mill Creek (WWF, MF) at Station 56.60 (Doylestown, PA Quadrangle N: 3.1 inches; W: 10.4 inches, Latitude: 40° 15' 58.646" North; Longitude: 75° 11' 56.342" West). Fill for the Parkway will result in a permanent impact of 2,132 linear feet.

12. To place fill and provide conveyance of hydrology with 83 feet of 24-inch RCP that will be depressed 0.5 feet and impact a forested wetland tributary to Neshaminy Creek (TSF, MF) at Station 66+33 (Doylestown, PA Quadrangle N: 3.4 inches; W: 10.0 inches, Latitude: 40° 16' 6.612" North; Longitude: 75° 11' 46.77" West). Fill for the Parkway will result in a permanent impact of 0.34 acre and temporary impact of 0.07 acre.

13. To place fill and provide conveyance to hydrology with 73 feet of 36-inch RCP that will be depressed 0.5 foot and impact a UNT to Neshaminy Creek (TSF, MF) at Station 66+56 (Doylestown, PA Quadrangle N: 3.4 inches; W: 10.0 inches, Latitude: 40° 16' 6.934" North; Longitude: 75° 11' 42.293" West). Fill for the Parkway will result in a permanent impact of 60 linear feet.

14. To place fill and provide conveyance of hydrology with two 86-foot lengths of 24-inch RCP and on 101-foot length of 36-inch RCP that will be depressed 0.5 feet and impact a forested wetland and UNT to Neshaminy Creek (TSF, MF) at Station 77+13 (Doylestown, PA Quadrangle N: 3.6 inches; W: 9.6 inches, Latitude: 40° 16' 10.548"



North; Longitude: 75° 11' 33.856" West). Plastic utility conduit will be installed inground above the pipes. Fill for the Parkway will result in a permanent impact of 114 linear feet of stream and 0.51 acre of wetland and temporary impact to 25 linear feet of stream and 0.12 acre of wetland.

15. To place fill and impact a UNT to Neshaminy Creek (TSF, MF) at Station 92+21 (Doylestown, PA Quadrangle N: 3.6 inches; W: 9.6 inches, Latitude: 40° 16' 21.836"; Longitude: 75° 11' 21.694" West). Fill for the Parkway will result in a permanent impact of 550 linear feet.

The owner proposes to create, restore, enhance, and protect wetlands, streams, and riparian habitat as compensatory mitigation for impacts at the Kansas Road mitigation site.

**E46-1034. Department of Transportation**, 7000 Geerdes Boulevard, King of Prussia, PA 19406, Montgomery Township, **Montgomery County**, United States Army Corps of Engineers, Philadelphia District.

This application is part of an overall project for associated impacts, to construct and maintain the proposed approximately 9-mile segment of SR 6202 Parkway (Parkway). This project has been divided into three design/construction sections (701, 711 and 721). The limit for the entire project is between Welsh Road (SR 0063) in Montgomery Township, Montgomery County (Ambler, PA USGS Quadrangle N: 17.0 inches; W: 14.75 inches) and the existing SR 0611 Bypass in Doylestown Township, Bucks County (Doylestown, PA USGS Quadrangle N: 7.5 inches; W: 2.5 inches) and traverses through Montgomery Township in Montgomery County and Warrington, New Britain, and Doylestown Townships in Bucks County. The Parkway includes a four-lane roadway between Welsh and Horsham Roads (SR 0463) and a two-lane roadway between Horsham Road and the SR 0611 Bypass. In addition, a 12-foot-wide shared-use path will be constructed within the right-of-way of the Parkway. The project proposes to permanently impact a total of approximately 6.33 acres of wetland (PEM/PSS/PFO). The construction of a total of 9.30 acres of wetland replacement is proposed at the Kansas Road mitigation site located near the intersection of County Line and Kansas Roads in Warrington Township, Bucks County.

This permit for Section 711 is the second submission for the SR 6202 construction project. The limit of work extends between Horsham Road (SR 0463) in Montgomery Township, Montgomery County and County Line Road (SR 2038) in Montgomery Township, Montgomery County.

The construction work in Section 711 includes the following water obstruction and encroachment activities:

1. To place fill and impact a forested wetland, which drains to a UNT to Little Neshaminy Creek (WWF, MF) at Station 204+43 (Ambler, PA Quadrangle N: 20.9 inches; W: 14.4 inches, Latitude: 40° 14' 25.808" North; Longitude: 75° 13' 38.426" West). Permanent impact of 0.17 acre of wetland due to cut-fill for the Parkway and a stormwater management basin.

2. To place fill and provide conveyance to maintain surface hydrology and wetland hydrology by installing 84 feet of 60-inch RCP that will be depressed 0.5 foot within a UNT to Little Neshaminy Creek (WWF, MF) at Station 217+59 (Ambler, PA Quadrangle N: 21.4 inches; W: 13.6 inches, Latitude: 40° 14' 31.81" North; Longitude: 75° 13' 23.407" West). Plastic utility conduit will be installed inground above the pipe. The proposed work will temporarily impact 8 linear feet and permanently impact 118

linear feet of stream channel. The proposed fill to forested wetland will temporarily impact 0.03 acre and permanently impact 0.16 acre.

3. To place fill and provide conveyance to maintain surface hydrology and wetland hydrology by installing 96 feet of 36-inch RCP that will be depressed 0.5 feet within a forested wetland in the Little Neshaminy Creek (WWF, MF) Watershed at Station 220+46 (Ambler, PA Quadrangle N: 21.4 inches; W: 13.6 inches, Latitude: 40° 14' 32.53" North; Longitude: 75° 13' 20.484" West). The proposed fill to forested wetland will temporarily impact 0.05 acre of permanently impact 0.21 acre.

4. To place fill to provide conveyance to maintain surface hydrology and wetland hydrology by installing 64 feet of 30-inch RCP, 67 feet of 30-inch RCP, 40 feet of 30-inch RCP and 73 feet of 30-inch RCP that will be depressed 0.5 feet within UNTs to Little Neshaminy Creek (WWF, MF) at Station 232+85 (Ambler, PA Quadrangle N: 21.9 inches; W: 13.3 inches, Latitude: 40° 14' 42.869" North; Longitude: 75° 13' 11.069" West). Plastic Utility conduit will be installed inground below the pipes. The proposed work will temporarily impact 14 linear feet and permanently impact 213 linear feet of stream channel. The proposed fill to forested wetland will temporarily impact 0.19 acre and permanently impact 0.76 acre.

5. To place fill and impact a UNT to Little Neshaminy Creek (WWF, MF) at station 235+60 (Ambler, PA Quadrangle N: 21.9 inches; W: 13.3 inches, Latitude: 40° 14' 43.54" North; Longitude: 75° 13' 10.211" West). Fill for the Parkway will result in a permanent impact of 63 linear feet.

6. To place fill and provide conveyance to maintain surface hydrology and wetland hydrology by installing 73 feet of 24-inch RCP that will be depressed 0.5 foot within an intermittent stream and forested wetland in the Little Neshaminy Creek (WWF, MF) Watershed at Station 239+07 (Ambler, PA Quadrangle N: 22.0 inches; W: 13.1 inches, Latitude: 40° 14' 47.153" North; Longitude: 75° 13' 6.522" West). Plastic utility conduit will be installed inground above the pipe. The proposed fill to forested wetland will temporarily impact 7 linear feet of stream channel of 0.04 acre of forested wetland and permanently impact 107 linear feet of stream and 0.10 acre of wetland.

7. Crossing of existing stream and forest/scrub wetland by installing a 48-foot by 5-foot spread box beam bridge with a length of 73.5 feet across an unnamed intermittent tributary to Little Neshaminy Creek (WWF, MF) at Station 246+86 (Ambler, PA Quadrangle N: 22.4 inches; W: 12.9 inches, Latitude: 40° 14' 53.246" North; Longitude: 75° 13' 0.811" West). The minimum underclearance is 5.3 feet. Plastic utility conduit will be installed on the structure. The proposed aerial cover will result in the functional loss of 0.02 acre of wetland; 0.06 acre of wetland will be permanently impacted by the construction of the structure and associated fill. The proposed crossing will result in the discharge (that is, placement) of 2,150 ft<sup>2</sup> and 1,480 cy<sup>3</sup> of fill in the 100-year floodplain of the UNT to Little Neshaminy Creek.

8. Crossing of existing stream and forested wetland by installing a 48-foot by 11-foot spread box beam bridge with a length of 73.5 feet and 11.2 foot minimum underclearance within an unnamed intermittent tributary to Little Neshaminy Creek (WWF, MF) at Station 254+92 (Ambler, PA Quadrangle N: 22.7 inches; W: 12.6 inches, Latitude: 40° 14' 59.324" North; Longitude: 75° 12' 53.18" West). Plastic utility conduit will be installed on the structure. The proposed structure and adjacent fill

will permanently impact 0.19 acre of forested wetland, with an additional 0.03 acre of functional loss due to the aerial coverage. The proposed crossing will result in the discharge (that is, placement) of 16,160 ft<sup>2</sup> and 5,981 cy<sup>3</sup> of fill in the 100-year floodplain of the UNT of Little Neshaminy Creek. A temporary steam crossing will be used during construction. The crossing will consist of three smooth lined corrugated plastic pipes, 60-inch diameters that are 25 feet long. A temporary sandbag dam will be on the upstream end of the pipe and a rock filter will be used on the downstream end. The impact for this temporary pipe crossing is 15 linear feet of stream and 0.09 acre of wetland.

9. To place fill and impact a UNT to Little Neshaminy Creek (WWF, MF) at Station 259+05 (Doylestown, PA Quadrangle N: 0.3 inch; W: 12.5 inches, Latitude: 40° 15' 2.343" North; Longitude: 75° 12' 49.722" West). Fill for the Parkway will result in a permanent impact of 95 linear feet.

10. To place fill and impact a forested/emergent wetland tributary to Little Neshaminy Creek (WWF, MF) at Station 260+16 (Doylestown, PA Quadrangle N: 0.3 inch; W: 12.5 inches, Latitude: 40° 15' 3.414" North; Longitude: 75° 12' 49.39" West). Fill for the Parkway will result in a permanent impact of 0.13 acre and temporary impact of 0.04 acre.

11. To place fill and impact a UNT to Little Neshaminy Creek (WWF, MF) and forested wetland at Station 262+33 (Doylestown, PA Quadrangle N: 0.3 inch; W: 12.5 inches, Latitude: 40° 15' 5.213" North; Longitude: 75° 12' 47.75" West). Fill for the Parkway will result in a permanent impact of 146 linear feet and 0.01 acre.

12. To place fill and impact a scrub/shrub/emergent wetland tributary to Little Neshaminy Creek (WWF, MF) at Station 270+71 (Doylestown, PA Quadrangle N: 0.5 inch; W: 12.0 inches, Latitude: 40° 15' 10.858" North; Longitude: 75° 12' 40.154" West). Fill for the Parkway will result in a permanent impact of 0.06 acre and temporary impact to 0.05 acre.

13. To place fill and provide conveyance to maintain surface hydrology by installing 90 feet of 24-inch RCP depressed 0.5 feet, which will impact a scrub/shrub/emergent wetland tributary to Little Neshaminy Creek (WWF, MF) at Station 272+82 (Doylestown, PA Quadrangle N: 0.5 inch; W: 12.0 inches, Latitude: 40° 15' 11.471" North; Longitude: 75° 12' 37.48" West). Fill for the Parkway will result in a permanent impact of 0.11 acre and temporary impact to 0.03 acre.

*Southwest Region: Watershed Management Program Manager, 400 Waterfront Drive, Pittsburgh, PA 15222-4745.*

**E02-584-A7. Hanson Aggregates PMA, Inc.**, 2200 Springfield Pike, Connellsville, PA 15425, in The City of Aliquippa, Baden Borough, and Hopewell Township, **Beaver County**, United States Army Corps of Engineers, Pittsburgh District. To amend Permit E02-584, which authorizes commercial sand and gravel dredging in select areas of the Allegheny River (WWF) and Ohio River (WWF), subject to review of fish surveys, mussel surveys and prescribed setbacks in Allegheny, Armstrong, Beaver and Westmoreland Counties to include Ohio River Mile Points 19.2 to 20.2 (Upstream beginning point: Baden, PA Quadrangle N: 0.4 inch; W: 15.0 inches, Latitude: 40° 37' 37.1"; Longitude: 80° 13' 59.8". Downstream end point: Baden, PA Quadrangle N: 2.9 inches; W: 15.3 inches, Latitude: 40° 38' 28.7"; Longitude: 80° 14' 9.12"), left descending banks in The City of Aliquippa, Baden Borough, and Hopewell Township, Beaver County.

**E02-919-A7. Tri-State River Products, Inc.**, Box 218, 334 Insurance Street, Beaver, PA 15009, in The City of Aliquippa, Baden Borough, and Hopewell Township, **Beaver County**, United States Army Corps of Engineers, Pittsburgh District. To amend Permit E02-919, which authorizes commercial sand and gravel dredging in select areas of the Allegheny River (WWF) and Ohio River (WWF), subject to review of fish surveys, mussel surveys and prescribed setbacks in Allegheny, Armstrong, Beaver and Westmoreland Counties to include Ohio River Mile Points 19.2 to 20.2 (Upstream beginning point: Baden, PA Quadrangle N: 0.4 inch; W: 15.0 inches, Latitude: 40° 37' 37.1"; Longitude: 80° 13' 59.8". Downstream end point: Baden, PA Quadrangle N: 2.9 inches; W: 15.3 inches, Latitude: 40° 38' 28.7"; Longitude: 80° 14' 9.12"), left descending banks in The City of Aliquippa, Baden Borough, and Hopewell Township, Beaver County.

**E02-1042-A2. Butler Concrete and Supply Company**, 409 Saxonburg Boulevard, Saxonburg, PA 16056. To extend an existing retaining wall in East Deer Township, **Allegheny County**, United States Army Corps of Engineers, Pittsburgh District. The applicant proposes to amend Permit No. E02-1042-A1 to extend and maintain the existing retaining wall an additional 110.0 feet in the channel and along the right bank of the Allegheny River (WWF) for the purpose of providing better access to the Butler Concrete & Supply Company. The project is located near River Mile 19.6 and will impact approximately 135.0 linear feet of stream channel.

**E02-1326-A7. Glacial Sand and Gravel Company**, P. O. Box 1022, Kittanning, PA 16201, in the City of Aliquippa, Baden Borough, and Hopewell Township, **Beaver County**, United States Army Corps of Engineers, Pittsburgh District. To amend Permit E02-1326, which authorizes commercial sand and gravel dredging in select areas of the Allegheny River (WWF) and Ohio River (WWF), subject to review of fish surveys, mussel surveys and prescribed setbacks in Allegheny, Armstrong, Beaver and Westmoreland Counties to include Ohio River Mile Points 19.2 to 20.2 (Upstream beginning point: Baden, PA Quadrangle N: 0.4 inch; W: 15.0 inches, Latitude: 40° 37' 37.1"; Longitude: 80° 13' 59.8". Downstream end point: Baden, PA Quadrangle N: 2.9 inches; W: 15.3 inches, Latitude: 40° 38' 28.7"; Longitude: 80° 14' 9.12"), left descending banks in the City of Aliquippa, Baden Borough, and Hopewell Township, Beaver County.

**E02-1598. Springdale Borough**, P. O. Box 153, Springdale, PA 15144. To construct an outfall in Springdale Borough, **Allegheny County**, United States Army Corps of Engineers, Pittsburgh District (New Kensington West, PA Quadrangle N: 7.5 inches; W: 2.9 inches, Latitude: 40° 32' 29"; Longitude: 79° 46' 15"). The applicant proposes to construct and maintain a 42-inch diameter outfall structure 263.0 linear feet in length on the right bank of Riddle Run (WWF) and to place and maintain rip rap along the left and right banks of said stream for a distance of approximately 30.0 feet for the purpose of discharging stormwater from Butler Road and other roads into Riddle Run. The project is located approximately 800.0 feet north from the confluence of Riddle Run and the Allegheny River and will impact approximately 30.0 linear feet of stream channel.

#### DAM SAFETY

*Central Office: Bureau of Waterways Engineering, 400 Market Street, Floor 3, P. O. Box 8554, Harrisburg, PA 17105-8554.*

**D56-117. Lake George Dam, The Buncher Company c/o Joseph M. Jackovic**, Penn Liberty Plaza 1,

Suite 300, 1300 Penn Avenue, Pittsburgh, PA 15222. To operate and maintain Lake George Dam according to the regulatory requirements and to install piezometers on the downstream embankment. The Lake George Dam is located across Kooser Run (HQ-CWF), impacting 0.0 acres of wetlands with no proposed impacts to the stream channel (Seven Springs, PA Quadrangle N: 10.9 inches; W: 16.9 inches) in Jefferson Township, **Somerset County**.

**D40-227. Croops Dam, Greg Dischinat**, 180 Nazareth Drive, Nazareth, PA 18064. To rehabilitate, operate, and maintain the Croops Dam across a tributary to Hunlock Creek (CWF), impacting 50 linear feet of stream channel, for the purpose of rehabilitating the deteriorated dam in order to restore the approximately 4-acre recreational lake. Work includes constructing a new spillway structure and rebuilding the earthfill embankment (Nanticoke, PA Quadrangle N: 16.0 inches; W: 12.9 inches) in Hunlock Township, **Luzerne County**.

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## ACTIONS

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### THE CLEAN STREAMS LAW AND THE FEDERAL CLEAN WATER ACT FINAL ACTIONS TAKEN FOR NATIONAL POLLUTION DISCHARGE ELIMINATION SYSTEM (NPDES) PERMITS AND WATER QUALITY MANAGEMENT (WQM) PERMITS

The Department of Environmental Protection (Department) has taken the following actions on previously received applications for new, amended and renewed NPDES and WQM permits, applications for permit waivers and Notices of Intent (NOI) for coverage under general permits. This notice is provided in accordance with 25 Pa. Code Chapters 91 and 92 and 40 CFR Part 122, implementing provisions of The Clean Streams Law (35 P. S. §§ 691.1—691.1001) and the Federal Clean Water Act.

<i>Location</i>	<i>Permit Authority</i>	<i>Application Type or Category</i>
Section I	NPDES	Renewals
Section II	NPDES	New or amendment
Section III	WQM	Industrial, sewage or animal wastes; discharges to groundwater
Section IV	NPDES	MS4 individual permit
Section V	NPDES	MS4 permit waiver
Section VI	NPDES	Individual permit stormwater construction
Section VII	NPDES	NOI for coverage under NPDES general permits

Sections I—VI contain actions related to industrial, animal or sewage wastes discharges, discharges to groundwater and discharges associated with municipal separate storm sewer systems (MS4), stormwater associated with construction activities and concentrated animal feeding operations (CAFOs). Section VII contains notices for parties who have submitted NOIs for coverage under general NPDES permits. The approval for coverage under general NPDES permits is subject to applicable effluent limitations, monitoring, reporting requirements and other conditions set forth in each general permit. The approval of coverage for land application of sewage sludge or residential septage under applicable general permit is subject to pollutant limitations, pathogen and vector attraction reduction requirements, operational standards, general requirements, management practices and other conditions set forth in the respective permit. Permits and related documents, effluent limitations, permitting requirements and other information are on file and may be inspected and arrangements made for copying at the contact office noted before the action.

Persons aggrieved by an action may appeal, under section 4 of the Environmental Hearing Board Act (35 P. S. § 7514) and 2 Pa.C.S. §§ 501—508 and 701—704 (relating to the Administrative Agency Law), to the Environmental Hearing Board, Second Floor, Rachel Carson State Office Building, 400 Market Street, P. O. Box 8457, Harrisburg, PA 17105-8457, (717) 787-3483. TDD users should contact the Environmental Hearing Board (Board) through the Pennsylvania Relay Service, (800) 654-5984. Appeals must be filed with the Board within 30 days of publication of this notice in the *Pennsylvania Bulletin*, unless the appropriate statute provides a different time period. Copies of the appeal form and the Board's rules of practice and procedure may be obtained from the Board. The appeal form and the Board's rules of practice and procedure are also available in Braille or on audiotape from the Secretary of the Board at (717) 787-3483. This paragraph does not, in and of itself, create any right of appeal beyond that permitted by applicable statutes and decision law.

For individuals who wish to challenge an action, appeals must reach the Board within 30 days. A lawyer is not needed to file an appeal with the Board.

Important legal rights are at stake, however, so individuals should show this notice to a lawyer at once. Persons who cannot afford a lawyer may qualify for free pro bono representation. Call the Secretary to the Board at (717) 787-3483 for more information.

**I. NPDES Renewal Permit Actions**

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

<i>NPDES No. (Type)</i>	<i>Facility Name &amp; Address</i>	<i>County &amp; Municipality</i>	<i>Stream Name (Watershed #)</i>	<i>EPA Waived Y/N ?</i>
PA0085138 (Sew)	Five Forks Brethren in Christ Church 9244 Five Forks Road Waynesboro, PA 17268	Franklin County Quincy Township	UNT West Branch Antietam Creek 13-C	Y
PA0083186 (Sew)	HMSHOST Turnpike Travel Plazas Sideling Hill Service Plaza P. O. Box 8 Middletown, PA 17057	Fulton County Taylor Township	Lick Branch Wooden Bridge Creek 12-C	Y
PAG2003803042R	Don Lechleitner Springbrook Farms, Inc. 1840 Fishburn Road Hershey, PA 17033	Lebanon County South Londonderry Township	Swatara Creek WWF	Y
PAR10P191-R	George Christianson Shadow Creek, LLC 411 Chestnut Street Lebanon, PA 17042	Lebanon County North Cornwall Township	Snitz Creek TSF	Y

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

<i>NPDES No. (Type)</i>	<i>Facility Name &amp; Address</i>	<i>County &amp; Municipality</i>	<i>Stream Name (Watershed #)</i>	<i>EPA Waived Y/N ?</i>
PA0209571	Romain Dorman Small Flow Treatment Facility 1665 Johnstown Road Mifflinburg, PA 17844	West Buffalo Township Union County	North Branch Buffalo Creek 10C	Y

*Southwest Region: Water Management Program Manager, 400 Waterfront Drive, Pittsburgh, PA 15222-4745.*

<i>NPDES No. (Type)</i>	<i>Facility Name &amp; Address</i>	<i>County &amp; Municipality</i>	<i>Stream Name (Watershed #)</i>	<i>EPA Waived Y/N</i>
PA0097110 Industrial Waste	Shade Landfill, Inc. 1176 Number 1 Road Cairnbrook, PA 15924	Somerset County Shade Township	Laurel Run	Y
PA0219363 Sewage	Pyramid Healthcare, Inc. 1216 11th Avenue Altoona, PA 16601	Cambria County Reade Township	Powell Run	Y

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

<i>NPDES No. (Type)</i>	<i>Facility Name &amp; Address</i>	<i>County &amp; Municipality</i>	<i>Stream Name (Watershed #)</i>	<i>EPA Waived Y/N ?</i>
PA0239241	Carol Millett 9213 Old State Road Conneaut Lake, PA 16316	Sadsbury Township Crawford County	UNT to Conneaut Outlet 16-D	Y

**II. New or Expanded Facility Permits, Renewal of Major Permits and EPA Nonwaived Permit Actions**

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

**NPDES Permit No. PA0055891**, Industrial Waste, **Henderson Road Superfund Site Technical Steering Committee, c/o RT Environmental Services, Inc.**, 215 West Church Road, Suite 301, King of Prussia, PA 19406. This proposed facility is located in Upper Merion Township, **Montgomery County**.

Description of Proposed Action/Activity: Approval for the renewal to discharge treated groundwater from the facility know as Henderson Road Superfund Site to a UNT to the Schuylkill River in Watershed 3F.

**NPDES Permit No. PA00300231, Amendment No. 1**, Sewage, **Bryn Athyn Borough**, P. O. Box 683, 2835 Bucks Road, Bryn Athyn, PA 19009. This proposed facility is located in Bryn Athyn Borough, **Montgomery County**.

Description of Proposed Action/Activity: Approval for the amendment to incorporate maximum monthly flow of 0.08 mgd to discharge into a UNT to Huntingdon Valley Creek in Watershed 3J.

**NPDES Permit No. PA0024180**, Sewage, **Berks-Montgomery Municipal Authority**, 136 Municipal Drive, Gilbertsville, PA 19525-0370. This proposed facility is located in Douglass Township, **Montgomery County**.

Description of Proposed Action/Activity: Approval for the renewal to discharge treated sewage from the Swamp Creek STP in Perkiomen Watershed 3E.

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

**NPDES Permit No. PA0247715**, Sewage, **Greater Gettysburg Development Co., LLC**, 601 Mason Dixon Road, Gettysburg, PA 17325. This proposed facility is located in Straban Township, **Adams County**.

Description of Proposed Action/Activity: Authorization to discharge to a UNT of Rock Creek in Watershed 13-D.

**NPDES Permit No. PA0083607**, 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 the Forge Creek in Watershed 7-D.

**NPDES Permit No. PA0261190**, Sewage, **Tiger Properties, Four East High Street**, Carlisle, PA 17013. This proposed facility is located in North Middleton Township, **Cumberland County**.

Description of Proposed Action/Activity: Authorization to discharge to Watershed 7-B.

**NPDES Permit No. PA0087980, Amendment 1**, CAFO, **Alan Rice and Brian Brechbill**, Dream Farms, 13689 Dream Highway, Newburg, PA 17240. This proposed facility is located in Lurgan Township, **Franklin County**.

Description of Size and Scope of Proposed Operation/Activity: Transfer of Permit.

*Southwest Region: Water Management Program Manager, 400 Waterfront Drive, Pittsburgh, PA 15222-4745.*

**NPDES Permit No. PA0035246**, Industrial Waste, **Municipal Authority of Westmoreland County**, P. O. Box 730, Greensburg, PA 15601. This proposed facility is located in Dunbar Township, **Fayette County**.

Description of Proposed Action/Activity: Permit issuance to discharge from a facility located at Indian Creek Water Filtration Plant to receiving waters named Youghiogheny River.

**NPDES Permit No. PA0253871**, Sewage, **Lone Hill Development, LP**, 212 Sussex Way, McMurray, PA 15317. This proposed facility is located in Green Hills Borough, **Washington County**.

Description of Proposed Action/Activity: Permit issuance to discharge treated sewage from Lone Pine Estates Sewage Treatment Plant.

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

**NPDES Permit No. PA0222216**, Sewage, **Edinboro Conference Campground**, 12940 Fry Road, Edinboro, PA 16412. This proposed facility is located in Washington Township, **Erie County**.

Description of Proposed Action/Activity: This application is for a new NPDES permit to discharge treated sanitary sewage from a seasonally operated campground to a UNT to Boles Run.

**NPDES Permit No. PA0103446**, Industrial Waste, **Amendment No. 2, Veolia ES Greentree Landfill, LLC**, 635 Toby Road, Kersey, PA 15846. This proposed facility is located in Fox Township, **Elk County**.

Description of Proposed Action/Activity: This application is for an amendment to an NPDES Permit, for addition of new stormwater outfalls and a restructuring of existing stormwater outfalls, as a result of the proposed landfill expansion. This is a minor discharge.

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

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

**WQM Permit No. 3808401**, Sewage, **Union Township**, 3111 SR 72, Jonestown, PA 17038. This proposed facility is located in Union Township, **Lebanon County**.

Description of Proposed Action/Activity: Permit approval for the construction/operation of sewerage facilities consisting of influent pump station, two sequencing batch reactors, post equalization tanks, three effluent pumps, cloth media tertiary filters, UV disinfection, two aerobic digesters and post aeration.

**WQM Permit No. 6703405 08-1**, Sewage, **Stewartstown Borough Authority, c/o Stewartstown Borough Office**, 6 North Main Street, Stewartstown, PA 17363. This proposed facility is located in Hopewell Township, **York County**.

Description of Proposed Action/Activity: Permit approval for the construction of sewerage facilities consisting of modifications to the thickener including a 600 gpm submersible pump.

**WQM Permit No. 2108405**, Sewage, **Tiger Properties**, Four East High Street, Carlisle, PA 17013. This proposed facility is located in North Middleton Township, **Cumberland County**.

Description of Proposed Action/Activity: Permit approval for the construction/operation of a small flow treatment facility with septic tank, peat filter and chlorine disinfection discharging to the Conodoguinet Creek.

**WQM Permit No. 2898201, Transfer No. 1**, CAFO, **Alan Rice and Brian Brechbill, Dream Farms**, 13689 Dream Highway, Newburg, PA 17240. This proposed facility is located in Lurgan Township, **Franklin County**.

Description of Proposed Action/Activity: Transfer of Permit.

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

**WQM Permit No. WQG018663**, Sewerage, **Theodore Lowe**, 639 West Sunbury Road, West Sunbury, PA 16061. This proposed facility is located in Center Township, **Butler County**.

Description of Proposed Action/Activity: Issuance of a single-residence Sewage Treatment Plant.

**WQM Permit No. WQG028316**, Sewerage, **Pleasant Township**, P. O. Box 865, Warren, PA 16365. This proposed facility is located in Pleasant Township, **Warren County**.

Description of Proposed Action/Activity: This proposed pump station will replace the ejector station, while performing the same general duty. This project will not change the volume or quantity of waste entering the collection system.

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

**WQM Permit No. WQG02090818**, Sewerage, **Lower Makefield Township Sewer Authority**, 1100 Edgewood Road, Yardley, PA 19067. This proposed facility is located in Lower Makefield and Newtown Townships, **Bucks County**.

Description of Action/Activity: Construction and operation of a sewer extension.

**WQM Permit No. 4608409**, Sewerage, **Upper Providence Township**, 1286 Black Rock Road, Oaks, PA 19456. This proposed facility is located in Upper Providence Township, **Montgomery County**.

Description of Action/Activity: Installation of a sanitary sewer interceptor.

#### **IV. NPDES Stormwater Discharges from MS4 Permit Actions**

#### **V. NPDES Waiver Stormwater Discharges from MS4 Actions**

#### **VI. NPDES Discharges of Stormwater Associated with Construction Activities Individual Permit Actions**

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

<i>NPDES Permit No.</i>	<i>Applicant Name &amp; Address</i>	<i>County</i>	<i>Municipality</i>	<i>Receiving Water/Use</i>
PAI024808011	Arcadia East Associates No. 1, LP 100 Gateway Drive Suite 310 Bethlehem, PA 18017	Northampton	East Allen Township	Monocacy Creek HQ-CWF
PAI026404002(2)	Duck Harbor Company R. R. 1 Box 214C Equinunk, PA 18417	Wayne	Lebanon and Damascus Townships	Little Equinunk Creek HQ-CWF

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

<i>NPDES Permit No.</i>	<i>Applicant Name &amp; Address</i>	<i>County</i>	<i>Municipality</i>	<i>Receiving Water/Use</i>
PAI000108001	CVDA, LLP Dannie Holsinger 113 Country Club Road Fairfield, PA 17320	Adams	Hamiltonban	Middle Creek HQ-CWF

#### **VII. Approvals to Use NPDES and/or Other General Permits**

The EPA Region III Administrator has waived the right to review or object to this permit action under the waiver provision 40 CFR 123.23(d).

#### **List of NPDES and/or Other General Permit Types**

PAG-1	General Permit for Discharges From Stripper Oil Well Facilities
PAG-2	General Permit for Discharges of Stormwater Associated With Construction Activities (PAR)
PAG-3	General Permit for Discharges of Stormwater From Industrial Activities
PAG-4	General Permit for Discharges From Small Flow Treatment Facilities
PAG-5	General Permit for Discharges From Gasoline Contaminated Groundwater Remediation Systems
PAG-6	General Permit for Wet Weather Overflow Discharges From Combined Sewer Systems (CSO)
PAG-7	General Permit for Beneficial Use of Exceptional Quality Sewage Sludge by Land Application
PAG-8	General Permit for Beneficial Use of Nonexceptional Quality Sewage Sludge by Land Application to Agricultural Land, Forest, a Public Contact Site or a Land Reclamation Site
PAG-8 (SSN)	Site Suitability Notice for Land Application Under Approved PAG-8 General Permit Coverage

PAG-9	General Permit for Beneficial Use of Residential Septage by Land Application to Agricultural Land, Forest, or a Land Reclamation Site
PAG-9 (SSN)	Site Suitability Notice for Land Application Under Approved PAG-9 General Permit Coverage
PAG-10	General Permit for Discharge Resulting from Hydrostatic Testing of Tanks and Pipelines
PAG-11	(To Be Announced)
PAG-12	Concentrated Animal Feeding Operations (CAFOs)
PAG-13	Stormwater Discharges from Municipal Separate Storm Sewer Systems (MS4)

*General Permit Type—PAG-2**Facility Location:*

<i>Municipality &amp; County</i>	<i>Permit No.</i>	<i>Applicant Name &amp; Address</i>	<i>Receiving Water/Use</i>	<i>Contact Office &amp; Phone No.</i>
Doylestown, New Britain and Washington Townships Bucks County	PAG200 0907140	Department of Transportation 7000 Geerdes Boulevard King of Prussia, PA 19406	Neshaminy Creek TSF, MF	Southeast Regional Office 2 East Main Street Norristown, PA 19401 (484) 250-5900
Buckingham Township Bucks County	PAG200 0903169-R	Bucks County Airport Authority 3879 Old Easton Road P. O. Box 1185 Doylestown, PA 18901	UNT Pine Run TSF, MF	Southeast Regional Office 2 East Main Street Norristown, PA 19401 (484) 250-5900
Phoenixville Borough Chester County	PAG200 1508063	Palma, LP, Palma, Inc. GP 1890 Rose Cottage Lane Malvern, PA 19355	French Creek TSF	Southeast Regional Office 2 East Main Street Norristown, PA 19401 (484) 250-5900
Pocopson Township Chester County	PAG00 1508053	Sheila M. Bowel, Edward Ebling 1861 Lenape Road West Chester, PA 19382	UNT Pocopson Creek TSF, MF	Southeast Regional Office 2 East Main Street Norristown, PA 19401 (484) 250-5900
East Clan Township Chester County	PAG200 1508044	Michael McNabb 109 Sycamore Spring Lane Downingtown, PA 19335	Valley Creek CWF	Southeast Regional Office 2 East Main Street Norristown, PA 19401 (484) 250-5900
Franklin Township Chester County	PAG200 1508022	Brothers Properties, LLC 2705 Whittleby Court West Chester, PA 19312	UNT West Branch White Clay Creek TSF, MF	Southeast Regional Office 2 East Main Street Norristown, PA 19401 (484) 250-5900
East Marlborough Township Chester County	PAG200 1508060	University of Pennsylvania 3101 Walnut Street Philadelphia, PA 19104-6289	Red Clay Creek TSF	Southeast Regional Office 2 East Main Street Norristown, PA 19401 (484) 250-5900
Sadsbury Township Chester County	PAG200 1508009	Larry Constable 3608 Leike Road Parkesburg, PA 19365	UNT Buck Run TSF, MF	Southeast Regional Office 2 East Main Street Norristown, PA 19401 (484) 250-5900
Whitemarsh Township Montgomery County	PAG200 4607118	Southeaster Pennsylvania Transportation Authority (SEPTA) 1234 Market Street 18th Floor Philadelphia, PA 19107	Sandy Run TSF	Southeast Regional Office 2 East Main Street Norristown, PA 19401 (484) 250-5900
North Wales Borough Montgomery County	PAG200 4608133	North Penn School District 401 East Hancock Avenue Lansdale, PA 19446	Wissahickon Creek TSF	Southeast Regional Office 2 East Main Street Norristown, PA 19401 (484) 250-5900
Worcester Township Montgomery County	PAG200 4608118	PECO Energy Company 2301 Market Street S9-1 Philadelphia, PA 19103	Zacharias Creek TSF	Southeast Regional Office 2 East Main Street Norristown, PA 19401 (484) 250-5900

<i>Facility Location: Municipality &amp; County</i>	<i>Permit No.</i>	<i>Applicant Name &amp; Address</i>	<i>Receiving Water/Use</i>	<i>Contact Office &amp; Phone No.</i>
Upper Dublin Township Montgomery County	PAG200 4608113	Dresher Properties, LP 55 Lynn Avenue Oreland, PA 19075	UNT Sandy Run TSF	Southeast Regional Office 2 East Main Street Norristown, PA 19401 (484) 250-5900
Franconia Township Montgomery County	PAG200 4608128	Franconia Sewer Authority 671 Allentown Road Franconia, PA 18924	Skippack Creek TSF	Southeast Regional Office 2 East Main Street Norristown, PA 19401 (484) 250-5900
Limerick Township Montgomery County	PAG200 4608078	Landmark Hotels, Inc. 14424 Clearfield Shawville Highway Clearfield, PA 16839	UNT Schuylkill River WWF	Southeast Regional Office 2 East Main Street Norristown, PA 19401 (484) 250-5900
Hatfield Township Montgomery County	PAG200 4607117	Oak Tree Industrial Associates 2880 Bergey Road Suite D Hatfield, PA 19440	West Branch Neshaminy Creek WWF, MF	Southeast Regional Office 2 East Main Street Norristown, PA 19401 (484) 250-5900
Limerick Township Montgomery County	PAG200 4608132	O & F Centennial Associates, LP 2589 Sibel Circle Lansdale, PA 19446	Schuylkill River WWF	Southeast Regional Office 2 East Main Street Norristown, PA 19401 (484) 250-5900
Franconia Township Montgomery County	PAG200 4606105-1	Ken Clemmer 261 Schoolhouse Road Suite 4 Souderton, PA 18964	Skippack Creek TSF	Southeast Regional Office 2 East Main Street Norristown, PA 19401 (484) 250-5900
Upper Hanover Township Montgomery County	PAG200 4608103	Upper Hanover Authority 1704 Pillsbury Road East Greenville, PA 18041	Tributary Perkiomen/ Hosensack Creek TSF, CWF	Southeast Regional Office 2 East Main Street Norristown, PA 19401 (484) 250-5900
Upper Merion Township Montgomery County	PAG200 4608105	RWK Enterprises, Inc. 127 South Gulph Road King of Prussia, PA 19406	Abrams Run/Crow Creek WWF	Southeast Regional Office 2 East Main Street Norristown, PA 19401 (484) 250-5900
Douglas Township Montgomery County	PAG200 4608116	Sealstrip Corporation, Inc. 200 North Washington Street Boyertown, PA 19512	UNT Swamp Creek TSF, MF	Southeast Regional Office 2 East Main Street Norristown, PA 19401 (484) 250-5900
City of Easton Northampton County	PAG2004808016	Pennrose Properties, LLC 1301 North 31st Street Philadelphia, PA 19121-4495	Delaware River WWF, MF	Northampton County Conservation District (610) 746-1971
City of Pottsville Schuylkill County	PAG2005408019	Thomas A. Palamar 401 North Centre Street Pottsville, PA	Norwegian Creek CWF	Schuylkill County Conservation District (570) 622-3742
Todd and Ayr Townships Fulton County	PAG2002908005	McConnellsburg Borough Municipal Authority P. O. Box 218 McConnellsburg, PA 17233	Big Cove Creek CWF	Fulton County Conservation District 216 North Second Street McConnellsburg, PA 17233 (717) 485-3547 Ext. 122
Jackson Township Lebanon County	PAG2003808002	Michael Garman Gardel, LLC 471 North Reading Road Ephrata, PA 17522	UNT to Tulpehocken Creek TSF	Lebanon County Conservation District 2120 Cornwall Road Suite 5 Lebanon, PA 17042 Ext. 4



## NOTICES

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<i>Facility Location: Municipality &amp; County</i>	<i>Permit No.</i>	<i>Applicant Name &amp; Address</i>	<i>Receiving Water/Use</i>	<i>Contact Office &amp; Phone No.</i>
North Cornwall Township Lebanon County	PAG2003808019	Marc DeSouza Meadow Lane Farms, LLC 225 North Presidential Avenue Bala Cynwyd, PA 19004	Snitz Creek TSF	Lebanon County Conservation District 2120 Cornwall Road Suite 5 Lebanon, PA 17042 (717) 272-3908 Ext. 4
Union Township Lebanon County	PAG2003808027	Philip S. Moreau MMR Investments—TG, LLC 25515 Via Mariquita Carmel, CA 93923	Swatara Creek WWF	Lebanon County Conservation District 2120 Cornwall Road Suite 5 Lebanon, PA 17042 (717) 272-3908 Ext. 4
North Annville Township Dauphin County	PAG2003808025	Jay Long Long's Excavating, Inc. 249 Clear Spring Road Annville, PA 17003	Quittapahilla Creek TSF	Lebanon County Conservation District 2120 Cornwall Road Suite 5 Lebanon, PA 17042 (717) 272-3908 Ext. 4
Palmyra Borough North Londonderry Township Lebanon County	PAG2003808014	John Lippa Members 1st Federal Credit Union 5000 Louise Drive Mechanicsburg, PA 17055	Trib to Killinger Creek TSF	Lebanon County Conservation District 2120 Cornwall Road Suite 5 Lebanon, PA 17042 (717) 272-3908 Ext. 4
Union Township Berks County	PAG2000608070	Christopher Canavan Centennial Acquisitions, LP 404 Sumneytown Pike Suite 200 North Wales, PA 19454	WWF—UNT Schuylkill River	Berks County Conservation District 1238 County Welfare Road Suite 200 Leesport, PA 19533-9710 (610) 372-4657 Ext. 201
Douglass Township	PAG2000608057	Timothy Specht Trap Rock No. 3, LLC P. O. Box 300 Boyertown, PA 19512	WWF—UNT Schuylkill River	Berks County Conservation District 1238 County Welfare Road Suite 200 Leesport, PA 19533-9710 (610) 372-4657 Ext. 201
Caernarvon Township	PAG2000608010	Thomas Hornberger Twin Valley Fire Department P. O. Box 181 25 Hall Street Elverson, PA 19520	WWF Conestoga River	Berks County Conservation District 1238 County Welfare Road Suite 200 Leesport, PA 19533-9710 (610) 372-4657 Ext. 201
Derry Township Dauphin County	PAG2002208039	George Cvijic 20 Erford Road Lemoyne, PA 17043	Spring Creek WWF	Dauphin County Conservation District 1451 Peters Mountain Road Dauphin, PA 17018
Derry Township Dauphin County	PAG2002208035	Thomas DeDonatis DeDo Corp. 345 Elm Avenue Hershey, PA 17033	Swatara Creek WWF	Dauphin County Conservation District 1451 Peters Mountain Road Dauphin, PA 17018

<i>Facility Location: Municipality &amp; County</i>	<i>Permit No.</i>	<i>Applicant Name &amp; Address</i>	<i>Receiving Water/Use</i>	<i>Contact Office &amp; Phone No.</i>
Susquehanna Township Dauphin County	PAG2002208036	Richard Bowen Templar Development, LLC 3 Gateway Center Pittsburgh, PA 15222	Paxton Creek WWF	Dauphin County Conservation District 1451 Peters Mountain Road Dauphin, PA 17018
Washington Township Dauphin County	PAG2002208040	David Howicz TS Elizabethville, LLC 3540 Sweet Maggie Lane Naperville, IL 60564	Wiconisco Creek WWF	Dauphin County Conservation District 1451 Peters Mountain Road Dauphin, PA 17018
Clearfield County Lawrence Township	PAG2001708018	Mark A. Austin Department of Military and Veterans Affairs Building 0-10 Fort Indiantown Gap Annville, PA 17003	UNT to West Branch Susquehanna River WWF	Clearfield County Conservation District 650 Leonard Street Clearfield, PA 16830 (814) 765-2629
Lycoming County Muncy Township	PAG2004108007	John Fry Fryland, LLC Land Development 560 Robbittown Road Muncy, PA 17756	Oak Run CWF	Lycoming County Conservation District 542 County Farm Road Suite 202 Montoursville, PA 17754 (570) 433-3003
Montour County Derry Township	PAG2004708005	Penn Tank Lines 3275 Maple Street Allentown, PA 18104	Chillisquaque Creek WWF	Montour County Conservation District 112 Woodbine Lane Suite 2 Danville, PA 17821 (570) 271-1140
Beaver County Chippewa Township	PAG2000403016 (R)	Chippewa Evangelical Free Church c/o Robert E. Liljestrand 239 Braun Road Beaver Falls, PA 15010	Bradys Run TSF	Beaver County Conservation District (724) 378-1701
Cambria County White Township	PAG2001108016	Tracy Plesinger White Township 743 Ridge Road Fallentimber, PA 16639	Beaverdam Run CWF	Cambria County Conservation District (814) 472-2120
Westmoreland County Mt. Pleasant Township	PAG2006508042	Gary Graham Turnpike Commission P. O. Box 67676 Harrisburg, PA 17106-7676	Brush Run CWF	Westmoreland County Conservation District (724) 837-5271
Butler County Franklin Township	PAG2001008026	E & E Chestnut Developers, Inc. Butler, PA 16002	Mulligan Run CWF	Butler County Conservation District (724) 284-5270
Erie County City of Erie	PAG2002508027	City of Erie School District 148 West 21st Street Erie, PA 16502	Lake Erie CWF	Erie County Conservation District (814) 825-6403
Mercer County Hempfield Township	PAG2004308012	Hudson Companies 2450 Shenango Valley Freeway Hermitage, PA 16148	UNT Little Shenango River TSF	Mercer County Conservation District (724) 662-2242

*General Permit Type—PAG-3**Facility Location:*

<i>Municipality &amp; County</i>	<i>Permit No.</i>	<i>Applicant Name &amp; Address</i>	<i>Receiving Water/Use</i>	<i>Contact Office &amp; Phone No.</i>
Hazleton City Luzerne County	PAR232209	Reynolds Packaging Kama, Inc. 600 Dietrich Avenue Hazleton, PA 18201-7754	Storm Sewer to Hazle Creek CWF	DEP—NERO Water Management Program 2 Public Square Wilkes-Barre, PA 18711-2511 (570) 826-2511
Moosic Borough Lackawanna County	PAR142204	MActac Scranton Facility 802 East Corey Street Scranton, PA 18505-3595	Lackawanna River CWF	DEP—NERO Water Management Program 2 Public Square Wilkes-Barre, PA 18711-2511 (570) 826-2511
Hazleton City Luzerne County	PAR602212	M.H. Brenner Recycling, Inc. 282 South Wyoming Street Hazleton, PA 18201	Storm Drains to Button Wood Street to Hazle Creek	DEP—NERO Water Management Program 2 Public Square Wilkes-Barre, PA 18711-2511 (570) 826-2511
Scott Township Lackawanna County	PAR232222	Metso Paper USA, Inc. 987 Griffin Pond Road Clarks Summit, PA 18411	Ackerly Creek	DEP—NERO Water Management Program 2 Public Square Wilkes-Barre, PA 18711-2511 (570) 826-2511
Cumberland County Silver Spring Township	PAR803714	IBM Corporation— Mechanicsburg North Castle Drive Armonk, NY 10504	Hogestown Run CWF 7B	DEP—SCRO 909 Elmerton Avenue Harrisburg, PA 17110 (717) 705-4707
Franklin County Antrim and Montgomery Townships	PAR403501	Waste Management Disposal Services of PA, Inc. 9446 Letzburg Road Greencastle, PA 17225	UNT Conococheague Creek WWF 13-C	DEP—SCRO 909 Elmerton Avenue Harrisburg, PA 17110 (717) 705-4707
Berks County Muhlenberg Township	PAR233543	Air Liquid Industrial U.S., LP P. O. Box 13577 Reading, PA 19605	Schuylkill River WWF 3-C	DEP—SCRO 909 Elmerton Avenue Harrisburg, PA 17110 (717) 705-4707
York County West Manchester Township	PAR203609	Namasco Corporation Temtco Steel Division 319 North Court Avenue Louisville, MS 39339	UNT to Codorus Creek 7-H	DEP—SCRO 909 Elmerton Avenue Harrisburg, PA 17110 (717) 705-4707
Findlay Township Allegheny County	PAR206124	Precision Kidd Steel Company One Quality Way Aliquippa, PA 15001	Tributary to Montour Run	Southwest Regional Office Water Management Program Manager 400 Waterfront Drive Pittsburgh, PA 15222-4745 (412) 442-4000

*General Permit Type—PAG-4**Facility Location:*

<i>Municipality &amp; County</i>	<i>Permit No.</i>	<i>Applicant Name &amp; Address</i>	<i>Receiving Water/Use</i>	<i>Contact Office &amp; Phone No.</i>
Richland Township Bucks County	PAG040100	John J. Schmooch 433 East Cherry Road Quakertown, PA 18951	Three Mile Run Watershed 2D	Southeast Regional Office 2 East Main Street Norristown, PA 19401

*Facility Location:*

<i>Municipality &amp; County</i>	<i>Permit No.</i>	<i>Applicant Name &amp; Address</i>	<i>Receiving Water/Use</i>	<i>Contact Office &amp; Phone No.</i>
Dauphin County Conewago Township	PAG043884	R. H. Kreiser Construction 1569 Elm Road Elizabethtown, PA 17022	UNT Brills Run 7G	DEP—SCRO 909 Elmerton Avenue Harrisburg, PA 17110 (717) 705-4707
Limestone Township Warren County	PAG049480	Rachel H. Watson 15910 Route 62 Tidioute, PA 16351	Allegheny River 16-F	DEP—NWRO Water Management 230 Chestnut Street Meadville, PA 16335-3481 (814) 332-6942
Center Township Butler County	PAG049479	Theodore Lowe 639 West Sunbury Road West Sunbury, PA 16061	UNT to Stony Run 20-C	DEP—NWRO Water Management 230 Chestnut Street Meadville, PA 16335-3481 (814) 332-6942

*General Permit Type—PAG-5**Facility Location:*

<i>Municipality &amp; County</i>	<i>Permit No.</i>	<i>Applicant Name &amp; Address</i>	<i>Receiving Water/Use</i>	<i>Contact Office &amp; Phone No.</i>
North Sewickley Township Beaver County	PAG056232	Sheetz, Inc. 2700 Sixth Avenue Altoona, PA 16602	Bennett Run	Southwest Regional Office Water Management Program Manager 400 Waterfront Drive Pittsburgh, PA 15222-4745 (412) 442-4000
Canonsburg Borough Washington County	PAG056192	Coen Oil Company P. O. Box 34 1100 West Chestnut Street Washington, PA 15301	Chartiers Creek	Southwest Regional Office Water Management Program Manager 400 Waterfront Drive Pittsburgh, PA 15222-4745 (412) 442-4000
Menallen Township Fayette County	PAG056183	United Refining Company of PA P. O. Box 688 11 Bradley Street Warren, PA 16365	Jennings Run	Southwest Regional Office Water Management Program Manager 400 Waterfront Drive Pittsburgh, PA 15222-4745 (412) 442-4000
South Strabane Township Washington County	PAG056190	Coen Oil Company P. O. Box 34 1100 Chestnut Street Washington, PA 15301	UNT to Chartiers Creek	Southwest Regional Office Water Management Program Manager 400 Waterfront Drive Pittsburgh, PA 15222-4745 (412) 442-4000
Center Township Beaver County	PAG056179	Morelli Corporation 2 Lindsay Drive Beaver Falls, PA 15010	Moon Run to Ohio River	Southwest Regional Office Water Management Program Manager 400 Waterfront Drive Pittsburgh, PA 15222-4745 (412) 442-4000
New Stanton Borough Westmoreland County	PAG056184	Sunoco, Inc. 5733 Butler Street Pittsburgh, PA 15201	Sewickley Creek	Southwest Regional Office Water Management Program Manager 400 Waterfront Drive Pittsburgh, PA 15222-4745 (412) 442-4000

## NOTICES

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<i>Facility Location: Municipality &amp; County</i>	<i>Permit No.</i>	<i>Applicant Name &amp; Address</i>	<i>Receiving Water/Use</i>	<i>Contact Office &amp; Phone No.</i>
White Oak Borough Allegheny County	PAG056185	Sunoco, Inc. 5733 Butler Street Pittsburgh, PA 15201	Crooked Creek	Southwest Regional Office Water Management Program Manager 400 Waterfront Drive Pittsburgh, PA 15222-4745 (412) 442-4000
Smith Township Washington County	PAG056188	Jake Schneider Box 7 Route 18 Atlasburg, PA 15004	Burgetts Fork	Southwest Regional Office Water Management Program Manager 400 Waterfront Drive Pittsburgh, PA 15222-4745 (412) 442-4000
South Fork Borough Cambria County	PAG056209	Kick Brothers, Inc. 220 Lake Street South Fork, PA 15956	Conemaugh River	Southwest Regional Office Water Management Program Manager 400 Waterfront Drive Pittsburgh, PA 15222-4745 (412) 442-4000
Finleyville Borough Washington County	PAG056208	Sheetz, Inc. 5700 Sixth Avenue Altoona, PA 16602	Peters Creek	Southwest Regional Office Water Management Program Manager 400 Waterfront Drive Pittsburgh, PA 15222-4745 (412) 442-4000
Bethel Park Borough Allegheny County	PAG056206	Conoco Phillips Company 1400 Park Avenue Bayway Office Building Linden, NJ 07036	Catfish Run	Southwest Regional Office Water Management Program Manager 400 Waterfront Drive Pittsburgh, PA 15222-4745 (412) 442-4000
City of Washington Washington County	PAG056205	Coen Oil Company P. O. Box 34 1100 West Chestnut Street Washington, PA 15301	Chartiers Creek	Southwest Regional Office Water Management Program Manager 400 Waterfront Drive Pittsburgh, PA 15222-4745 (412) 442-4000
Penn Township Westmoreland County	PAG056203	Howard Gasoline and Oil Company P. O. Box 494 Harrison City, PA 15636	Bushy Run	Southwest Regional Office Water Management Program Manager 400 Waterfront Drive Pittsburgh, PA 15222-4745 (412) 442-4000
Roscoe Borough Washington County	PAG056200	Coen Oil Company P. O. Box 34 1100 West Chestnut Street Washington, PA 15301	Monongahela River	Southwest Regional Office Water Management Program Manager 400 Waterfront Drive Pittsburgh, PA 15222-4745 (412) 442-4000

*Facility Location:  
Municipality &  
County*North Fayette  
Township  
Allegheny CountyPermit No.  
PAG056199*Applicant Name &  
Address*  
Tonidale Gulf Station  
7021 Steubenville Pike  
Oakdale, PA 15071*Receiving  
Water/Use*  
UNT to Moon Run*Contact Office &  
Phone No.*Southwest Regional Office  
Water Management  
Program Manager  
400 Waterfront Drive  
Pittsburgh, PA  
15222-4745  
(412) 442-4000Bethel Park  
Borough  
Allegheny CountyPermit No.  
PAG056197*Applicant Name &  
Address*  
Conoco Phillips Company  
1400 Park Avenue  
Bayway Office Building  
Linden, NJ 07036

Graeser Run Creek

Southwest Regional Office  
Water Management  
Program Manager  
400 Waterfront Drive  
Pittsburgh, PA  
15222-4745  
(412) 442-4000*General Permit Type—PAG-12**Facility Location:  
Municipality &  
County*Berks County  
Centre TownshipPermit No.  
PAG123619*Applicant Name &  
Address*  
Aaron Martin  
North End View Farm  
1383 River Road  
Mohrsville, PA 19541*Receiving  
Water/Use*  
UNT Plum Creek  
WWF  
3-B*Contact Office &  
Phone No.*DEP—SCRO Water  
Management Program  
909 Elmerton Avenue  
Harrisburg, PA 17110  
(717) 705-4802**STATE CONSERVATION COMMISSION****NUTRIENT MANAGEMENT PLANS RELATED TO APPLICATIONS FOR  
NATIONAL POLLUTION DISCHARGE ELIMINATION SYSTEM (NPDES)  
PERMITS FOR CONCENTRATED ANIMAL FEEDING OPERATIONS (CAFO)**

The State Conservation Commission has taken the following actions on previously received applications for nutrient management plans under the act of July 6, 2005 (Act 38 of 2005, 3 Pa.C.S. §§ 501—522) (hereinafter referred to as Act 38), for agricultural operations that have or anticipate submitting applications for new, amended or renewed NPDES permits, or Notices of Intent for coverage under a general permit, for CAFOs, under 25 Pa. Code Chapter 92. This notice is provided in accordance with 25 Pa. Code Chapter 92 and 40 CFR Part 122, implementing The Clean Streams Law (35 P. S. §§ 691.1—691.1001) and the Federal Clean Water Act.

Persons aggrieved by any action may appeal under section 517 of Act 38, section 4 of the Environmental Hearing Board Act (35 P. S. § 7514) and 2 Pa.C.S. §§ 501—508 and 701—704 (relating to Administrative Agency Law) to the Environmental Hearing Board, Second Floor, Rachael 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 AT&T Relay Service at (800) 654-5984. Appeals must be filed with the Board within 30 days of publication of this notice in the *Pennsylvania Bulletin*. 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 pro bono representation. Call the Secretary of the Board at (717) 787-3483 for more information.

**ACTIONS—NUTRIENT MANAGEMENT PLAN—PUBLIC NOTICE SPREADSHEET**

<i>Agricultural Operation Name and Address</i>	<i>County</i>	<i>Total Acres</i>	<i>Animal Equivalent Units</i>	<i>Animal Type</i>	<i>Special Protection Waters (HQ or EV or NA)</i>	<i>Approved or Disapproved</i>
Timber Ridge Farms 9699 Timber Ridge Road Big Cove Tannery, PA 17212	Fulton	66.0	1,180	Swine	N/A—WWF	Approved
Rohrer Farm, LLC Dale Rohrer 762 West Lexington Road Lititz, PA 17543	Lancaster	0	286	Pullets, Hogs	NA	Approved

<i>Agricultural Operation Name and Address</i>	<i>County</i>	<i>Total Acres</i>	<i>Animal Equivalent Units</i>	<i>Animal Type</i>	<i>Special Protection Waters (HQ or EV or NA)</i>	<i>Approved or Disapproved</i>
Beiler Farms Keith and Kent Beiler 2185 Smyrna Road Paradise, PA 17562	Lancaster	91.6	399.1	Dairy, Hogs	NA	Approved
David H. Martin 420 Nottingham Road Nottingham, PA 19362	Lancaster	232.45	698.3	Hog, Pullets, Heifers	HQ	Approved
Yippe Farms Arlin Benner 880 Pinkerton Road Mount Joy, PA 17552	Lancaster	611.2	1,470.9	Dairy	NA	Approved
Hissong Farmstead, Inc. 6841 Buchanan Trail West Mercersburg, PA 17236	Franklin	1,402.4	1,444.9	Dairy	NA	Approved
Dry Run Farm 8815 Dry Run Farms Mercersburg, PA 17236	Franklin	96	1,792.6	Swine	NA	Approved

**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 AT&T 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**

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

**Permit No. 3480050, Operations Permit, Public Water Supply.**

Applicant **Easton Suburban Water Authority**  
3700 Hartley Avenue  
Easton, PA 18045  
Williams Township

County **Northampton**  
Type of Facility PWS

Consulting Engineer Dennis W. Silbaugh, P. E.  
Gannett Fleming, Inc.  
P. O. Box 67100  
Harrisburg, PA 17106

Permit to Operate Issued November 19, 2008

**Permit No. 3540032, Operations Permit, Public Water Supply.**

Applicant **Pennsylvania American Water**  
800 West Hersheypark Drive  
Hershey, PA 17033  
Frackville Borough

County **Schuylkill**  
Type of Facility PWS

Consulting Engineer Joel M. Mitchell, P. E.  
Pennsylvania American Water  
852 Wesley Drive  
Mechanicsburg, PA 17055

Permit to Operate Issued November 20, 2008

**Permit No. 2580023MA, Minor Amendment, Public Water Supply.**

Applicant **Pennsylvania American Water**  
800 West Hersheypark Drive  
Hershey, PA 17033  
Bridgewater Township

County **Susquehanna**  
 Type of Facility PWS  
 Consulting Engineer Scott Thomas, P. E.  
 Pennsylvania American Water  
 852 Wesley Drive  
 Mechanicsburg, PA 17055  
 Permit to Construct November 24, 2008  
 Issued

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

**Permit No. 0108502**, Public Water Supply.  
 Applicant **East Berlin Area Joint Authority**  
 Municipality Hamilton Township  
 County **Adams**  
 Type of Facility Construction of a new subdivision known as the Buttercup Farm subdivision with 2 wells, disinfection, storage tank and booster pump station.  
 Consulting Engineer Bruce Hulshizer, P. E.  
 Buchart-Horn, Inc.  
 445 West Philadelphia Street  
 York, PA 17401-3383  
 Permit to Construct November 25, 2008  
 Issued

**Permit No. 0108506**, Public Water Supply.  
 Applicant **Poosum Valley Municipal Authority**  
 Municipality Menallen Township  
 County **Adams**  
 Type of Facility Installation of a 2nd membrane filtration unit, chlorine tolerant membranes in the existing unit and replacement of the finished water reservoir roof.  
 Consulting Engineer Janet R. McNally, P. E.  
 William F. Hill & Assoc., Inc.  
 207 Baltimore Street  
 Gettysburg, PA 17325  
 Permit to Construct November 17, 2008  
 Issued

**Permit No. 3608507**, Public Water Supply.  
 Applicant **Pequea Valley School District**  
 Municipality Paradise Township  
 County **Lancaster**  
 Type of Facility Installation of softening, disinfection, nitrate treatment and general corrosion control at the New Paradise Elementary School.  
 Consulting Engineer William E. Fleischer, P. E.  
 Moore Engineering Company  
 3637 Columbia Avenue  
 Lancaster, PA 17603  
 Permit to Construct December 9, 2008  
 Issued

**Permit No. 2208505**, Public Water Supply.  
 Applicant **United Water Pennsylvania**  
 Municipality Swatara Township  
 County **Dauphin**  
 Type of Facility Replacement of booster pumps at the Oberlin Booster Pumping Station.  
 Consulting Engineer Arthur Saunders, P. E.  
 United Water Pennsylvania  
 4211 East Park Circle  
 Harrisburg, PA 17111  
 Permit to Construct November 12, 2008  
 Issued

**Permit No. 0608513 MA, Minor Amendment**, Public Water Supply.  
 Applicant **Western Berks Water Authority**  
 Municipality Spring Township  
 County **Berks**  
 Type of Facility Replacement of Low Lift Pump No. 2, addition of Backwash Sump Pump No. 2 and installation of a tank mixer in Sugarloaf Tank No. 2.  
 Consulting Engineer Russell M. Smith, P. E.  
 Spotts Stevens and McCoy, Inc.  
 345 North Wyomissing Boulevard  
 Reading, PA 19610-0307  
 Permit to Construct November 21, 2008  
 Issued

**Operations Permit** issued to **The York Water Company**, 7670100, West Manheim Township, **York County** on December 4, 2008, for the operation of facilities approved under Construction Permit No. 6771506-T1.

**Operations Permit** issued to **Poosum Valley Municipal Authority**, 7010034, Menallen Township, **Adams County** on November 20, 2008, for the operation of facilities approved under Construction Permit No. 0108514 E.

**Operations Permit** issued to **West Manchester Township Authority**, 7670101, West Manchester Township, **York County** on December 4, 2008, for the operation of facilities approved under Construction Permit No. 6703506.

**Operations Permit** issued to **Insite Development, LLC—Eagle View MHP**, 7010055, Berwick Township, **Adams County** on November 12, 2008, for the operation of facilities approved under Construction Permit No. 0106512.

**Operations Permit** issued to **Myerstown Water Authority**, 7380025, Jackson Township, **Lebanon County** on November 26, 2008, for the operation of facilities approved under Construction Permit No. 3807506 MA.

**Operations Permit** issued to **The York Water Company**, 7670100, Oxford Township, **Adams County** on November 21, 2008, for the operation of facilities approved under Construction Permit No. 0108501.

**Operations Permit** issued to **Penn Manor School District**, 7361035, Martic Township, **Lancaster County** on November 26, 2008, for the operation of facilities approved under Construction Permit No. 3608506.



**Operations Permit** issued to **Christiana Borough Authority**, 7360007, Sadsbury Township, **Lancaster County** on November 21, 2008, for the operation of facilities approved under Construction Permit No. 3608520 MA.

**Operations Permit** issued to **Altoona City Authority**, 4070023, Juniata Township, **Blair County** on November 20, 2008, for the operation of facilities approved under Construction Permit No. 0708508 MA.

**Operations Permit** issued to **Elizabethtown Area Water Authority**, 7360124, Mount Joy Borough, **Lancaster County** on December 4, 2008, for the operation of facilities approved under Construction Permit No. 3608522.

**Operations Permit** issued to **Brookwood Countryside MHP**, 4050004, Bedford Township, **Bedford County** on November 20, 2008, for the operation of facilities approved under Construction Permit No. 4050004.

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

**Permit No. 5308502—Construction**, Public Water Supply.

Applicant	<b>Ulysses Municipal Authority</b>
Township or Borough	Ulysses Borough
County	<b>Potter</b>
Responsible Official	Betty Jo Hilfiger Ulysses Municipal Authority 522 Main Street Ulysses, PA 16948
Type of Facility	Public Water Supply—Construction
Consulting Engineer	Michael J. Peleschak alfred benesch & company 400 One Norwegian Plaza P. O. Box 1090 Pottsville, PA 17901
Permit Issued Date	December 8, 2008
Description of Action	Addition of potassium phosphate to water from Well No. 3 to sequester iron and manganese, the use of sodium hypochlorite to disinfect water from Big Spring reservoir and Well No. 3 and all related water system improvements for implementation.

**SEWAGE FACILITIES ACT PLAN APPROVAL**

**Plan Approvals Granted under section 5 of the Pennsylvania Sewage Facilities Act (35 P.S. § 750.5)**

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

*Plan Location:* Opus East, LLC, Bethlehem Crossings IV and V.

<i>Borough or Township</i>	<i>Borough or Township Address</i>	<i>County</i>
Lower Nazareth Township	Township Building 306 Butztown Road Bethlehem, PA 18020	Northampton County

*Plan Description:* The approved plan provides for the subdivision plan submitted for the previously referenced proposed Official Plan Revision consisting of two multiflex warehouse buildings on a 50.86 acre tract located on Fritch Drive, Lower Nazareth Township, Northampton County. Building IV will be 228,000 sq. ft. and Building V will be 304,000 sq. ft. The peak daily sewage flow generated from these buildings is estimated to be 7,315 gpd. The average daily design flow is 3,658 gpd.

Denitrification of the wastewater to a treatment level of 10mg/l Total Nitrogen is required because elevated levels of nitrate nitrogen exist in the groundwater exceeding the Environmental Protection Agency drinking water regulations. The proposed wastewater treatment system design uses a sequential approach to treat the domestic type wastewater and maximize nitrogen removal. Wastewater from the two buildings will flow by gravity in 6" laterals to a pump station located between the buildings. The sewage will be pumped by grinder pumps through a 2" force main to a treatment tank area consisting of a solids removal tank, a Micro Fast 9.0 unit, a Nitro Fast 9.0 unit, an ABC-N 4.5 unit, a Micro Fast 3.0 unit and a dosing tank. Seven elevated sand mound absorption areas have been delineated. Beds C, E and F have been identified as the primary onlot sewage absorption areas, which have a combined design peak daily capacity of 7,315 gpd. The three primary absorption beds will be dosed by three independent delivery lines from the dosing tank. Four tested replacement (secondary) absorption areas will provide for the long-term sewage needs of the project. All tested absorption areas must remain undisturbed until actual sewage disposal system construction begins. Public water will be provided to the site by the City of Bethlehem.

A Krone Aquaflux Electromagnetic flow meter is proposed to be located after M-H 3-6 on the 2" force main in a subsurface access vault. A data logger will be utilized by the wastewater treatment plant operator to document and analyze the wastewater flow to prevent overloading of the wastewater treatment facility and the absorption areas. An Operating and Maintenance Agreement has been executed between Lower Nazareth Township and Bethlehem Crossings IV, LLC which requires influent water use metering to verify the effluent volume.

Any required NPDES Permits or WQM Permits must be obtained in the name of Bethlehem Crossings IV, LLC.

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

*Plan Location:* On the southeast side of Old Carlisle Road, 0.4 mile north of it's intersection with Bull Valley Road.

<i>Borough or Township</i>	<i>Borough or Township Address</i>	<i>County</i>
Butler Township	P. O. Box 339 Biglerville, PA 17307	Adams County

*Plan Description:* The approved plan provides the installation of a small flow treatment facility to serve one single-family dwelling with wastewater flows estimated at 500 gpd discharging to a UNT of Opossum Creek. The dwelling will utilize a private well. The name of the project is Steve Sheets and the Department of Environmental Protection (Department) Code No. is B3-01909-185-3s. The Department's review of the sewage facilities update revision has not identified any significant environmental impacts resulting from this proposal. Any required

NPDES Permits or WQM Permits must be obtained in the name of the municipality, authority or owner as appropriate.

*Plan Location:*

<i>Borough or Township</i>	<i>Borough or Township Address</i>	<i>County</i>
Bethel Township	289 Long Hollow Road Warfordsburg, PA 17267	Fulton County

*Plan Description:* The approved plan provides for the extension of Bethel Township Sewer Authority's collection system to serve five existing residential and two existing commercial lots along Buck Valley Road. The Department of Environmental Protection's review of the sewage facilities update revision has not identified any significant environmental impacts resulting from this proposal. Any required NPDES Permits or WQM Permits must be obtained in the name of the municipality or authority as appropriate.

*Plan Location:*

<i>Borough or Township</i>	<i>Borough or Township Address</i>	<i>County</i>
Southampton Township	5735 Chaneyville Road Clearville, PA 15535	Bedford County

*Plan Description:* The approved plan provides for the construction of a Small Flow Treatment Facility (SFTF). The SFTF will serve one single-family dwelling. The SFTF will be located along SR 326 approximately 1 mile north of Maryland border in Southampton Township, Bedford County and will discharge to Amorine Branch. The Department of Environmental Protection's review of the sewage facilities update revision has not identified any significant environmental impacts resulting from this proposal. Any required NPDES Permits or WQM Permits must be obtained in the name of the municipality or authority as appropriate.

*Plan Location:*

<i>Borough or Township</i>	<i>Borough or Township Address</i>	<i>County</i>
Southampton Township	5735 Chaneyville Road Clearville, PA 15535	Bedford County

*Plan Description:* The approved plan provides for the construction of a Small Flow Treatment Facility (SFTF). The SFTF will serve one single-family dwelling. The SFTF will be located along SR 3005 just north of Beans Cove, in Southampton Township, Bedford County and will discharge to Wildcat Run. The Department of Environmental Protection's review of the sewage facilities update revision has not identified any significant environmental impacts resulting from this proposal. Any required NPDES Permits or WQM Permits must be obtained in the name of the municipality or authority as appropriate.

*Plan Location:*

<i>Borough or Township</i>	<i>Borough or Township Address</i>	<i>County</i>
Napier Township	P. O. Box 49 Schellsburg, PA 15559	Bedford County

*Plan Description:* The approved plan provides for the construction of a Small Flow Treatment Facility (SFTF). The SFTF will serve one single-family dwelling. The SFTF will be located along SR 4022 approximately a half

mile north of Point, in Napier Township, Bedford County and will discharge to a UNT to Adams Run. The Department of Environmental Protection's review of the sewage facilities update revision has not identified any significant environmental impacts resulting from this proposal. Any required NPDES Permits or WQM Permits must be obtained in the name of the municipality or authority as appropriate.

*Plan Location:*

<i>Borough or Township</i>	<i>Borough or Township Address</i>	<i>County</i>
Harrison Township	4747 Milligans Cove Road Manns Choice, PA 15550	Bedford County

*Plan Description:* The approved plan provides for the construction of a Small Flow Treatment Facility (SFTF). The SFTF will serve one single-family dwelling. The SFTF will be located along SR 96 approximately a mile south of Manns Choice, in Harrison Township, Bedford County and will discharge to Buffalo Run. The Department of Environmental Protection's review of the sewage facilities update revision has not identified any significant environmental impacts resulting from this proposal. Any required NPDES Permits or WQM Permits must be obtained in the name of the municipality or authority as appropriate.

*Plan Location:*

<i>Borough or Township</i>	<i>Borough or Township Address</i>	<i>County</i>
Londonderry Township	P. O. Box 215 Hyndman, PA 15545	Bedford County

*Plan Description:* The approved plan provides for the construction of a Small Flow Treatment Facility (SFTF). The SFTF will serve one single-family dwelling that is currently on holding tanks. The SFTF will be located along SR 96 south of Palo Alto, in Londonderry Township, Bedford County and will discharge to a UNT of Gladdens Run. The Department of Environmental Protection's review of the sewage facilities update revision has not identified any significant environmental impacts resulting from this proposal. Any required NPDES Permits or WQM Permits must be obtained in the name of the municipality or authority as appropriate.

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

*Plan Location:*

<i>Borough or Township</i>	<i>Borough or Township Address</i>	<i>County</i>
Winfield Township	194 Brose Road Cabot, PA 16023	Butler County

*Plan Description:* The approved plan provides for addressing sewage needs in the Cabot, Marwood and Knox Chapel/Route 356 area through a conventional gravity system with connection to the Buffalo Township Municipal Authority's existing sewage treatment plant. The Department of Environmental Protection's review of the sewage facilities update revision has not identified any significant environmental impacts resulting from this proposal. Any required NPDES Permits or WQM Permits must be obtained in the name of the municipality or authority as appropriate.

## 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 Pennsylvania AT&T Relay Service at (800) 654-5984.

The Department has received the following plans and reports:

*Northeast Region: Ronald S. Brezinski, Environmental Cleanup Program Manager, 2 Public Square, Wilkes-Barre, PA 18711-0790.*

**Czeitner Property**, Lower Woodside Drive, Silver Lake Township, **Susquehanna County**. Dawn L. Washo, Resource Environmental Management, Inc., 8 Ridge Street, Montrose, PA 18801 has submitted a Final Report (on behalf of her client, Lori Czeitner, 19 Arlington Street, Johnson City, NY 13790), concerning the remediation of soils found to have impacted by No. 2 fuel oil as a result of a release from a 275-gallon aboveground storage tank. The report documents attainment of the Residential Statewide Health Standard. A public notice regarding the submittal of the Final Report was published in *The Susquehanna County Transcript* on November 26, 2008.

**Lakeside Energy/Hazleton Generation Facility**, 10 Maplewood Drive, Hazle Township, **Luzerne County**.

Jeffrey C. Thomas, P. G., EPSYS, LLC, 1414 North Cameron Street, Suite A, Harrisburg, PA 17103 has submitted a Final Report (on behalf of his client, Lakeside Energy, LLC, 150 North Michigan Avenue, Suite 2930, Chicago, IL 60601), concerning the remediation of soils found to have been impacted by fuel oil in April 2002 and in May 2003 and by glycol in November 2005 and in April 2006 as a result of accidental releases. The report was submitted to document attainment of the Statewide Health Standard. A summary of the Notice of Intent to Remediate and a public notice regarding the submittal of the Final Report were published in *The Standard-Speaker* on October 31, 2008.

*Southcentral Region: Environmental Cleanup Program Manager, 909 Elmerton Avenue, Harrisburg, PA 17110.*

**O'Sullivan Films Inc.**, Lebanon City, **Lebanon County**. August Mack, 941 Wheatland Avenue, Suite 202, Lancaster, PA 17603, and O'Sullivan Films, Inc., 1507 Willow Street, Lebanon, PA 17046, submitted a Final Report concerning remediation of site soils contaminated with lubricating oil from two roll mills. The report is intended to document remediation of the site to meet the Residential Statewide Health Standard.

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

**Trinity Industries Soil (Former Trinity Industries Site)**, City of Butler, **Butler County**. Civil & Environmental Consultants, Inc., 333 Baldwin Road, Pittsburgh, PA 15205 on behalf of the Community Development Corporation of Butler County, 112 Woody Drive, Butler, PA 16001 has submitted a Final Report concerning remediation of site soil contaminated with arsenic, barium and compounds, iron, lead, nickel, polychlorinated biphenyls (aroclor) (PCBs) and thallium. The Report is intended to document remediation of the site to meet Site-Specific and Statewide Health Standards.

## LAND RECYCLING AND ENVIRONMENTAL REMEDIATION

UNDER ACT 2, 1995

### PREAMBLE 3

**The Department has taken action on the following plans and reports under the Land Recycling and Environmental Remediation Standards Act (35 P. S. §§ 6026.101—6026.908).**

Provisions of 25 Pa. Code § 250.8, administration of the Land Recycling and Environmental Remediation Standards Act (act), require the Department of Environmental Protection (Department) to publish in the *Pennsylvania Bulletin* a notice of final actions on plans and reports. A final report is submitted to document cleanup of a release of a regulated substance at a site to one of the remediation standards of the act. A final report provides a description of the site investigation to characterize the nature and extent of contaminants in environmental media, the basis of selecting the environmental media of concern, documentation supporting the selection of residential or nonresidential exposure factors, a description of the remediation performed and summaries of sampling methodology and analytical results which demonstrate that the remediation has attained the cleanup standard selected. Plans and reports required by provisions of the act for compliance with selection of remediation to a Site-Specific Standard, in addition to a final report, include a remedial investigation report, risk assessment report and cleanup plan. A remedial investigation report

includes conclusions from the site investigation, concentration of regulated substances in environmental media, benefits of refuse of the property and, in some circumstances, a fate and transport analysis. If required, a risk assessment report describes potential adverse effects caused by the presence of regulated substances. If required, a cleanup plan evaluates the abilities of potential remedies to achieve remedy requirements. A work plan for conducting a baseline remedial investigation is required by provisions of the act for compliance with selection of a special industrial area remediation. The baseline remedial investigation, based on the work plan, is compiled into the baseline environmental report to establish a reference point to show existing contamination, describe proposed remediation to be done and include a description of existing or potential public benefits of the use or reuse of the property. The Department may approve or disapprove plans and reports submitted. This notice provides the Department's decision and, if relevant, the basis for disapproval.

For further information concerning the plans and reports, contact the Environmental Cleanup Program manager in the Department regional office before which the notice of the plan or report appears. If information concerning a final report is required in an alternative form, contact the Community Relations Coordinator at the appropriate regional office. TDD users may telephone the Department through the Pennsylvania AT&T Relay Service at (800) 654-5984.

The Department has received the following plans and reports:

*Northeast Region: Ronald S. Brezinski, Environmental Cleanup Program Manager; 2 Public Square, Wilkes-Barre, PA 18711-0790.*

**PPL Lower Mount Bethel Plant**, 6079 DePues Ferry Road, Lower Mount Bethel Township, **Northampton County**. Jennifer L. Sedora, PPL Services Corporation, Two North Nine Street, GENPL6, Allentown, PA 18101-1179 submitted a Final Report (on behalf of Bradley Piatt, PPL Lower Mt. Bethel Energy, LLC, Two North Ninth Street, GENPL6, Allentown, PA 18101-1179), concerning the remediation of soils found to have been impacted by lubricating oil as a result of a leaking turbine. The report documented attainment of the State-wide Health Standard for soil and was approved on December 1, 2008. The report was originally submitted within 90 days of the release.

*Southcentral Region: Environmental Cleanup Program Manager; 909 Elmerton Avenue, Harrisburg, PA 17110.*

**Schmoyer Trust Property**, Boyertown Borough, **Berks County**. Spotts, Stevens and McCoy, Inc., 1047 North Park Road, Reading, PA 19610-0307, on behalf of Barbara Schmoyer, 129 Sunset Lane, Boyertown, PA 19512 and Thrivent Financial Bank, 122 East College Avenue, Suite 1E, Appleton, WI 54911-5741, submitted a Final Report concerning remediation of site soils and groundwater contaminated with No. 2 fuel oil. The Final Report demonstrated attainment of the Residential State-wide Health Standard and was approved by the Department of Environmental Protection on December 2, 2008.

**Mount Union Creosote Site AOC-1**, Mount Union Borough, **Huntingdon County**. Environmental Alliance, Inc., 1812 Newport Gap Pike, Wilmington, DE 19808, on behalf of Mount Union School Area School District, 28 West Market Street, Mount Union, PA 17066, submitted a Cleanup Plan concerning remediation of site soils and groundwater contaminated with PAHs. The site will be

remediated to the Site-Specific Standard. The plan was approved by the Department of Environmental Protection on December 5, 2008.

*Northcentral Region: Environmental Cleanup Program Manager; 208 West Third Street, Williamsport, PA 17701.*

**Axeman-Anderson Company Fuel Oil Release**, South Williamsport Borough, **Lycoming County**. Pennsylvania Tectonics, 826 Main Street, Peckville, PA 18452 on behalf of Axeman-Anderson Company, 300 East Mountain Avenue, South Williamsport, PA 17702 has submitted a Final Report within 90 days of the release concerning remediation of site soil contaminated with No. 2 fuel oil. The Final Report demonstrated attainment of the State-wide Health Standard and was approved by the Department of Environmental Protection on November 12, 2008.

*Northwest Region: Environmental Cleanup Program Manager; 230 Chestnut Street, Meadville, PA 16335-3481.*

**American Meter**, City of Erie, **Erie County**. Civil & Environmental Consultants, Inc., 333 Baldwin Road, Pittsburgh, PA 15205 on behalf of American Meter Company, 2 West Liberty Boulevard, Suite 180, Malvern, PA 19355 has submitted a Risk Assessment Report and Cleanup Plan concerning remediation of site soil contaminated with arsenic, antimony, lead and site groundwater contaminated with trichlorethene. The Risk Assessment Report and Cleanup Plan was approved by the Department of Environmental Protection on October 17, 2008.

#### RESIDUAL WASTE GENERAL PERMITS

**Permits Renewed under the Solid Waste Management Act (35 P. S. §§ 6018.101—6018.1003); the Municipal Waste Planning, Recycling and Waste Reduction Act (53 P. S. §§ 4000.101—4000.1904); and Residual Waste Regulations for a General Permit to Operate Residual Waste Processing Facilities and the Beneficial Use of Residual Waste other than Coal Ash.**

*Central Office: Division of Municipal and Residual Waste, Rachel Carson State Office Building, 14th Floor, 400 Market Street, Harrisburg, PA 17105-8472.*

**General Permit Number WMGR029**. General Permit Number WMGR029 authorizes the operation of a transfer facility prior to beneficial use of waste oil, spent anti-freeze and waste oil/water mixtures. The permit was renewed by Central Office on December 5, 2008.

Continued operation of the following facilities is authorized under General Permit Number WMGR029:

#### **WMGR029 Safety-Kleen Corporation:**

WMGR029C	1606 Pittsburgh Avenue Erie, PA 16505
WMGR029D	77 Towpath Road Fairless Hills, PA 19030
WMGR029E	10 Eleanor Drive New Kingstown, PA 17072
WMGR029F	1140 Greenhill Road West Chester, PA 19380
WMGR029G	650 Noble Drive West Mifflin, PA 15122
WMGR029H	600 Stewart Road Wilkes-Barre, PA 18706
WMGR029I	150 Allenbill Drive Johnstown, PA 15904

**WMGR029D001 Hydrocarbon Recovery Services:**

WMGR029D001C 201 Lindsay Road  
Zelienople, PA 06063

WMGR029D001D 5140 Paxton Street  
Harrisburg, PA 17111

**WMGR029D002 Ernies Waste Oil, LLC:**

WMGR029D002 155-C Swiontek Road  
R. D. 3, Aliquippa, PA 15001

Persons interested in reviewing the general permit should contact Ronald C. Hassinger, Chief, General Permits/Beneficial Use Section, Division of Municipal and Residual Waste, Bureau of Waste Management, P. O. Box 8472, Harrisburg, PA 17105-8472, (717) 787-7381. TDD users should contact the Department of Environmental Protection through the Pennsylvania AT&T Relay Service, (800) 654-5984.

**OPERATE WASTE PROCESSING OR DISPOSAL AREA OR SITE**

**Permit Issued under the Solid Waste Management Act (35 P. S. §§ 6018.101—6018.1003), the Municipal Waste Planning, Recycling and Waste Reduction Act (53 P. S. §§ 4000.101—4000.1904) and Regulations to Operate Solid Waste Processing or Disposal Area or Site.**

*Southeast Region: Regional Solid Waste Manager, 2 East Main Street, Norristown, PA 19401.*

**Permit No. 301254. Clean Earth of Southeast Pennsylvania, Inc.,** 7 Steel Road East, Morrisville, PA 19067-0847, Falls Township, **Bucks County.** This amended waste management permit is to allow Clean Earth of Southeast Pennsylvania, Inc. (CESP), to accept soils from generators with metal concentrations that exceed the facility's regular metal acceptance limitations but that still are suitable for reuse by one of CESP's end market users under an existing approval or authorization for the end use. The permit was issued by the Southeast Regional Office on December 2, 2008.

**Permit modification 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 Regulations to Operate Solid Waste Processing or Disposal Area or Site.**

*Northcentral Region: Regional Solid Waste Manager, 208 West Third Street, Williamsport, PA 17701.*

**Permit No. 301306. Sunbury Generation, LP,** P. O. Box 517, Old Susquehanna Trail, Shamokin Dam, PA 17876, located in Monroe Township, **Snyder County.** The application for a major permit modification for the Sunbury Generation, LLC's Residual Waste Impoundment was approved by the Williamsport Regional Office on December 4, 2008.

Persons interested in reviewing the permit should contact David Garg, P. E., Environmental Engineer Manager, Williamsport Regional Office, 208 West Third Street, Suite 101, Williamsport, PA 17701, (570) 327-3653. TDD users should contact the Department of Environmental Protection through the Pennsylvania AT&T Relay Service, (800) 654-5984.

**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.**

*Northwest Region: Regional Solid Waste Manager, 230 Chestnut Street, Meadville, PA 16335-3481.*

**Permit Application No. 101397. Veolia ES Greentree Landfill, LLC,** 635 Toby Road, Kersey, PA 15846, Fox Township, **Elk County.** The application was for a major permit modification for expansion of the Veolia ES Greentree Landfill. The expansion permit was issued by the Northwest Regional Office on December 8, 2008.

**AIR QUALITY**

**General Plan Approval and Operating Permit Usage Authorized under the Air Pollution Control Act (35 P. S. §§ 4001—4015) and 25 Pa. Code Chapter 127 to construct, modify, reactivate or operate air contamination sources and associated air cleaning devices.**

*Southeast Region: Air Quality Program, 2 East Main Street, Norristown, PA 19401, Sachin Shankar; New Source Review Chief, (484) 250-5920.*

**GP3-46-0077: Haines & Kibblehouse, Inc.** (2052 Lucon Road, Skippack, PA 19474) On December 4, 2008, to operate a portable crusher plant in Lower Providence Township, **Montgomery County.**

**GP9-46-0032: Haines & Kibblehouse, Inc.** (2052 Lucon Road, Skippack, PA 19474) On December 4, 2008, to operate one diesel-fired internal combustion engine in Lower Providence Township, **Montgomery County.**

*Southcentral Region: Air Quality Program, 909 Elmerton Avenue, Harrisburg, PA 17110, William R. Weaver; New Source Review Chief, (717) 705-4702.*

**GP3-36-03178: Pennsy Supply, Inc.** (1001 Paxton Street, Harrisburg, PA 17105) On December 3, 2008, for a Portable Nonmetallic Mineral Processing Plant under GP3 in East Hempfield Township, **Lancaster County.**

**GP9-36-03178: Pennsy Supply, Inc.** (1001 Paxton Street, Harrisburg, PA 17105) On December 3, 2008, for Diesel or No. 2 fuel-fired Internal Combustion Engines under GP9 in East Hempfield Township, **Lancaster County.**

**GP19-67-03147: Namasco Corporation** (319 North Court Avenue, Louisville, MS 39339) On December 3, 2008, for a Dry Abrasive Blasting Operation under GP19 in West Manchester Township, **York County.**

*Northwest Region: Air Quality Program, 230 Chestnut Street, Meadville, PA 16335-3481, George Monasky; New Source Review Chief, (814) 332-6940.*

**GP-10-238A: Seneca Valley School District—Intermediate High School** (124 Seneca School Road, Harmony, PA 16037) On December 2, 2008, to operate a natural gas fired boiler (BAQ-GPA/GP-1) in Jackson Township, **Butler County.**

**GP-37-144A: Jameson Memorial Hospital** (1211 Wilmington Avenue, New Castle, PA 16105) On December 2, 2008, to operate three natural gas fired boilers (BAQ-GPA/GP-1) in New Castle, **Lawrence County.**

**GP-43-344A: Hillcrest Memorial Park** (2619 East State Street, Hermitage, PA 16148) On December 3, 2008, for to operate an animal cremation unit (BAQ-GPA/GP-14) in Hermitage, **Mercer County**.

**Plan Approvals Issued under the Air Pollution Control Act (35 P. S. §§ 4001—4015) and regulations in 25 Pa. Code Chapter 127, Subchapter B relating to construction, modification and reactivation of air contamination sources and associated air cleaning devices.**

*Southeast Region: Air Quality Program, 2 East Main Street, Norristown, PA 19401, Sachin Shankar, New Source Review Chief, (484) 250-5920.*

**09-0048D: H & K Materials** (300 Skunk Hollow Road, Chalfont, PA 19067) On December 3, 2008, to modify production parameters of an existing plan approval at an existing facility in Hilltown Township, **Bucks County**. The emission rate of NO<sub>x</sub>, VOC, CO and SO<sub>x</sub> are requested to be revised based on stack test results. The annual production limit will be reduced from 495,000 tons to 50,000 tons. The annual potential to emit for all the criteria pollutants will decrease due to the reduction in the production limit and will become the new limits for the facility. The company shall comply with good air pollution control practices, monitoring and recordkeeping procedures designed to keep the facility operating within all applicable air quality requirements.

*Northwest Region: Air Quality Program, 230 Chestnut Street, Meadville, PA 16335-3481, George Monasky, New Source Review Chief, (814) 332-6940.*

**24-123F: Veolia ES Greentree Landfill** (635 Toby Road, Kersey, PA 15846) On November 26, 2008, to construct additional landfill cells (Area 2 expansion) in Fox Township, **Elk County**. This is a Title V facility.

**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, Sachin Shankar, New Source Review Chief, (484) 250-5920.*

**09-0048D: H & K Materials** (300 Skunk Hollow Road, Chalfont, PA 19067) On December 3, 2008, to modify production parameters of an existing plan approval at an existing facility in Hilltown Township, **Bucks County**. The emission rate of NO<sub>x</sub>, VOC, CO and SO<sub>x</sub> are requested to be revised based on stack test results. The annual production limit will be reduced from 495,000 tons to 50,000 tons. The annual potential to emit for all the criteria pollutants will decrease due to the reduction in the production limit and will become the new limits for the facility. The company shall comply with good air pollution control practices, monitoring and recordkeeping procedures designed to keep the facility operating within all applicable air quality requirements.

*Northcentral Region: Air Quality Program, 208 West Third Street, Williamsport, PA 17701, David Aldenderfer, Program Manager, (570) 327-3637.*

**49-302-062: Sun-Re Cheese Corp.** (178 Lenker Avenue, Sunbury, PA 17801) On November 26, 2008, to extend the authorization to operate an anaerobic digestion system and associated biogas flare on a temporary

basis to May 25, 2009, in the City of Sunbury, **Northumberland County**. The plan approval has been extended.

*Southwest Region: Air Quality Program, 400 Waterfront Drive, Pittsburgh, PA 15222-4745, M. Gorog and B. Hatch, Environmental Engineer Managers, (412) 442-4163/5226.*

**26-00562A: Coastal Lumber Co.** (3302 Lobban Place, Charlottesville, VA 22903) On December 4, 2008, to extend the period of temporary operation of sources and controls covered under plan approval 26-00562A until June 4, 2009, at their Hopwood Sawmill, in South Union Township, **Fayette County**. The plan approval has been extended.

*Northwest Region: Air Quality Program, 230 Chestnut Street, Meadville, PA 16335-3481, George Monasky, New Source Review Chief, (814) 332-6940.*

**42-004C: American Refining Group, Inc.** (77 North Kendall Avenue, Bradford, PA 16701) On November 30, 2008, to construct a new hydrotreater unit to enable ARG to produce diesel fuels for commercial sale that meet the ultra low sulfur standards required by the Environmental Protection Agency and to construct a desulfurization unit to convert the existing sour gas to a sweet gas as well as reducing H<sub>2</sub>S from the hydrotreater to elemental sulfur in the City of Bradford, **McKean County**. This is a Title V facility.

**Title V Operating Permits Issued under the Air Pollution Control Act (35 P. S. §§ 4001—4015) and 25 Pa. Code Chapter 127, Subchapter G.**

*Southeast Region: Air Quality Program, 2 East Main Street, Norristown, PA 19401, Janine Tulloch-Reid, Facilities Permitting Chief, (484) 250-5920.*

**46-00025: Lonza, Inc.** (900 River Road, Conshohocken, PA 19248) On December 4, 2008, for renewal of the Title V Operating Permit in Upper Merion Township, **Montgomery County**. The initial permit was issued on December 31, 2001. The facility is primarily a synthesized pharmaceutical, fine organic chemical manufacturing plant with various manufacturing equipment, including boilers, emergency generators, laboratory hoods, a hazardous waste incinerator and a waste treatment plant. The facility is major for VOCs and NO<sub>x</sub> emissions and HAPs. The facility caps facility-wide HAP emissions to less than 25 tpy combination HAPs and less than 10 tpy any individual HAP. There are no new sources at the facility. Updated regulations for 40 CFR Part 63, Subpart EEE—National Emission Standards for HAPs for Hazardous Waste Combustors have been added to Source ID 001—Hazardous Waste Incinerator. CEMS reporting and recordkeeping requirements have also been added to Source ID 001. The facility is subjected to Compliance Assurance Monitoring (CAM) under 40 CFR Part 64. CAM requirements have been added to the permit for the scrubber/packed tower (C07) and the thermal oxidizer (C06) associated with Source IDs 101 (Raw Material and Waste Storage Tanks) and 106 (Manufacturing Processes). CAM conditions appear in Section D Source Level Requirements at each source. The renewal contains all applicable requirements including monitoring, recordkeeping and reporting.

*Southcentral Region: Air Quality Program, 909 Elmerton Avenue, Harrisburg, PA 17110, Yasmin Neidlinger, Facilities Permitting Chief, (717) 705-4702.*

**06-05024: Reliant Energy Mid-Atlantic Power Holdings, LLC** (121 Champion Way, Canonsburg, PA

15317) on December 8, 2008, for approval of a de minimis emission increase at their Titus Generating Station in Cumru Township, **Berks County**.

**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, Janine Tulloch-Reid, Facilities Permitting Chief, (484) 250-5920.*

**15-00005: Transwall Office Systems, Inc.** (1220 Wilson Drive, West Chester, PA 19380) on December 4, 2008, to operate an office furniture manufacturing plant in West Goshen Township, **Chester County**. The permit is for a non-Title V (State-only) facility. The facility has elected to cap their VOCs and HAPs to Minor Source threshold levels; the facility is a Synthetic Minor. This action is a renewal of the State-only Operating Permit. The initial permit was issued on November 21, 2003. There are no new sources at the facility and there are no new applicable regulations for the facility. The renewal permit will include monitoring, recordkeeping and reporting requirements designed to keep the plant operating within all applicable air quality requirements.

**23-00053: Delaware County Memorial Hospital** (501 North Lansdowne Avenue, Drexel Hill, PA 19026) on December 4, 2008, to operate three natural gas/No. 2 fuel oil-fired boilers and one natural gas and three diesel fuel-fired emergency generators at their facility in Upper Darby Township, **Delaware County**. The renewal permit is for a non-Title V (State-only) facility. The potential to emit NOx from the facility exceeds 25 tpy; however, Delaware County Memorial Hospital has elected to restrict NOx emissions from the facility to less than 25 tpy. Therefore, the facility is categorized as Synthetic Minor. The renewal permit will contain monitoring, recordkeeping, reporting and work practice requirements designed to keep the facility operating within all applicable air quality requirements.

**15-00054: Highway Materials, Inc.** (680 Morehall Road, Malvern, PA 19355) on December 4, 2008, for a non-Title V Facility, Renewal of a State-only, Synthetic Minor Permit in East Whiteland Township, **Chester County**. Highway Materials is an asphalt paving mixture and block manufacturing facility. The sources of emissions include a hot mix asphalt batch plant. The company took a tpy throughput restriction on the amount of asphalt being produced per year. 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, Ray Kempa, New Source Review Chief, (570) 826-2507.*

**40-00061: Temple Inland, Inc.** (533 Forest Road, Hazleton, PA 18202) on November 30, 2008, to re-issue a State-only (Synthetic Minor) Operating Permit for operation of a paperboard container and box manufacturing process and two boilers at their facility in Hazle Township, **Luzerne County**.

**48-00055: Mary Immaculate Center** (300 Cherryville Road, Northampton, PA 18067) on November 30, 2008, to re-issue a State-only (Synthetic Minor) Operating Permit for operation of three boilers fired by No. 4 fuel oil at their facility in Lehigh Township, **Northampton County**.

**39-00023: Pittsburgh Terminals Corp.** (P. O. Box 2621, Harrisburg, PA 17105) on November 30, 2008, to operate a bulk loading terminal for gasoline and distillate products facility in Allentown City, **Lehigh County**. This is a State-only Synthetic Minor operating permit.

*Southcentral Region: Air Quality Program, 909 Elmerton Avenue, Harrisburg, PA 17110, William R. Weaver, New Source Review Chief, (717) 705-4702.*

**06-03093: Pennsy Supply, Inc.** (1001 Paxton Street, P. O. Box 3331, Harrisburg, PA 17105-3331) on December 4, 2008, for operation of a railcar unloading station controlled by a wet suppression system in Cumru Township, **Berks County**. This action is a renewal of the State-only operating permit.

**22-03048: Reiff & Nestor Company** (P. O. Box 147, Lykens, PA 17048-0147) on December 4, 2008, for operation of a high-speed steel tap manufacturing facility in Lykens Borough, **Dauphin County**. This is a renewal of the State-only operating permit.

**22-05055: Department of General Services Annex Complex** (4 Cherry Road, Harrisburg, PA 17110-2927) on December 2, 2008, for operation of three natural gas and/or No. 2 oil fired boilers and emergency generators in Susquehanna Township, **Dauphin County**.

**67-03035: Martin's Potato Chips, Inc.** (P. O. Box 28, Thomasville, PA 17364-0028) on December 5, 2008, for operation of a potato chip manufacturing plant in Jackson Township, **York County**. This is a renewal of the State-only operating permit.

**67-05055: Conagra Foods, Inc.** (321 Taylor Avenue, Red Lion, PA 17356-2211) on December 5, 2008, for operation of their flour milling facility in Red Lion Borough, **York County**. This is a renewal of the State-only operating permit.

**67-05098: O-N Minerals Pennroc Corporation, LP** (495 Penroc Drive, York, PA 17405) on December 5, 2008, for operation of their limestone crushing plant in West Manchester Township, **York County**. This is a renewal of the State-only operating permit.

**67-05099: Kinsley Manufacturing, Inc.** (1110 East Princess Street, York, PA 17403-2543) on December 4, 2008, for operation of their steel fabrication plant in the City of York, **York County**. This is a renewal of the State-only operating permit.

**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.**

*Southeast Region: Air Quality Program, 2 East Main Street, Norristown, PA 19401, Janine Tulloch-Reid, Facilities Permitting Chief, (484) 250-5920.*

**46-00041: Graphic Packaging International, Inc.** (1035 Longford Road, Phoenixville, PA 19460) the Title V Operating Permit was issued as an Administrative Amendment for a Change of Ownership of the facility formerly owned by Bluegrass Folding Carton Company, LLC (Tax ID 20-5002721) now owned by Graphic Packaging International, Inc. (Tax ID 84-0772929) in Upper Providence Township, **Montgomery County**. The facility's major emission points include printing presses containing VOCs and HAPs. The Administrative Amendment of the Title V Operating Permit was issued under the Air Pollution Control Act (35 P.S. §§ 4001—4015) and 25 Pa. Code § 127.450. The amended Title V Operating



Permit did not change and contains all of the applicable regulatory requirements including monitoring recordkeeping, reporting and emission limits.

*Southcentral Region: Air Quality Program, 909 Elmerton Avenue, Harrisburg, PA 17110, William R. Weaver, New Source Review Chief, (717) 705-4702.*

**28-03027: APX Industrial Coatings, Inc.** (9473 Lincoln Way West, Saint Thomas, PA 1252-9710) on December 5, 2008, to operate their finish paint facility in St. Thomas Township, **Franklin County**. This State-only operating permit was administratively amended due to a change of ownership. This is Revision No. 2.

## **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.*

**63841304 and NPDES Permit No. PA0111643, Laurel Run Mining Company**, (1800 Washington Road, Pittsburgh, PA 15241), to renew the permit for the Vesta Mine in North Bethlehem, West Bethlehem and East Bethlehem Townships, and Centerville and Deemston Boroughs, **Washington County** and related NPDES permit. No additional discharges. Application received October 17, 2007. Permit issued December 2, 2008.

**17071301 and NPDES Permit No. PA0335784, Rosebud Mining Company**, (301 Market Street, Kittanning, PA 16201-9642), to operate the Harmony Mine in Burnside Township, **Clearfield County** a new underground mine and related NPDES permit. Surface Acres Proposed 57.5, Underground Acres Proposed 3,645.0, Subsidence Control Plan Acres Proposed 2,189.1. Receiving stream: Spring Run, classified for the following use: CWF. Application received January 18, 2007. Permit issued December 5, 2008.

*Cambria District Mining Office: 286 Industrial Park Road, Ebensburg, PA 15931, (814) 472-1900.*

**32020101 and NPDES No. PA0249165, Alverda Enterprises, Inc.**, P. O. Box 87, Alverda, PA 15710, permit renewal for reclamation only of a bituminous surface and auger mine in Pine Township, **Indiana County**, affecting 18.3 acres. Receiving streams: Yellow Creek classified for the following uses: CWF. There are no potable water supply intakes within 10 miles downstream. Application received September 8, 2008. Permit issued December 3, 2008.

**11980102 and NPDES No. PA0234753, E. P. Bender Coal Company, Inc.**, P. O. Box 594, Carrolltown, PA 15722, permit renewal for reclamation only of a bituminous surface and auger mine in Reade Township, **Cambria County**, affecting 240 acres. Receiving streams: UNTs to Fallentimber Run and Fallentimber Run classified for the following use: CWF. There are no potable water supply intakes within 10 miles downstream. Application received August 15, 2008. Permit issued December 3, 2008.

*Greensburg District Mining Office: Armbrust Professional Center, 8205 Route 819, Greensburg, PA 15601, (724) 925-5500.*

**Contract No. 65-07-01 and NPDES Permit No. PA0251437, Coal Loaders, Inc.** (P. O. Box 556, Ligonier, PA 15658). Government Financed Construction Contract revised to allow the contractor to repair the existing bridge deck and abutments that carry the project haul road over Hannas Run at the reclamation site located in Ligonier Township, **Westmoreland County**, affecting 8.8 acres of abandoned mine lands. Receiving streams: Hannas Run and UNTs to Hannas Run. Application received September 18, 2008. Revised contract issued December 3, 2008.

**30080101 and NPDES Permit No. PA0251411, Fayette Coal & Coke, Inc.** (2611 Memorial Boulevard, Connellsville, PA 15425). Permit issued for commencement, operation and reclamation of a bituminous surface mining site located in Dunkard Township, **Greene County**, affecting 46.8 acres. Receiving streams: UNTs to Dunkard Creek and Dunkard Creek. Application received May 28, 2008. Permit issued December 4, 2008.

*Knox District Mining Office: P. O. Box 669, 310 Best Avenue, Knox, PA 16232-0669, (814) 797-1191.*

**24980101 and NPDES Permit No. PA0227706, Energy Resources, Inc.** (34 Kelley Way, Suite 100, Brilliant, OH 43913) Renewal of an existing bituminous strip, auger and clay removal operation in Fox Township, **Elk County** affecting 457.0 acres. Receiving streams: UNT to McCauley Run, McCauley Run and Hayes Run, UNT to Little Toby Creek. Application received October 14, 2008. Permit Issued December 3, 2008.

**16940107 and NPDES Permit No. PA0226831, RFI Energy, Inc.** (P. O. Box 162, Sligo, PA 16255) Revision to an existing bituminous strip and sandstone removal operation for the beneficial use of coal ash in Perry Township, **Clarion County** affecting 217.0 acres. This permit is also revised to change the post-mining land use from forestland and pastureland/land occasionally cut for hay on the C & K Coal Company property. Receiving streams: Five UNTs to Cherry Run. Application received August 25, 2008. Permit Issued December 4, 2008.

*Moshannon District Mining Office: 186 Enterprise Drive, Philipsburg, PA 16866, (814) 342-8200.*

**17970102 and NPDES No. PA0220558, EnerCorp, Inc.** (1686 Allport Cutoff, Morrisdale, PA 16858), permit renewal for the continued operation and restoration of a bituminous surface mine in Graham Township, **Clearfield County**, affecting 58.9 acres. Receiving streams: Alder Run and Flat Run, both of which are classified for the following use: CWF. There are no potable water supply intakes within 10 miles downstream. Application received September 15, 2008. Permit issued November 19, 2008.

**17813093 and NPDES No. PA0609609, AMFIRE Mining Co., LLC** (One Energy Place, Latrobe, PA



15650). Permit renewal for the continued operation and restoration of a bituminous surface, auger, refuse disposal, noncoal (shale) mining and preparation plant mine in Lawrence Township, **Clearfield County**, affecting 112.5 acres. Receiving stream: Wolf Run, classified for the following use: CWF. There are no potable water supply intakes within 10 miles downstream. Application received October 9, 2008. Permit issued December 1, 2008.

**17060108 and NPDES No. PA0256404. RES Coal, LLC** (224 Grange Hall Road, Armagh, PA 15920). Transfer of an existing bituminous surface mine from Sky Haven Coal, Inc. (5510 State Park Road, Penfield, PA 15849), located in Morris Township, **Clearfield County**, affecting 67.8 acres. Receiving streams: Emigh Run and UNTs, classified for the following use: CWF. There are no potable water supply intakes within 10 miles downstream. Application received June 4, 2008. Permit issued November 5, 2008.

*Pottsville District Mining Office: 5 West Laurel Boulevard, Pottsville, PA 17901, (570) 621-3118.*

**49851603R4. Mid-Valley Coal Sales, Inc.**, (1380 Tioga Street, Coal Township, PA 17866), renewal of an existing anthracite coal preparation operation in Ralpho Township, **Northumberland County** affecting 21.6 acres, receiving stream: none. Application received May 15, 2006. Renewal issued December 8, 2008.

*Noncoal Permits Ations*

*Greensburg District Mining Office: Armbrust Professional Center, 8205 Route 819, Greensburg, PA 15601, (724) 925-5500.*

**26970401 and NPDES Permit No. PA0202100. Laurel Aggregates, Inc.** (300 Dents Run Road, Morgantown, WV 26501). Permit revised to allow underground mining of the Loyalhanna and Greenbrier Limestone at an existing noncoal surface mining site (limestone quarry) located in Springhill Township, **Fayette County**, now affecting 758.5 acres (487 acres underground). Receiving streams: UNTs to Rubles Run and Rubles Run. Application received September 25, 2006. Permit revision issued December 1, 2008

*Knox District Mining Office: P. O. Box 669, 310 Best Avenue, Knox, PA 16232-0669, (814) 797-1191.*

**37070301 and NPDES Permit No. PA0258407. Terra Resources, LLC** (267 Gilmore Road, Enon Valley, PA 16120) Commencement, operation and restoration of a Large Industrial Mineral operation in Slippery Rock Township, **Lawrence County** affecting 74.0 acres. Receiving streams: UNT to Slippery Rock Creek. Application received August 27, 2008. Permit Issued November 26, 2008.

*Moshannon District Mining Office: 186 Enterprise Drive, Philipsburg, PA 16866, (814) 342-8200.*

**1479401 and NPDES Permit No. PA0118001. Graymont (PA) Inc.**, 965 East College Avenue, Pleasant Gap, PA 16823, renewal of NPDES permit, in Spring and Benner Townships, **Centre County**. Receiving streams: Logan Branch to Spring Creek to Bald Eagle Creek to West Branch, classified for the following uses: CWF; HQ-CWF; CWF. There are no potable water supply intakes within 10 miles downstream. NPDES renewal application received October 28, 2008. Permit issued November 24, 2008.

**53070803. Todd W. McCoy** (P. O. Box 218, Ulysses, PA 16748). Commencement, operation and restoration of a small noncoal (flagstone) operation in Allegheny Town-

ship, **Potter County**, affecting 3.0 acres. Receiving streams: Peet Brook, tributary to Allegheny River. Application received June 27, 2007. Permit issued November 14, 2008.

**08080807. Harry E. Camp** (R. R. 3, Box 56, Wyalusing, PA 18853). Commencement, operation and restoration of a small noncoal (bluestone) operation in Herrick Township, **Bradford County**, affecting 2.0 acres. Receiving streams: UNT, tributary to Camps Creek. Application received July 9, 2008. Permit issued November 24, 2008.

*Pottsville District Mining Office: 5 West Laurel Boulevard, Pottsville, PA 17901, (570) 621-3118.*

**58080846. James W. Donahue and Jonathan G. Weaver**, (R. R. 2, Box 766, Susquehanna, PA 18847-9713), commencement, operation and restoration of a quarry operation in Rush Township, **Susquehanna County** affecting 5.0 acres, receiving stream: none. Application received July 24, 2008. Permit issued December 4, 2008.

**64080801. Roloson Excavating, Incorporated**, (836 Braman Road, Equinunk, PA 18417), commencement, operation and restoration of a quarry operation in Manchester Township, **Wayne County** affecting 5.0 acres, receiving stream: none. Application received July 14, 2008. Permit issued December 8, 2008.

**ACTIONS ON BLASTING ACTIVITY APPLICATIONS**

**Actions on applications under the Explosives Acts of 1937 and 1957 (43 P.S. §§ 151–161); and 25 Pa. Code § 211.124 (relating to blasting activity permits). Blasting activity performed as part of a coal or noncoal mining activity will be regulated by the mining permit for that coal or noncoal mining activity.**

*Blasting Permits Actions*

*Cambria District Mining Office: 286 Industrial Park Road, Ebensburg, PA 15931, (814) 472-1900.*

**21084164. Warrens Excavating & Drilling, Inc.**, P. O. Box 214, Myerstown, PA 17067-0214, blasting activity permit issued for residential development in South Middleton Township, **Cumberland County**. Blasting activity permit end date is November 21, 2009. Permit issued November 24, 2008.

**21084166. Warrens Excavating & Drilling, Inc.**, P. O. Box 214, Myerstown, PA 17067-0214, blasting activity permit issued for residential development in Hampden Township, **Cumberland County**. Blasting activity permit end date is November 21, 2009. Permit issued November 24, 2008.

**21084165. Warrens Excavating & Drilling, Inc.**, P. O. Box 214, Myerstown, PA 17067-0214, blasting activity permit issued for residential development in Hampden Township, **Cumberland County**. Blasting activity permit end date is November 21, 2009. Permit issued November 24, 2008.

*Greensburg District Mining Office: Armbrust Professional Center, 8205 Route 819, Greensburg, PA 15601, (724) 925-5500.*

**30084009. Shallenberger Construction** (2611 Memorial Avenue, Connellsville, PA 15425). Permit issued for gas well drilling at the Willis No. 24-A site, located in Cumberland Township, **Greene County**, with an expected duration of 6 months. Permit issued December 3, 2008.

**26084006. Wampum Hardware Company** (636 Paden Road, New Galilee, PA 16141). Blasting activity permit for construction of Hampton Inn, located in Uniontown Township, **Fayette County**. The expected duration of blasting will be 6 months. Permit issued December, 4, 2008.

*Knox District Mining Office: P. O. Box 669, 310 Best Avenue, Knox, PA 16232-0669, (814) 797-1191.*

**25084001. Eugene C. Carpenter** (36 Vaughn Street, Jackson, OH 45640). Blasting activity permit for well seismic surveys in Conneaut and Beaver Townships, **Erie and Crawford Counties**. This blasting activity permit will expire on April 30, 2009. Application received December 3, 2008. Application issued December 4, 2008.

*Moshannon District Mining Office: 186 Enterprise Drive, Philipsburg, PA 16866, (814) 342-8200.*

**17084008. RES Coal, LLC** (224 Grange Hall Road, Armagh, PA 15920) Blasting on the Maxton GFCC No.-17-08-08 located in Morris Township, **Clearfield County**. Permit issued December 4, 2008. Permit expires October 31, 2010.

*Pottsville District Mining Office: 5 West Laurel Boulevard, Pottsville, PA 17901, (570) 621-3118.*

**40084124. Austin Powder Company**, (25800 Science Park Drive, Cleveland, OH 44122), construction blasting for East Mountain Corporate Center in Wilkes-Barre Township, **Luzerne County** with an expiration date of December 1, 2009. Permit issued December 3, 2008.

**54084105. Schlouch, Inc.**, (P. O. Box 69, Blandon, PA 19510), construction blasting for Highridge Business Park Lot 4A in Cass and Foster Townships, **Schuylkill County** with an expiration date of November 21, 2009. Permit issued December 3, 2008.

**06084126. Horst Drilling & Blasting, Inc.**, (141 Ranck's Church Road, New Holland, PA 17557), construction blasting for Wal-Mart expansion in Exeter Township, **Berks County** with an expiration date of December 1, 2009. Permit issued December 4, 2008.

## 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 AT&T Relay Service, (800) 654-5984. Appeals must be filed with the Board within 30 days of publication of this notice in the *Pennsylvania Bulletin*, unless the appropriate statute provides a different time period. Copies of the appeal form and the Board's rules of practice and procedure may be obtained from the Board. The appeal form and the Board's rules of practice and procedure are also available in Braille or on audiotape from the Secretary of the Board at (717) 787-3483. This paragraph does not, in and of itself, create any right of appeal beyond that permitted by applicable statutes and decision law.

For individuals who wish to challenge an action, appeals must reach the Board within 30 days. A lawyer is not needed to file an appeal with the Board.

Important legal rights are at stake, however, so individuals should show this notice to a lawyer at once. Persons who cannot afford a lawyer may qualify for free pro bono representation. Call the Secretary to the Board at (717) 787-3483 for more information.

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**Actions on applications for the following activities filed under the Dam Safety and Encroachments Act (32 P. S. §§ 693.1—693.27), section 302 of the Flood Plain Management Act (32 P. S. § 679.302) and The Clean Streams Law (35 §§ 691.1—691.702) and Notice of Final Action for Certification under section 401 of the FWPCA (33 U.S.C.A. § 1341).**

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*Permits, Environmental Assessments and 401 Water Quality Certifications Issued*

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

**E40-679. City of Pittston**, 35 Broad Street, Pittston, PA 18640. City of Pittston, **Luzerne County**, United States Army Corps of Engineers, Baltimore District.

To modify and maintain an existing stone arch stream enclosure in a tributary to the Susquehanna River (CWF) with work consisting of replacing a 300-foot long deteriorated portion within a 72-inch diameter reinforced concrete pipe. This work was authorized and constructed under Emergency Permit No. EP4007436, dated September 10, 2007. The project is located approximately 200 feet south of the intersection of Broad and Gazette Streets (Pittston, PA Quadrangle Latitude: 4° 19' 17"; Longitude: 75° 47' 19"). (Subbasin: 5B)

**E48-396. Blue Mountain Industrial Center, Inc.**, P. O. Box 592, Nazareth, PA 18064. Lehigh Township, **Northampton County**, United States Army Corps of Engineers, Philadelphia District.

To fill 0.11 acre of PEM wetlands for the purpose of constructing a self storage facility. The permittee is required to provide 0.11 acre of replacement wetlands. The site is located at 1139 Riverview Drive, 1.5 miles south of the Lehigh River bridge (Palmerton, PA Quadrangle Latitude: 40° 46' 22.1"; Longitude: 45° 36' 4.4") in Lehigh Township, Northampton County. (Subbasin: 2C)

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

**E05-346: William E. Harris**, 338 Faculty Road, Duncannon, PA 17020, Harris Driveway, Monroe Township, **Bedford County**, United States Army Corps of Engineers, Baltimore District.

To maintain a 42.0-inch diameter by 40.0-foot long CMP culvert in a UNT to West Branch Sideling Hill

Creek (EV) to provide continued access to the Harris home located along Piney Creek Road about 0.50 mile west from its intersection with Big Creek Road (Mench, PA Quadrangle N: 1.0 inch; W: 15.26 inches, Latitude: 39° 45' 20"; Longitude: 78° 21' 31") in Monroe Township, Bedford County.

**E36-837: Mitch Newman, D.R. Horton, Inc.**, 700 East Gate Drive, Suite 110, Mt. Laurel, NJ 08054-3810, East Hempfield Township, **Lancaster County**, United States Army Corps of Engineers, Baltimore District.

To construct and maintain a 36.0-foot wide three span bridge having a normal span of 36.0 feet and an underclearance of 8.0 feet and two 6.0-foot wide pedestrian ford crossings, each having a length of 36.0 feet, all impacting Millers Run (CWF) for the purpose of constructing a residential subdivision near the intersection of SR 741 and McGovernville Road (Lancaster, PA Quadrangle N: 12.7 inches; W: 16.0 inches, Latitude: 40° 04' 10"; Longitude: 76° 31' 50") in East Hempfield Township, Lancaster County.

## STORAGE TANKS

### SITE-SPECIFIC INSTALLATION PERMITS

The following Storage Tank Site-Specific Installation Permits, under the authority of the Storage Tank Spill Prevention Act (35 P. S. §§ 6021.304, 6021.504, 6021.1101 and 6021.1102) and under 25 Pa. Code Chapter 245, Subchapter C, have been issued by the Bureau of Waste Management, Director, P. O. Box 8763, Harrisburg, PA 17105-8763.

SSIP Permit No.	Applicant Name & Address	County	Municipality	Tank Type	Tank Capacity
08-67-007	Defense Distribution Depot Susquehanna 2001 Mission Drive Building 1 Bay 3 New Cumberland, PA 17070-5011 Attn: Robert Montefour	York	Fairview Township	6 ASTs storing No. 2 Fuel Oil	300,000 gallons total

## SPECIAL NOTICES

*Moshannon District Mining Office: 186 Enterprise Drive, Philipsburg, PA 16866, (814) 342-8200.*

**RES Coal, LLC, GFCC No. 17-08-08, Maxton Operation, Morris Township, Clearfield County (Emigh Run to Moshannon Creek—Upper West Branch Watershed):** A no-cost construction contract has been awarded to RES Coal, LLC that will result in the reclamation of approximately 49.2 acres of abandoned mine land including the reclamation of 1,800-feet of abandoned highwall, the removal of coal refuse covering approximately 18.0 acres and the daylighting and reclamation of 16.0 acres of abandoned deep mines. The site will be reclaimed and regraded to approximate original contour. Alkaline addition in the form of waste lime will be added to the mining area. A total of 2,280 tons of alkaline waste lime will be placed on the site. The estimated value of the reclamation work is \$199,500 which will be done at no cost to the Commonwealth. The site is located just west Hawk Run on lands formerly mined and subsequently abandoned by Morrisdale Coal Company in the late 1940s. Blasting has been approved as part of the reclamation activities. Refuse reprocessing is prohibited at the site.

### Bureau of Deep Mine Safety Approval of Request for Variance

The Department of Environmental Protection (Department), Bureau of Deep Mine Safety (BMS) has approved Cumberland Coal Resources, LP's request for a variance from the requirements of section 268(b) of the Pennsylvania Bituminous Coal Mine Act (act) (52 P. S. §§ 701-268(b)) at the Cumberland Mine. This notification contains a summary of this request and the basis for the Department's approval. A complete copy of the variance

request may be obtained from Cathy Dunn by calling (724) 430-4475 or from the BMS web site at [www.depweb.state.pa.us/deepminesafety/site/default.asp](http://www.depweb.state.pa.us/deepminesafety/site/default.asp).

*Summary of the Request:* Cumberland Coal Resources, LP requests a variance to extend shelter holes at the Cumberland Mine.

The basis for the Bureau's approval is summarized as follows:

1. All employees will be notified of the approved extended shelter plan by means of a safety talk.
2. Signs shall be posted stating that the shelter holes are now 175' apart and in excess of 80'.
3. To provide safety for personnel walking in this entry, all transportation (jeeps, portal busses, motors, and the like) will immediately stop when observing personnel walking and allow them time to get into the nearest crosscut before proceeding. The equipment operator shall sound an alarm when personnel are encountered.
4. Haulage equipment shall be maintained in a safe operating condition with safety features functioning as designed and approved. Locomotives will be required to transport loads designed to allow stopping within 100 feet. All haulage vehicles will be required to travel at speeds that will ensure safe stopping distances of less than 100 feet.
5. A means of identifying shelter hole locations shall be provided. A reflective indicator/marker must be visible from the track haulage travelway. This will give persons walking along the travelway a perception of how far they must travel to reach a shelter hole. Markers shall be the same color and design at each location through the extended shelter hole areas.

6. Shelter holes shall be maintained at all switch throws and doors that do not fall within 15' of a crosscut. No people will be located in by areas where manholes must be cut to comply with this plan.

7. Crosscuts which serve as shelter holes shall be maintained free of obstructions and debris, other than normal roof to ground support. Clearance must be maintained for a depth of at least 15' and rib to rib.

8. Supply cars and equipment shall be pulled by an approved vehicle in the direction of travel. When it is necessary to push nonpropelled track equipment (supply cars, and the like) the vehicle operator must have an unobstructed view of the track haulage. A flashing light or audible warning device shall be mounted on the end of the train/trip which is being pushed. An employee will accompany the trip placing himself in by and out of harms way to provide for a clear travelway to the end of the track.

9. Workmen performing tasks along the track haulage roads shall be provided with flashing warning devices (lights). These devices shall be placed not more than 100' from each work site and in clear view of haulage equipment.

10. All employees and persons entering Cumberland Mine shall be adequately trained and instructed concerning shelter hole procedures and safety procedures and safety precautions. This shall include all visitors, workers, employees, contractors, inspectors, and the like. Training shall be part of annual retraining and hazardous training.

Continued authorization for operation under the approval is contingent upon compliance with the measures described in your enclosed plan and the following conditions.

1. All employees, contractors, inspectors, visitors, and the like, shall be adequately trained and instructed concerning shelter hole guidelines and safety procedures prior to entering Cumberland Mine. This training shall become a part of the annual retraining, task training and hazard training.

2. Prior to each longwall move, the safety precautions for use of shelter holes will be reviewed with all personnel in short safety/training meetings. A record of these safety contacts will be maintained.

3. The District Mine Inspector must approve any system employed to control pedestrian or track haulage equipment movement prior to implementation of that system.

4. The investigating committee recommends that established load limits be posted on each piece of haulage equipment.

5. The investigating committee recommends that equipment operators use hand held radios to communicate while operating equipment.

6. Where haulage grades are excessive and the possibility exists for runaway equipment, a signal block light system is recommended to prevent more than one trip or pedestrians and haulage equipment from being in the same area at the same time.

Cumberland Coal Resources' submittal provides protections which are equal to or in excess of the protections afforded by section 268(b) of the act and the investigating committee recommends approval based on that finding.

[Pa.B. Doc. No. 08-2299. Filed for public inspection December 19, 2008, 9:00 a.m.]

### Availability of Technical Guidance

Technical guidance documents are available on the Department of Environmental Protection's (Department) web site at [www.depweb.state.pa.us](http://www.depweb.state.pa.us) (DEP Keywords: "Technical Guidance"). The "Final Documents" heading is the link to a menu of the various Department bureaus where each bureau's final technical guidance documents are posted. The "Draft Technical Guidance" heading is the link to the Department's draft technical guidance documents.

The Department will continue to revise its nonregulatory documents, as necessary, throughout 2008.

#### *Ordering Paper Copies of Department Technical Guidance*

The Department encourages the use of the Internet to view and download technical guidance documents. When this option is not available, persons can order a paper copy of any of the Department's draft or final technical guidance documents by contacting the Department at (717) 783-8727.

In addition, bound copies of some of the Department's documents are available as Department publications. Check with the appropriate bureau for more information about the availability of a particular document as a publication.

#### *Changes to Technical Guidance Documents*

Following is the current list of recent changes. Persons who have questions or comments about a particular document should call the contact person whose name and phone number is listed with each document.

#### *Final Technical Guidance:*

DEP ID: 383-3301-205. Title: Laboratory Reporting Instructions for Radiological Contaminants in Drinking Water Systems. Description: This guidance provides instructions to all community public water systems and certified laboratories for the reporting of drinking water radiological monitoring results for gross alpha, radium 226, radium 228, uranium, gross beta, tritium, strontium-90, and iodine-131, as required by the Federal Radionuclides Rule and as implemented in 25 Pa. Code Chapter 109 (relating to safe drinking water) Regulations. This guidance has been revised to incorporate changes to reporting requirements under the revised regulations, which became effective on April 3, 2004, and to establish uniform instructions and protocol for implementing reporting requirements for the contaminants regulated under this rule. Notice of the draft technical guidance document was published at 38 Pa.B. 548 (January 26, 2008), with provision for a 30-day public comment period that concluded on February 25, 2008. Although the Department did not receive any public comments during the comment period, the Department made changes to the final document to enhance its clarity. Specifically, changes were made to Section 2; page 4, Section 3; page 5, and Section 6; page 26 to clarify that labs are to notify the Department when test results exceed certain screening levels. Additionally, the table on page 25 was updated to

include the screening level (equivalent dose) for each contaminant. Finally, in Section 11, to be consistent with the instructions provided in the guidance, the reported results for all of the examples were edited to include 3 decimal places; and the explanation in the Gross Alpha and Uranium paragraphs was clarified to describe what value is used to determine compliance. Contact: Dawn Hissner, Department of Environmental Protection, Bureau of Water Standards and Facility Regulation, Rachel Carson State Office Building, 11th Floor, P. O. Box 8467, Harrisburg, PA 17105-84671, (717) 787-0130, dhissner@state.pa.us. Effective Date: December 20, 2008.

*Notice to Rescind Technical Guidance:*

DEP ID: 275-2101-007. Title: Best Available Technology and Other Permitting Criteria (Section 7.2: Best Available Technology—Boilers). Description: 25 Pa. Code Chapter 127 requires that all new sources shall control emissions to the maximum extent, consistent with the Best Available Technology (BAT), as determined by the Department at the time of the issuance of the plan approval. The existing BAT technical guidance for boilers, contained in section 7.2 of technical guidance document number 275-2101-007 (initially published on October 9, 1988), includes minimum requirements for particulate matter and sulfur dioxide controls. It also includes standards for new boilers which are subject to provisions of 25 Pa. Code § 127.12(a)(5). The BAT limitations and requirements in the existing BAT guidance for boilers are obsolete, making the rescission of section 7.2 of the technical guidance document necessary. The Department intends to develop new BAT criteria for boilers. Contact: Joseph White, Department of Environmental Protection, Bureau of Air Quality, 400 Market Street, Rachel Carson State Office Building, P. O. Box 8468, Harrisburg, PA 17105-8468, (717) 787-2856; jowhite@state.pa.us. Effective Date: December 31, 2008.

JOHN HANGER,  
*Acting Secretary*

[Pa.B. Doc. No. 08-2300. Filed for public inspection December 19, 2008, 9:00 a.m.]

## Board and Committee Meeting Schedules for 2009

The following is a list of 2009 meetings of advisory and other boards and committees associated with the Department of Environmental Protection (Department). These schedules and an agenda for each meeting, including meeting materials, will be available through the Public Participation Center on the Department's web site at [www.depweb.state.pa.us](http://www.depweb.state.pa.us) (DEP Keywords: Participate). Prior to each meeting, the Department encourages individuals to visit it's web site to confirm meeting date, time and location.

Persons in need of accommodations as provided for in the Americans With Disabilities Act of 1990 should contact the individual listed for each board or committee, or through the Pennsylvania AT&T Relay Service at (800) 654-5984 (TDD) to discuss how the Department may accommodate their needs.

### Agricultural Advisory Board

The Agricultural Advisory Board will hold bimonthly meetings on the following dates. The meetings will begin at 10 a.m. at the Department's Southcentral Regional Office, Susquehanna Room A, 909 Elmerton Avenue, Harrisburg, PA, unless otherwise noted.

February 18, 2009  
April 15, 2009  
June 17, 2009  
August 19, 2009

Department of Agriculture  
Samuel E. Hayes, Jr. Livestock  
Evaluation Center  
1494 West Pine Grove Road  
Pennsylvania Furnace, PA 16865  
NOTE: Meeting will begin at 8 a.m.

October 21, 2009  
December 16, 2009

Contact: Frank X. Schneider, Bureau of Watershed Management, P. O. Box 8465, Harrisburg, PA 17105-8465, (717) 772-5972, fschneider@state.pa.us.

### Air Quality Technical Advisory Committee

The Air Quality Technical Advisory Committee will meet at 9:15 a.m. in Room 105 of the Rachel Carson State Office Building, 400 Market Street, Harrisburg, PA on the following dates:

February 12, 2009  
March 12, 2009  
May 28, 2009  
July 23, 2009  
September 24, 2009  
November 18, 2009

Contact: Martin Felion, Bureau of Air Quality, Division of Air Resources Management, P. O. Box 8468, Harrisburg, PA 17105-8468, (717) 772-3939, mafelion@state.pa.us.

### Certification Program Advisory Committee (For Water and Wastewater System Operators)

The 2009 meetings of the Certification Program Advisory Committee will begin at 10 a.m. in the Second Floor Training Room of the Rachel Carson State Office Building, 400 Market Street, Harrisburg, PA 17105, unless otherwise noted. The meeting dates are as follows:

April 23, 2009

Department of Environmental  
Protection  
Southcentral Regional Office  
Susquehanna Room A  
909 Elmerton Avenue  
Harrisburg, PA

June 18, 2009  
December 10, 2009

Contact: Cheri Sansoni, Bureau of Water Standards and Facility Regulation, Certification and Licensing, P. O. Box 8454, Harrisburg, PA 17105-8454, (717) 772-5158, csansoni@state.pa.us.

### Chesapeake Bay Advisory Committee

The Chesapeake Bay Advisory Committee will hold meetings on the dates as follows. Meetings will be held from 9 a.m. until 12 p.m. in Room 105, Rachel Carson State Office Building, 400 Market Street, Harrisburg, PA.

March 5, 2009  
September 3, 2009

Contact: Dave Reed, Bureau of Watershed Management, P. O. Box 8465, Harrisburg, PA 17105-8465, (717) 772-5649, davreed@state.pa.us.

### Citizens Advisory Council

Meetings of the Citizens Advisory Council are typically held at 11 a.m. on the third Tuesday of the month in Room 105 of the Rachel Carson State Office Building, 400 Market Street, Harrisburg, PA, except where noted. The 2009 meeting dates are scheduled as follows:

January 20, 2009  
 February 17, 2009  
 March 17, 2009  
 April 21, 2009  
 May 20, 2009  
 June 16, 2009  
 July 21, 2009  
 September 15, 2009  
 October 20, 2009  
 November 17, 2009

*Contact:* Patricia Davenport, Citizens Advisory Council, P. O. Box 8459, Harrisburg, PA 17105-8459, (717) 787-4527, padavenpor@state.pa.us.

#### **Climate Change Advisory Committee**

The Climate Change Advisory Committee will hold meetings in 2009 on the dates as follows. The scheduling of additional meetings in 2009 is expected and will be announced in future issues of the *Pennsylvania Bulletin*. Each scheduled meeting will convene from 10 a.m. to 3 p.m. in Room 105 of the Rachel Carson State Office Building, 400 Market Street, Harrisburg, PA 17105. The meeting dates are as follows:

January 22, 2009  
 February 4, 2009  
 March 4, 2009  
 April 7, 2009  
 May 6, 2009  
 June 3, 2009  
 July 1, 2009

*Contact:* Paula J. Sviben, Office of Energy and Technology Deployment, P. O. Box 8772, Harrisburg, PA 17105-8772, (717) 772-8912, psviben@state.pa.us.

#### **Cleanup Standards Scientific Advisory Board**

The Cleanup Standards Scientific Advisory Board (Board) will meet on March 11, 2009, from 10 a.m. to 3 p.m. in Room 105 of the Rachel Carson State Office Building, 400 Market Street, Harrisburg, PA. Additional meetings scheduled by the Board will be advertised in future issues of the *Pennsylvania Bulletin*.

*Contact:* Marilyn Wooding, Land Recycling Program, P. O. Box 8471, Harrisburg, PA 17105-8471, (717) 783-7816, mwooding@state.pa.us.

#### **Coal and Clay Mine Subsidence Insurance Fund Board**

The Coal and Clay Mine Subsidence Insurance Fund Board will hold meetings in 2009 as follows. The meetings will begin at 10 a.m. in the 10th Floor Conference Room of the Rachel Carson State Office Building, 400 Market Street, Harrisburg, PA, unless otherwise noted.

March 25, 2009      8th Floor Conference Room, Rachel Carson State Office Building, Harrisburg, PA

June 25, 2009  
 December 10, 2009

*Contact:* Lawrence Ruane, Bureau of Mining and Reclamation, P. O. Box 8461, Harrisburg, PA 17105-8461, (717) 783-9590, lruane@state.pa.us.

#### **Coal Mine Safety Board**

The Coal Mine Safety Board (Board) will hold meetings in 2009 follows. Additional meetings scheduled by the Board will be advertised in future issues of the *Pennsylvania Bulletin*.

January 7, 2009      1 p.m., Rachel Carson State Office Building, Room 105, Harrisburg, PA  
 January 14, 2009      10 a.m., Fayette County Health Center, Bureau of Mine Safety Training Room, 100 New Salem Road, Uniontown, PA 15401

*Contact:* Allison Gaida, Bureau of Mine Safety, Fayette County Health Center, 100 New Salem Road, Room 167, Uniontown, PA 15401, (724) 439-7469, agaida@state.pa.us.

#### **Coastal Zone Advisory Committee**

Meetings of the Coastal Zone Advisory Committee will be held as follows. The meetings will convene from 9:30 a.m. to 12 p.m. in the 10th Floor Conference Room of the Rachel Carson State Office Building, 400 Market Street, Harrisburg, PA.

January 14, 2009  
 June 3, 2009

*Contact:* Jeff Dewey, Water Planning Office, P. O. Box 2063, Harrisburg, PA 17105-2063, (717) 772-5619, jdewey@state.pa.us.

#### **Environmental Justice Advisory Board**

Meetings of the Environmental Justice Advisory Board are held quarterly unless otherwise indicated. The meetings are expected to begin at 8:30 a.m. in Room 105 of the Rachel Carson State Office Building, 400 Market Street, Harrisburg, PA. The 2009 meeting dates are as follows:

February 3, 2009  
 May 5, 2009  
 August 4, 2009  
 November 3, 2009

*Contact:* Doan D. Barefield, Office of Environmental Advocate, Rachel Carson State Office Building, P. O. Box 2063, Harrisburg, PA 17105-2063, (717) 783-5630, dbarefield@state.pa.us.

#### **Environmental Quality Board**

Meetings of the Environmental Quality Board will be held in Room 105 of the Rachel Carson State Office Building, 400 Market Street, Harrisburg, PA, and will begin at 9 a.m. Meetings will only be held when there are a sufficient number of agenda items for consideration. The 2009 meeting dates are as follows:

January 20, 2009  
 February 17, 2009  
 March 17, 2009  
 April 21, 2009  
 May 20, 2009  
 June 16, 2009  
 July 21, 2009  
 August 18, 2009  
 September 15, 2009  
 October 20, 2009  
 November 17, 2009  
 December 15, 2009

*Contact:* Michele Tate, Environmental Quality Board, P. O. Box 8477, Harrisburg, PA, 17105-8477, (717) 783-8727, mtate@state.pa.us.

#### **Laboratory Accreditation Advisory Committee**

The Laboratory Accreditation Advisory Committee will hold meetings in 2009 as follows. The meetings will be held from 10 a.m. until 3 p.m. in Room 206 of the Bureau of Laboratories Building, 2575 Interstate Drive, Harrisburg, PA 17110.

March 12, 2009  
 June 11, 2009  
 September 10, 2009  
 December 10, 2009

*Contact:* Aaren S. Alger, Bureau of Laboratories, P. O. Box 1467, Harrisburg, PA 17105-1467, (717) 346-8212, aalger@state.pa.us.

#### **Low-Level Waste Advisory Committee**

The Low-Level Waste Advisory Committee will meet on October 2, 2009, from 10 a.m. until 2 p.m. in Room 105, Rachel Carson State Office Building, 400 Market Street, Harrisburg, PA.

*Contact:* Rich Janati, Bureau of Radiation Protection, P. O. Box 8469, Harrisburg, PA 17105-8469, (717) 787-2147, rjanati@state.pa.us.

#### **Mine Families First Response and Communications Advisory Board**

The Mine Families First Response and Communications Advisory Board (Board) will meet at 10 a.m. on April 29, 2009 in the Delaware Room, 16th Floor, Rachel Carson State Office Building, 400 Market Street, Harrisburg, PA. Additional meetings scheduled by the Board will be advertised in future issues of the *Pennsylvania Bulletin*.

*Contact:* Allison Gaida, Bureau of Mine Safety, Fayette County Health Center, 100 New Salem Road, Room 167, Uniontown, PA 15401, (724) 439-7469, agaida@state.pa.us.

#### **Mining and Reclamation Advisory Board**

The Mining and Reclamation Advisory Board will meet quarterly in 2009 as follows. Meetings will begin at 10 a.m. and will be held in the Rachel Carson State Office Building, 400 Market Street, Harrisburg, PA. The meeting dates and locations are as follows:

January 21, 2009	Delaware Room, 16th Floor, Rachel Carson State Office Building.
April 23, 2009	Room 105, 1st Floor, Rachel Carson State Office Building.
July 23, 2009	Meeting details will be announced at a later date in the <i>Pennsylvania Bulletin</i> .
October 22, 2009	Room 105, 1st Floor, Rachel Carson State Office Building.

*Contact:* James Charowsky, Bureau of Mining and Reclamation, P. O. Box 8461, Harrisburg, PA 17105-8461, (717) 787-7007, jcharowsky@state.pa.us.

#### **Oil and Gas Technical Advisory Board**

The Oil and Gas Management Technical Advisory Board will hold meetings in 2009 as indicated. The meetings will convene at 10 a.m. in the 6th Floor Conference Room of the Rachel Carson State Office Building, 400 Market Street, Harrisburg, PA.

January 22, 2009  
 March 26, 2009  
 May 28, 2009  
 September 17, 2009

*Contact:* Carol Daniels, Bureau of Oil and Gas Management, P. O. Box 8765, Harrisburg, PA 17105-8765, (717) 772-2100, cardaniels@state.pa.us.

#### **Radiation Protection Advisory Committee**

The Radiation Protection Advisory Committee will hold two meetings in 2009 as follows. The meetings will be held from 9 a.m. to 3 p.m. in the Rachel Carson State Office Building, 400 Market Street, Harrisburg, PA.

March 26, 2009 10th Floor Conference Room, Rachel Carson State Office Building

October 22, 2009 14th Floor Conference Room, Rachel Carson State Office Building

*Contact:* Constance Andescavage, Bureau of Radiation Protection, P. O. Box 8469, Harrisburg, PA 17105-8469, (717) 787-2480, candescava@state.pa.us.

#### **Recycling Fund Advisory Committee**

The Recycling Fund Advisory Committee will meet on the date listed. The meeting is expected to begin at 10 a.m. and will be held in Room 105 of the Rachel Carson State Office Building, 400 Market Street, Harrisburg, PA.

September 10, 2009

*Contact:* Michael Texter, Bureau of Waste Management, P. O. Box 8471, Harrisburg, PA 17105-8471, (717) 787-9871, mtexter@state.pa.us.

#### **Sewage Advisory Committee**

The Sewage Advisory Committee will meet on the dates listed. The meetings will begin at 10:30 a.m. and will be held in Room 105 of the Rachel Carson State Office Building, 400 Market Street, Harrisburg, PA. The meeting dates are as follows:

March 11, 2009  
 June 10, 2009  
 September 9, 2009  
 November 18, 2009

*Contact:* John Diehl, Bureau of Water Standards and Facility Regulation, P. O. Box 8774, Harrisburg, PA 17105-8774, (717) 783-2941, jdiehl@state.pa.us.

#### **Small Business Compliance Advisory Committee**

The Small Business Compliance Advisory Committee will hold quarterly meetings as indicated. The meetings will begin at 10 a.m. in the 12th Floor Conference Room of the Rachel Carson State Office Building, 400 Market Street, Harrisburg, PA. Prior to the meeting, it is recommended individuals visit the Department's web site at [www.depweb.state.pa.us](http://www.depweb.state.pa.us) (DEP Keywords: "Small Business, Small Business Help"), to confirm meeting date, time and location.

January 28, 2009  
 April 22, 2009  
 July 22, 2009  
 October 28, 2009

*Contact:* Susan Foster, Bureau of Air Quality, P. O. Box 8468, Harrisburg, PA 17105-8468, (717) 787-7019, sufoster@state.pa.us.

#### **Small Water Systems Technical Assistance Center Advisory Board**

The Small Water Systems Technical Assistance Center Advisory Board meetings for 2009 will be held at 10 a.m. in Room 105 of the Rachel Carson State Office Building, 400 Market Street, Harrisburg, PA. The 2009 meeting dates are as follows:

May 21, 2009  
 July 30, 2009  
 October 15, 2009

*Contact:* Janet Fisher, Bureau of Water Standards and Facility Regulation, P. O. Box 8467, Harrisburg, PA 17105-8467, (717) 783-2294, janfisher@state.pa.us.

#### **Solid Waste Advisory Committee**

The Solid Waste Advisory Committee will meet on the following dates. The meetings are expected to begin at 10

a.m. and will be held in Room 105, Rachel Carson State Office Building, 400 Market Street, Harrisburg, PA.

January 15, 2009

March 19, 2009

May 14, 2009

September 10, 2009 (joint meeting with the Recycling Fund Advisory Committee)

November 12, 2009

*Contact:* Michael Texter, Bureau of Waste Management, P. O. Box 8471, Harrisburg, PA 17105-8471, (717) 787-9871, mtexter@state.pa.us.

#### **State Board for Certification of Sewage Enforcement Officers**

The 2009 meetings of the State Board for Certification of Sewage Enforcement Officers have not been scheduled. Notices for upcoming meetings will be published in future issues of the *Pennsylvania Bulletin*.

*Contact:* Cheri Sansoni, Bureau of Water Standards and Facility Regulation, P. O. Box 8454, Harrisburg, PA 17105-8454, (717) 772-5158, csansoni@state.pa.us.

#### **State Board for Certification of Water and Wastewater Systems Operators**

The 2009 meetings of the State Board for Certification of Water and Wastewater Systems Operators will begin at 10 a.m. in the 8th floor Conference Room, Rachel Carson State Office Building, 400 Market Street, Harrisburg, PA 17105-8454, unless otherwise noted. The meeting dates and locations are as follows:

February 6, 2009	Conference Call
April 3, 2009	Conference Call
June 19, 2009	Rachel Carson State Office Building, 10th Floor Conference Room
August 14, 2009	Conference Call
October 16, 2009	Conference Call
December 18, 2009	Conference Call

*Contact:* Cheri Sansoni, Bureau of Water Standards and Facility Regulation, Certification and Licensing, P. O. Box 8454, Harrisburg, PA 17105-8454, (717) 772-5158, csansoni@state.pa.us.

#### **Statewide Water Resources Committee**

The Statewide Water Resources Committee will hold quarterly meeting on the dates indicated. The meetings will begin at 9:30 a.m. in Room 105 of the Rachel Carson State Office Building, 400 Market Street, Harrisburg, PA, unless otherwise noted. The meeting dates are as follows:

March 26, 2009	
June 18, 2009	
September 17, 2009	
December 10, 2009	Department of Environmental Protection Southcentral Regional Office Susquehanna Room A 909 Elmerton Avenue Harrisburg, PA

*Contact:* Susan Weaver, Chief, Division of Water Use Planning, P. O. Box 8555, Harrisburg, PA 17105-8555, (717) 783-8055, suweaver@state.pa.us.

#### **Storage Tank Advisory Committee**

Meetings of the Storage Tank Advisory Committee will be held in the 14th Floor Conference Room, Rachel

Carson State Office Building, 400 Market Street, Harrisburg, PA, and will begin at 10 a.m. Meetings will only be held when there are a sufficient number of agenda items for consideration. The meeting dates are as follows:

March 10, 2009

June 9, 2009

September 8, 2009

December 8, 2009

*Contact:* Charles M. Swokel, Bureau of Waste Management, Division of Storage Tanks, P. O. Box 8762, Harrisburg, PA 17105-8762, (717) 772-5806, (800) 42-TANKS (within the Commonwealth), cswokel@state.pa.us.

#### **Technical Advisory Committee on Diesel-Powered Equipment**

The Technical Advisory Committee on Diesel-Powered Equipment announces its schedule of 2009 meetings. The meetings will be held at 10 a.m. in the Bureau of Mine Safety Conference Room in the Fayette County Health Center, 100 New Salem Road, Uniontown, PA. The meeting dates are as follows:

January 15, 2009

April 8, 2009

July 8, 2009

October 14, 2009

*Contact:* Allison Gaida, Bureau of Mine Safety, Fayette County Health Center, 100 New Salem Road, Room 167, Uniontown, PA 15401, (724) 439-7469, agaida@state.pa.us.

#### **Water Resources Advisory Committee**

The Water Resources Advisory Committee meetings for 2009 will be held at 9:30 a.m. in Room 105 of the Rachel Carson State Office Building, 400 Market Street, Harrisburg, PA. The meeting dates are as follows:

January 8, 2009

April 8, 2009

July 15, 2009

October 7, 2009

*Contact:* Phil Consonery, Bureau of Water Standards and Facility Regulation, P. O. Box 8466, Harrisburg, PA 17105-8467, (717) 772-2184, pconsonery@state.pa.us.

#### **Water Resources Regional Committees (For the State Water Plan)**

The following is a list of 2009 meeting dates for the six Water Resources Regional Committees associated with the Department. The six regional committees listed were created under 27 Pa.C.S. Chapter 31 (relating to water resources planning) to help guide the development of a new State Water Plan (plan) for the Commonwealth. The regional committees' purpose is to develop the regional component of the overall plan, and to provide recommendations to the Statewide Water Resources Committee, which is charged under 27 Pa.C.S. Chapter 31 to develop the plan. The 2009 meeting dates of the six Water Resources Regional Committees are as follows:

##### *Delaware Water Resources Regional Committee*

Meetings of the Delaware Water Resources Regional Committee in 2009 will be held at 9:30 a.m. at various locations throughout the Delaware River Basin. The meeting dates are as follows:

February 13, 2009	Department of Environmental Protection Southeast Regional Office 2 East Main Street Norristown, PA 19401
Conference Call	



May 8, 2009 Department of Environmental Protection  
Southeast Regional Office  
2 East Main Street  
Norristown, PA 19401

August 14, 2009 Carbon County Environmental Center  
151 East White Bear Drive  
Summit Hill, PA 18250

November 13, 2009 Department of Environmental Protection  
Southeast Regional Office  
2 East Main Street  
Norristown, PA 19401

Questions concerning these meetings should be directed to Jay Braund, Water Planning Office, P. O. Box 2063, Harrisburg, PA 17105-2063, (717) 783-2402, jbraund@state.pa.us.

*Great Lakes Water Resources Regional Committee*

Meetings of the Great Lakes Water Resources Regional Committee in 2009 will be held at 10 a.m. at the Erie County Conservation District, Headwaters Park, 1927 Wager Road, Erie, PA 16509. The meeting dates are as follows:

February 3, 2009 NOTE: Conference call will begin at  
Conference Call 9:30 a.m.

September 2, 2009

Questions concerning these meetings should be directed to Lori Mohr, Water Planning Office, P. O. Box 2063, Harrisburg, PA 17105-2063, (717) 787-4628; laumohr@state.pa.us.

*Lower Susquehanna Water Resources Regional Committee*

Meetings of the Lower Susquehanna Water Resources Regional Committee in 2009 will be held at 9:30 a.m. at the following locations:

February 9, 2009 Department of Environmental Protection  
Conference Call Southcentral Regional Office  
909 Elmerton Avenue  
Harrisburg, PA 17110

September 14, 2009 Department of Environmental Protection  
Southcentral Regional Office  
909 Elmerton Avenue  
Harrisburg, PA 17110

Questions concerning these meetings should be directed to Leslie Sarvis, Water Planning Office, P. O. Box 2063, Harrisburg, PA 17105-2063, (717) 772-5634, lsarvis@state.pa.us.

*Ohio Water Resources Regional Committee*

Meetings of the Ohio Water Resources Regional Committee in 2009 will be held at 10 a.m. at the following locations.

February 17, 2009 Department of Environmental Protection  
Conference Call Southwest Regional Office  
400 Waterfront Drive  
Pittsburgh, PA 15222  
NOTE: Conference call will begin at 9:30 a.m.

August 31, 2009 Westmoreland Conservation District  
218 Donohoe Road  
Greensburg, PA 15601

Questions concerning these meetings should be directed to Lori Mohr, Water Planning Office, P. O. Box 2063, Harrisburg, PA 17105-2063, (717) 787-4628, laumohr@state.pa.us.

*Potomac Water Resources Regional Committee*

Meetings of the Potomac Water Resources Regional Committee in 2009 will be held at 10 a.m. at the following locations. The meeting dates are as follows:

February 20, 2009 Adams County Conservation  
Conference Call District  
670 Old Harrisburg Road  
Suite 201  
Gettysburg, PA 17325  
NOTE: Conference call will begin at 9:30 a.m.

May 15, 2009 Adams County Conservation  
Conference Call District  
670 Old Harrisburg Road  
Suite 201  
Gettysburg, PA 17325  
NOTE: Conference call will begin at 9:30 a.m.

September 18, 2009 Adams County Conservation  
District  
670 Old Harrisburg Road  
Suite 201  
Gettysburg, PA 17325

November 20, 2009 Adams County Conservation  
Conference Call District  
670 Old Harrisburg Road  
Suite 201  
Gettysburg, PA 17325  
NOTE: Conference call will begin at 9:30 a.m.

Questions concerning these meetings should be directed to Leslie Sarvis, Water Planning Office, P. O. Box 2063, Harrisburg, PA 17105-2063, (717) 772-5634, lsarvis@state.pa.us.

*Upper/Middle Susquehanna Water Resources Regional Committee*

Meetings of the Upper/Middle Susquehanna Water Resources Regional Committee in 2009 will be held at 10 a.m. at various locations throughout the Upper/Middle Susquehanna River Basin. The meeting dates are as follows:

February 18, 2009 Department of Environmental Protection  
Conference Call Southeast Regional Office  
208 West Third Street, Suite 101  
Williamsport, PA 17701-6448  
NOTE: Conference call will begin at 9:30 a.m.

September 16, 2009 Centre County Solid Waste  
Authority  
253 Transfer Road  
Bellefonte, PA 16823

Questions concerning these meetings should be directed to Jay Braund, Water Planning Office, P. O. Box 2063, Harrisburg, PA 17105-2063, (717) 783-2402, jbraund@state.pa.us.

JOHN HANGER,  
*Acting Secretary*

[Pa.B. Doc. No. 08-2301. Filed for public inspection December 19, 2008, 9:00 a.m.]

## DEPARTMENT OF HEALTH

### Amendments to Charges for Medical Records; Correction

Because of an inadvertent typographical error in the notice published at 38 Pa.B. 6660 (December 6, 2008), the Department of Health (Department) is reprinting the document in its entirety to ensure accuracy of the information contained in this document.

Under 42 Pa.C.S. §§ 6152 and 6155 (relating to subpoena of records; and rights of patients), the Secretary of Health (Secretary) is directed to adjust annually the amounts which may be charged by a health care facility or health care provider upon receipt of a request or subpoena for production of medical charts or records. These charges apply to any request for a copy of a medical chart or record except as follows:

(1) Flat fees (as listed in this notice) apply to amounts that may be charged by a health care facility or health care provider when copying medical charges or records either: (a) for the purpose of supporting any claim or appeal under the Social Security Act or any Federal or State financial needs based program; or (b) for a district attorney.

(2) An insurer shall not be required to pay for copies of medical records required to validate medical services for which reimbursement is sought under an insurance contract, except as provided in: (a) the Worker's Compensation Act (77 P. S. §§ 1—1041.4 and 2501—2506) and the regulations promulgated thereunder; (b) 75 Pa.C.S. Chapter 17 (relating to financial responsibility) and the regulations promulgated thereunder; or (c) a contract between an insurer and any other party.

The charges listed in this notice do not apply to an X-ray film or any other portion of a medical record which is not susceptible to photostatic reproduction.

Under 42 Pa.C.S. § 6152.1 (relating to limit on charges), the Secretary is directed to make a similar adjustment to the flat fee which may be charged by a health care facility or health care provider for the expense of reproducing medical charts or records where the request is: (1) for the purpose of supporting a claim or appeal under the Social Security Act or any Federal or State financial needs based benefit program; or (2) made by a district attorney.

The Secretary is directed to base these adjustments on the most recent changes in the consumer price index reported annually by the Bureau of Labor Statistics of the United States Department of Labor. For the annual period of October 31, 2007, through October 31, 2008, the consumer price index was 4.2%.

Accordingly, the Secretary provides notice that, effective January 1, 2009, the following fees may be charged by a health care facility or health care provider for production

of records in response to subpoena or request:

	<i>Not to Exceed</i>
Amount charged per page for pages 1—20	\$ 1.33
Amount charged per page for pages 21—60	\$ .99
Amount charged per page for pages 61—end	\$ .33
Amount charged per page for microfilm copies	\$ 1.96
Flat fee for production of records to support any claim under Social Security	\$25.09
Flat fee for supplying records requested by a district attorney	\$19.80
* Search and retrieval of records	\$19.80

\* *Note:* Federal regulations enacted under the Health Insurance Portability and Accountability Act (HIPAA) at 45 CFR Parts 160—164 state that covered entities may charge a reasonable cost based fee that includes only the cost of copying, postage and summarizing the information (if the individual has agreed to receive a summary) when providing individuals access to their medical records. The Department of Health and Human Services has stated that the fees may not include costs associated with searching for and retrieving the requested information. For further clarification on this issue, inquiries should be directed to the Office of Civil Rights, United States Department of Health and Human Services, 200 Independence Avenue, S.W., Room 509F, HHH Building, Washington, D.C. 20201, (866) 627-7748, [www.hhs.gov/ocr/hipaa](http://www.hhs.gov/ocr/hipaa).

In addition to the amounts listed previously, charges may also be assessed for the actual cost of postage, shipping and delivery of the requested records.

The Department is not authorized to enforce these charges.

Questions or inquiries concerning this notice should be sent to James T. Steele, Jr., Deputy Chief Counsel, Room 825, Health and Welfare Building, Harrisburg, PA 17120 or for speech and or hearing impaired persons the Pennsylvania AT&T Relay Service at (800) 654-5984 (TT) or V/TT (717) 783-6514.

A. EVERETTE JAMES,  
*Acting Secretary*

[Pa.B. Doc. No. 08-2302. Filed for public inspection December 19, 2008, 9:00 a.m.]

### Application of Bucktail Medical Center for Exception

Under 28 Pa. Code § 51.33 (relating to requests for exceptions), the Department of Health (Department) gives notice that Bucktail Medical Center has requested an exception to the requirements of 28 Pa. Code § 131.22 (relating to treatment orders).

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](mailto:paexcept@health.state.pa.us).

The facility is requesting a waiver of the comment period, as set forth in 28 Pa. Code § 51.33(c).

Persons with a disability who wish to obtain a copy of a request and/or provide comments to the Department and require an auxiliary aid, service or other accommodation to do so should contact the Division at the previously

listed address or phone numbers or for speech and/or hearing impaired persons V/TT (717) 783-6154 or the Pennsylvania AT&T Relay Service at (800) 654-5984.

A. EVERETTE JAMES,  
*Acting Secretary*

[Pa.B. Doc. No. 08-2303. Filed for public inspection December 19, 2008, 9:00 a.m.]

### Application of Canonsburg General Hospital for Exception

Under 28 Pa. Code § 51.33 (relating to requests for exceptions), the Department of Health (Department) gives notice that Canonsburg General Hospital has requested an exception to the requirements of 28 Pa. Code § 123.25(2) (relating to regulations for control of anesthetic explosion hazards).

This request is on file with the Department. Persons may receive a copy of a request for exception by requesting a copy from the Department of Health, Division of Acute and Ambulatory Care, Room 532, Health and Welfare Building, Harrisburg, PA 17120, (717) 783-8980, fax (717) 772-2163, paexcept@health.state.pa.us.

The facility is requesting a waiver of the comment period, as set forth in 28 Pa. Code § 51.33(c).

Persons with a disability who wish to obtain a copy of a request and/or provide comments to the Department and require an auxiliary aid, service or other accommodation to do so should contact the Division at the previously listed address or phone numbers or for speech and/or hearing impaired persons V/TT (717) 783-6154 or the Pennsylvania AT&T Relay Service at (800) 654-5984.

A. EVERETTE JAMES,  
*Acting Secretary*

[Pa.B. Doc. No. 08-2304. Filed for public inspection December 19, 2008, 9:00 a.m.]

### Application of DuBois Regional Medical Center/ Brookville Hospital Campus for Exception

Under 28 Pa. Code § 51.33 (relating to requests for exceptions), the Department of Health (Department) gives notice that DuBois Regional Medical Center/Brookville Hospital Campus 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: 3.1-5.2.1.1 (relating to corridor width).

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 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).

A. EVERETTE JAMES,  
*Acting Secretary*

[Pa.B. Doc. No. 08-2305. Filed for public inspection December 19, 2008, 9:00 a.m.]

### Application of DuBois Regional Medical Center/ Charles Medical Center for Exception

Under 28 Pa. Code § 51.33 (relating to requests for exceptions), the Department of Health (Department) gives notice that DuBois Regional Medical Center/Charles Medical Center 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: 3.1-5.2.1.1 (relating to corridor width).

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 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).

A. EVERETTE JAMES,  
*Acting Secretary*

[Pa.B. Doc. No. 08-2306. Filed for public inspection December 19, 2008, 9:00 a.m.]

### Application for Exception to 28 Pa. Code § 127.32

Under 28 Pa. Code § 51.33 (relating to requests for exceptions), the Department of Health (Department) gives notice that the following facilities have requested an exception to the requirements of 28 Pa. Code § 127.32 (relating to written orders):

Children's Hospital of Pittsburgh of UPMC  
Elk Regional Health Center  
Mount Nittany Medical Center  
Warren General Hospital

These requests are on file with the Department. Persons may receive a copy of a request for exception by requesting a copy from the Department of Health, Division of Acute and Ambulatory Care, Room 532, Health and Welfare Building, Harrisburg, PA 17120, (717) 783-8980, fax (717) 772-2163, paexcept@health.state.pa.us.

These facilities are requesting a waiver of the comment period, as set forth in 28 Pa. Code § 51.33(c).

Persons with a disability who wish to obtain a copy of a request and/or provide comments to the Department and require an auxiliary aid, service or other accommodation to do so should contact the Division at the previously listed address or phone numbers or for speech and/or hearing impaired persons V/TT (717) 783-6154 or the Pennsylvania AT&T Relay Service at (800) 654-5984.

A. EVERETTE JAMES,  
*Acting Secretary*

[Pa.B. Doc. No. 08-2307. Filed for public inspection December 19, 2008, 9:00 a.m.]

### Application of Hospital of the University of Pennsylvania for Exception

Under 28 Pa. Code § 51.33 (relating to requests for exceptions), the Department of Health (Department) gives notice that Hospital of the University of Pennsylvania 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: 3.4.2.1(1) (relating to patient areas) and 3.2.3.1(1) (relating to clearances).

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 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).

A. EVERETTE JAMES,  
*Acting Secretary*

[Pa.B. Doc. No. 08-2308. Filed for public inspection December 19, 2008, 9:00 a.m.]

### Application of Jersey Shore Hospital for Exception

Under 28 Pa. Code § 51.33 (relating to requests for exceptions), the Department of Health (Department) gives notice that Jersey Shore Hospital has requested an exception to the requirements of 28 Pa. Code § 131.22 (relating to treatment orders).

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, (717) 772-2163, paexcept@health.state.pa.us.

The facility is requesting a waiver of the comment period, as set forth in 28 Pa. Code § 51.33(c).

Persons with a disability who wish to obtain a copy of a request and/or provide comments to the Department and require an auxiliary aid, service or other accommodation to do so should contact the Division at the previously listed address or phone numbers or for speech and/or hearing impaired persons V/TT (717) 783-6154 or the Pennsylvania AT&T Relay Service at (800) 654-5984.

A. EVERETTE JAMES,  
*Acting Secretary*

[Pa.B. Doc. No. 08-2309. Filed for public inspection December 19, 2008, 9:00 a.m.]

### Application of Memorial Medical Center/Lee Ambulatory Surgery Facility for Exception

Under 28 Pa. Code § 51.33 (relating to requests for exceptions), the Department of Health (Department) gives notice that Memorial Medical Center/Lee Ambulatory Surgery Facility has requested an exception to the requirements of 28 Pa. Code § 551.21 (relating to criteria for ambulatory surgery).

This request is on file with the Department. Persons may receive a copy of a request for exception by requesting a copy from the Department of Health, Division of Acute and Ambulatory Care, Room 532, Health and Welfare Building, Harrisburg, PA 17120, (717) 783-8980, fax (717) 772-2163, paexcept@health.state.pa.us.

The facility is requesting a waiver of the comment period, as set forth in 28 Pa. Code § 51.33(c).

Persons with a disability who wish to obtain a copy of a request and/or provide comments to the Department and require an auxiliary aid, service or other accommodation to do so should contact the Division at the previously listed address or phone numbers or for speech and/or

hearing impaired persons V/TT (717) 783-6154 or the Pennsylvania AT&T Relay Service at (800) 654-5984.

A. EVERETTE JAMES,  
*Acting Secretary*

[Pa.B. Doc. No. 08-2310. Filed for public inspection December 19, 2008, 9:00 a.m.]

### Application of Southwest Regional Medical Center for Exception

Under 28 Pa. Code § 51.33 (relating to requests for exceptions), the Department of Health (Department) gives notice that Southwest Regional Medical Center has requested an exception to the requirements of 28 Pa. Code § 123.25(2) (relating to regulations for control of anesthetic explosion hazards).

This request is on file with the Department. Persons may receive a copy of a request for exception by requesting a copy from the Department of Health, Division of Acute and Ambulatory Care, Room 532, Health and Welfare Building, Harrisburg, PA 17120, (717) 783-8980, fax (717) 772-2163, paexcept@health.state.pa.us.

The facility is requesting a waiver of the comment period, as set forth in 28 Pa. Code § 51.33(c).

Persons with a disability who wish to obtain a copy of a request and/or provide comments to the Department and require an auxiliary aid, service or other accommodation to do so should contact the Division at the previously listed address or phone numbers or for speech and/or hearing impaired persons V/TT (717) 783-6154 or the Pennsylvania AT&T Relay Service at (800) 654-5984.

A. EVERETTE JAMES,  
*Acting Secretary*

[Pa.B. Doc. No. 08-2311. Filed for public inspection December 19, 2008, 9:00 a.m.]

### Application of Warminster Surgical Center for Exception

Under 28 Pa. Code § 51.33 (relating to requests for exceptions), the Department of Health (Department) gives notice that Warminster Surgical Center has requested an exception to the requirement of 28 Pa. Code § 569.35 (relating to general safety precautions).

This request is on file with the Department. Persons may receive a copy of a request for exception by requesting a copy from the Department of Health, Division of Acute and Ambulatory Care, Room 532, Health and Welfare Building, Harrisburg, PA 17120, (717) 783-8980, fax (717) 772-2163, paexcept@health.state.pa.us.

The facility is requesting a waiver of the comment period, as set forth in 28 Pa. Code § 51.33(c).

Persons with a disability who wish to obtain a copy of a request and/or provide comments to the Department and require an auxiliary aid, service or other accommodation to do so should contact the Division at the previously listed address or phone numbers or for speech and/or

hearing impaired persons V/TT (717) 783-6154 or the Pennsylvania AT&T Relay Service at (800) 654-5984.

A. EVERETTE JAMES,  
*Acting Secretary*

[Pa.B. Doc. No. 08-2312. Filed for public inspection December 19, 2008, 9:00 a.m.]

### Long-Term Care Nursing Facilities; Request for Exception

The following long-term care nursing facility is seeking an exception to 28 Pa. Code § 205.67(k) (relating to electric requirements for existing and new construction).

Longwood at Oakmont Health Care Center  
500 Route 909  
Verona, PA 15147

This request is 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.

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 wish to comment in an alternative format (for example, large print, audiotape, Braille) should contact the Division of Nursing Care Facilities at the address listed previously or for speech and/or hearing impaired persons V/TT (717) 783-6154 or the Pennsylvania AT&T Relay Service at (800) 654-5984 (TT).

A. EVERETTE JAMES,  
*Acting Secretary*

[Pa.B. Doc. No. 08-2313. Filed for public inspection December 19, 2008, 9:00 a.m.]

## DEPARTMENT OF PUBLIC WELFARE

### Additional Class of Disproportionate Share Payments

The purpose of this notice is to announce the Department of Public Welfare's (Department) intent to establish a one-time additional class of disproportionate share hospital (DSH) payments for certain qualifying acute care general hospitals that provide a significant level of inpatient services to the Medical Assistance (MA) population in counties with a high concentration of MA eligible persons.

MA enrolled hospitals qualifying for this payment shall be located within a county defined as having a high MA concentration based on the June 2008, Pennsylvania (PA)

MA eligibility statistics. High MA concentration counties are counties exceeding the 98th percentile on the total number of PA MA eligible persons. Hospitals, located within high MA concentration counties, shall meet all of the following criteria to qualify for this payment based on Fiscal Year (FY) 2005-2006 MA cost report information:

- Provide at least 15,000 total acute MA inpatient days.
- Rank in at least the 75th percentile on the total number of acute MA inpatient days for all hospitals within the county.
- Have a ratio of acute MA inpatient days to total hospital acute inpatient days in excess of the 80th percentile for all hospitals within the county.
- Have at least 100,000 total hospital acute inpatient days.

In addition, hospitals shall have an operating margin lower than 3% for FY 2007 as reported in Pennsylvania Health Care Cost Containment Council's *Financial Analysis 2007, Volume One*.

Payments will be divided proportionately among qualifying hospitals based on the percentage of each qualifying hospital's acute MA inpatient days to total hospital bed days used for all qualifying facilities based on FY 2005-2006 MA cost reports.

In making these one-time payments, the Department will ensure that no acute care general hospital will receive a DSH payment that is in excess of its hospital-specific DSH upper payment limit and the Commonwealth will not exceed its aggregate annual DSH allotment.

#### *Fiscal Impact*

The FY 2008-2009, fiscal impact as a result of this one-time payment is \$10,993,843 in total funds (\$5 million in State General funds and \$5.994 million in Federal funds).

#### *Public Comment*

Interested persons are invited to submit written comments regarding this notice to the Department at the following address Department of Public Welfare, Office of Medical Assistance Programs, c/o Regulations Coordinator, Room 515, Health and Welfare Building, Harrisburg, PA 17120. Comments received within 30 days will be reviewed and considered for any subsequent revision of the notice.

Persons with a disability who require an auxiliary aid or service may submit comments using the Pennsylvania AT&T Relay Service at (800) 654-5984 (TDD users) or (800) 654-5988 (voice users).

ESTELLE B. RICHMAN,  
*Secretary*

**Fiscal Note:** 14-NOT-576. (1) General Fund; (2) Implementing Year 2008-09 is \$5M; (3) 1st Succeeding Year 2009-10 is \$0; 2nd Succeeding Year 2010-11 is \$0; 3rd Succeeding Year 2011-12 is \$0; 4th Succeeding Year 2012-13 is \$0; 5th Succeeding Year 2013-14 is \$0; (4) 2007-08 Program—\$21.175M; 2006-07 Program—

\$14.500M; 2005-06 Program—\$10.800M; (7) Acute Care Hospitals; (8) recommends adoption. Funds have been included in the budget to cover this increase.

[Pa.B. Doc. No. 08-2314. Filed for public inspection December 19, 2008, 9:00 a.m.]

## DEPARTMENT OF REVENUE

### Annual Inflation Adjustment; Pennsylvania Gaming Cash Flow Management

In accordance with 61 Pa. Code § 1001.8 (relating to State Gaming Fund transfers), the Department of Revenue (Department) is required to publish notice of the annual inflation adjustment as proscribed in 4 Pa.C.S. § 1403(d) (relating to establishment of State Gaming Fund and net slot machine revenue distribution).

Section 1403(c) of 4 Pa.C.S. requires the Department to utilize the most recent consumer price index effective immediately prior to the date the adjustment is due to take effect. This adjustment will be published by the United States Department of Labor, Bureau of Labor Statistics in January 2009. Thereafter, the Department will publish an additional notice of the annual inflation adjustment.

STEPHEN H. STETLER,  
*Acting Secretary*

[Pa.B. Doc. No. 08-2315. Filed for public inspection December 19, 2008, 9:00 a.m.]

### Pennsylvania Goldbar Cro\$\$word Instant Lottery Game

Under the State Lottery Law (72 P.S. §§ 3761-101—3761-314) and 61 Pa. Code § 819.203 (relating to notice of instant game rules), the Secretary of Revenue hereby provides public notice of the rules for the following instant lottery game:

1. *Name:* The name of the game is Pennsylvania Goldbar Cro\$\$word.
2. *Price:* The price of a Pennsylvania Goldbar Cro\$\$word instant lottery game ticket is \$3.
3. *Play Symbols:* Each Pennsylvania Goldbar Cro\$\$word instant lottery game ticket will feature a "YOUR LETTERS" area, a crossword puzzle play grid for the "Goldbar Cro\$\$word" game and a "Bonus" play area. The "Bonus" area is played separately. The play symbols and their captions located in the "YOUR LETTERS" area are: the letters A through and including Z. The play symbols located in the "Goldbar Cro\$\$word" puzzle play grid are: the letters A through and including Z. The play symbols and their captions located in the "Bonus" play area are: Cash symbol (CASH), Chest symbol (CHEST), Gift symbol (GIFT), Moneybag (MNYBAG), Money symbol (MONEY), Gold Nugget symbol (GLDNGT) and a Gold Bar symbol (GLDBAR).
4. *Prizes:* The prizes that can be won in the "Goldbar Cro\$\$word" game are: \$3, \$5, \$10, \$20, \$30, \$50, \$100, \$1,000 and \$60,000. The prizes that can be won in the "Bonus" game are: \$10 and \$100. A player can win up to 2 times on a ticket.

5. *Approximate Number of Tickets Printed for the Game:* Approximately 14,400,000 tickets will be printed for the Pennsylvania Goldbar Cro\$\$word instant lottery game.

6. *Determination of Prize Winners:*

(a) The determination of the prize winners for the "Goldbar Cro\$\$word" game are:

(1) Holders of tickets where the player completely uncovers 10 words in the crossword puzzle play grid for the "Goldbar Cro\$\$word" game, using only the letters found in the "YOUR LETTERS" area, on a single ticket, shall be entitled to a prize of \$60,000.

(2) Holders of tickets where the player completely uncovers 9 words in the crossword puzzle play grid for the "Goldbar Cro\$\$word" game, using only the letters found in the "YOUR LETTERS" area, on a single ticket, shall be entitled to a prize of \$1,000.

(3) Holders of tickets where the player completely uncovers 8 words in the crossword puzzle play grid for the "Goldbar Cro\$\$word" game, using only the letters found in the "YOUR LETTERS" area, on a single ticket, shall be entitled to a prize of \$100.

(4) Holders of tickets where the player completely uncovers 7 words in the crossword puzzle play grid for the "Goldbar Cro\$\$word" game, using only the letters found in the "YOUR LETTERS" area, on a single ticket, shall be entitled to a prize of \$50.

(5) Holders of tickets where the player completely uncovers 6 words in the crossword puzzle play grid for the "Goldbar Cro\$\$word" game, using only the letters found in the "YOUR LETTERS" area, on a single ticket, shall be entitled to a prize of \$30.

(6) Holders of tickets where the player completely uncovers 5 words in the crossword puzzle play grid for the "Goldbar Cro\$\$word" game, using only the letters found in the "YOUR LETTERS" area, on a single ticket, shall be entitled to a prize of \$20.

(7) Holders of tickets where the player completely uncovers 4 words in the crossword puzzle play grid for the "Goldbar Cro\$\$word" game, using only the letters found in the "YOUR LETTERS" area, on a single ticket, shall be entitled to a prize of \$10.

(8) Holders of tickets where the player completely uncovers 3 words in the crossword puzzle play grid for the "Goldbar Cro\$\$word" game, using only the letters found in the "YOUR LETTERS" area, on a single ticket, shall be entitled to a prize of \$5.

(9) Holders of tickets where the player completely uncovers 2 words in the crossword puzzle play grid for

the "Goldbar Cro\$\$word" game, using only the letters found in the "YOUR LETTERS" area, on a single ticket, shall be entitled to a prize of \$3.

(b) The determination of the prize winners for the "Bonus" game are:

(1) Holders of tickets with a Gold Bar (GLDBAR) play symbol in any "BONUS" spot, on a single ticket, shall be entitled to a prize of \$10.

(2) Holders of tickets with a Gold Bar (GLDBAR) play symbol in each of the five "BONUS" spots, on a single ticket, shall be entitled to a prize of \$100.

7. *Game Play Instructions for the "Goldbar Cro\$\$word" game are:*

(a) The player shall scratch the "YOUR LETTERS" area to reveal 18 letters. For each of the 18 letters revealed in the "YOUR LETTERS" area, the player shall rub the same letter each time it is found in the "Goldbar Cro\$\$word" puzzle play area.

(b) When a player reveals two or more words in the "Goldbar Cro\$\$word" puzzle play area, the player is entitled to win a prize as described in Section 6(a).

(c) Only the highest prize won in the "Goldbar Cro\$\$word" instant lottery game and the prize won in the "Bonus" game will be paid if the ticket meets the criteria established in 61 Pa. Code § 819.213 (relating to ticket validation and requirements).

(d) For purposes of this game, a word must contain at least three letters and cannot be formed by linking letters diagonally or by reading the letters from the bottom to the top.

(e) Letters combined to form a word must appear in an unbroken horizontal or vertical string of letters in the "Goldbar Cro\$\$word" puzzle play area. An unbroken string of letters cannot be interrupted by a black space and must contain every single letter square between two black spaces.

(f) Every single letter in the unbroken string must be revealed in the "YOUR LETTERS" area and be included to form a word.

(g) The possible complete words for each ticket in the game are shown on the "Goldbar Cro\$\$word" puzzle play grid of the ticket. The player must match all of the letters in a possible complete word in order to complete the word.

8. *Number and Description of Prizes and Approximate Odds:* The following table sets forth the approximate number of winners, amounts of prizes and approximate odds of winning:

<i>Win Prize(s) With:</i>	<i>Win:</i>	<i>Approximate Odds Are 1 In:</i>	<i>Approximate No. Of Winners Per 14,400,000 Tickets:</i>
2 WORDS	\$3	7.69	1,872,000
3 WORDS	\$5	12.50	1,152,000
4 WORDS	\$10	125	115,200
\$10 (GOLD BAR)	\$10	55.56	259,200
5 WORDS	\$20	200	72,000
4 WORDS + \$10 (GOLD BAR)	\$20	100	144,000
6 WORDS	\$30	1,200	12,000
5 WORDS + \$10 (GOLD BAR)	\$30	1,200	12,000
7 WORDS	\$50	800	18,000
8 WORDS	\$100	1,200	12,000

<i>Win Prize(s) With:</i>	<i>Win:</i>	<i>Approximate Odds Are 1 In:</i>	<i>Approximate No. Of Winners Per 14,400,000 Tickets:</i>
\$100 (GOLD BAR)	\$100	385.85	37,320
9 WORDS	\$1,000	10,909	1,320
10 WORDS	\$60,000	720,000	20

BONUS = Get a Gold Bar (GLDBAR) symbol in any spot, win \$10. Get five Gold Bar (GLDBAR) symbols, win \$100.

Prizes, including top prizes, are subject to availability at the time of purchase.

9. *Retailer Incentive Awards:* The Lottery may conduct a separate Retailer Incentive Game for retailers who sell Pennsylvania Goldbar Cro\$\$word instant lottery game tickets. The conduct of the game will be governed by 61 Pa. Code § 819.222 (relating to retailer bonuses and incentive).

10. *Unclaimed Prize Money:* For a period of 1 year from the announced close of Pennsylvania Goldbar Cro\$\$word, prize money from winning Pennsylvania Goldbar Cro\$\$word instant lottery game tickets will be retained by the Secretary for payment to the persons entitled thereto. If no claim is made within 1 year of the announced close of the Pennsylvania Goldbar Cro\$\$word instant lottery game, the right of a ticket holder to claim the prize represented by the ticket, if any, will expire and the prize money will be paid into the State Lottery Fund and used for purposes provided for by statute.

11. *Governing Law:* In purchasing a ticket, the customer agrees to comply with and abide by the State Lottery Law (72 P.S. §§ 3761-101—3761-314), 61 Pa. Code Part V (relating to State Lotteries) and the provisions contained in this notice.

12. *Termination of the Game:* The Secretary may announce a termination date, after which no further tickets from this game may be sold. The announcement will be disseminated through media used to advertise or promote Pennsylvania Goldbar Cro\$\$word or through normal communications methods.

STEPHEN H. STETLER,  
*Acting Secretary*

[Pa.B. Doc. No. 08-2316. Filed for public inspection December 19, 2008, 9:00 a.m.]

## DEPARTMENT OF TRANSPORTATION

### Finding Crawford County

Under section 2002(b) of The Administrative Code of 1929 (71 P.S. § 512(b)), the Director of the Bureau of Design as delegated by the Secretary of Transportation makes the following written finding:

The Federal Highway Administration (FHWA) and the Department of Transportation (Department) are planning to reface the abutments and wing walls on the Allen Street Railroad Bridge in the City of Titusville, Crawford County. The project will require the use of the Oil Creek and Titusville Railroad, which is a part of a historic rail line and, therefore qualifies as a section 4(f)/section 2002 resource.

In accordance with section 2002 of The Administrative Code 1929 establishing the Department, a Level-2 Categorical Exclusion Evaluation (CEE) has been developed for the subject project along with a "Determination of Section 4(f) De minimus Use Section 2002 No Adverse Use" checklist to evaluate the potential environmental impacts caused by the subject project. The checklist also serves as the Section 2002 Evaluation. The approved documents are available in the CE/EA Expert System.

Based upon studies, there is no feasible and prudent alternative to the proposed action. Mitigation measures will be taken to minimize harm as stipulated in the Level-2 CEE, the "Determination of Section 4(f) De minimus Use Section 2002 No Adverse Use" and the associated Memorandum of Agreement.

The environmental, economic, social and other effects of the proposed project as enumerated in section 2002 of The Administrative Code 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 such effects.

BRIAN G. THOMPSON, P. E.,  
*Director*  
*Bureau of Design*

[Pa.B. Doc. No. 08-2317. Filed for public inspection December 19, 2008, 9:00 a.m.]

### Finding Venango County

Under section 2002(b) of The Administrative Code of 1929 (71 P.S. § 512(b)), the Director of the Bureau of Design as delegated by the Secretary of Transportation makes the following written finding:

The Federal Highway Administration (FHWA) and the Department of Transportation (Department) are planning a bridge preservation project for the Jersey Railroad Bridge No. 2 in Venango County. The project will require the use of the Oil Creek and Titusville Railroad which is a part of a historic rail line and Oil Creek State Park. Therefore, it qualifies as a section 4(f)/section 2002 resource.

In accordance with section 2002 of The Administrative Code of 1929 establishing the Department, a Level-2 Categorical Exclusion Evaluation (CEE) has been developed for the subject project along with a "Determination of Section 4(f) De minimis Use Section 2002 No Adverse Use" checklist to evaluate the potential environmental impacts caused by the subject project. The checklist also serves as the section 2002 Evaluation. The approved documents are available in the CE/EA Expert System.

Based upon studies, there is no feasible and prudent alternative to the proposed action. Mitigation measures will be taken to minimize harm as stipulated in the Level-2 CEE, the "Determination of Section 4(f) De



minimis Use Section 2002 No Adverse Use,” and the associated Memorandum of Agreement.

The environmental, economic, social and other effects of the proposed project as enumerated in section 2002 of The Administrative Code 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 such effects.

BRIAN G. THOMPSON, P. E.,  
Director  
Bureau of Design

[Pa.B. Doc. No. 08-2318. Filed for public inspection December 19, 2008, 9:00 a.m.]

## INSURANCE DEPARTMENT

### **Aetna Health, Inc.; Rate Increase Filing for Central and Northeastern Pennsylvania Large Group Commercial HMO Business; Rate Filing**

Aetna Health, Inc. requests approval of an increase to its Central and Northeast Pennsylvania Commercial HMO rates for large groups. This filing represents an annual increase of approximately 22.9% over the previously approved base rate. As a result of rate adjustments over the past year, the policyholder will see an average annual rate increase of only 9.8%. This will result in additional annual premium income of approximately \$1.882 million. The rate increase will affect about 4,569 members. The requested approval date is April 1, 2009.

Unless formal administrative action is taken prior to March 4, 2009, the subject filing may be deemed approved by operation of law.

A copy of the filing is available on the Insurance Department's (Department) web site at [www.ins.state.pa.us](http://www.ins.state.pa.us). To access the filing, under "Quick Links" click on "Rate Filings Published in the PA Bulletin."

A copy of the filing is also available for public inspection, by appointment, during normal working hours at the Department's Regional Office in Harrisburg.

Interested parties are invited to submit written or e-mail comments, suggestions or objections to Carol E. Slack, Insurance Department, Insurance Product Regulation, 1311 Strawberry Square, Harrisburg, PA 17120, [cslack@state.pa.us](mailto:cslack@state.pa.us) within 30 days after publication of this notice in the *Pennsylvania Bulletin*.

JOEL SCOTT ARIO,  
Insurance Commissioner

[Pa.B. Doc. No. 08-2319. Filed for public inspection December 19, 2008, 9:00 a.m.]

### **Aetna Health, Inc.; Rate Increase Filing for Pittsburgh and Western Pennsylvania Large Group Commercial HMO Business; Rate Filing**

Aetna Health, Inc. requests approval of an increase to its Pittsburgh and Western Pennsylvania Commercial HMO rates for large groups. This filing represents an annual increase of approximately 17.5% over the previously approved base rate. As a result of rate adjustments over the past year, the policyholder will see an average annual rate increase of only 9.2%. This will result in

additional annual premium income of approximately \$1.405 million. The rate increase will affect about 3,497 members. The requested approval date is April 1, 2009.

Unless formal administrative action is taken prior to March 4, 2009, the subject filing may be deemed approved by operation of law.

A copy of the filing is available on the Insurance Department's (Department) web site at [www.ins.state.pa.us](http://www.ins.state.pa.us). To access the filing, under "Quick Links" click on "Rate Filings Published in the PA Bulletin."

A copy of the filing is also available for public inspection, by appointment, during normal working hours at the Department's Regional Office in Harrisburg.

Interested parties are invited to submit written or email comments, suggestions or objections to Carol E. Slack, Insurance Department, Insurance Product Regulation, 1311 Strawberry Square, Harrisburg, PA 17120, [cslack@state.pa.us](mailto:cslack@state.pa.us) within 30 days after publication of this notice in the *Pennsylvania Bulletin*.

JOEL SCOTT ARIO,  
Insurance Commissioner

[Pa.B. Doc. No. 08-2320. Filed for public inspection December 19, 2008, 9:00 a.m.]

### **Aetna Health, Inc.; Rate Increase Filing for Southeast Pennsylvania Large Group Commercial HMO Business; Rate Filing**

Aetna Health, Inc. requests approval of an increase to its Southeastern Pennsylvania Commercial HMO rates for large groups. This filing represents an annual increase of approximately 17.5% over the previously approved base rate. As a result of rate adjustments over the past year, the policyholder will see an average annual rate increase of only 9.4%. This will result in additional annual premium income of approximately \$31.110 million. The rate increase will affect about 80,983 members. The requested approval date is April 1, 2009.

Unless formal administrative action is taken prior to March 4, 2009, the subject filing may be deemed approved by operation of law.

A copy of the filing is available on the Insurance Department's (Department) web site at [www.ins.state.pa.us](http://www.ins.state.pa.us). To access the filing, under "Quick Links" click on "Rate Filings Published in the PA Bulletin."

A copy of the filing is also available for public inspection, by appointment, during normal working hours at the Department's Regional Office in Harrisburg.

Interested parties are invited to submit written or email comments, suggestions or objections to Carol E. Slack, Insurance Department, Insurance Product Regulation, 1311 Strawberry Square, Harrisburg, PA 17120, [cslack@state.pa.us](mailto:cslack@state.pa.us) within 30 days after publication of this notice in the *Pennsylvania Bulletin*.

JOEL SCOTT ARIO,  
Insurance Commissioner

[Pa.B. Doc. No. 08-2321. Filed for public inspection December 19, 2008, 9:00 a.m.]

**Aetna Health, Inc.; Small Group (with fewer than 51 subscribers); Rate Filing**

Aetna Health, Inc. requests a rate increase of 15.2% annually for the groups with fewer than 51 average subscribers. The filing will affect approximately 7,000 members and generate additional revenue of approximately \$4.8 million annually. An effective date of April 1, 2009, is requested.

Unless formal administrative action is taken prior to March 5, 2009, the subject filing may be deemed approved by operation of law.

A copy of the filing is available on the Insurance Department's (Department) web site at [www.ins.state.pa.us](http://www.ins.state.pa.us). To access the filing under the "Quick Links" click on "Rate Filings Published in the PA Bulletin."

A copy of the filing is also available for public inspection, by appointment, during normal working hours at the Department's Regional Office in Harrisburg.

Interested parties are invited to submit written or email comment's, suggestions or objections to Rashmi Mathur, Actuary, Insurance Department, Insurance Product Regulation, 1311 Strawberry Square, Harrisburg, PA 17120, [rmathur@state.pa.us](mailto:rmathur@state.pa.us) within 30 days after publication of this notice in the *Pennsylvania Bulletin*.

JOEL SCOTT ARIO,  
*Insurance Commissioner*

[Pa.B. Doc. No. 08-2322. Filed for public inspection December 19, 2008, 9:00 a.m.]

**Application and Request for a Certificate of Authority to Provide a Continuing Care Retirement Community by Ivy Hill SNF, LLC**

Ivy Hill SNF, LLC has applied for a Certificate of Authority to operate a Continuing Care Retirement Community at Ivy Hill Rehabilitation and Nursing Center in Wyndmoor, PA. The initial filing was received on November 5, 2008, 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 grounds of public or private interest to the issuance of a Certificate of Authority are invited to submit a written statement to the Insurance Department (Department) within 30 days from the date of this issue of the *Pennsylvania Bulletin*. Each written statement must include name, address and telephone number of the interested party, identification of the application to which the statement is addressed and a concise statement with sufficient detail to inform the Department of the exact basis of the statement. Written statements should be directed to Steven L. Yerger, Insurance Department, 1345 Strawberry Square, Harrisburg, PA 17120, fax (717) 787-8557, [syerger@state.pa.us](mailto:syerger@state.pa.us).

JOEL SCOTT ARIO,  
*Insurance Commissioner*

[Pa.B. Doc. No. 08-2323. Filed for public inspection December 19, 2008, 9:00 a.m.]

**Application and Request for a Certificate of Authority to Provide a Continuing Care Retirement Community by Madlyn and Leonard Abramson Center for Jewish Life**

Madlyn and Leonard Abramson Center for Jewish Life has applied for a Certificate of Authority to operate a Continuing Care Retirement Community at Madlyn and Leonard Abramson Center for Jewish Life in North Wales, PA. The initial filing was received on December 5, 2008, 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 grounds of public or private interest to the issuance of a Certificate of Authority are invited to submit a written statement to the Insurance Department (Department) within 30 days from the date of this issue of the *Pennsylvania Bulletin*. Each written statement must include name, address and telephone number of the interested party, identification of the application to which the statement is addressed and a concise statement with sufficient detail to inform the Department of the exact basis of the statement. Written statements should be directed to Steven L. Yerger, Insurance Department, 1345 Strawberry Square, Harrisburg, PA 17120, fax (717) 787-8557, [syerger@state.pa.us](mailto:syerger@state.pa.us).

JOEL SCOTT ARIO,  
*Insurance Commissioner*

[Pa.B. Doc. No. 08-2324. Filed for public inspection December 19, 2008, 9:00 a.m.]

**Coal Mine Compensation Rating Bureau; Workers' Compensation Loss Cost Filing; Rate Filing**

On December 5, 2008, the Insurance Department (Department) received from the Coal Mine Compensation Rating Bureau (CMCRB) a filing for a loss cost level change for Workers' Compensation Insurance. This filing is made in accordance with section 705 of the act of July 2, 1993 (P.L. 190, No. 44). The CMCRB requests an overall 14.4% decrease in collectible loss costs, effective April 1, 2009, on a new and renewal basis. Also, the CMCRB has calculated the Employer Assessment Factor effective April 1, 2009, to be 2.39%, as compared to the currently approved provision of 2.23%.

The entire April 1, 2009, loss cost filing is available for review on the Department's web site at [www.ins.state.pa.us](http://www.ins.state.pa.us). Under the Quick Links section, click on the link "Rate Filings Published in the PA Bulletin."

Interested parties are invited to submit written comments, suggestions or objections to Eric Zhou, Insurance Department, Insurance Product Regulation, 1311 Strawberry Square, Harrisburg, PA 17120, [gzhou@state.pa.us](mailto:gzhou@state.pa.us) within 30 days after publication of this notice in the *Pennsylvania Bulletin*.

JOEL SCOTT ARIO,  
*Insurance Commissioner*

[Pa.B. Doc. No. 08-2325. Filed for public inspection December 19, 2008, 9:00 a.m.]

### Pennsylvania Compensation Rating Bureau; Workers' Compensation Loss Cost Filing; Rate Filing

On December 10, 2008, the Insurance Department received from the Pennsylvania Compensation Rating Bureau (PCRB) a filing for a loss cost level change for Workers' Compensation Insurance. This filing is made in accordance with section 705 of the act of July 2, 1993 (P. L. 190, No. 44). The PCRB requests an overall 0.7% increase in collectible loss costs, effective April 1, 2009, on a new and renewal basis. Also, the PCRB has calculated the Employer Assessment Factor effective April 1, 2009, to be 2.41%, as compared to the currently approved provision of 2.26%. Updates to a variety of other rating values to reflect the most recent available experience are also being submitted for approval.

The entire April 1, 2009, loss cost filing is available for review on the PCRB's web site at [www.pcrb.com](http://www.pcrb.com) in the "Filings" section.

Interested parties are invited to submit written comments, suggestions or objections to Eric Zhou, Insurance Department, Insurance Product Regulation, 1311 Strawberry Square, Harrisburg, PA 17120, [gzhou@state.pa.us](mailto:gzhou@state.pa.us) within 30 days after publication of this notice in the *Pennsylvania Bulletin*.

JOEL SCOTT ARIO,  
*Insurance Commissioner*

[Pa.B. Doc. No. 08-2326. Filed for public inspection December 19, 2008, 9:00 a.m.]

## LEGISLATIVE REFERENCE BUREAU

### Documents Filed But Not Published

The Legislative Reference Bureau (Bureau) accepted the following documents during the preceding calendar month for filing without publication under 1 Pa. Code § 3.13(b) (relating to contents of *Bulletin*). The Bureau will continue to publish on a monthly basis either a summary table identifying the documents accepted during the preceding calendar month under this subsection (b) or a statement that no documents have been received. For questions concerning or copies of documents filed, but not published, call (717) 783-1530.

#### *Executive Board*

Resolution No. CB-08-290, Dated October 27, 2008. The following Executive Board Resolution authorizes the interest arbitration award between the Commonwealth and the Pennsylvania State Corrections Officers Association. The Award provides for the establishment of rates of pay, hours of work and other conditions of employment for the period July 1, 2008, through June 30, 2011.

#### *Governor's Office*

Manual M210.3—Index of Issuances—Directives Management System, Amended August 11, 2008.

Management Directive No. 205.36—Right-to-Know Law, Amended November 20, 2008.

Management Directive No. 315.20—Taxability of the Use of State-Provided Vehicles, Amended November 17, 2008.

Management Directive No. 505.32—Governor's Awards for Excellence, Amended November 12, 2008.

MARY JANE PHELPS,  
*Director*  
*Pennsylvania Bulletin*

[Pa.B. Doc. No. 08-2327. Filed for public inspection December 19, 2008, 9:00 a.m.]

## LIQUOR CONTROL BOARD

### Expiration of Leases

The Liquor Control Board seeks the following new site:

Montgomery County, Wine & Spirits Store #4646, (New Store), North Wales, PA

Lease retail commercial space to the Commonwealth. Proposals are invited to provide the Liquor Control Board with approximately 10,000 net useable square feet of new or existing retail commercial space. Location must be within a 5 mile radius of Routes 202 and 309, Bethlehem Pike, Montgomery Township, North Wales, PA.

*Proposals due:* January 2, 2009, at 12 p.m.

**Department:** Liquor Control Board  
**Location:** Real Estate Division, 8305 Ridge Avenue, Philadelphia, PA 19128-2113  
**Contact:** Robert Jolly, (215) 482-9670

Philadelphia County, Wine & Spirits Store #5146, (New Store), Philadelphia, PA

Lease retail commercial space to the Commonwealth. Proposals are invited to provide the Liquor Control Board with approximately 500 to 1,000 net useable square feet of new or existing retail commercial space. Location must be within a 0.10 mile radius of 17th Street and John F. Kennedy Boulevard, Philadelphia, PA.

*Proposals due:* January 2, 2009, at 12 p.m.

**Department:** Liquor Control Board  
**Location:** Real Estate Division, 8305 Ridge Avenue, Philadelphia, PA 19128-2113  
**Contact:** Henry Blocker, Jr., (215) 482-9670

PATRICK J. STAPLETON, III,  
*Chairperson*

[Pa.B. Doc. No. 08-2328. Filed for public inspection December 19, 2008, 9:00 a.m.]

## PENNSYLVANIA PUBLIC UTILITY COMMISSION

### Abandon Public Service

**A-2008-2078319. Safe Harbor Water Power Corporation.** Application of Safe Harbor Water Power Corporation under section 1102(a)(2) of the Pennsylvania Public Utility Code Authorizing Safe Harbor Water Power Corporation to Abandon Public Service in the Commonwealth of Pennsylvania.

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 of the

Pennsylvania Public Utility Commission, P. O. Box 3265, Harrisburg, PA 17105-3265, with a copy served on the applicant, on or before January 5, 2009. The documents filed in support of the application are available for inspection and copying at the Office of the Secretary between 8 a.m. and 4:30 p.m., Monday through Friday, and at the applicant's business address.

*Applicant:* Safe Harbor Water Power Corporation

*Through and By Counsel:* Robert C. Gerlach, Esquire, Patrick R. Gillard, Esquire, Ballard Spahr Andrews and Ingersoll, LLP, 1735 Market Street, 51st Floor, Philadelphia, PA 19103

JAMES J. MCNULTY,  
*Secretary*

[Pa.B. Doc. No. 08-2329. Filed for public inspection December 19, 2008, 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 January 5, 2009. Documents filed in support of the applications are available for inspection and copying at the Office of the Secretary between 8 a.m. and 4:30 p.m., Monday through Friday, and at the business address of the respective applicant.

### Application of the following for approval to *begin operating as common carriers for transportation of persons as described under the application.*

**A-2008-2078128. Supportive Concepts for Families, Inc.** (200 Penn Street, Reading, Berks County, PA 19602), for the right to begin to transport persons in paratransit service from points in the Counties of Berks, Huntingdon, Juniata, Lebanon, Lehigh, Mifflin, Montgomery, Philadelphia and York, to points in Pennsylvania, and return.

### Application of the following for the approval of the *transfer of stock as described under the application.*

**A-2008-2077344. Infinity Limousine, Inc.** (128 West Apron Drive, Reading, Berks County, PA 19605)—a corporation of the Commonwealth, for the approval of 100% of all of the issued and outstanding shares of capital stock, which consists of 1,000 shares held by Arnold S. Brooks to Robert James Muir. *Attorney:* John E. Muir, Esquire, Roland & Schlegel, LLC, P. O. Box 902, Reading, PA 19603-0902.

JAMES J. MCNULTY,  
*Secretary*

[Pa.B. Doc. No. 08-2330. Filed for public inspection December 19, 2008, 9:00 a.m.]

### Telecommunications

**A-2008-2077491. Commonwealth Telephone Company, d/b/a Frontier Communications Commonwealth Telephone Company and Comcast Business Communications, LLC.** Joint petition of Commonwealth Telephone Company, d/b/a Frontier Communications Commonwealth Telephone Company and Comcast Business Communications, LLC for approval of a local interconnection agreement under section 252(e) of the Telecommunications Act of 1996.

Commonwealth Telephone Company, d/b/a Frontier Communications Commonwealth Telephone Company and Comcast Business Communications, LLC, by its counsel, filed on December 2, 2008, at the Pennsylvania Public Utility Commission (Commission), a joint petition for approval of a local interconnection agreement under sections 251 and 252 of the Telecommunications Act of 1996.

Interested parties may file comments concerning the petition and agreement with the Secretary, Pennsylvania Public Utility Commission, P. O. Box 3265, Harrisburg, PA 17105-3265. Comments are due on or before 10 days after the date of publication of this notice. Copies of the Commonwealth Telephone Company, d/b/a Frontier Communications Commonwealth Telephone Company and Comcast Business Communications, LLC 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. 08-2331. Filed for public inspection December 19, 2008, 9:00 a.m.]

### Telecommunications

**A-2008-2077464. Commonwealth Telephone Company, d/b/a Frontier Communications Commonwealth Telephone Company and IDT America, Corp.** Joint petition of Commonwealth Telephone Company, d/b/a Frontier Communications Commonwealth Telephone Company and IDT America, Corp. for approval of an interconnection agreement under section 252(e) of the Telecommunications Act of 1996.

Commonwealth Telephone Company, d/b/a Frontier Communications Commonwealth Telephone Company and IDT America, Corp., by its counsel, filed on December 2, 2008, at the Pennsylvania Public Utility Commission (Commission), a joint petition for approval of an interconnection agreement under sections 251 and 252 of the Telecommunications Act of 1996.

Interested parties may file comments concerning the petition and agreement with the Secretary, Pennsylvania Public Utility Commission, P. O. Box 3265, Harrisburg, PA 17105-3265. Comments are due on or before 10 days after the date of publication of this notice. Copies of the Commonwealth Telephone Company, d/b/a Frontier Communications Commonwealth Telephone Company and IDT America, Corp. 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. 08-2332. Filed for public inspection December 19, 2008, 9:00 a.m.]

### Telecommunications

**A-2008-2078101. Commonwealth Telephone Company, d/b/a Frontier Communications Commonwealth Telephone Company and MCImetro Access Transmission Services, LLC.** Joint petition of Commonwealth Telephone Company, d/b/a Frontier Communications Commonwealth Telephone Company and MCImetro Access Transmission Services, LLC for approval of an Indirect Traffic Exchange and Compensation Agreement under section 252(e) of the Telecommunications Act of 1996.

Commonwealth Telephone Company, d/b/a Frontier Communications Commonwealth Telephone Company and MCImetro Access Transmission Services, LLC, by its counsel, filed on December 4, 2008, at the Pennsylvania Public Utility Commission (Commission), a joint petition for approval of an Indirect Traffic Exchange and Compensation Agreement under sections 251 and 252 of the Telecommunications Act of 1996.

Interested parties may file comments concerning the petition and agreement with the Secretary, Pennsylvania Public Utility Commission, P. O. Box 3265, Harrisburg, PA 17105-3265. Comments are due on or before 10 days after the date of publication of this notice. Copies of the Commonwealth Telephone Company, d/b/a Frontier Communications Commonwealth Telephone Company and MCImetro Access Transmission Services, LLC 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. 08-2333. Filed for public inspection December 19, 2008, 9:00 a.m.]

### Telecommunications

**A-2008-2077502. Frontier Communications of Breezewood, LLC, Frontier Communications of Pennsylvania, LLC and Comcast Business Communications, LLC.** Joint petition of Frontier Communications of Breezewood, LLC, Frontier Communications of Pennsylvania, LLC and Comcast Business Communica-

tions, LLC for approval of a local interconnection agreement under section 252(e) of the Telecommunications Act of 1996.

Frontier Communications of Breezewood, LLC, Frontier Communications of Pennsylvania, LLC and Comcast Business Communications, LLC, by its counsel, filed on December 2, 2008, at the Pennsylvania Public Utility Commission (Commission), a joint petition for approval of a local 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 Frontier Communications of Breezewood, LLC, Frontier Communications of Pennsylvania, LLC and Comcast Business Communications, LLC 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. 08-2334. Filed for public inspection December 19, 2008, 9:00 a.m.]

## STATE ATHLETIC COMMISSION

### Public Meetings for 2009

The State Athletic Commission (Commission) of the Department of State announces its schedule for regular meetings to be held at least once every 2 months in 2009 under 5 Pa.C.S. § 103 (relating to duties of commission). Meetings will be held in Room 303, North Office Building, Harrisburg, PA 17120, at 11 a.m. These meetings are open to the public and are scheduled as follows:

February 23, 2009  
April 20, 2009  
June 29, 2009  
August 24, 2009  
October 26, 2009  
December 21, 2009

Individuals having questions regarding these meetings should contact the Commission at (717) 787-5720.

GREGORY P. SIRB,  
*Executive Director*

[Pa.B. Doc. No. 08-2335. Filed for public inspection December 19, 2008, 9:00 a.m.]



# PROPOSED RULEMAKING

## ENVIRONMENTAL QUALITY BOARD

[ 25 PA. CODE CH. 109 ]

### Long-Term 2 Enhanced Surface Water Treatment Rule; (Safe Drinking Water)

The Environmental Quality Board (Board) proposes to amend Chapter 109 (relating to safe drinking water). The amendments pertain to public water systems (PWSs) supplied by a surface water source and PWSs supplied by a groundwater source under the direct influence of surface water. The Long-Term 2 Enhanced Surface Water Treatment Rule (LT2) will further protect public health against *Cryptosporidium* and other microbial pathogens in drinking water. These amendments will supplement existing microbial treatment regulations and targets PWSs with higher potential risk from *Cryptosporidium*. *Cryptosporidium* is a particular concern because it is highly resistant to chlorine and has been identified as the cause of a number of waterborne disease outbreaks in the United States. The EPA has concluded that existing treatment requirements do not provide adequate public health protection in filtered PWSs with the highest source water *Cryptosporidium* levels. Consequently, these amendments will require PWSs to monitor their source water to determine an average *Cryptosporidium* level that will be used to establish the degree of additional treatment, if any, the filtered PWS must provide. Additional *Cryptosporidium* treatment must be achieved by using one or more treatment or control processes from a microbial toolbox of options, and systems must report that these toolbox options are adequately maintained.

This proposal was adopted by the Board at its meeting of August 19, 2008.

#### A. Effective Date

These amendments will go into effect upon publication in the *Pennsylvania Bulletin* as final-form rulemaking.

#### B. Contact Persons

For further information contact Barry Greenawald, Chief, Division of Operations Monitoring and Training, P. O. Box 8467, Rachel Carson State Office Building, Harrisburg, PA 17105-8467, (717) 772-4018 or Marylou Barton, Assistant Counsel, Bureau of Regulatory Counsel, P. O. Box 8464, Rachel Carson State Office Building, Harrisburg, PA 17105-8464, (717) 787-7060. Information regarding submitting comments on this proposal appears in Section J of this preamble. Persons with a disability may use the Pennsylvania AT&T Relay Service by calling (800) 654-5984 (TDD users) or (800) 654-5988 (voice users). This proposal is available electronically through the Department of Environmental Protection (Department) web site [www.depweb.state.pa.us](http://www.depweb.state.pa.us).

#### C. Statutory Authority

The proposed rulemaking is being made under the authority of section 4 of the Pennsylvania Safe Drinking Water Act (35 P. S. § 721.4), which grants the Board the authority to adopt rules and regulations governing the provision of drinking water to the public, and sections 1917-A and 1920-A of The Administrative Code of 1929 (71 P. S. §§ 510-7 and 510-20).

#### D. Background and Purpose

These proposed amendments apply to PWSs supplied by a surface water source and public water systems supplied by a groundwater source under the direct influence of surface water (GUDI). Approximately 355 PWSs filter surface or GUDI sources to provide drinking water to about 8.4 million Commonwealth citizens and thousands of visitors. Surface and GUDI sources have been shown to contain *Cryptosporidium* and other pathogens which pose a public health risk. *Cryptosporidium* is a particular concern targeted by the LT2 because it has been identified as the cause of a number of waterborne disease outbreaks in the United States. *Cryptosporidium* is a common protozoan in the environment. Sources of *Cryptosporidium* oocysts include agricultural runoff and wastewater discharges. If a water system's treatment processes do not efficiently remove *Cryptosporidium*, oocysts may enter finished water at levels that pose health risks. Unlike other pathogens (disease-causing organisms) such as viruses and bacteria, *Cryptosporidium* oocysts are resistant to inactivation using standard disinfection practices, such as chlorine. Therefore, the successful control of *Cryptosporidium* is dependent on physical removal processes, such as filtration, utilized by PWSs.

In humans, *Cryptosporidium* may cause a severe gastrointestinal infection, termed *Cryptosporidiosis*, which can last several weeks. *Cryptosporidiosis* usually causes 7 to 14 days of diarrhea, a low-grade fever, nausea and abdominal cramps in individuals with healthy immune systems. There is currently no therapeutic cure for *cryptosporidiosis*, but the disease is self-limiting in healthy individuals. It does, however, pose serious health and mortality risks for sensitive subpopulations including children, the elderly, pregnant women, organ transplant recipients and persons with weakened immune systems, almost 20% of the population in the United States.

The EPA has concluded that existing treatment requirements do not provide adequate public health protection in filtered PWSs with the highest source water *Cryptosporidium* levels. The LT2 rule increases public health protection from *Cryptosporidium* by establishing a method to identify and adequately treat surface and GUDI sources with elevated levels of *Cryptosporidium*. More specifically, the rule requires the following.

PWSs must monitor their source water (the influent water entering the treatment plant) to determine an average *Cryptosporidium* level. More specifically, large systems must monitor for *Cryptosporidium*, *E.coli*, and turbidity at least once per month for 24-consecutive months. Small systems may initially monitor just for *E.coli* as a screening analysis and are required to monitor for *Cryptosporidium* only if their *E. coli* levels exceed specified "trigger" values. Small PWSs that exceed the *E. coli* trigger will be required to monitor for *Cryptosporidium*.

Applicable PWSs will be classified in one of four treatment categories (or "bins") based on the results of the source water *Cryptosporidium* monitoring described in the previous paragraph. The higher the *Cryptosporidium* oocyst concentration of the source water, the higher the bin classification. This bin classification determines the degree of additional *Cryptosporidium* treatment, if any, the filtered PWS must provide above and beyond existing treatment requirements, all of which remain in effect under these amendment. The EPA

suspects that the majority of filtered PWSs will be classified in Bin 1, which carries no additional treatment requirements. PWSs classified in Bins 2, 3 or 4 must achieve 1.0-log to 2.5-log of treatment (90-99.7% reduction) for *Cryptosporidium* over and above that provided by existing conventional treatment.

Filtered PWSs must meet the additional *Cryptosporidium* treatment required in Bins 2, 3 or 4 by using treatment or control processes from a microbial toolbox of options. The microbial toolbox provides feasible treatment options specifically targeted at *Cryptosporidium* and establishes operational and design standards for each option. The toolbox options include standards for *Cryptosporidium* inactivation and removal processes, which were researched and developed by the EPA and are published for the first time in this proposed rulemaking. More specifically, standards for *Cryptosporidium* inactivation by ozone, chlorine dioxide and UV light are established. Standards established for processes that physically remove *Cryptosporidium* contamination include membranes, bag filters, cartridge filters, presedimentation basins and riverbank filtration. The development of these standards overcomes an existing significant limitation by providing specific strategies to comply with additional *Cryptosporidium* treatment.

The EPA believes that implementation of the LT2 will significantly reduce levels of infectious *Cryptosporidium* in finished drinking water. In addition, the treatment technique requirements of this proposed rulemaking will increase protection against other microbial contaminants by improving overall filter plant treatment. Considering that approximately 355 PWSs would be impacted by this proposed rulemaking, it is in the best interest of this Commonwealth's public health protection and economic development goals to incorporate the LT2 into Chapter 109.

The draft proposed LT2 amendments were presented to the Small Systems Technical Assistance Center Advisory Board (TAC Board) on November 13, 2007. On December 12, 2007, the TAC Board provided a letter supporting the draft proposed amendments, and included written comments. The most noteworthy comments included: upfront clarification of applicability to surface and GUDI, support of additional Department language on the EPA research, need to add definition of "bin," consistent methodology for challenge testing, value of adding Microbial Toolbox Summary and Reporting Requirements as appendices to Chapter 109, which is available from the Department at [www.depweb.state.pa.us](http://www.depweb.state.pa.us) (DEP Keyword: Participation; select "Proposals Currently Open for Comment" or through the Contact Persons listed in Preamble) and acceptance of validation testing requirements. LT2 specific comments were thoroughly considered and the majority of them were addressed or incorporated, or both, into the proposed amendments.

#### E. Summary of Regulatory Requirements

The proposed amendments are based on Federal Long-Term 2 Enhanced Surface Water Treatment Rule requirements. The majority of the amendments directly reflect and are no more stringent than Federal regulatory language. Specific differences, including more stringent language will be outlined as follows.

Additions to existing Chapter 109 language follow:

##### § 109.1 Definitions.

The Department has added definitions for the following terms in 109.1: "bag filter," "bank filtration," "bin," "cartridge filter," "flowing stream," "lake/reservoir," "mem-

brane" "filtration," "plant intake," "presedimentation," "significant deficiency" and "2-stage lime softening." These terms are vital to the clear interpretation of the LT2 and had not been previously defined in Chapter 109.

Additionally, the following text was added to the existing definition of "conventional filtration," "The clarification step must be a solid/liquid separation process where accumulated solids are removed during this separate component of the treatment system." This text was incorporated because it provides valuable clarification to help ensure consistent Statewide implementation and application of the existing definition. This additional text is consistent with the EPA language provided in the preamble of the LT2 regulation. By means of a memo and verbal discussion, the EPA Headquarters indicated this language should be used to clarify any confusion when implementing regulations and applying the conventional classification.

##### § 109.202 (relating to State MCLs, MRDLs and treatment technique requirements)

The provisions of this section alert GUDI sources that they must monitor source water for *Cryptosporidium*.

##### § 109.204 (relating to disinfection profiling and benchmarking).

The provisions of this section update an existing incorporation of Federal requirements by reference.

##### § 109.304 (relating to analytical requirements).

The provisions of this section alert systems that they must use an approved laboratory to analyze *Cryptosporidium* samples.

##### § 109.418 (relating to special notice for failure to conduct source water *Cryptosporidium* monitoring or failure to determine bin classification).

The provisions of this section incorporate Federal language regarding required public notification for failure to adequately conduct all necessary source water monitoring.

##### § 109.705 (relating to sanitary surveys).

The provisions of this section incorporate Federal language which outlines the requirements of a system for responding to and correcting significant deficiencies identified in a sanitary survey report.

##### § 109.1002 (relating to MCLs, MRDLs or treatment techniques).

The provisions of this section alert bottled water and vended water systems to the treatment technique requirements (additional treatment for elevated *Cryptosporidium* source water levels) of the LT2. These would only apply in the rare circumstance where a bottled or vended system utilizes surface or GUDI as a source.

##### § 109.1003 (relating to monitoring requirements).

The provisions of this section alert bottled water and vended water systems to the source water monitoring requirements of the LT2. These would only apply in the rare circumstance where a bottled or vended system utilizes surface or GUDI as a source.

New language added to Chapter 109 by means of Subchapter L. Long-Term 2 Enhanced Surface Water Treatment Rule follow:

##### § 109.1201 (relating to scope).

These proposed amendments apply to PWSs supplied by a surface water source and public water systems



supplied by a groundwater source under the direct influence of surface water. Approximately 355 PWSs, serving about 8.4 million citizens will be impacted by the proposed amendments. Compliance dates will be determined following four schedules based on population served by the PWS.

Language in this section is identical to Federal language.

*§ 109.1202 (relating to monitoring requirements).*

These amendments require applicable PWSs to monitor their source water (the influent water entering the treatment plant) to determine an average *Cryptosporidium* level. More specifically, Schedule 1–3 systems must monitor for *Cryptosporidium*, *E.coli* and turbidity at least once per month for 24 consecutive months. Schedule 4 systems may initially monitor just for *E.coli* as a screening analysis and are required to monitor for *Cryptosporidium* only if their *E. coli* levels exceed specified “trigger” values. Schedule 4 PWSs that exceed the *E. coli* trigger must monitor for *Cryptosporidium* for either 12 consecutive months (two samples per month) or 24 consecutive months (one sample per month). Provisions are included which may allow seasonal sources to conduct less overall monitoring, a total of 12 samples evenly spaced within the season of operation. Sampling start dates are staggered with the largest systems monitoring first and the smallest last. This allows small systems more time to prepare and budget for the sampling. It also helps prevent overwhelming demand on the analytical laboratories.

Language in this section is identical to Federal language with the following exceptions, identified by italics:

Section 109.1202(a)(5) for filtered systems serving fewer than 10,000 people, the Department may approve monitoring for an indicator other than *E. coli* under subsection (a)(3). The Department also may approve an alternative to the *E. coli* concentration in subsection (a)(4)(i), (ii) or (iv) to trigger *Cryptosporidium* monitoring. The Department added the following language “*This approval by the Department would be based on EPA-supported research indicating the validity of an alternative to E. coli.*”

The italicized language is necessary because the decision to approve an alternative to *E.coli* should be based on substantial National research.

*§ 109.1202(f) New sources.*

(1) A system that *intends* to use a new source of surface water or GUDI after the system is required to begin monitoring under subsection (c) shall monitor the new source on a schedule the Department approves. *Any source that has not been monitored according to the requirements of this subchapter will be considered to be a new source. Source water monitoring for new sources must meet the requirements of this subchapter. The system shall also meet the bin classification and Cryptosporidium treatment requirements of § 109.1203(a)–(j), as applicable, for the new source on a schedule approved by the Department. Sources that have not been monitored according to the requirements of this subchapter will be considered to be Bin 4 until monitoring is adequately completed. No later than the applicable Cryptosporidium compliance dates specified in § 109.1203(k), systems wishing to use sources that have not been monitored shall meet the Bin 4 treatment requirements of § 109.1203 (a)–(j) unless otherwise indicated by the Department.*

*§ 109.1202(p) Multiple sources.*

Systems with plants that use multiple water sources, including multiple surface water sources and blended

surface water and groundwater sources, shall collect samples as specified in subsection (e)(1) or (2). The use of multiple sources during monitoring must be consistent with routine operational practice. *Sources not adequately evaluated during the monitoring period will be considered new sources and the requirements under § 109.1202(f) (relating to new sources) will apply. Systems may begin monitoring a new source as soon as a sampling schedule and plan has been approved by the Department.*

Additional italicized language was added to the subsections (f) and (p) to clarify the meaning of “new sources.” This language was created in response to ongoing confusion from systems already conducting the sampling on their sources and comments from the TAC Board. This addition was necessary because the EPA failed to address the issue of exactly what a “new source” was, creating the potential for confusion and lack of necessary monitoring on numerous sources. More importantly, the EPA failed to address how multiple sources, not utilized during the initial round of sampling, would be dealt with. The EPA assumed systems would only utilize one source. The vast majority of this Commonwealth’s filter plants have more than one source. The Department has chosen to designate any sources not evaluated during the initial round of sampling as a new source. This enables the Commonwealth to establish a reasonable schedule for the monitoring of these sources, allowing systems time to budget for and conduct the monitoring. This approach also assures public health is adequately protected and unmonitored sources are not utilized without proper treatment. Language in this section was created to fill a void in Federal language, it does not specifically alter existing Federal language in a more stringent fashion. In developing this language, the Department worked with the Association of State Drinking Water Administrators (ASDWA) to setup National conference calls with other state regulatory agencies. The Department’s approach is consistent with the National consensus approach, presented to EPA Headquarters by means of an ASDWA memo.

*§ 109.1203 (relating to bin classification and treatment technique requirement).*

Applicable PWSs will be classified in one of four treatment categories (or “bins”) based on the results of the source water *Cryptosporidium* monitoring described in the previous section. The higher the *Cryptosporidium* oocyst concentration of the source water, the higher the bin classification. This bin classification determines the degree of additional *Cryptosporidium* treatment, if any, the filtered PWS must provide above and beyond existing treatment requirements, all of which remain in effect under this amendment. The EPA suspects that the majority of filtered PWSs will be classified in Bin 1, which carries no additional treatment requirements. PWSs classified in Bins 2, 3 or 4 must achieve 1.0-log to 2.5-log of treatment (90-99.7% reduction) for *Cryptosporidium* over and above that provided by existing conventional treatment. Ultimately, this additional treatment establishes a new treatment technique requirement for filter plants whose source water is Bin 2 or greater. As with monitoring, bin determination and compliance dates are staggered with large systems being impacted first and small systems last.

Language in this section is similar to Federal language with the following exceptions, identified by italics:

*§ 109.1203(e) (relating to filtered system additional Cryptosporidium treatment requirements).*

Filtered systems shall provide the level of additional treatment for *Cryptosporidium* specified in this subsec-

tion based on their bin classification as determined under § 109.1203 (a)—(c) and according to the schedule in § 109.1203(k)—(o). If the system bin classification is Bin 1 and the system is in full compliance with applicable treatment technique requirements under § 109.202(c), the system shall provide additional *Cryptosporidium* treatment requirements as follows:

The previously italicized language was added for all system types in § 109.1203(e). The Department felt it was necessary to clarify the intent of the Federal regulation to provide additional treatment beyond that already required. Incorporating a Chapter 109-specific reference to existing regulatory requirements should help prevent confusion on the part of the regulated community.

*§ 109.1203(m)(5)*

*On a case by case basis within an agreed upon time frame, the Departments may allow up to an additional 2 years for complying with the treatment requirement for systems making capital improvements.*

The previously italicized language was added based on comments from the TAC Board that this would help provide clarification and prevent confusion.

Throughout the Federal LT2 rule, specific language was incorporated to provide a compliance approach for unfiltered systems. Under existing Chapter 109 requirements, the Commonwealth does not allow unfiltered systems. However, a small number of systems have sources which were thought to be groundwater; therefore, these sources had been used in an unfiltered status. It was recently determined that some of these well sources are actually under the influence of surface water or GUDI. Unfiltered language was incorporated into the State LT2 regulation to address these sources. However, the unfiltered source testing requirements and bin determination are essentially identical to the filtered source testing requirements. This language is more stringent than Federal language; but, necessary to be consistent with existing Chapter 109 language. Most importantly, it is necessary to assure that public health and safety are adequately protected by the addition of proper filtration on unfiltered surface and GUDI sources.

*§ 109.1204 (relating to requirements for microbial toolbox components).*

Filtered PWSs must meet the additional *Cryptosporidium* treatment required in Bins 2, 3 or 4 by using treatment or control processes from a microbial toolbox of options. The microbial toolbox provides feasible treatment options specifically targeted at *Cryptosporidium* and establishes operational and design standards for each option. The toolbox options include standards for *Cryptosporidium* inactivation and removal processes, which were researched and developed by the EPA and are published for the first time in this proposed rulemaking. More specifically, standards for *Cryptosporidium* inactivation by ozone, chlorine dioxide and UV light are established. Standards established for processes that physically remove *Cryptosporidium* contamination include membranes, bag filters, cartridge filters, presedimentation basins and riverbank filtration. The development of these standards overcomes an existing significant limitation by providing specific strategies to comply with additional *Cryptosporidium* treatment.

Language in this section is identical to Federal language with the following exceptions, identified by italics: *§ 109.1204(b)*

Watershed control program. Systems receive 0.5-log *Cryptosporidium* treatment credit for implementing a

watershed control program that meets the requirements. *This credit may not be used to maintain the additional log removal credits specified in § 109.1203 (relating to bin classification and treatment technique requirements). This credit may only be applied in addition to the toolbox options used to meet the minimum log removal and may apply in lieu of a toolbox option for which credit has been temporarily revoked.*

The previously italicized text is more stringent than Federal language. It is necessary to avoid imposition of treatment technique violations upon water systems due to events which they have no control over. The watershed control program (WCP) option is different than other toolbox options in that it relates to efforts undertaken outside of the filter plant operations to reduce *Cryptosporidium* loading entering the filter plant. Additionally, this option focuses on source water protection, as opposed to in-plant treatment and monthly reporting. The Department anticipates that in a scenario where a spill or other contamination of the source water was to occur upstream of the filter plant intake, the WCP credit could be revoked. If systems rely on this credit to maintain the minimum *Cryptosporidium* log removal credit, a treatment technique violation would be incurred by the water system through no action of its own. The italicized language encourages source water protection and allows systems to pursue this valuable toolbox option, while preventing situations where systems rely on this option to maintain a monthly treatment technique; avoiding the previously mentioned scenario. The Department anticipates that systems will wish to pursue additional log removal treatment beyond the minimum required by their bin classification (Bin 2 and greater). It would be wise for systems to do this to provide a margin of safety regarding the removal of *Cryptosporidium*. The italicized language is consistent with this thinking.

*§ 109.1204(o) Chlorine dioxide.*

Systems are eligible to receive the *Cryptosporidium* treatment credit listed in Table 1. CT Values (mg min/L) for *Cryptosporidium* Inactivation by Chlorine Dioxide, contained in Appendix A to Subchapter L which is available from the Department at [www.depweb.state.pa.us](http://www.depweb.state.pa.us) (DEP Keyword: Participation; select "Proposals Currently Open for Comment" or through the Contact Persons listed in the Preamble), by meeting the corresponding chlorine dioxide CT value for the applicable water temperature, as described in subsection (n).

*(1) The Department may approve alternative chlorine dioxide CT values to those listed in subsection (o) on a site-specific basis.*

*(2) The Department will base this approval on a site-specific study a system conducts that follows a Department-approved protocol.*

The Department chose to remove the above italicized text from the regulation. The CT values published in the Federal regulation are based on extensive research and are the minimum dosages necessary to assure proper operation of this treatment process. To assure consistent application of this technology on a level that is protective of public health and safety, the Department felt it was best to remove the text allowing site-specific deviations.

*§ 109.1204(p) Ozone.*

Systems receive the *Cryptosporidium* treatment credit listed in Table 2 CT Values (mg min/L) for *Cryptosporidium* Inactivation by Ozone, contained in Appendix A to Subchapter L which is available from the Department at [www.depweb.state.pa.us](http://www.depweb.state.pa.us) (DEP Keyword:

Participation; select "Proposals Currently Open for Comment" or through the Contact Persons listed in the Preamble), by meeting the corresponding ozone CT values for the applicable water temperature, as described in subsection (n).

*(1) The Department may approve alternative Ozone CT values to those listed in subsection (p) on a site-specific basis.*

*(2) The Department will base this approval on a site-specific study a system conducts that follows a Department-approved protocol.*

The Department chose to remove the above italicized text from the regulation. The CT values published in the Federal regulation are based on extensive research and are the minimum dosages necessary to assure proper operation of this treatment process. To assure consistent application of this technology on a level that is protective of public health and safety, the Department felt it was best to remove the text allowing site-specific deviations.

*§ 109.1204(q)(2)(iii)*

The Department may accept alternative validation testing approaches, *if these approaches are first approved by EPA.*

The Department chose to add the above italicized text to assure adequate research is conducted on a particular UV treatment unit prior to validation and approval. This is necessary to assure proper operation of this treatment process and National standards are consistently upheld. To assure consistent application of this technology on a level that is protective of public health and safety, the Department felt it was best to work closely with the EPA and other state regulators to develop alternative validation testing approaches. This should help prevent systems from incurring additional costs necessary to validate an already properly-validated treatment unit.

*§ 109.1205 (relating to reporting and recordkeeping requirements).*

PWSs impacted by these proposed amendments must report source water monitoring results and bin determination. PWSs which fall into Bin 2, 3 or 4 must report which toolbox options are used to meet these requirements. Additionally these systems must report monthly that the selected toolbox options are being adequately maintained within specified operating standards.

Language in this section is identical to Federal language with the following exceptions, identified by italics:

*§ 109.1205(i)*

(i) Microbial toolbox reporting requirements. Microbial toolbox reporting requirements, established by the EPA under the National Primary Drinking Water regulations in 40 CFR 141.721(f) are incorporated by reference except as otherwise established by this chapter. Systems are required to report items specified § 109.1204 for all toolbox components for which they are requesting treatment credit, as outlined in Appendix B to Subchapter L which is available from the Department at [www.depweb.state.pa.us](http://www.depweb.state.pa.us) (DEP Keyword: Participation; select "Proposals Currently Open for Comment" or through the Contact Persons listed in the Preamble). *Alternatively, the State may approve a system to certify operation within required parameters for treatment credit rather than reporting monthly operational data for toolbox options.*

The Department deleted the above italicized text because it is contradictory to other LT2 regulatory language, which outlines detailed reporting requirements;

and the overall intent of the regulation, to assure increased treatment is maintained on sources with elevated *Cryptosporidium*. It is critical that systems using sources with elevated *Cryptosporidium* levels, adequately and vigilantly maintain this additional treatment. To assure adequate protection of public health and safety, monthly reporting is necessary. The EPA has established no other mechanism to assure proper operation without the reporting. Therefore, this alternative would result in state and National inconsistencies regarding treatment requirements. Systems required to conduct this reporting, would be doing so to assure compliance with a more stringent treatment technique for the removal of *Cryptosporidium*, shown to be an acute public health risk. Monthly reporting for treatment technique compliance has always been the minimum requirement for previous treatment techniques. Therefore, it is a reasonable expectation to maintain this requirement as a mechanism to assure adequate *Cryptosporidium* treatment remains in place.

F. *Benefits, Costs and Compliance*

*Benefits*

The LT2 rule will further protect public health against *Cryptosporidium* and other microbial pathogens in drinking water supplied to approximately 8.4 million Commonwealth citizens and thousands of out-of-State visitors. These amendments will supplement existing microbial treatment regulations and target PWSs with higher potential risk from *Cryptosporidium*. *Cryptosporidium* is a particular concern because it is highly resistant to chlorine and has been identified as the cause of a number of waterborne disease outbreaks in the United States. The EPA has concluded that existing treatment requirements do not provide adequate public health protection in filtered PWSs with the highest source water *Cryptosporidium* levels. Consequently, these amendments will require PWSs to monitor their source water to determine an average *Cryptosporidium* level that will be used to establish the degree of additional treatment, if any, the filtered PWSs must provide.

Additional *Cryptosporidium* treatment is expected to result in a reduced rate of *Cryptosporidium*-related illnesses and death. The EPA estimates that after full implementation of the LT2 rule, on average, the Nation is expected to avoid 89,375 to 1,459,126 illnesses and 20 to 314 deaths annually.

Furthermore, the EPA estimates the annual present value of the mean benefit of LT2 rule implementation ranges from \$177 million to \$2.8 billion, depending on the rate of *Cryptosporidium* occurrence.

Projecting the distribution of illnesses and deaths from *Cryptosporidium* within this Commonwealth is extremely difficult; however, the best available potential estimate would be a \$4.48 million to \$70.84 million annual benefit depending on the rate of *Cryptosporidium* occurrence.

*Compliance Costs*

The LT2 rule applies to PWSs supplied by a surface water source and PWSs supplied by a GUDI source. Approximately 355 PWSs treat surface or GUDI sources to ultimately provide drinking water to about 8.4 million Commonwealth citizens and thousands of out-of-State visitors. All 355 PWSs will be affected by this rule to varying degrees. According to the EPA, the overall mean annualized LT2 cost impacts to PWSs are estimated to range from approximately \$93 to \$133 million. This range in mean cost estimates is associated with the different *Cryptosporidium* occurrence data sets. In this Commonwealth, this translates to \$2,352,900 to \$3,364,900.

More specifically, PWSs will incur monitoring costs to assess source water *Cryptosporidium* levels, though monitoring requirements vary by PWS size (large v. small). Source water monitoring costs are structured on a per-plant basis. There are three types of monitoring that plants may be required to conduct: turbidity, *E. coli*, and *Cryptosporidium*. Source water turbidity is a common water quality parameter used for plant operational control. Also, to meet Surface Water Treatment Rule (SWTR), Long Term 1 Enhanced Surface Water Treatment Rule (LT1ESWTR), and Interim Enhanced Surface Water Treatment Rule (IESWTR) requirements, most PWSs have turbidity analytical equipment in-house and operators are experienced with turbidity measurement. Thus, the EPA assumes that the incremental turbidity monitoring burden associated with the LT2 is negligible.

Estimates of laboratory fees, shipping costs, labor hours for sample collection, and hours for reporting results were used to predict PWS costs for initial source water monitoring under the LT2. National monitoring costs for initial monitoring range from \$45 million to \$59 million depending on the occurrence data set and discount rate. In this Commonwealth, monitoring cost estimates range from \$1.14 million to \$1.49 million.

Filtered plants in small PWSs initially will be required to conduct 1 year of biweekly *E. coli* source water monitoring. These plants will be required to monitor for *Cryptosporidium* if *E. coli* levels exceed 10 *E. coli*/100 mL for lakes and reservoir sources or 50 *E. coli*/100 mL for flowing stream sources. The EPA estimated the percent of small plants that would be triggered into *Cryptosporidium* monitoring as being equal to the percent of large plants that would fall into any bin requiring additional treatment. The EPA survey data indicate that approximately 75 to 80% of small PWSs will not exceed the *E. coli* trigger values and, consequently, will not be required to monitor for *Cryptosporidium*. *E. coli* (\$25/sample) is far less costly to analyze than *Cryptosporidium* (\$500/sample); therefore, this approach will significantly reduce the burden for small PWSs. In this Commonwealth, 260 small systems (serve < 10,000 customers) are affected by LT2. If the EPA estimates are true, 195 small systems will avoid *Cryptosporidium* sampling costs, needing to spend \$650 per system to sample. This equates to a total cost savings 12,000 per small system or \$2.46 million total. Conversely 65 small systems may be required to incur the full sampling cost of \$12,650 per system.

All PWSs that conducted initial monitoring were assumed to conduct the second round of monitoring, except for those PWSs that installed treatment that achieves a total of 5.5-log or greater treatment for *Cryptosporidium* as a result of the rule. The PWSs are exempt from monitoring under the LT2. The EPA estimates that the cost of the second round of source water monitoring will range from \$21 million to \$36 million, depending on the occurrence data set and discount rate used in the estimate. In this Commonwealth, this translates to approximately \$531,130 to \$910,800 cost for the second round of monitoring.

Some PWSs (10% estimate) will incur costs for additional *Cryptosporidium* treatment, where required. The EPA was unable to provide specific cost estimates for additional treatment, due to the variety of options available. In this Commonwealth, it is estimated that 35 systems may need to provide additional treatment. It is expected that most of these systems will take advantage of the option of optimizing filter plant turbidity to 0.15

NTU (50% lower than current regulatory requirements). Due to ongoing optimization assistance efforts, this Commonwealth's filter plants are well positioned to meet these lower requirements. Optimizing filter plant turbidities is an operational technique, much less costly than installation of additional treatment.

The EPA estimates that states (including primacy agencies) will incur an annualized cost of \$1.1 to 1.4 million. In this Commonwealth, this translates to \$27,830 to \$35,420.

The EPA estimates that all households served by surface and GUDI sources will face some increase in household costs due to implementation of the LT2. Over 95% of all households are estimated to face an annual cost increase of less than \$12. Households served by small PWSs that install advanced technologies will face the greatest increases in annual costs. Approximately 8.4 million Commonwealth citizens and thousands of visitors receive drinking water from filter plants affected by LT2.

#### *Compliance Assistance Plan*

The Department's Safe Drinking Water Program utilizes the Commonwealth's PENNVEST Program to offer financial assistance to eligible public water systems. This assistance is in the form of a low-interest loan, with some augmenting grant funds for hardship cases. Eligibility is based upon factors such as public health impact, compliance necessity and project/operational affordability.

In addition, the Department has instituted a number of assistance programs, including the highly successful and Nationally recognized Filter Plant Performance Evaluation Program. More recently, the Department contracted with the Pennsylvania Section American Water Works Association under the Partnership for Safe Water Program. The Partnership promotes and supports filtered surface water suppliers who are committed to going beyond compliance. The Department is a leading participant in the EPA Area Wide Optimization Program. This National program provides compliance assistance tools, which state regulatory agencies can share with water suppliers. The Department has been utilizing a data collection and analysis tool—Optimization Assessment Software (OAS)—for approximately 3 years. Utilizing the OAS software will help systems prepare to take advantage of the optimized turbidity toolbox options of the LT2 regulation.

Finally, the Bureau of Water Standards and Facility Regulation has a section dedicated to providing both training and outreach support services to public water system operators. As a result of the Department's efforts outlined previously, this Commonwealth's public water suppliers are well positioned to manage the risk and meet the more rigorous public health protection measures included in the LT2.

#### *Paperwork Requirements*

The proposed amendments will require monitoring and reporting of source water *Cryptosporidium* levels. A small number of water systems, those with elevated source water *Cryptosporidium*, will need to report monthly that they are maintaining additional treatment. Modifying the existing data reporting forms, possibly creating a new form, should easily facilitate this additional monitoring and reporting. In effect, little additional paperwork will be necessary.

#### *G. Sunset Review*

These regulations will be reviewed in accordance with the sunset review schedule published by the Department

to determine whether the regulations effectively fulfill the goal for which it was intended.

H. Regulatory Review

Under section 5(a) of the Regulatory Review Act (act) (71 P. S. § 745.5(a)), on November 24, 2008, the Department submitted a copy of these proposed amendments to the Independent Regulatory Review Commission (IRRC) and the Chairpersons of the House and Senate Environmental Resources and Energy Committees (Committees). In addition to submitting the proposed amendments, the Department has provided IRRC and the Committees with a copy of a detailed Regulatory Analysis Form prepared by the Department. A copy of this material is available to the public upon request.

Under section 5(g) of the act, IRRC may convey any comments, recommendations or objections to the proposed amendments within 30 days of the close of the public comment period. The comments, recommendations or objections shall specify the regulatory review criteria that have not been met. The act specifies detailed procedures for review of these issues by the Department, the General Assembly and the Governor prior to final publication of the regulations.

I. Public Comments

Written Comments—Interested persons are invited to submit comments, suggestions or objections regarding the proposed rulemaking to the Environmental Quality Board, P. O. Box 8477, Harrisburg, PA 17105-8477 (express mail: Rachel Carson State Office Building, 16th Floor, 400 Market Street, Harrisburg, PA 17101-2301). Comments submitted by facsimile will not be accepted. Comments, suggestions or objections must be received by the Board by January 20, 2009. Interested persons may also submit a summary of their comments to the Board. The summary may not exceed one page in length and must also be received by the Board by January 20, 2009. The one-page summary will be provided to each member of the Board in the agenda packet distributed prior to the meeting at which the final-form rulemaking will be considered.

Electronic Comments—Comments may be submitted electronically to the Board at RegComments@state.pa.us and must also be received by the Board by January 20, 2009. A subject heading of the proposal and a return name and address must be included in each transmission.

JOHN HANGER,
Acting Chairperson

Fiscal Note: 7-426. No fiscal impact; (8) recommends adoption.

Annex A

TITLE 25. ENVIRONMENTAL PROTECTION

PART I. DEPARTMENT OF ENVIRONMENTAL PROTECTION

Subpart C. PROTECTION OF NATURAL RESOURCES

ARTICLE II. WATER RESOURCES

CHAPTER 109. SAFE DRINKING WATER

Subchapter A. GENERAL PROVISIONS

§ 109.1. Definitions.

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

\* \* \* \* \*

Bag filter—A pressure-driven separation device that remove particulate matter larger than 1 micrometer using an engineered porous filtration media. It is typically constructed of a nonrigid, fabric filtration media housed in a pressure vessel in which the direction of flow is from the inside of the bag to outside.

Bank filtration—A water treatment process that uses a well to recover surface water that has naturally infiltrated into groundwater through a riverbed or bank). Infiltration is typically enhanced by the hydraulic gradient imposed by a nearby pumping water supply or other well.

Bin—A category based on the level of Cryptosporidium present in source water. Four potential bins exist, 1 through 4. The higher the bin, the higher the concentration of source water Cryptosporidium.

\* \* \* \* \*

Cartridge filter—A pressure-driven separation device that removes particulate matter larger than 1 micrometer using an engineered porous filtration media. It is typically constructed as rigid or semi-rigid, self-supporting filter elements housed in pressure vessels in which flow is from the outside of the cartridge to the inside.

\* \* \* \* \*

Conventional filtration—The series of processes for the purpose of substantial particulate removal consisting of coagulation/flocculation, [ sedimentation ] clarification, granular media and filtration. The clarification step must be a solid/liquid separation process where accumulated solids are removed during this separate component of the treatment system.

\* \* \* \* \*

Flowing stream—A course of running water flowing in a definite channel.

\* \* \* \* \*

Lake/reservoir—A natural or man made basin or hollow on the earth's surface in which water collects or is stored that may or may not have a current or single direction of flow.

\* \* \* \* \*

Membrane filtration—

(i) A pressure or vacuum driven separation process in which particulate matter larger than 1 micrometer is rejected by an engineered barrier, primarily through a size-exclusion mechanism, and which has a measurable removal efficiency of a target organism that can be verified through the application of a direct integrity test.

(ii) The term includes the common membrane technologies of microfiltration, ultrafiltration, nanofiltration and reverse osmosis.

\* \* \* \* \*

Plant intake—The works or structures at the head of a conduit through which water is diverted from a source (for example, a river or lake) into the treatment plant.

\* \* \* \* \*

Presedimentation—A preliminary treatment process used to remove gravel, sand and other particu-

late material from the source water through settling before the water enters the primary clarification and filtration processes in a treatment plant.

\* \* \* \* \*

**Significant deficiency**—A defect in design, operation or maintenance, or a failure or malfunction of the sources, treatment, storage or distribution system that the Department determines to be causing, or has the potential for causing the introduction of contamination into the water delivered to consumers.

\* \* \* \* \*

**2-stage lime softening**—A process in which chemical addition and hardness precipitation occur in each of two distinct unit clarification processes in series prior to filtration.

\* \* \* \* \*

**Subchapter B. MCLs, MRDLs OR TREATMENT TECHNIQUE REQUIREMENTS**

**§ 109.202. State MCLs, MRDLs and treatment technique requirements.**

\* \* \* \* \*

(c) *Treatment technique requirements for pathogenic bacteria, viruses and protozoan cysts.* A public water system shall provide adequate treatment to reliably protect users from the adverse health effects of microbiological contaminants, including pathogenic bacteria, viruses and protozoan cysts. The number and type of treatment barriers and the efficacy of treatment provided shall be commensurate with the type, degree and likelihood of contamination in the source water.

(1) A public water supplier shall provide, as a minimum, continuous filtration and disinfection for surface water and GUDI sources. The treatment technique [ shall ] must provide at least 99.9% removal and inactivation of *Giardia lamblia* cysts, and at least 99.99% removal and inactivation of enteric viruses. Beginning January 1, 2002, public water suppliers serving 10,000 or more people shall provide at least 99% removal of *Cryptosporidium* oocysts. Beginning January 1, 2005, public water suppliers serving fewer than 10,000 people shall provide at least 99% removal of *Cryptosporidium* oocysts. The Department, depending on source water quality conditions, may require additional treatment as necessary to meet the requirements of this chapter and to protect the public health.

\* \* \* \* \*

(vi) For a source including springs, infiltration galleries, cribs or wells permitted for use by the Department prior to May 16, 1992, and determined by the Department to be a GUDI source, the public water supplier shall:

\* \* \* \* \*

**(D) Monitor source water for *Cryptosporidium* as specified in § 109.1202(f) (relating to monitoring requirements).**

\* \* \* \* \*

**§ 109.204. Disinfection profiling and benchmarking.**

(a) The disinfection profiling and benchmarking requirements, established by the EPA under the National Primary Drinking Water Regulations in 40 CFR 141.172, 141.530—141.536, 141.540—141.544, 141.570(c) and (d)

and 141.708—141.709 are incorporated by reference except as otherwise established by this chapter.

\* \* \* \* \*

**Subchapter C. MONITORING REQUIREMENTS**

**§ 109.304. Analytical requirements.**

\* \* \* \* \*

(d) *Cryptosporidium.* A system shall have *Cryptosporidium* samples analyzed by a laboratory that is approved under the EPA's Laboratory Quality Assurance Evaluation Program for Analysis of *Cryptosporidium* in Water or a laboratory that has been accredited for *Cryptosporidium* analysis by an equivalent Department laboratory accreditation program.

**Subchapter D. PUBLIC NOTIFICATION**

**§ 109.418. Special notice for failure to conduct source water *Cryptosporidium* monitoring or failure to determine bin classification.**

(a) *Special notice for repeated failure to conduct monitoring of the source water for *Cryptosporidium* and for failure to determine bin classification or *Cryptosporidium* level.* The owner or operator of a community or noncommunity water system that is required to monitor source water under § 109.1202 (relating to monitoring requirements) shall notify persons served by the water system that monitoring has not been completed as specified no later than 30 days after the system has failed to collect any 3 months of monitoring as specified in § 109.1202(c). The notice shall be repeated as specified in § 109.409(b)(3) (relating to Tier 2 public notice—form, manner and frequency of notice).

(b) *Delivery of the special notice for failure to determine bin classification or *Cryptosporidium* level.* The owner or operator of a community or noncommunity water system that is required to determine a bin classification under § 109.1203 (relating to bin classification and treatment technique requirements), or to determine *Cryptosporidium* level under § 109.1203(i) and (j), shall notify persons served by the water system that the determination has not been made as required no later than 30 days after the system has failed to report the determination as specified in § 109.1205(h) (relating to reporting and recordkeeping requirements) or § 109.1203(i) and (j), initial round and second round, respectively. The notice shall be repeated as specified in § 109.409(b)(3). The notice is not required if the system is complying with a Department-approved schedule to address the violation.

**(c) Form and manner of the special notice.**

(1) The form and manner of the public notice must follow the requirements for a Tier 2 public notice prescribed in § 109.409(c). The public notice shall be presented as required in § 109.411(c) (relating to content of a public notice).

(2) The notice must contain the following language, including the language necessary to fill in the blanks.

(i) The special notice for repeated failure to conduct monitoring must contain the following language:

We are required to monitor the source of your drinking water for *Cryptosporidium*. Results of the monitoring are to be used to determine whether water treatment at the (treatment plant name) is sufficient to adequately remove *Cryptosporidium* from your drinking water. We are required to complete this monitoring and make this determination by (required bin determination date). We "did not monitor or test" or "did not complete all monitoring or testing" on schedule and, therefore, we may not be able to determine by the required date what treatment modifications, if any, must be made to ensure adequate *Cryptosporidium* removal. Missing this deadline may, in turn, jeopardize our ability to have the required treatment modifications, if any, completed by the deadline required, (date). For more information, please call (name of water system contact) of (name of water system) at (phone number).

(ii) The special notice for failure to determine bin classification or *Cryptosporidium* level must contain the following language:

We are required to monitor the source of your drinking water for *Cryptosporidium* to determine by (date) whether water treatment at the (treatment plant name) is sufficient to adequately remove *Cryptosporidium* from your drinking water. We have not made this determination by the required date. Our failure to do this may jeopardize our ability to have the required treatment modifications, if any, completed by the required deadline of (date). For more information, please call (name of water system contact) of (name of water system) at (phone number).

(3) Each special notice must also include a description of what the system is doing to correct the violation and when the system expects to return to compliance or resolve the situation.

**Subchapter G. SYSTEM MANAGEMENT RESPONSIBILITIES**

**§ 109.705. Sanitary surveys.**

\* \* \* \* \*

(d) The following apply to significant deficiencies identified at public water systems supplied by a surface water source and public water systems supplied by a groundwater source under the direct influence of surface water:

(1) For sanitary surveys performed by the Department, a system shall respond in writing to significant deficiencies identified in sanitary survey reports no later than 45 days after receipt of the report, indicating how and on what schedule the system will address significant deficiencies noted in the survey.

(2) A system shall correct significant deficiencies identified in sanitary survey reports according to the schedule approved by the Department, or if there is no approved schedule, according to the schedule reported under paragraph (1) if the deficiencies are within the control of the system.

**Subchapter J. BOTTLED WATER AND VENDED WATER SYSTEMS, RETAIL WATER FACILITIES AND BULK WATER HAULING SYSTEMS**

**§ 109.1002. MCLs, MRDLs or treatment techniques.**

(a) Bottled water and vended water systems, retail water facilities and bulk water hauling systems shall supply drinking water that complies with the MCLs, MRDLs and treatment technique requirements under §§ 109.202 [and ], 109.203 and 109.1203 (relating to State MCL's, MRDL's and treatment technique requirements; [and ] unregulated contaminants; and bin classification and treatment technique requirements).

**§ 109.1003. Monitoring requirements.**

(a) *General monitoring requirements.* Bottled water and vended water systems, retail water facilities and bulk water hauling systems shall monitor for compliance with the MCLs and MRDLs in accordance with § 109.301 (relating to general monitoring requirements) and [ shall ] comply with § 109.302 (relating to special monitoring requirements) and § 109.1202 (relating to monitoring requirements). The monitoring requirements shall be applied as follows, except that systems which have installed treatment to comply with primary MCL shall conduct quarterly operational monitoring for the contaminant which the facility is designed to remove:

(1) Bottled water systems, retail water facilities and bulk water hauling systems, for each entry point shall:

\* \* \* \* \*

(viii) *TTHM and HAA5 Stage 1 DBP Rule.* Beginning January 1, 2004, monitor annually for TTHMs and HAA5 if the system uses a chemical disinfectant or oxidant, or obtains finished water from another public water system that uses a chemical disinfectant or oxidant to treat the [ finished ] water. Bottled water systems are not required to monitor for TTHMs and HAA5 if the system does not use a chlorine-based disinfectant or oxidant and does not obtain finished water from another public water system that uses a chlorine-based disinfectant or oxidant to treat the [ finished ] water.

(A) *Routine monitoring.* \* \* \*

(B) *Reduced monitoring.* \* \* \*

(I) Systems that use groundwater sources shall reduce monitoring to [ 1 ] one sample per 3-year cycle per entry point if the annual TTHM average is no greater than 0.040 mg/L and the annual HAA5 average is no greater than 0.030 mg/L for 2 consecutive years or the annual TTHM average is no greater than 0.020 mg/L and the annual HAA5 average is no greater than 0.015 mg/L for 1 year. The sample shall be taken during the month of warmest water temperature. The 3-year cycle shall begin on January 1 following the quarter in which the system qualifies for reduced monitoring.

(II) Systems that use groundwater sources that qualify for reduced monitoring shall remain on reduced monitoring if the TTHM annual average is no greater than 0.060 mg/L and the HAA5 annual average is no greater than 0.045 mg/L. Systems that exceed these levels shall resume routine monitoring as prescribed in clause (A), except that systems that exceed either a TTHM or HAA5 MCL shall increase monitoring to at least [ 1 ] one sample per quarter per entry point beginning in the quarter immediately following the quarter in which the system exceeds the TTHM or HAA5 MCL.



(ix) **TTHM and HAA5 Stage 2 DBP Rule.** Beginning October 1, 2013, monitor annually for TTHMs and HAA5 if the system uses a chemical disinfectant or oxidant to treat the water, or obtains finished water from another public water system that uses a chemical disinfectant or oxidant to treat the water as follows:

(A) **Routine monitoring.** Systems shall take at least one dual sample set per year per entry point during the month of warmest water temperature.

(B) **Increased monitoring.** If any sample results exceed either a TTHM or HAA5 MCL, the system shall take at least one dual sample set per quarter per entry point. The system shall return to the sampling frequency of one dual sample set per year per entry point if, after at least 1 year of monitoring, each TTHM sample result is no greater than 0.060 mg/L and each HAA5 sample result is no greater than 0.045 mg/L.

(x) Beginning January 1, 2004, monitor daily for chlorite if the system uses chlorine dioxide for disinfection or oxidation. Systems shall take at least one daily sample at the entry point. If a daily sample exceeds the chlorite MCL, the system shall take three additional samples within 24 hours from the same lot, batch, machine, carrier vehicle or point of delivery. The chlorite MCL is based on the average of the required daily sample plus any additional samples.

[ (x) ] (xi) Beginning January 1, 2004, monitor monthly for bromate if the system uses ozone for disinfection or oxidation.

(A) *Routine monitoring.* \* \* \*

(B) *Reduced monitoring.*

(I) [ Systems ] Until March 31, 2009, systems shall reduce monitoring for bromate from monthly to quarterly if the average source water bromide concentration is less than 0.05 mg/L based upon representative monthly bromide measurements for 1 year. Systems on reduced monitoring shall continue monthly source water bromide monitoring. If the running annual average source water bromide concentration, computed quarterly, is equal to or exceeds 0.05 mg/L, the system shall revert to routine monitoring as prescribed by clause (A).

(II) Beginning April 1, 2009, a system required to analyze for bromate may reduce monitoring from monthly to quarterly, if each sample result is less than or equal to 0.0025 mg/L based on monthly measurements as prescribed in clause (A) for the most recent 12 months. Systems qualifying for reduced bromate monitoring under subclause (I) may remain on reduced monitoring as long as each sample result from the previous 12 months is less than or equal to 0.0025 mg/L. If any sample result exceeds 0.0025 mg/L, the system shall resume routine monitoring as prescribed under clause (A).

\* \* \* \* \*

(Editor Note: The following subchapter is new. It appears in regular text to enhance readability.)

#### Subchapter L. LONG-TERM 2 ENHANCED SURFACE WATER TREATMENT RULE

Sec.

109.1201. Scope.

109.1202. Monitoring requirements.

109.1203. Bin classification and treatment technique requirements.

109.1204. Requirements for microbial toolbox components.

109.1205. Reporting and recordkeeping requirements.

#### § 109.1201. Scope.

(a) *Scope.* This subchapter establishes or extends treatment technique requirements in lieu of maximum contaminant levels for *Cryptosporidium*. These requirements are in addition to requirements for filtration and disinfection.

(b) *Applicability.* This subchapter applies to public water systems supplied by a surface water source and public water systems supplied by a groundwater source under the direct influence of surface water.

(1) Wholesale systems shall comply with the requirements of this subchapter based on the population of the largest system in the combined distribution system.

(2) The requirements of this subchapter for filtered systems apply to systems required by National Primary Drinking Water Regulations to provide filtration treatment, whether or not the system is currently operating a filtration system.

#### § 109.1202. Monitoring requirements.

(a) *Initial round of source water monitoring.* A system shall conduct the following monitoring on the schedule in subsection (c) unless it meets the monitoring exemption criteria in subsection (d):

(1) Filtered systems serving at least 10,000 people shall sample their source water for *Cryptosporidium*, *E. coli* and turbidity at least monthly for 24 months.

(2) Unfiltered systems serving at least 10,000 people shall sample their source water for *Cryptosporidium* at least monthly for 24 months.

(3) Filtered systems serving less than 10,000 people shall sample its source water for *E. coli* at least once every 2 weeks for 12 months. A filtered system serving less than 10,000 people may avoid *E. coli* monitoring if the system notifies the Department that it will monitor for *Cryptosporidium* as described in paragraph (4). The system shall notify the Department no later than 3 months prior to the date the system is otherwise required to start *E. coli* monitoring under subsection (c).

(4) Filtered systems serving less than 10,000 people shall sample their source water for *Cryptosporidium* at least twice per month for 12 months or at least monthly for 24 months if they meet one of the following subparagraphs, based on monitoring conducted under paragraph (3):

(i) For systems using lake/reservoir sources, the annual mean *E. coli* concentration is greater than 10 *E. coli*/100 mL.

(ii) For systems using flowing stream sources, the annual mean *E. coli* concentration is greater than 50 *E. coli*/100 mL.

(iii) The system does not conduct *E. coli* monitoring as described in paragraph (3).

(iv) Systems using groundwater sources under the direct influence of surface water (GUDI) shall comply with this paragraph based on the *E. coli* level that applies to the nearest surface water body. If no surface water body is nearby, the system shall comply based on the requirements that apply to systems using lake/reservoir sources.

(5) For filtered systems serving less than 10,000 people, the Department may approve monitoring for an indicator other than *E. coli* under paragraph (3). The Department also may approve an alternative to the *E. coli* concentration in paragraph (4)(i), (ii) or (iv) to trigger *Cryptosporidium* monitoring. This approval by the



Department would be based on EPA-supported research indicating the validity of an alternative to *E. coli*. The Department will provide this approval to the system in writing and will include the basis for the Department's determination that the alternative indicator, trigger level, or both, will provide a more accurate identification of whether a system will exceed the Bin 1 *Cryptosporidium* level in § 109.1203(c) (relating to bin classification and treatment technique requirements).

(6) Unfiltered systems serving less than 10,000 people shall sample their source water for *Cryptosporidium* at least twice per month for 12 months or at least monthly for 24 months.

(7) Systems may sample more frequently than required under this section if the sampling frequency is evenly spaced throughout the monitoring period.

(b) *Second round of source water monitoring.* Systems shall conduct a second round of source water monitoring that meets the requirements for monitoring parameters, frequency, and duration described in subsection (a), unless they meet the monitoring exemption criteria in subsection (d). Systems shall conduct this monitoring on the schedule in subsection (c).

(c) *Source water monitoring schedule.* Systems shall begin the monitoring required in subsections (a) and (b) as follows:

- (1) At least 100,000 people:
  - (i) Begin the first round of source water monitoring no later than the month beginning October 1, 2006.
  - (ii) Begin the second round of source water monitoring no later than the month beginning April 1, 2015.
- (2) From 50,000 to 99,999 people:
  - (i) Begin the first round of source water monitoring no later than the month beginning April 1, 2007.
  - (ii) Begin the second round of source water monitoring no later than the month beginning October 1, 2015.
- (3) From 10,000 to 49,999 people:
  - (i) Begin the first round of source water monitoring no later than the month beginning April 1, 2008.
  - (ii) Begin the second round of source water monitoring no later than the month beginning October 1, 2016.
- (4) Less than 10,000 people and monitor for *E. coli*:
  - (i) Begin the first round of source water monitoring no later than the month beginning October 1, 2008.
  - (ii) Begin the second round of source water monitoring no later than the month beginning October 1, 2017.
- (5) Less than 10,000 and monitor for *Cryptosporidium*:
  - (i) Begin the first round of source water monitoring no later than the month beginning April 1, 2010.
  - (ii) Begin the second round of source water monitoring no later than the month beginning April 1, 2019.

(d) *Source water monitoring avoidance.*

(1) *5.5 log treatment.* A filtered system is not required to conduct source water monitoring under this subchapter if the system will provide a total of at least 5.5-log of treatment for *Cryptosporidium*, equivalent to meeting the treatment requirements of Bin 4 in § 109.1203.

(2) *Notification.* If a system chooses to provide the level of treatment in paragraph (1), as applicable, rather than start source water monitoring, the system shall notify the Department in writing no later than the date the system

is otherwise required to submit a sampling schedule for monitoring under subsections (i)—(k). Alternatively, a system may choose to stop sampling at any point after it has initiated monitoring if it notifies the Department in writing that it will provide this level of treatment. Systems shall install and operate technologies to provide this level of treatment by the applicable treatment compliance date in § 109.1203(k)—(o).

(e) *Plants operating only part of the year.* Public water systems supplied by a surface water source and public water systems supplied by a groundwater source under the direct influence of surface water that operate for only part of the year shall conduct source water monitoring in accordance with this subchapter, but with the following modifications:

(1) Systems shall sample their source water only during the months that the plant operates unless the Department specifies another monitoring period based on plant operating practices.

(2) Systems with plants that operate less than 6 months per year and that monitor for *Cryptosporidium* shall collect at least six *Cryptosporidium* samples per year during each of 2 years of monitoring. Samples must be evenly spaced throughout the period the plant operates or is anticipated to operate.

(f) *New sources.*

(1) A system that intends to use a new source of surface water or GUDI after the system is required to begin monitoring under subsection (c) shall monitor the new source on a schedule the Department approves. Any source that has not been monitored according to the requirements of this subchapter will be considered to be a new source. Source water monitoring for new sources must meet the requirements of this subchapter. The system shall also meet the bin classification and *Cryptosporidium* treatment requirements of § 109.1203(a)—(j), as applicable, for the new source on a schedule approved by the Department. Sources that have not been monitored according to the requirements of this subchapter will be considered to be Bin 4 until monitoring is adequately completed. No later than the applicable *Cryptosporidium* compliance dates specified in § 109.1203(k), systems wishing to use sources that have not been monitored shall meet the Bin 4 treatment requirements of § 109.1203(a)—(j) unless otherwise indicated by the Department.

(2) The requirements of this subsection apply to public water systems supplied by a surface water source or groundwater source under the direct influence of surface water that begin operation after the monitoring start date applicable to the system's size under subsection (c).

(3) The system shall begin a second round of source water monitoring no later than 6 years following initial bin classification under § 109.1203 or determination of the *Cryptosporidium* level under § 109.1203(i) and (j), as applicable.

(g) *Monitoring violations.* Failure to collect any source water sample required under this section in accordance with the sampling schedule, sampling location, analytical method, approved laboratory and reporting requirements of this subsection, §§ 109.304 and 109.1205(a)—(e) (relating to analytical requirements; and reporting and recordkeeping requirements) is a monitoring violation.

(h) *Grandfathering monitoring data.* Systems may use (grandfather) monitoring data collected prior to the applicable monitoring start date in subsection (c) to meet the

initial source water monitoring requirements in subsection (a). Grandfathered data may substitute for an equivalent number of months at the end of the monitoring period. Data submitted under this subsection must meet the requirements in § 109.1205(f).

(i) *Source water sampling schedules.* Systems required to conduct source water monitoring under subsections (a)—(h) shall submit a sampling schedule that specifies the calendar dates when the system will collect each required sample.

(1) Systems shall submit sampling schedules no later than 3 months prior to the applicable date listed in subsection (c) for each round of required monitoring.

(2) A system must comply with the following:

(i) A system serving at least 10,000 people shall submit its sampling schedule for the initial round of source water monitoring under subsection (a) to the EPA electronically at <https://intranet.epa.gov/lt2/>.

(ii) If a system is unable to submit the sampling schedule electronically, the system may use an alternative approach for submitting the sampling schedule that the EPA approves.

(3) A system serving less than 10,000 people shall submit its sampling schedules for the initial round of source water monitoring under subsection (a) to the Department.

(4) Systems shall submit sampling schedules for the second round of source water monitoring under subsection (b) to the Department.

(5) If the EPA or the Department does not respond to a system regarding its sampling schedule, the system shall sample at the reported schedule.

(j) *Source water sample collection period.* Systems shall collect samples within 2 days before or 2 days after the dates indicated in their sampling schedule (that is, within a 5 day period around the schedule date) unless one of the conditions of paragraph (b)(1) or (2) applies.

(1) *Extreme sample collection conditions.* If an extreme condition or situation exists that may pose danger to the sample collector, or that cannot be avoided and causes the system to be unable to sample in the scheduled 5-day period, the system shall sample as close to the scheduled date as is feasible unless the Department approves an alternative sampling date. The system shall submit an explanation for the delayed sampling date to the Department concurrent with the shipment of the sample to the laboratory.

(2) *Replacement samples.* The requirements for replacement samples are as follows:

(i) If a system is unable to report a valid analytical result for a scheduled sampling date due to equipment failure, loss of or damage to the sample, failure to comply with the analytical method requirements, including the quality control requirements in § 109.304, or the failure of an approved laboratory to analyze the sample, then the system shall collect a replacement sample.

(ii) The system shall collect the replacement sample not later than 21 days after receiving information that an analytical result cannot be reported for the scheduled date unless the system demonstrates that collecting a replacement sample within this time frame is not feasible or the Department approves an alternative resampling date. The system shall submit an explanation for the delayed sampling date to the Department concurrent with the shipment of the sample to the laboratory.

(k) *Missed samples.* Systems that fail to meet the criteria of subsection (j) for any source water sample required under subsections (a)—(h) shall revise their sampling schedules to add dates for collecting all missed samples. Systems shall submit the revised schedule to the Department for approval prior to when the system begins collecting the missed samples.

(l) *Source water sampling locations.* Systems required to conduct source water monitoring under subsections (a)—(h) shall collect samples for each plant that treats a surface water or GUDI source. When multiple plants draw water from the same influent, such as the same pipe or intake, the Department may approve one set of monitoring results to be used to satisfy the requirements of subsections (a)—(h) for all plants.

(m) *Chemical treatment prior to sampling location.* Systems shall collect source water samples prior to chemical treatment, such as coagulants, oxidants and disinfectants.

(n) *Source water sample location for plants that recycle.* Systems that recycle filter backwash water shall collect source water samples prior to the point of filter backwash water addition.

(o) *Bank filtration.*

(1) Systems that receive *Cryptosporidium* treatment credit for bank filtration to meet existing treatment technique requirements of § 109.202(c) (relating to State MCLs, MRDLs and treatment technique requirements), as applicable, shall collect source water samples in the surface water prior to bank filtration.

(2) Systems that use bank filtration as pretreatment to a filtration plant shall collect source water samples from the well (that is, after bank filtration). Use of bank filtration during monitoring must be consistent with routine operational practice. Systems collecting samples after a bank filtration process may not receive treatment credit for the bank filtration under § 109.1204(f) (relating to requirements for microbial toolbox components).

(p) *Multiple sources.* Systems with plants that use multiple water sources, including multiple surface water sources and blended surface water and groundwater sources, shall collect samples as specified in paragraph (1) or (2). The use of multiple sources during monitoring must be consistent with routine operational practice. Sources not adequately evaluated during the monitoring period will be considered new sources and the requirements under subsection (f) will apply. Systems may begin monitoring a new source as soon as a sampling schedule and plan have been approved by the Department.

(1) If a sampling tap is available where the sources are combined prior to treatment, systems shall collect samples from the tap.

(2) If a sampling tap where the sources are combined prior to treatment is not available, systems shall collect samples at each source near the intake on the same day and shall follow either subparagraph (i) or (ii) for sample analysis.

(i) Systems may composite samples from each source into one sample prior to analysis. The volume of sample from each source must be weighted according to the proportion of the source in the total plant flow at the time the sample is collected.

(ii) Systems may analyze samples from each source separately and calculate a weighted average of the analysis results for each sampling date. The weighted average

must be calculated by multiplying the analysis result for each source by the fraction the source contributed to total plant flow at the time the sample was collected and then summing these values.

(q) *Additional requirements.* A system shall submit a description of its sampling locations to the Department at the same time as the sampling schedule required under subsections (i)—(k). This description must address the position of the sampling location in relation to the system's water sources and treatment processes, including pretreatment, points of chemical treatment and filter backwash recycle. If the Department does not respond to a system regarding sampling locations, the system shall sample at the reported locations.

**§ 109.1203. Bin classification and treatment technique requirements.**

(a) *Bin classification.* Following completion of the initial round of source water monitoring required under § 109.1202(a) (relating to monitoring requirements), filtered systems shall calculate an initial *Cryptosporidium* bin concentration for each plant for which monitoring was required. Calculation of the bin concentration must use the *Cryptosporidium* results reported under § 109.1202(a) and must follow the procedures in subsection (b)(1)—(5).

(b) *Procedures for calculating bin classifications.*

(1) For systems that collect a total of at least 48 samples, the bin concentration is equal to the arithmetic mean of all sample concentrations.

(2) For systems that collect a total of at least 24 samples, but not more than 47 samples, the bin concentration is equal to the highest arithmetic mean of all sample concentrations in any 12 consecutive months during which *Cryptosporidium* samples were collected.

(3) For systems that serve less than 10,000 people and monitor for *Cryptosporidium* for only 1 year (that is, collect 24 samples in 12 months), the bin concentration is equal to the arithmetic mean of all sample concentrations.

(4) For systems with plants operating only part of the year that monitor less than 12 months per year under § 109.1202(e), the bin concentration is equal to the highest arithmetic mean of all sample concentrations during any year of *Cryptosporidium* monitoring.

(5) If the monthly *Cryptosporidium* sampling frequency varies, systems shall first calculate a monthly average for each month of monitoring. Systems shall then use these monthly average concentrations, rather than individual sample concentrations, in the applicable calculation for bin classification in paragraphs (1)—(4).

(c) *Cryptosporidium bin concentration thresholds.* Systems required to monitor for *Cryptosporidium* under § 109.1202 shall use *Cryptosporidium* bin concentration calculated under subsections (a)—(b) to determine their initial bin classification as follows:

(1) With a *Cryptosporidium* bin concentration of less than 0.075 oocysts/L, the bin classification is Bin 1.

(2) With a *Cryptosporidium* bin concentration of 0.075 oocysts/L or higher, but less than 1.0 oocysts/L, the bin classification is Bin 2

(3) With a *Cryptosporidium* bin concentration of 1.0 oocysts/L or higher but less than 3.0 oocysts/L, the bin classification is Bin 3

(4) With a *Cryptosporidium* bin concentration of 3.0 oocysts/L or higher, the bin classification is Bin 4

(5) If serving less than 10,000 people and not required to monitor for *Cryptosporidium* under § 109.1202(a)(4), the bin classification is Bin 1.

(d) *Cryptosporidium bin concentration recalculation requirements.* Following completion of the second round of source water monitoring required under § 109.1202(b), filtered systems shall recalculate their *Cryptosporidium* bin concentration using the *Cryptosporidium* results reported under § 109.1202(b) and following the procedures in subsection (b)(1)—(4). Systems shall then redetermine their bin classification using the bin concentrations subsection (c).

(e) *Filtered system additional Cryptosporidium treatment requirements.* Filtered systems shall provide the level of additional treatment for *Cryptosporidium* specified in this subsection based on their bin classification as determined under subsections (a)—(c) and according to the schedule in subsections (k)—(o). The treatments required under paragraphs (1)—(4) are in addition to existing treatment technique requirements contained in § 109.202(c), which still apply. Systems using multiple sources shall establish their bin classification based on the highest bin source in use by the facility.

(1) *Bin 1.* If the system bin classification is Bin 1 and the system is in full compliance with applicable treatment technique requirements under § 109.202(c), the system shall provide additional *Cryptosporidium* treatment as follows:

(i) Conventional filtration treatment (including softening), slow sand or diatomaceous earth filtration must provide no additional treatment.

(ii) Direct filtration treatment must provide no additional treatment.

(iii) Alternative filtration technologies must provide no additional treatment.

(2) *Bin 2.* If the system bin classification is Bin 2 and the system is in full compliance with applicable treatment technique requirements under § 109.202(c) (relating to State MDLs, MDRLs and technique requirements), the system shall provide additional *Cryptosporidium* treatment as follows:

(i) Conventional filtration treatment (including softening), slow sand or diatomaceous earth filtration must provide 1-log additional treatment.

(ii) Direct filtration treatment must provide 1.5 log additional treatment.

(iii) Alternative filtration technologies must provide additional treatment as determined by the Department such that the total *Cryptosporidium* removal and inactivation is at least 4.0 log.

(3) *Bin 3.* If the system bin classification is Bin 3 and the system is in full compliance with applicable treatment technique requirements under § 109.202(c), the system shall provide additional *Cryptosporidium* treatment as follows:

(i) Conventional filtration treatment (including softening), slow sand or diatomaceous earth filtration must provide 2-log additional treatment.

(ii) Direct filtration treatment must provide 2.5 log additional treatment.

(iii) Alternative filtration technologies must provide additional treatment as determined by the Department so that the total *Cryptosporidium* removal and inactivation is at least 5.0 log.

(4) *Bin 4.* If the system bin classification is Bin 4 and the system is in full compliance with applicable treatment technique requirements under § 109.202(c), the system shall provide additional *Cryptosporidium* treatment as follows:

(i) Conventional filtration treatment (including softening), slow sand or diatomaceous earth filtration must provide 2.5-log additional treatment.

(ii) Direct filtration treatment must provide 3 log additional treatment.

(iii) Alternative filtration technologies must provide additional treatment as determined by the Department so that the total *Cryptosporidium* removal and inactivation is at least 5.5 log.

(f) *Treatment and management options for filtered systems, microbial toolbox.*

(1) Filtered systems shall use one or more of the treatment and management options listed in § 109.1204 (relating to requirements for microbial toolbox components), termed the microbial toolbox, to comply with the additional *Cryptosporidium* treatment required in subsection (e).

(2) Systems using sources classified in Bin 3 and Bin 4 shall achieve at least 1-log of the additional *Cryptosporidium* treatment required under § 109.1204(a) using either one or a combination of the following: bag filters, bank filtration, cartridge filters, chlorine dioxide, membranes, ozone or UV, as described in § 109.1204(b), (c) and (n)—(q) (relating to requirements for microbial toolbox components).

(g) *Failure to meet treatment credit.* Failure by a system in any month to achieve treatment credit by meeting criteria in § 109.1204(b), (c) and (n)—(q) for microbial toolbox options that is at least equal to the level of treatment required in subsection (e) is a violation of the treatment technique requirement.

(h) *Increased watershed contamination.* If the Department determines during a sanitary survey or an equivalent source water assessment that after a system completed the monitoring conducted under § 109.1202(a) or (b), significant changes occurred in the system's watershed that could lead to increased contamination of the source water by *Cryptosporidium*, the system shall take actions specified by the Department to address the contamination. These actions may include additional source water monitoring or implementing microbial toolbox options listed in § 109.1204, or both.

(i) *Unfiltered systems determination of Cryptosporidium bin level, initial round.* Following completion of the initial source water monitoring required under § 109.1202(a), unfiltered systems shall calculate their bin classification using the methods listed in subsections (b) and (c).

(j) *Unfiltered systems determination of Cryptosporidium bin level, second round.* Following completion of the second round of source water monitoring required under subsection (b), unfiltered systems shall calculate their bin classification using the methods listed in subsections (b) and (c).

(k) *Schedule for compliance with Cryptosporidium treatment requirements.* Following initial bin classification under subsection (c), filtered systems shall provide the level of additional treatment for *Cryptosporidium* required under subsections (e)—(h) according to the schedule in subsection (m). The treatments required under

subsections (e)—(h) are in addition to existing treatment technique requirements contained in § 109.202(c), which still apply.

(l) *Treatment technique requirements for unfiltered systems.* Following initial determination of the *Cryptosporidium* level under subsection (i), unfiltered systems shall meet all applicable treatment technique requirements of § 109.202(c) and provide the additional level of treatment for *Cryptosporidium* required under subsections (e)—(h) on a schedule approved by the Department but no later than the schedule in subsection (m).

(m) *Cryptosporidium treatment compliance dates.* *Cryptosporidium* treatment compliance dates are as follows:

(1) Systems that serve at least 100,000 people shall comply with *Cryptosporidium* treatment requirements by April 1, 2012.

(2) Systems that serve from 50,000 to 99,999 people shall comply with *Cryptosporidium* treatment requirements by October 1, 2012.

(3) Systems that serve from 10,000 to 49,999 people shall comply with *Cryptosporidium* treatment requirements by October 1, 2013.

(4) Systems that serve less than 10,000 people shall comply with *Cryptosporidium* treatment requirements by October 1, 2014.

(5) On a case by case basis within an agreed upon time frame, the Department may allow up to an additional 2 years for complying with the treatment requirement for systems making capital improvements.

(n) *Change in Cryptosporidium level for filtered system.* If the bin classification for a filtered system changes following the second round of source water monitoring, as determined under subsection (d), the system shall provide the level of treatment for *Cryptosporidium* required under subsections (e)—(h) on a schedule the Department approves.

(o) *Change in Cryptosporidium level for unfiltered system.* If the *Cryptosporidium* level for an unfiltered system changes following the second round of monitoring, as determined under subsection (j), and if the system shall provide a different level of *Cryptosporidium* treatment under subsection (i) and (j) due to this change, the system shall meet this treatment requirement on a schedule the Department approves.

#### **§ 109.1204. Requirements for microbial toolbox components.**

(a) A system will receive the treatment credits listed Appendix B to Subchapter L. Microbial Toolbox Summary Table: Options, Treatment Credits and Criteria which is available from the Department at [www.depweb.state.pa.us](http://www.depweb.state.pa.us) (DEP Keyword: Participation; select "Proposals Currently Open for Comment" or through the Contact Persons listed in the Preamble), by meeting the conditions for microbial toolbox components described in subsections (b)—(q). A system shall apply these treatment credits to meet the treatment technique requirements listed in section § 109.1203 (relating to bin classification and treatment technique requirements).

(b) *Watershed control program.* Systems receive 0.5-log *Cryptosporidium* treatment credit for implementing a watershed control program that meets the requirements of this subsection. This credit may not be used to maintain the additional log removal credits specified in

§ 109.1203. This credit may only be applied in addition to the toolbox options used to meet the minimum log removal and may apply in lieu of a toolbox option for which credit has been temporarily revoked.

(1) Systems that intend to apply for the watershed control program credit shall notify the Department of this intent at least 2 years prior to the treatment compliance date applicable to the system in § 109.1203(k)—(o).

(2) Systems shall submit to the Department a proposed watershed control plan at least 1 year before the applicable treatment compliance date in § 109.1203(k)—(o). The Department will approve the watershed control plan for the system to receive watershed control program treatment credit. The watershed control plan must include the following elements:

(i) Identification of an “area of influence” outside of which the likelihood of *Cryptosporidium* or fecal contamination affecting the treatment plant intake is not significant. This is the area to be evaluated in future watershed surveys under paragraph (4)(ii).

(ii) Identification of both potential and actual sources of *Cryptosporidium* contamination and an assessment of the relative impact of these sources on the system’s source water quality.

(iii) An analysis of the effectiveness and feasibility of control measures that could reduce *Cryptosporidium* loading from sources of contamination to the system’s source water.

(iv) A statement of goals and specific actions the system will undertake to reduce source water *Cryptosporidium* levels. The plan must explain how the actions are expected to contribute to specific goals, identify watershed partners and their roles, identify resource requirements and commitments, and include a schedule for plan implementation with deadlines for completing specific actions identified in the plan.

(3) Systems with existing watershed control programs (that is, programs in place on January 5, 2006) are eligible to seek this credit. Their watershed control plans must meet the criteria in paragraph (2) and must specify ongoing and future actions that will reduce source water *Cryptosporidium* levels.

(4) *Systems shall complete the following actions to maintain the 0.5-log credit:*

(i) Submit an annual watershed control program status report to the Department. The annual watershed control program status report must describe the system’s implementation of the approved plan and assess the adequacy of the plan to meet its goals. The report must explain how the system is addressing any shortcomings in plan implementation, including those previously identified by the Department or as the result of the watershed survey conducted under subparagraph (ii). The report must also describe significant changes that have occurred in the watershed since the last watershed sanitary survey. If a system determines during implementation that making a significant change to its approved watershed control program is necessary, the system shall notify the Department prior to making any changes. If a change is likely to reduce the level of source water protection, the system shall also list in its notification the actions the system will take to mitigate this effect.

(ii) Undergo a watershed sanitary survey every 3 years for community water systems and every 5 years for noncommunity water systems and submit the survey

report to the Department. The survey must be conducted according to Department guidelines and by persons the Department approves.

(A) The watershed sanitary survey must meet the following criteria:

(I) Encompass the region identified in the Department-approved watershed control plan as the area of influence.

(II) Assess the implementation of actions to reduce source water *Cryptosporidium* levels.

(III) Identify any significant new sources of *Cryptosporidium*.

(B) If the Department determines that significant changes may have occurred in the watershed since the previous watershed sanitary survey, systems shall undergo another watershed sanitary survey by a date the Department requires, which may be earlier than the regular date in this subparagraph.

(iii) The system shall make the watershed control plan, annual status reports, and watershed sanitary survey reports available to the public upon request. These documents must be in a plain language style and include criteria by which to evaluate the success of the program in achieving plan goals. The Department may approve systems to withhold from the public portions of the annual status report, watershed control plan, and watershed sanitary survey based on water supply security considerations.

(5) If the Department determines that a system is not carrying out the approved watershed control plan, the Department may withdraw the watershed control program treatment credit.

(c) *Alternative source.*

(1) A system may conduct source water monitoring that reflects a different intake location (either in the same source or for an alternate source) or a different procedure for the timing or level of withdrawal from the source (alternative source monitoring). If the Department approves, a system may determine its bin classification under § 109.1203 based on the alternative source monitoring results.

(2) If systems conduct alternative source monitoring under paragraph (1), systems shall also monitor their current plant intake concurrently as described in § 109.1202 (relating to monitoring requirements).

(3) Alternative source monitoring under paragraph (1) must meet the requirements for source monitoring to determine bin classification, as described in §§ 109.1202 and 109.1205. Systems shall report the alternative source monitoring results to the Department, along with supporting information documenting the operating conditions under which the samples were collected.

(4) If a system determines its bin classification under § 109.1203 using alternative source monitoring results that reflect a different intake location or a different procedure for managing the timing or level of withdrawal from the source, the system shall relocate the intake or permanently adopt the withdrawal procedure, as applicable, no later than the applicable treatment compliance date in § 109.1203(k)—(o).

(d) *Presedimentation.* Systems will receive 0.5-log *Cryptosporidium* treatment credit for a presedimentation basin during any month the process meets the criteria in this subsection.

(1) The presedimentation basin must be in continuous operation and must treat the entire plant flow taken from a surface water or GUDI source.

(2) The system shall continuously add a coagulant to the presedimentation basin.

(3) The presedimentation basin must achieve the performance criteria as follows:

(i) Demonstrates at least 0.5-log mean reduction of influent turbidity. This reduction must be determined using daily turbidity measurements in the presedimentation process influent and effluent and must be calculated as follows:  $\log_{10}$  (monthly mean of daily influent turbidity) -  $\log_{10}$  (monthly mean of daily effluent turbidity).

(ii) Comply with Department-approved performance criteria that demonstrate at least 0.5-log mean removal of micron-sized particulate material through the presedimentation process.

(e) *2-stage lime softening.* Systems receive an additional 0.5-log *Cryptosporidium* treatment credit for a 2-stage lime softening plant if chemical addition and hardness precipitation occur in two separate and sequential softening stages prior to filtration. Both softening stages must treat the entire plant flow taken from a surface water or GUDI source.

(f) *Bank filtration.* Systems receive *Cryptosporidium* treatment credit for bank filtration that serves as pretreatment to a filtration plant by meeting the criteria in this subsection. Systems using bank filtration when they begin source water monitoring under § 109.1202(a) shall collect samples as described in § 109.1202(o) and are not eligible for this credit.

(1) Wells with a groundwater flow path of at least 25 feet receive 0.5-log treatment credit. Wells with a groundwater flow path of at least 50 feet receive 1.0-log treatment credit. The groundwater flow path must be determined as specified in paragraph (4).

(2) Only wells in granular aquifers are eligible for treatment credit. Granular aquifers are those comprised of sand, clay, silt, rock fragments, pebbles or larger particles and minor cement. A system shall characterize the aquifer at the well site to determine aquifer properties. Systems shall extract a core from the aquifer and demonstrate that in at least 90% of the core length, grains less than 1.0 mm in diameter constitute at least 10% of the core material.

(3) Only horizontal and vertical wells are eligible for treatment credit.

(4) For vertical wells, the groundwater flow path is the measured distance from the edge of the surface water body under high flow conditions (determined by the 100 year floodplain elevation boundary or by the floodway, as defined in Federal Emergency Management Agency flood hazard maps) to the well screen. For horizontal wells, the groundwater flow path is the measured distance from the bed of the river under normal flow conditions to the closest horizontal well lateral screen.

(5) Systems shall monitor each wellhead for turbidity at least once every 4 hours while the bank filtration process is in operation. If monthly average turbidity levels, based on daily maximum values in the well, exceed 1 NTU, the system shall report this result to the Department and conduct an assessment within 30 days to determine the cause of the high turbidity levels in the well. If the Department determines that microbial re-

moval has been compromised, the Department may revoke treatment credit until the system implements corrective actions approved by the Department to remediate the problem.

(6) Springs and infiltration galleries are not eligible for treatment credit under this section, but are eligible for credit under subsection (i).

(7) The Department may approve *Cryptosporidium* treatment credit for bank filtration based on a demonstration of performance study that meets the criteria in this paragraph. This treatment credit may be greater than 1.0-log and may be awarded to bank filtration that does not meet the criteria in paragraphs (1)–(5).

(i) The study must follow a Department-approved protocol and must involve the collection of data on the removal of *Cryptosporidium* or a surrogate for *Cryptosporidium* and related hydrogeologic and water quality parameters during the full range of operating conditions.

(ii) The study must include sampling both from the production well and from monitoring wells that are screened and located along the shortest flow path between the surface water source and the production well.

(g) *Combined filter performance.* Systems using conventional filtration treatment or direct filtration treatment receive an additional 0.5-log *Cryptosporidium* treatment credit during any month the system meets the criteria in this subsection. Combined filter effluent (CFE) turbidity must be less than or equal to 0.15 NTU in at least 95% of the measurements. Turbidity must be measured as described in § 109.304(c) (relating to analytical requirements).

(h) *Individual filter performance.* Systems using conventional filtration treatment or direct filtration treatment will receive 0.5-log *Cryptosporidium* treatment credit, which can be in addition to the 0.5-log credit under subsection (g), during any month the system meets the criteria in this subsection. Compliance with these criteria must be based on individual filter turbidity monitoring as described in § 109.301(1)(iv) (relating to general monitoring requirements), as applicable.

(1) The filtered water turbidity for each individual filter must be less than or equal to 0.15 NTU in at least 95% of the measurements recorded each month.

(2) An individual filter may not have a measured turbidity greater than 0.3 NTU in two consecutive measurements taken 15 minutes apart.

(3) A system that has received treatment credit for individual filter performance and fails to meet the requirements of paragraph (1) or (2) during any month does not receive a treatment technique violation under § 109.1203(g) if the Department determines the following:

(i) The failure was due to unusual and short-term circumstances that could not reasonably be prevented through optimizing treatment plant design, operation, and maintenance.

(ii) The system has experienced no more than two of these failures in any calendar year.

(i) *Demonstration of performance.* The Department may approve *Cryptosporidium* treatment credit for drinking water treatment processes based on a demonstration of performance study that meets the criteria in this subsection. This treatment credit may be greater than or less than the prescribed treatment credits in § 109.1203(e)—

(h) or subsection (d)—(f) and subsections (n)—(q) and may be awarded to treatment processes that do not meet the criteria for the prescribed credits.

(1) Systems cannot receive the prescribed treatment credit for any toolbox option in subsections (d)—(f) or (n)—(q) if that toolbox option is included in a demonstration of performance study for which treatment credit is awarded under this paragraph.

(2) The demonstration of performance study must follow a Department-approved protocol and must demonstrate the level of *Cryptosporidium* reduction the treatment process will achieve under the full range of expected operating conditions for the system.

(3) Approval by the Department will be in writing and may include monitoring and treatment performance criteria that the system shall demonstrate and report on an ongoing basis to remain eligible for the treatment credit. The Department may designate the criteria when necessary to verify that the conditions under which the demonstration of performance credit was approved are maintained during routine operation.

(j) *Bag and cartridge filters.* Systems receive *Cryptosporidium* treatment credit of up to 2.0-log for individual bag or cartridge filters and up to 2.5-log for bag or cartridge filters operated in series by meeting the criteria in paragraphs (1)—(10). To be eligible for this credit, systems shall report the results of challenge testing that meet the requirements of paragraphs (2)—(9) to the Department. The filters must treat the entire plant flow taken from a surface water or groundwater source under the direct influence of surface water source.

(1) The *Cryptosporidium* treatment credit awarded to bag or cartridge filters will be based on the removal efficiency demonstrated during challenge testing that is conducted according to the criteria in paragraphs (2)—(9). A factor of safety equal to 1-log for individual bag or cartridge filters and 0.5-log for bag or cartridge filters in series must be applied to challenge testing results to determine removal credit. Systems may use results from challenge testing conducted prior to January 5, 2006, if the prior testing was consistent with the criteria specified in paragraphs (2)—(9).

(2) Challenge testing must be performed on full-scale bag or cartridge filters, and the associated filter housing or pressure vessel, that are identical in material and construction to the filters and housings the system will use for removal of *Cryptosporidium*. Bag or cartridge filters must be challenge tested in the same configuration that the system will use, either as individual filters or as a series configuration of filters.

(3) Challenge testing must be conducted using *Cryptosporidium* or a surrogate that is removed no more efficiently than *Cryptosporidium*. The microorganism or surrogate used during challenge testing is referred to as the challenge particulate. The concentration of the challenge particulate must be determined using a method capable of discreetly quantifying the specific microorganism or surrogate used in the test; gross measurements such as turbidity may not be used.

(4) The maximum feed water concentration that can be used during a challenge test must be based on the detection limit of the challenge particulate in the filtrate (that is, filtrate detection limit) and must be calculated using the following equation:

$$\text{Maximum Feed Concentration} = 1 \times 10^4 \times (\text{Filtrate Detection Limit})$$

(5) Challenge testing must be conducted at the maximum design flow rate for the filter as specified by the manufacturer.

(6) Each filter evaluated must be tested for a duration sufficient to reach 100% of the terminal pressure drop, which establishes the maximum pressure drop under which the filter may be used to comply with this subchapter.

(7) Removal efficiency of a filter must be determined from the results of the challenge test and expressed in terms of log removal values using the following equation:

$$\text{LRV} = \text{LOG}_{10}(C_f) - \text{LOG}_{10}(C_p)$$

Where: LRV = log removal value demonstrated during challenge testing;  $C_f$  = the feed concentration measured during the challenge test; and  $C_p$  = the filtrate concentration measured during the challenge test. In applying this equation, the same units must be used for the feed and filtrate concentrations. If the challenge particulate is not detected in the filtrate, then the term  $C_p$  must be set equal to the detection limit.

(8) Each filter tested must be challenged with the challenge particulate during three periods over the filtration cycle: within 2 hours of start-up of a new filter; when the pressure drop is between 45 and 55% of the terminal pressure drop; and at the end of the cycle after the pressure drop has reached 100% of the terminal pressure drop. An LRV must be calculated for each of these challenge periods for each filter tested. The LRV for the filter ( $\text{LRV}_{\text{filter}}$ ) must be assigned the value of the minimum LRV observed during the three challenge periods for that filter.

(9) If less than 20 filters are tested, the overall removal efficiency for the filter product line must be set equal to the lowest  $\text{LRV}_{\text{filter}}$  among the filters tested. If 20 or more filters are tested, the overall removal efficiency for the filter product line must be set equal to the 10th percentile of the set of  $\text{LRV}_{\text{filter}}$  values for the various filters tested. The percentile is defined by  $(i/(n+1))$  where  $i$  is the rank of  $n$  individual data points ordered lowest to highest. If necessary, the 10th percentile may be calculated using linear interpolation.

(10) If a previously tested filter is modified in a manner that could change the removal efficiency of the filter product line, challenge testing to demonstrate the removal efficiency of the modified filter must be conducted and submitted to the Department.

(k) *Membrane filtration.*

(1) *Cryptosporidium treatment credit.* Systems receive *Cryptosporidium* treatment credit for membrane filtration that meets the criteria of this paragraph. Membrane cartridge filters that meet the definition of membrane filtration in § 109.1 (relating to definitions) are eligible for this credit. The level of treatment credit a system receives is equal to the lower of the values determined under the following:

(i) The removal efficiency demonstrated during challenge testing conducted under the conditions in paragraph (2).

(ii) The maximum removal efficiency that can be verified through direct integrity testing used with the membrane filtration process under the conditions in paragraph (3).

(2) *Challenge testing.* The membrane used by the system shall undergo challenge testing to evaluate removal efficiency, and the system shall report the results of

challenge testing to the Department. Challenge testing must be conducted according to the criteria in subparagraphs (i)—(vii). Systems may use data from challenge testing conducted prior to January 5, 2006, if the prior testing was consistent with the criteria in subparagraphs (i)—(vii).

(i) Challenge testing must be conducted on either a full-scale membrane module, identical in material and construction to the membrane modules used in the system's treatment facility, or a smaller-scale membrane module, identical in material and similar in construction to the full-scale module. A module is defined as the smallest component of a membrane unit in which a specific membrane surface area is housed in a device with a filtrate outlet structure.

(ii) Challenge testing must be conducted using *Cryptosporidium* oocysts or a surrogate that is removed no more efficiently than *Cryptosporidium* oocysts. The organism or surrogate used during challenge testing is referred to as the challenge particulate. The concentration of the challenge particulate, in both the feed and filtrate water, must be determined using a method capable of discretely quantifying the specific challenge particulate used in the test; gross measurements such as turbidity may not be used.

(iii) The maximum feed water concentration that can be used during a challenge test is based on the detection limit of the challenge particulate in the filtrate and must be determined according to the following equation:

$$\text{Maximum Feed Concentration} = 3.16 \times 10^6 \times (\text{Filtrate Detection Limit})$$

(iv) Challenge testing must be conducted under representative hydraulic conditions at the maximum design flux and maximum design process recovery specified by the manufacturer for the membrane module. Flux is defined as the throughput of a pressure driven membrane process expressed as flow per unit of membrane area. Recovery is defined as the volumetric % of feed water that is converted to filtrate over the course of an operating cycle uninterrupted by events such as chemical cleaning or a solids removal process (that is, backwashing).

(v) Removal efficiency of a membrane module must be calculated from the challenge test results and expressed as a log removal value according to the following equation:

$$\text{LRV} = \text{LOG}_{10}(C_f) \times \text{LOG}_{10}(C_p)$$

Where: LRV = log removal value demonstrated during the challenge test;  $C_f$  = the feed concentration measured during the challenge test; and  $C_p$  = the filtrate concentration measured during the challenge test. Equivalent units must be used for the feed and filtrate concentrations. If the challenge particulate is not detected in the filtrate, the term  $C_p$  is set equal to the detection limit for the purpose of calculating the LRV. An LRV must be calculated for each membrane module evaluated during the challenge test.

(vi) The removal efficiency of a membrane filtration process demonstrated during challenge testing must be expressed as a log removal value ( $\text{LRV}_{C\text{-Test}}$ ). If less than 20 modules are tested, then  $\text{LRV}_{C\text{-Test}}$  is equal to the lowest of the representative LRVs among the modules tested. If 20 or more modules are tested, then  $\text{LRV}_{C\text{-Test}}$  is equal to the 10th percentile of the representative LRVs among the modules tested. The percentile is defined by  $(i/(n+1))$  where  $i$  is the rank of  $n$  individual data points

ordered lowest to highest. If necessary, the 10th percentile may be calculated using linear interpolation.

(vii) The challenge test must establish a quality control release value (QCRV) for a nondestructive performance test that demonstrates the *Cryptosporidium* removal capability of the membrane filtration module. This performance test must be applied to each production membrane module used by the system that was not directly challenge tested in order to verify *Cryptosporidium* removal capability. Production modules that do not meet the established QCRV are not eligible for the treatment credit demonstrated during the challenge test.

(viii) If a previously tested membrane is modified in a manner that could change the removal efficiency of the membrane or the applicability of the nondestructive performance test and associated QCRV, additional challenge testing to demonstrate the removal efficiency of, and determine a new QCRV for, the modified membrane must be conducted and submitted to the Department.

(3) *Direct integrity testing.* Systems shall conduct direct integrity testing in a manner that demonstrates a removal efficiency equal to or greater than the removal credit awarded to the membrane filtration process and meets the requirements described in subparagraphs (i)—(vi). A direct integrity test is defined as a physical test applied to a membrane unit to identify and isolate integrity breaches (that is, one or more leaks that could result in contamination of the filtrate).

(i) The direct integrity test must be independently applied to each membrane unit in service. A membrane unit is defined as a group of membrane modules that share common valving that allows the unit to be isolated from the rest of the system for the purpose of integrity testing or other maintenance.

(ii) The direct integrity method must have a resolution of 3 micrometers or less, where resolution is defined as the size of the smallest integrity breach that contributes to a response from the direct integrity test.

(iii) The direct integrity test must have a sensitivity sufficient to verify the log treatment credit awarded to the membrane filtration process by the Department, where sensitivity is defined as the maximum log removal value that can be reliably verified by a direct integrity test. Sensitivity must be determined using the approach in either clause (A) or (B) as applicable to the type of direct integrity test the system uses.

(A) For direct integrity tests that use an applied pressure or vacuum, the direct integrity test sensitivity must be calculated according to the following equation:

$$\text{LRV}_{\text{DIT}} = \text{LOG}_{10} (Q_p / (\text{VCF} \times Q_{\text{breach}}))$$

Where:  $\text{LRV}_{\text{DIT}}$  = the sensitivity of the direct integrity test;  $Q_p$  = total design filtrate flow from the membrane unit;  $Q_{\text{breach}}$  = flow of water from an integrity breach associated with the smallest integrity test response that can be reliably measured, and VCF = volumetric concentration factor. The volumetric concentration factor is the ratio of the suspended solids concentration on the high pressure side of the membrane relative to that in the feed water.

(B) For direct integrity tests that use a particulate or molecular marker, the direct integrity test sensitivity must be calculated according to the following equation:

$$\text{LRV}_{\text{DIT}} = \text{LOG}_{10}(C_f) - \text{LOG}_{10}(C_p)$$

Where:  $\text{LRV}_{\text{DIT}}$  = the sensitivity of the direct integrity test;  $C_f$  = the typical feed concentration of the marker



used in the test; and  $C_p$  = the filtrate concentration of the marker from an integral membrane unit.

(iv) Systems shall establish a control limit within the sensitivity limits of the direct integrity test that is indicative of an integral membrane unit capable of meeting the removal credit awarded by the Department.

(v) If the result of a direct integrity test exceeds the control limit established under subparagraph (iv), the system shall remove the membrane unit from service. Systems shall conduct a direct integrity test to verify any repairs, and may return the membrane unit to service only if the direct integrity test is within the established control limit.

(vi) Systems shall conduct direct integrity testing on each membrane unit at a frequency of at least once each day that the membrane unit is in operation. The Department may approve less frequent testing, based on demonstrated process reliability, the use of multiple barriers effective for *Cryptosporidium*, or reliable process safeguards.

(4) *Indirect integrity monitoring.* Systems shall conduct continuous indirect integrity monitoring on each membrane unit according to the criteria in subparagraphs (i)–(v). Indirect integrity monitoring is defined as monitoring some aspect of filtrate water quality that is indicative of the removal of particulate matter. A system that implements continuous direct integrity testing of membrane units in accordance with the criteria in subparagraphs (i)–(v) is not subject to the requirements for continuous indirect integrity monitoring. Systems shall submit a monthly report to the Department summarizing all continuous indirect integrity monitoring results triggering direct integrity testing and the corrective action that was taken in each case.

(i) Unless the Department approves an alternative parameter, continuous indirect integrity monitoring must include continuous filtrate turbidity monitoring.

(ii) Continuous monitoring must be conducted at least once every 15 minutes.

(iii) Continuous monitoring must be separately conducted on each membrane unit.

(iv) If indirect integrity monitoring includes turbidity and if the filtrate turbidity readings are above 0.15 NTU for a period greater than 15 minutes (that is, two consecutive 15-minute readings above 0.15 NTU), direct integrity testing must immediately be performed on the associated membrane unit as specified in paragraph (3)(i)–(v).

(v) If indirect integrity monitoring includes a Department-approved alternative parameter and if the alternative parameter exceeds a Department-approved control limit for a period greater than 15 minutes, direct integrity testing shall immediately be performed on the associated membrane units as specified in paragraph (3)(i)–(v).

(l) *Second stage filtration.* Systems receive 0.5-log *Cryptosporidium* treatment credit for a separate second stage of filtration that consists of sand, dual media, GAC or other fine grain media following granular media filtration if approved by the Department. To be eligible for this credit, the first stage of filtration must be preceded by a coagulation step and both filtration stages must treat the entire plant flow taken from a surface water or GUDI source. A cap, such as GAC, on a single stage of filtration is not eligible for this credit. The Department

will approve the treatment credit based on an assessment of the design characteristics of the filtration process.

(m) *Slow sand filtration (as secondary filter).* Systems are eligible to receive 2.5-log *Cryptosporidium* treatment credit for a slow sand filtration process that follows a separate stage of filtration if both filtration stages treat entire plant flow taken from a surface water or GUDI source and no disinfectant residual is present in the influent water to the slow sand filtration process. The Department will approve the treatment credit based on an assessment of the design characteristics of the filtration process. This subsection does not apply to treatment credit awarded to slow sand filtration used as a primary filtration process.

(n) *Inactivation toolbox components.* Calculation of CT values.

(1) Systems with treatment credit for chlorine dioxide or ozone under subsection (o) or (p) must calculate CT at least once each day, with both C and T measured during peak hourly flow as specified in § 109.304(c) and 40 CFR 141.74(b)(3) (relating to analytical and monitoring requirements).

(2) Systems with several disinfection segments in sequence may calculate CT for each segment, where a disinfection segment is defined as a treatment unit process with a measurable disinfectant residual level and a liquid volume. Under this approach, systems shall add the *Cryptosporidium* CT values in each segment to determine the total CT for the treatment plant.

(o) *Chlorine dioxide.* Systems are eligible to receive the *Cryptosporidium* treatment credit listed in Table 1, CT Values (mg • min/L) for *Cryptosporidium* Inactivation by Chlorine Dioxide, contained in Appendix A to Subchapter L which is available from the Department at [www.depweb.state.pa.us](http://www.depweb.state.pa.us) (DEP Keyword: Participation; select “Proposals Currently Open for Comment” or through the Contact Persons listed in the Preamble), by meeting the corresponding chlorine dioxide CT value for the applicable water temperature, as described in subsection (n).

(p) *Ozone.* Systems receive the *Cryptosporidium* treatment credit listed in Table 2, CT Values (mg • min/L) for *Cryptosporidium* Inactivation by Ozone, contained in Appendix A to Subchapter L which is available from the Department at [www.depweb.state.pa.us](http://www.depweb.state.pa.us) (DEP Keyword: Participation; select “Proposals Currently Open for Comment” or through the Contact Persons listed in the Preamble), by meeting the corresponding ozone CT values for the applicable water temperature, as described in subsection (n).

(q) *Ultraviolet light.* Systems receive *Cryptosporidium*, *Giardia lamblia* and virus treatment credits for ultraviolet (UV) light reactors by achieving the corresponding UV dose values shown in Table 3, UV Dose for *Cryptosporidium*, *Giardia lamblia* and Virus Inactivation, contained in Appendix A to Subchapter L which is available from the Department at [www.depweb.state.pa.us](http://www.depweb.state.pa.us) (DEP Keyword: Participation; select “Proposals Currently Open for Comment” or through the Contact Persons listed in the Preamble), as described in paragraph (1). Systems shall validate and monitor UV reactors as described in paragraphs (2) and (3) to demonstrate that they are achieving a particular UV dose value for treatment credit.

(1) *UV dose table.* The treatment credits listed in Table 3 are for UV light at a wavelength of 254 nm as produced by a low pressure mercury vapor lamp. To receive treatment credit for other lamp types, systems shall demon-

strate an equivalent germicidal dose through reactor validation testing, as described in paragraph (2). The UV dose values in this table are applicable only to post-filter applications of UV in filtered systems.

(2) *Reactor validation testing.* Systems shall use UV reactors that have undergone validation testing, conducted by a party acceptable to the Department, to determine the operating conditions under which the reactor delivers the UV dose required in paragraph (1) (that is, validated operating conditions). These operating conditions must include flow rate, UV intensity as measured by a UV sensor and UV lamp status.

(i) When determining validated operating conditions, systems shall account for the following factors:

- (A) UV absorbance of the water.
- (B) Lamp fouling and aging.
- (C) Measurement uncertainty of on-line sensors.
- (D) UV dose distributions arising from the velocity profiles through the reactor.
- (E) Failure of UV lamps or other critical system components.
- (F) Inlet and outlet piping or channel configurations of the UV reactor.

(ii) Validation testing must include the following: Full scale testing of a reactor that conforms uniformly to the UV reactors used by the system and inactivation of a test microorganism whose dose response characteristics have been quantified with a low pressure mercury vapor lamp.

(iii) The Department may accept alternative validation testing approaches, if these approaches are first approved by the EPA.

(3) *Reactor monitoring.*

(i) Systems shall monitor their UV reactors to determine if the reactors are operating within validated conditions, as determined under paragraph (2). This monitoring must include UV intensity as measured by a UV sensor, flow rate, lamp status, and other parameters the Department designates based on UV reactor operation. Systems shall verify the calibration of UV sensors and shall recalibrate sensors in accordance with a protocol the Department approves.

(ii) To receive treatment credit for UV light, systems shall treat at least 95% of the water delivered to the public during each month by UV reactors operating within validated conditions for the required UV dose, as described in paragraphs (1) and (2). Systems shall demonstrate compliance with this condition by the monitoring required under subparagraph (i).

**§ 109.1205. Reporting and recordkeeping requirements.**

(a) *Source water reporting time frame.* Systems shall report results from the source water monitoring required under § 109.1202 (relating to monitoring requirements) no later than 10 days after the end of the first month following the month when the sample is collected.

(b) *Methods for reporting initial source water monitoring results to EPA.* Systems serving at least 10,000 people shall report as follows:

(1) All systems serving at least 10,000 people shall report the results from the initial source water monitoring required under § 109.1202(a) to the EPA electronically at <https://intranet.epa.gov/lt2/>.

(2) If a system is unable to report monitoring results electronically, the system may use an alternative approach for reporting monitoring results the EPA approves.

(c) *Methods for reporting initial source water monitoring results to the Department.* Systems serving less than 10,000 people shall report results from the initial source water monitoring required under § 109.1202(a) to the Department using a method approved by the Department.

(d) *Methods for reporting second round of source water monitoring results to the Department.* All systems shall report results from the second round of source water monitoring required under § 109.1202(b) to the Department using a method approved by the Department.

(e) *Source water reporting data elements.* Systems shall report the applicable information in paragraphs (1) and (2) for the source water monitoring required under § 109.1202.

(1) *Cryptosporidium data elements.* Systems shall report data elements in subparagraphs (i)—(vii) for each *Cryptosporidium* analysis. Systems shall report data elements in subparagraphs (viii)—(x) as applicable.

- (i) PWS ID.
- (ii) Facility ID.
- (iii) Sample collection date.
- (iv) Sample type (field or matrix spike).
- (v) Sample volume filtered (L), to nearest  $\frac{1}{4}$  L.
- (vi) Indicate whether 100% of filtered volume was examined.
- (vii) Number of oocysts counted.
- (viii) For matrix spike samples, systems shall also report the sample volume spiked and estimated number of oocysts spiked. These data are not required for field samples.
- (ix) For samples in which less than 10 L is filtered or less than 100% of the sample volume is examined, systems shall also report the number of filters used and the packed pellet volume.
- (x) For samples in which less than 100% of sample volume is examined, systems shall also report the volume of resuspended concentrate and volume of this resuspension processed through immunomagnetic separation.

(2) *E. coli data elements.* Systems shall report the following data elements for each *E. coli* analysis:

- (i) PWS ID.
- (ii) Facility ID.
- (iii) Sample collection date.
- (iv) Analytical method number.
- (v) Method type.
- (vi) Source type (flowing stream, lake/reservoir, GUDI).
- (vii) *E. coli*/100 mL.
- (viii) Turbidity.

(f) *Grandfathering data.* Grandfathering previously collected data requirements, established by the EPA under the National Primary Drinking Water regulations in 40 CFR 141.707 (relating to grandfathering previously collected data) are incorporated by reference except as otherwise established by this chapter.

(g) *Sampling schedule reporting.* Systems shall report sampling schedules under § 109.1202(i)—(k) and source

water monitoring results under subsections (a)–(e) unless they notify the Department that they will not conduct source water monitoring due to meeting the criteria of § 109.1202(d).

(h) *Bin classification reporting.* Systems shall report their *Cryptosporidium* bin classification as follows:

(1) Systems shall report their initial bin classification under § 109.1203(c) (relating to bin classification and treatment technique requirements) to the Department for approval no later than 6 months after the system is required to complete initial source water monitoring based on the schedule in § 109.1202(c).

(2) Systems shall report their bin classification under § 109.1203(c) to the Department for approval no later than 6 months after the system is required to complete the second round of source water monitoring based on the schedule in § 109.1202(c).

(3) The bin classification report to the Department will include a summary of source water monitoring data and the calculation procedure used to determine bin classification.

(4) Failure to comply with the conditions of this subsection is a violation of the treatment technique requirement.

(i) *Microbial toolbox reporting requirements.* Systems are required to report items specified § 109.1204 (relating to requirements for microbial toolbox components) for all toolbox components for which they are requesting treatment credit. Systems must report to the State in accordance with Appendix C to subchapter L. Microbial Toolbox Reporting Requirements which is available from the Department at [www.depweb.state.pa.us](http://www.depweb.state.pa.us) (DEP Keyword: Participation; select “Proposals Currently Open for Comment” or through the Contact Persons listed in the Preamble).

(j) *Reporting significant change in disinfection practices.* Prior to making a significant change in disinfection practice, systems shall report disinfection profiles and benchmarks to the Department as established by the EPA under the National Primary Drinking Water regulations in 40 CFR 141.708 and 141.709 (relating to requirements when making a significant change in disinfection practice; and developing the disinfection profile and benchmark), which are incorporated by reference in § 109.204 (relating to disinfection profiling and benchmarking).

(k) *Source water monitoring recordkeeping requirements.* Systems shall keep results from the initial round of source water monitoring under § 109.1202(a) and the second round of source water monitoring under § 109.1202(b) until 3 years after bin classification under § 109.1203 (b) and (c).

(l) Notification retention systems shall keep any notification to the Department that they will not conduct source water monitoring due to meeting the criteria of § 109.1202(d) for 3 years.

(m) Results retention systems shall keep the results of treatment monitoring associated with microbial toolbox options under § 109.1204, as applicable, for 3 years.

[Pa.B. Doc. No. 08-2336. Filed for public inspection December 19, 2008, 9:00 a.m.]

## [ 25 PA. CODE CH. 109 ]

### Safe Drinking Water (Stage 2 Disinfectants and Disinfection Byproducts Rule)

The Environmental Quality Board (Board) proposes to amend Chapter 109 (relating to safe drinking water). The amendments will supplement the Stage 1 Disinfectants and Disinfection Byproduct Rule by requiring water systems to meet disinfection byproduct maximum contaminant levels (MCLs) at each monitoring site in the distribution system. The amendments will first focus on identifying the higher risk monitoring locations through the Initial Distribution System Evaluation (IDSE) and then addresses reducing exposure and lowering disinfectant byproducts (DBPs) peaks in distribution systems by using a new method to determine MCL compliance (Locational Running Annual Average (LRAA)).

The amendments will reduce the potential risks of cancer and reproductive and developmental health effects associated with DBPs by reducing peak and average levels of DBPs in drinking water supplies.

The amendments will apply to community water systems (CWSs) and nontransient noncommunity water systems (NTNCWSs) that add a primary or residual disinfectant other than ultraviolet light (UV) or deliver water that has been treated with a primary or residual disinfectant other than UV.

This proposal was adopted by the Board at its meeting of August 19, 2008.

#### A. Effective Date

These amendments will go into effect upon publication in the *Pennsylvania Bulletin* as final-form rulemaking.

#### B. Contact Persons

For further information, contact Ronald Furlan, Chief, Division of Planning and Permits, P. O. Box 8774, Rachel Carson State Office Building, Harrisburg, PA 17105-8774, (717) 787-8184 or Marylou Barton, Assistant Counsel, Bureau of Regulatory Counsel, P. O. Box 8464, Rachel Carson State Office Building, Harrisburg, PA 17105-8464, (717) 787-7060. Persons with a disability may use the Pennsylvania AT&T Relay Service by calling (800) 654-5984 (TDD users) or (800) 654-5988 (voice users). The proposal is available electronically through the Department of Environmental Protection's (DEP) web site [www.depweb.state.pa.us](http://www.depweb.state.pa.us).

#### C. Statutory Authority

The proposed rulemaking is being made under the authority of section 4 of the Pennsylvania Safe Drinking Water Act (SDWA) (35 P.S. § 721.4), which grants the Board the authority to adopt rules and regulations governing the provision of drinking water to the public, and sections 1917-A and 1920-A of The Administrative Code of 1929 (71 P.S. §§ 510-7 and 510-20).

#### D. Background and Purpose

The public health benefits of disinfection are significant and well-recognized. However, these very disinfection practices pose health risks of their own. Although disinfectants such as chlorine, hypochlorites and chlorine dioxide are effective in controlling many harmful microorganisms, they react with organic and inorganic matter in the water to form DBPs, which pose health risks at certain levels.

The first DBPs discovered in public drinking water were halogenated methanes in 1974. As a result, the

United States Environmental Protection Agency (EPA) promulgated a MCL for the composite sum of four individual DBP species: chloroform, bromodichloromethane, dibromochloromethane and bromoform. This composite sum was termed "Total Trihalomethanes" (TTHMs) and had an MCL of 0.1 mg/L that was applied only to community water systems serving at least 10,000 people.

Since the discovery of TTHMs in drinking water in 1974, other DBPs have been identified and studied for their health effects. Many of these studies have shown DBPs to be carcinogenic or to cause reproductive or developmental, or both, effects in laboratory animals. Studies have also shown that high levels of the disinfectants themselves may cause health problems over long periods of time, including damage to both the blood and the kidneys. While many of these studies have been conducted at high doses, the weight of the evidence indicates that DBPs present a potential public health problem that must be addressed.

In 1992, the EPA initiated a rulemaking process to address public health concerns associated with disinfectants, DBPs and microbial pathogens. As part of this rulemaking process, the EPA established a Regulatory Negotiation (Reg/Neg) Committee, which included representatives of state and local health and regulatory agencies, public water systems, elected officials, consumer groups and environmental groups.

The EPA's most significant concern in developing regulations for disinfectants and DBPs was the need to ensure that adequate treatment be maintained for controlling risks from microbial pathogens. One of the major goals addressed in the rulemaking process was to develop an approach that would reduce the level of exposure from disinfectants and DBPs without undermining the control of microbial pathogens. The intention was to ensure that drinking water is microbiologically safe at the limits set for disinfectants and DBPs and that these chemicals do not pose an unacceptable health risk at these limits. Thus, the Reg/Neg Committee also considered a range of microbial issues and agreed that the EPA should also propose a companion microbial rule, the *Interim Enhanced Surface Water Treatment Rule* (IESWTR).

Following months of intensive discussions and technical analysis, the Reg/Neg Committee recommended the development of three sets of rules: a two-stage rule to address disinfectants and DBPs (D/DBPs), the IESWTR and an *Information Collection Rule* (ICR). The approach used in developing these proposals considered the constraints of simultaneously treating water to control microbial contaminants, disinfectants and D/DBPs. The Reg/Neg Committee agreed that the schedule for the IESWTR should be linked to the schedule of the first stage of the D/DBPs rule to assure simultaneous compliance and a balanced risk-risk based implementation. The Reg/Neg Committee also agreed that additional information on health risk, occurrence, treatment technologies and analytical methods needed to be developed to better understand the risk-risk tradeoff, and how to accomplish an overall reduction in health risks to both pathogens and D/DBPs. Finally the Reg/Neg Committee agreed that to develop a reasonable set of rules and to understand more fully the limitations of the current Surface Water Treatment Rule, additional field data were critical. Thus, a key component of the regulation negotiation agreement was the promulgation of the ICR.

The *Federal Disinfectants and Disinfection Byproducts Rule* (D/DBPR) (40 CFR Parts 9, 141 and 142 (relating to

OMB approvals under the paperwork reduction act; National primary drinking water regulations; and National primary drinking water regulations implementation)), which was promulgated on December 16, 1998, was developed based on the outcome of this rulemaking process, as well as a wide range of technical comments from stakeholders and members of the public. Pennsylvania adopted the Stage 1 DBPR on July 21, 2001.

The Stage 1 DBPR regulated treatment practices at public water systems to eliminate or minimize disinfectant levels and DBPs that may cause harmful health effects. The Stage 1 DBPR applied to all community and nontransient noncommunity water systems that use a chemical disinfectant or oxidant, as well as to all transient noncommunity water systems that use chlorine dioxide. The Stage 1 DBPR established maximum residual disinfectant levels (MRDLs) for free chlorine, combined chlorine and chlorine dioxide. MCLs were also established for TTHM, five haloacetic acids (HAA5), bromate (calculated as running annual average (RAA)) and chlorite based on daily and monthly sampling. The MCL for TTHMs was lowered from 0.1 mg/L to 0.08 mg/L and applied to all community and nontransient noncommunity water systems, regardless of the population that is served. The Stage 1 DBPR also regulated prefiltration treatment techniques for public water systems that use conventional filtration to reduce source water Total Organic Carbon (TOC), which serves as a precursor to DBP.

The EPA promulgated the *Federal Stage 2 DBPR* on January 4, 2006. Congress required the EPA to promulgate the Stage 2 DBPR as part of the 1996 SDWA Amendments. The Stage 2 DBPR augments the Stage 1 DBPR. The goal of the Stage 2 DBPR is to target the highest risk systems for changes beyond those required for Stage 1 DBPR. The new requirements will provide for more consistent, equitable protection from DBPs across the entire distribution system and the reduction of DBP peaks. New risk-targeting provisions require systems to first identify their risk level; then, only those systems with the greatest risk will need to make operational or treatment changes. The Stage 2 DBPR will first focus on identifying the higher risk monitoring locations through the IDSE and then addresses reducing exposure and lowering DBP peaks in distribution systems by using a new method to determine MCL compliance (LRAA). The rule will also define operational evaluation levels.

As in Stage 1 DBPR, the Stage 2 DBPR will focus on monitoring for and reducing concentrations of two classes of DBPs: TTHM and HAA5. These two groups of DBPs act as indicators for the various byproducts that are present in water disinfected with chlorine or chloramine. This means that concentrations of TTHM and HAA5 are monitored for compliance, but their presence in drinking water is representative of many other chlorination DBPs that may also occur in the water; thus, a reduction in TTHM and HAA5 generally indicates an overall reduction of DBPs.

The Board proposes to incorporate the provisions of the *Federal Stage 2 DBPR* into Chapter 109.

The draft proposed amendments were submitted for review to the Small Water Systems Technical Assistance Center Advisory Board (TAC) for review and discussion on November 15, 2007. The TAC Board noted that the revisions are required for the Department to receive primacy and are not more stringent than the Federal rule. The TAC Board approved the proposed revisions in a letter dated December 12, 2007.

### E. Summary of Regulatory Requirements

The proposed amendments reflect, and are no more stringent than the new Federal Stage 2 DBPR requirements.

#### 1. § 109.1. Definitions.

This section was amended to add the following EPA definitions: “combined distribution systems,” “dual sample set,” “locational running annual average,” “running annual average and wholesale systems.” The definition of “finished water” was also amended. These amendments reflect the new definitions of the Federal Stage 2 DBPR found in 40 CFR 141.2 (relating to definitions).

#### 2. § 109.301(12). Monitoring requirements for disinfection byproducts and disinfection byproduct precursors.

This paragraph was revised to incorporate the EPA's new monitoring requirements for the Stage 2 DBPR. This amendment reflects the Federal requirements found in 40 CFR 141.132(a), (b) (relating to monitoring requirements), and (d) and 40 CFR 141.620—141.623.

#### 3. § 109.301(12)(i)(B)(I)(-c). TTHM and HAA5 Stage 1 DBP Rule.

A new item was added to incorporate the EPA's minor changes to Stage 1 DBPR which did not specify a time frame or sampling frequency for taking TOC source water samples. The Stage 2 DBPR requires systems to take TOC samples every 30 days at a location prior to treatment. These samples must be averaged quarterly for the most recent 4 quarters. Once a system has qualified for reduced monitoring it may reduce source water TOC monitoring to one sample every 90 days. This amendment reflects the Federal requirement found in 40 CFR 141.132(b)(1)(iii).

#### 4. § 109.301(12)(ii). TTHM and HAA5 Stage 2 DBP Rule.

This new subparagraph was added to incorporate the monitoring requirements of the Stage 2 DBPR. The subparagraph establishes monitoring and other requirements for achieving compliance with the MCLs based on LRAA for TTHM and HAA5 and for achieving compliance with the MRDLs for chlorine and chloramines for certain consecutive systems. The amendment reflects the Federal requirements in 40 CFR 141.620—141.623.

#### 5. § 109.301(12)(ii)(A). Applicability and schedule.

A new clause was added to incorporate the EPA's schedule for Stage 2 DBPR. The amendment reflects the Federal requirements in 40 CFR 141.620 (relating to general requirements).

#### 6. § 109.301(12)(ii)(B). Routine monitoring.

A new clause was added to incorporate the EPA's routine monitoring requirements for Stage 2 DBPR. The amendment reflects the Federal requirements in 40 CFR 141.621 (relating to routine monitoring).

#### 7. § 109.301(12)(ii)(C). Reduced monitoring.

A new clause was added to incorporate the EPA's reduced monitoring requirements for Stage 2 DBPR. The amendment reflects the Federal requirements in 40 CFR 141.623 (relating to reduced monitoring).

#### 8. § 109.301(12)(ii)(D). Increased monitoring.

A new clause was added to incorporate the EPA's conditions requiring increased monitoring. The amendment reflects the Federal requirements in 40 CFR 141.625 (relating to conditions requiring increased monitoring).

#### 9. § 109.301(12)(ii)(E). General monitoring and compliance requirements.

A new clause was added to incorporate the EPA's general monitoring and compliance requirements. The amendment reflects the Federal requirements in 40 CFR 141.620(c)(7), (d)(1) and (2), and 141.620(e).

#### 10. § 109.301(12)(iv). Bromate.

A new subclause was added to incorporate the EPA's minor changes to Stage 1 DBPR. Under the Stage 1 DBPR, systems that use ozone are required to monitor water in the distribution system for bromate whose MCL is 0.010 mg/L RAA. Under the Stage 2 DBPR, the criterion for reduced bromate monitoring is a bromate RAA less than or equal to 0.0025 mg/L. The amendment reflects the Federal requirements in 40 CFR 141.132(b)(3)(ii)(A) and (B).

#### 11. § 109.701(g)(2). Monitoring plans for disinfectants, disinfection byproducts and disinfection byproduct precursors.

This paragraph was revised to incorporate the EPA's new monitoring plans for D/DBPs and DBP precursors requirements under Stage 2 DBPR. This amendment reflects the Federal requirements found in 40 CFR 141.620 and 141.621.

#### 12. § 109.701(g)(1)(iii).

This new subparagraph was added to incorporate the EPA's new monitoring plan requirements. This amendment reflects Federal requirements found in 40 CFR 141.33(f) (relating to record maintenance).

#### 13. § 109.701(g)(2)(i). IDSE Requirements.

This subparagraph was added to incorporate by reference the EPA's IDSE requirements. The amendment reflects Federal requirements found in 40 CFR 141.600—141.605 (relating to initial distribution system evaluations).

#### 14. § 109.701(g)(2)(ii). Subchapter G monitoring plan.

This subparagraph was added to incorporate the EPA's monitoring plan requirements under the Stage 2 DBPR. The amendment reflects Federal requirements found in 40 CFR 141.622 (relating to Subpart V monitoring plan).

#### 15. § 109.701(g)(2)(iii). Operational evaluation level.

This subparagraph was added to incorporate the EPA's new operational evaluation level requirements. The amendment reflects Federal requirements found in 40 CFR 141.626 (relating to operational evaluation levels).

TTHM and HAA5 MCL compliance is based on an LRAA, therefore a system may have individual DBP results significantly higher than the MCL from time to time while remaining in compliance. This situation is a result of the fact that high concentrations are averaged with lower concentrations at a given location. While this situation does not constitute an MCL violation, it might indicate a trend that could lead to an MCL violation in future quarters.

The operational evaluation level is an LRAA threshold, meant to help systems identify if they are in danger of exceeding the MCL in the following monitoring quarter. The process is useful in that it alerts the system to the potential of an MCL violation if DBP levels remain at their current level and encourages them to consider what operational changes may be necessary to reduce DBP levels.

The operational evaluation level at any location is the sum of the two previous quarters' TTHM or HAA5 results plus the current quarter's TTHM or HAA5 result, divided by four to determine an average. If the operational evaluation level for TTHM exceeds 0.080 mg/L or the operational evaluation level for HAA5 exceeds 0.060 mg/L at any monitoring location, an exceedance of the operational evaluation level has occurred.

If this happens, the system must conduct an operational evaluation and submit a written report of the evaluation to the Department no later than 90 days after the system is notified of the analytical result that caused the exceedance.

16. *§ 109.1003(a)(1)(viii). Monitoring requirements.*

This subparagraph was revised to incorporate the EPA's TTHM and HAA5 bromate monitoring requirements for bottled water systems. This amendment reflects the Federal requirements found in 40 CFR 141.132(b)(1)(iii).

17. *§ 109.1003(a)(1)(x)(B). Monitoring requirements.*

This subclause was revised to incorporate the EPA's bromate reduced monitoring requirements for bottled water systems. This amendment reflects the Federal requirements found in 40 CFR 141.132(b)(3)(ii).

F. *Benefits, Costs and Compliance*

*Benefits*

The public health benefits of disinfection practices are significant and well-recognized. Disinfection, however, poses its own health risks. The proposed amendments will improve public health by increasing level of protection from exposure to DBP's through providing more consistent, equitable protection from DBPs across the entire distribution systems and the reduction of DBP peaks.

The proposed amendments will affect all CWSs (almost 2,042) and NTHCWSs (almost 600) serving about 10.5 million Pennsylvanians. These 10.5 million people will benefit from a reduction in health risks associated with disinfection practices, such as bladder cancer and kidney damage.

The EPA has estimated that the Nation may realize a total annual benefit of up to \$3.5 billion as a result of avoiding up to 581 cases of bladder cancer per year. In this Commonwealth, this translates into a total annual benefit of up to \$144 million in avoiding up to 24 cases of bladder cancer per year.

*Compliance Costs*

The EPA has estimated that the mean annual cost of approximately \$77 million will be borne by the regulated community, Nationwide, as a result of this rule. It is estimated that water systems in this Commonwealth will bear nearly \$3.39 million of this total annual cost.

The \$3.39 million estimate will include nontreatment costs of rule implementation, IDSE, Stage 2 DBPR monitoring plans, additional routine monitoring, reporting, recordkeeping and operational evaluations. Systems required to install treatment to comply with MCLs will accrue the additional costs of treatment installation as well as Operation and Maintenance.

*Compliance Assistance Plan*

The Safe Drinking Water Program utilizes the Commonwealth's PENNVEST Program to offer financial assistance to eligible public water systems. This assistance is in the form of a low-interest loan, with some augment-

ing grant funds for hardship cases. Eligibility is based upon factors such as public health impact, compliance necessity and project/operational affordability.

The Safe Drinking Water Program has established a network of regional and central office training staff that is responsive to identifiable training needs. The target audience in need of training may be either program staff or the regulated community.

In addition to this network of training staff, the Bureau of Water Standards and Facility Regulation have staff dedicated to providing both training and outreach support services to public water system operators. The DEP internet site also contains the *Drinking Water & Wastewater Treatment System Operator Information Center* internet site, which provides a bulletin board of timely, useful information for treatment plant operators.

*Paperwork Requirements*

The proposed amendments will involve monitoring activities, which include conducting the IDSE, Stage 2 DBPR monitoring plans, additional routine monitoring and operational evaluations. Water systems which treat with conventional filtration will also need to monitor and report total organic carbon, both in the source water and in the treated water.

It is anticipated that this additional monitoring and reporting will be easily facilitated by the addition of one or two new data reporting forms and that little additional paperwork will be necessary.

G. *Sunset Review*

These regulations will be reviewed in accordance with the sunset review schedule published by the DEP to determine whether the regulations effectively fulfill the goals for which they were intended.

H. *Regulatory Review*

Under section 5(a) of the Regulatory Review Act (71 P. S. § 745.5(a)), on November 24, 2008, the DEP submitted a copy of these proposed amendments to the Independent Regulatory Review Commission (IRRC) and the Chairpersons of the House and Senate Environmental Resources and Energy Committees (Committees). In addition to submitting the proposed amendments, the DEP has provided IRRC and the Committees with a copy of a detailed Regulatory Analysis Form prepared by the DEP. 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 amendments within 30 days of the close of the public comment period. The comments, recommendations or objections shall specify the regulatory review criteria that have not been met. The Regulatory Review Act specifies detailed procedures for review of these issues by the DEP, the General Assembly and the Governor prior to final publication of the regulations.

I. *Public Comments*

*Written Comments*—Interested persons are invited to submit comments, suggestions or objection regarding the proposed regulation to the Environmental Quality Board, P. O. Box 8477, Harrisburg, PA 17105-8477 (express mail: Rachel Carson State Office Building, 16th Floor, 400 Market Street, Harrisburg, PA 17105-2301). Comments submitted by facsimile will not be accepted. Comments, suggestions or objections must be received by the Board by January 20, 2009. Interested persons may also submit a summary of their comments to the Board. The sum-

mary may not exceed one page in length and must also be received by January 20, 2009. The one-page summary will be provided to each member of the Board in the agenda packet distributed prior to the meeting at which the final regulations will be considered.

*Electronic Comments*—Comments may be submitted electronically to the Board at RegComments@state.pa.us and must also be received by the Board by January 20, 2009. A subject heading of the proposal and a return name and address must be included in each transmission. If an acknowledgement of electronic comments is not received by the sender within 2 working days, the comments should be retransmitted to ensure receipt.

JOHN HANGER  
Acting Chairperson

**Fiscal Note:** 7-427. No fiscal impact; (8) recommends adoption. Proposed rulemaking will have no net cost increase to the Commonwealth. State agencies that use licensed radioactive material or radiation-producing machines have paid license fees in the past and will be subject to the increased fees. Those costs are expected to be nominal.

Annex A

TITLE 25. ENVIRONMENTAL PROTECTION

Subpart C. PROTECTION OF NATURAL RESOURCES

ARTICLE II. WATER RESOURCES

CHAPTER 109. SAFE DRINKING WATER

Subchapter A. GENERAL PROVISIONS

§ 109.1. Definitions.

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

\* \* \* \* \*

**Combined distribution system**—The interconnected distribution system consisting of the distribution systems of wholesale systems and of the public water systems that obtain finished water from another public water system.

\* \* \* \* \*

**DBP**—Disinfection byproduct.

\* \* \* \* \*

**Dual sample set**—A set of two samples collected at the same time and same location, with one sample analyzed for TTHM and the other sample analyzed for HAA5. Dual sample sets are collected for the purposes of conducting an IDSE and determining compliance with the TTHM and HAA5 MCLs under Subchapter G (relating to system management responsibilities).

\* \* \* \* \*

**Finished water**—[ Water that has been treated in compliance with the treatment technique requirements established in this chapter by a permitted public water system and is ready for consumption by the public. ] Water that is introduced into the distribution system of a public water system and is intended for distribution and consumption without further treatment, except as necessary to maintain water quality in the distribution system (for example, booster disinfection or addition of corrosion control chemicals).

\* \* \* \* \*

**IDSE**—Initial Distribution System Evaluation.

\* \* \* \* \*

**LRAA**—Locational running annual average—The average, computed quarterly, of quarterly arithmetic averages of all analytical results for samples taken at a particular monitoring location during the most recent 4 calendar quarters.

\* \* \* \* \*

**RAA**—Running annual average—The average, computed quarterly, of quarterly arithmetic averages of all analytical results for samples taken during the most recent 4 calendar quarters.

\* \* \* \* \*

**Wholesale system**—A public water system that treats source water as necessary to produce finished water and then delivers some or all of that finished water to another public water system. Delivery may be through a direct connection or through the distribution system of one or more consecutive systems.

Subchapter C. MONITORING REQUIREMENTS

§ 109.301. General monitoring requirements.

The monitoring requirements established by the EPA under the National Primary Drinking Water Regulations, 40 CFR Part 141 (relating to national primary drinking water regulations), as of December 8, 1984, are incorporated by reference. Public water suppliers shall monitor for compliance with MCLs and MRDLs in accordance with the requirements established in the National Primary Drinking Water Regulations, except as otherwise established by this chapter unless increased monitoring is required by the Department under § 109.302 (relating to special monitoring requirements). Alternative monitoring requirements may be established by the Department and may be implemented in lieu of monitoring requirements for a particular National Primary Drinking Water Regulation if the alternative monitoring requirements are in conformance with the Federal act and regulations. The monitoring requirements shall be applied as follows:

\* \* \* \* \*

(8) *Monitoring requirements for public water systems that obtain finished water from another public water system.*

\* \* \* \* \*

(ii) Community consecutive water suppliers shall [ :

(A) **Monitor for compliance with the MCL for TTHMs established under 40 CFR 141.12 (relating to maximum contaminant levels for total trihalomethanes) in accordance with 40 CFR 141.30 (relating to total trihalomethanes sampling, analytical and other requirements) if the system does one of the following:**

(I) Serves more than 10,000 persons.

(II) Obtains finished water from another public water system serving more than 10,000 persons.

(B) **Monitor ] monitor** the distribution system for compliance with the MCL for asbestos at the frequency indicated in paragraph (7)(i), when the Department determines that the system's distribution system contains asbestos cement pipe and optimum corrosion control measures have not been implemented.

\* \* \* \* \*

(12) *Monitoring requirements for disinfection byproducts and disinfection byproduct precursors.* Community water systems and nontransient noncommunity water systems that use a chemical disinfectant or oxidant shall monitor for disinfection byproducts and disinfection byproduct precursors in accordance with this paragraph. Community water systems and nontransient noncommunity water systems that obtain finished water from another public water system that uses a chemical disinfectant or oxidant to treat the finished water shall monitor for TTHMs and HAA5 in accordance with this paragraph. Systems that use either surface water or GUDI sources and that serve at least 10,000 persons shall begin monitoring by January 1, 2002. Systems that use either surface water or GUDI sources and that serve fewer than 10,000 persons, or systems that use groundwater sources, shall begin monitoring by January 1, 2004. Systems monitoring for disinfection byproducts and disinfection byproduct precursors shall take all samples during normal operating conditions. Systems monitoring for disinfection byproducts and disinfection byproduct precursors shall use only data collected under this chapter to qualify for reduced monitoring. Compliance with the MCLs and monitoring requirements for TTHMs, HAA5, chlorite (where applicable) and bromate (where applicable) shall be determined in accordance with 40 CFR 141.132 and 141.133 (relating to monitoring requirements; and compliance requirements) which are incorporated herein by reference.

(i) **TTHMs and HAA5 Stage 1 DBP Rule.**

\* \* \* \* \*

(B) *Reduced monitoring.* Systems shall monitor for TTHMs and HAA5 for at least 1 year prior to qualifying for reduced monitoring. Systems serving at least 500 persons and that use either surface water or GUDI sources shall monitor source water TOC monthly for at least 1 year prior to qualifying for reduced monitoring. The Department retains the right to require a system that meets the requirements of this clause to resume routine monitoring.

(I) For systems serving at least 500 persons that use either surface water or GUDI sources and that have a source water TOC running annual average that is no greater than 4.0 mg/L, a TTHM running annual average that is no greater than 0.040 mg/L and an HAA5 running annual average that is no greater than 0.030 mg/L, the required monitoring is reduced according to items (-a-) and (-b-). Systems serving at least 10,000 persons shall resume routine monitoring as prescribed in clause (A) if the TTHM running annual average exceeds 0.060 mg/L or the HAA5 running annual average exceeds 0.045 mg/L. Systems serving from 500 to 9,999 persons shall resume routine monitoring as prescribed in clause (A) if the annual TTHM average exceeds 0.060 mg/L or the annual HAA5 average exceeds 0.045 mg/L. Systems serving at least 500 persons that must resume routine monitoring shall resume routine monitoring in the quarter immediately following the quarter in which the system exceeded the specified TTHM or HAA5 criteria.

\* \* \* \* \*

**(-c-) Beginning April 1, 2008, systems not monitoring under the provisions of subparagraph (ii) shall take monthly TOC samples every 30 days at a location prior to any treatment, to qualify for reduced monitoring for TTHM and HAA5 under this subparagraph. In addition to meeting other criteria**

**for reduced monitoring in this section, the source water TOC running annual average must be less than 4.0 mg/L (based on the most recent 4 quarters of monitoring) on a continuing basis at each treatment plant to reduce or remain on reduced monitoring for TTHM and HAA5. Once qualified for reduced monitoring for TTHM and HAA5 under this section, a system may reduce source water TOC monitoring to quarterly TOC samples taken every 90 days at a location prior to any treatment.**

(II) For systems that use only groundwater sources not included under subclause (I), the required monitoring is reduced according to the following:

\* \* \* \* \*

(-b-) For systems serving fewer than 10,000 persons that have an annual TTHM average that is no greater than 0.040 mg/L and an annual HAA5 average that is no greater than 0.030 mg/L for 2 consecutive years or an annual TTHM average that is no greater than 0.020 mg/L and an annual HAA5 average that is no greater than 0.015 mg/L for 1 year, the required monitoring is reduced to one sample per 3-year cycle per treatment plant. The sample shall be taken at a location that represents a maximum residence time during the month of warmest water temperature. The 3-year cycle shall begin on January 1 following the quarter in which the system qualifies for reduced monitoring. If the TTHM **annual** average exceeds 0.060 mg/L, or the HAA5 **annual** average exceeds 0.045 mg/L the system shall resume routine monitoring as prescribed in clause (A), except that systems that exceed either a TTHM or HAA5 MCL shall increase monitoring to at least one sample per quarter per treatment plant beginning in the quarter immediately following the quarter in which the system exceeds the TTHM or HAA5 MCL.

(ii) **TTHMs and HAA5 Stage 2 DBP Rule.**

**(A) Applicability and schedule.**

**(I) Community water systems and nontransient noncommunity water systems using a primary or residual disinfectant other than ultraviolet light or delivering water that has been treated with a primary or residual disinfectant other than ultraviolet light shall monitor for compliance with the MCLs based on the LRAA for TTHMs and HAA5. A consecutive system or wholesale system shall comply at the same time as the system with the earliest compliance date in the combined distribution system. Systems shall comply with the requirements of this subparagraph as follows:**

**(-a-) Systems serving 100,000 or more people begin April 1, 2012.**

**(-b-) Systems serving from 50,000 to 99,999 people begin October 1, 2012.**

**(-c-) Systems serving from 10,000 to 49,999 people begin October 1, 2013.**

**(-d-) Systems serving less than 10,000 people:**

**(-1-) Begin October 1, 2013, if no Cryptosporidium monitoring is required under §§ 109.1201–109.1204. (Editor's Note: §§ 109.1201–109.1204 are proposed to be added at 38 Pa.B. 7035 (December 20, 2008).)**

**(-2-) Begin October 1, 2014, if Cryptosporidium monitoring is required under §§ 109.1201–109.1204.**

**(II) For the purpose of the schedule under this subparagraph, the Department may determine that**



the combined distribution system does not include certain consecutive systems based on factors such as receiving water from a wholesale system only on an emergency basis or receiving only a small percentage and small volume of water from a wholesale system. The Department may also determine that the combined distribution system does not include certain wholesale systems based on factors such as delivering water to a consecutive system only on an emergency basis or delivering only a small percentage and small volume of water to a consecutive system.

**(B) Routine monitoring.**

**(I)** A system that submitted an IDSE report shall begin monitoring at the locations and months recommended in the IDSE report unless the Department notifies the system that other locations or additional locations are required. A system that submitted a 40/30 certification, or qualified for a very small system waiver or a nontransient noncommunity water system serving less than 10,000, shall monitor at the locations and dates identified in its monitoring plan following the schedule in § 109.701(g)(2)(ii) (relating to reporting and recordkeeping).

**(II)** A system required to conduct quarterly monitoring shall begin monitoring in the first full calendar quarter that includes the compliance date specified in clause (A). A system required to conduct monitoring at frequencies less than quarterly

shall begin monitoring in the calendar month recommended in the IDSE report in accordance with 40 CFR 141.601 and 141.602 (relating to standard monitoring; and system specific studies) as incorporated by reference or the calendar month identified in the Subchapter G (relating to system management responsibilities) monitoring plan relating to § 109.701(g)(2)(ii) no later than 12 months after the compliance date under clause (A).

**(III)** Monitoring shall be conducted at no fewer than the number of locations identified in the table under subclauses (IV) and (V). All systems shall monitor during the month of highest DBP concentrations. Systems on quarterly monitoring shall take dual sample sets every 90 days at each monitoring location, except for community water systems using surface water or GUDI sources serving 500–3,300. Systems on annual monitoring and community water systems using surface water or GUDI sources serving 500–3,300 are required to take individual TTHM and HAA5 samples (instead of a dual sample set) at the locations with the highest TTHM and HAA5 concentrations, respectively. Only one location with a dual sample set per monitoring period is needed if the highest TTHM and HAA5 concentrations occur at the same location (and month, if monitored annually).

**(IV)** Community water systems and nontransient noncommunity water systems using surface water or GUDI sources shall monitor as follows:

<i>Population size</i>	<i>Monitoring frequencies</i>	<i>Distribution system monitoring location total per monitoring period</i>
< 500	Annually	2
500–3,300	Quarterly	2
3,301–9,999	Quarterly	2
10,000–49,999	Quarterly	4
50,000–249,999	Quarterly	8
250,000–999,999	Quarterly	12
1,000,000–4,999,999	Quarterly	16
≥ 5,000,000	Quarterly	20

**(V)** Community water systems and nontransient noncommunity water systems using ground water sources shall monitor as follows:

<i>Population size</i>	<i>Monitoring frequencies</i>	<i>Distribution system monitoring location total per monitoring period</i>
< 500	Annually	2
500–9,999	Annually	2
10,000–99,999	Quarterly	4
100,000–499,999	Quarterly	6
≥ 500,000	Quarterly	8

**(VI)** An undisinfected system that begins using a disinfectant other than UV light after the dates under 40 CFR 141.600 (relating to general requirements) as incorporated by reference for complying with the IDSE requirements, shall consult with the Department to identify compliance monitoring locations. The system shall develop a monitoring plan under § 109.701(g)(2)(ii) that includes those monitoring locations.

**(VII)** Systems shall use analytical techniques adopted by the EPA under the Federal act for TTHM and HAA5 analyses. Laboratories that have received accreditation by the Department shall conduct analyses.

**(C) Reduced monitoring.**

**(I)** Systems may reduce monitoring to the level specified in the table under subclauses (II) and (III) if, after at least 4 consecutive quarters, the LRAA is

equal to or less than 0.040 mg/L for TTHM and equal to or less than 0.030 mg/L for HAA5 at all monitoring locations. Only data collected under subparagraph (i) and this subparagraph may be used to qualify for reduced monitoring. Systems with surface water or GUDI sources shall also take monthly TOC samples every 30 days at a location prior to any treatment, to qualify for reduced monitoring for TTHM and HAA5 under this clause. In addition to meeting other criteria for reduced monitoring in this clause, the source water TOC running annual average (based on the most recent

4 quarters of monitoring) must be equal to or less than 4.0 mg/L on continuing basis at each treatment plant to reduce monitoring for TTHM and HAA5. Once qualified for reduced monitoring for TTHM and HAA5 under this clause, a system may reduce source water TOC monitoring to quarterly TOC samples taken every 90 days at a location prior to any treatment.

(II) Community water systems and nontransient noncommunity water systems using surface water or GUDI sources may reduce monitoring as follows:

<i>Population size</i>	<i>Monitoring frequencies</i>	<i>Distribution system monitoring location total per monitoring period</i>
< 500	Monitoring may not be reduced	
500—3,300	Annually	1 TTHM and 1 HAA5 sample: 1 at the location and during the quarter with the highest TTHM single measurement, 1 at the location and during the quarter with the highest HAA5 single measurement; 1 dual sample set per year if the highest TTHM and HAA5 measurements occurred at the same location and quarter.
3,301—9,999	Annually	2 dual sample sets: 1 at the location and during the quarter with the highest TTHM single measurement, 1 at the location and during the quarter with the highest HAA5 single measurement.
10,000—49,999	Quarterly	2 dual sample sets at the locations with the highest TTHM and the highest HAA5 LRAAs.
50,000—249,999	Quarterly	4 dual sample sets at the locations with two highest TTHM and two highest HAA5 LRAAs.
250,000—999,999	Quarterly	6 dual sample sets at the locations with the three highest TTHM and the three highest HAA5 LRAAs.
1,000,000—4,999,999	Quarterly	8 dual sample sets at the locations with the 4 highest TTHM and 4 highest HAA5 LRAAs.
≥ 5,000,000	Quarterly	10 dual sample sets at the locations with the five highest TTHM and five highest HAA5 LRAAs.

(III) Community water systems and nontransient noncommunity water systems using groundwater sources may reduce monitoring as follows:

<i>Population size</i>	<i>Monitoring frequencies</i>	<i>Distribution system monitoring location total per monitoring period</i>
< 500	Every third year	1 TTHM and 1 HAA5 sample: 1 at the location and during the quarter with the highest TTHM single measurement; 1 at the location and during quarter with highest HAA5 single measurement; 1 dual sample set per year if the highest TTHM and HAA5 measurements occurred at the same location and quarter.

<i>Population size</i>	<i>Monitoring frequencies</i>	<i>Distribution system monitoring location total per monitoring period</i>
500—9,999	Annually	1 TTHM and 1 HAA5 sample: 1 at the location and during the quarter with highest TTHM single measurement; 1 at the location during the quarter with the highest HAA5 single measurement; 1 dual sample set per year if the highest TTHM and HAA5 measurements occurred at the same location and quarter.
10,000—99,999	Annually	2 dual sample sets: 1 at the location and during the quarter with the highest TTHM single measurement; 1 at the location and during the quarter with the highest HAA5 single measurement.
100,000—499,999	Quarterly	2 dual sample sets at the locations with the highest TTHM and highest HAA5 LRAAs.
≥ 500,000	Quarterly	4 dual sample sets at the locations with the two highest TTHM and two highest HAA5 LRAAs.

(IV) Systems on reduced quarterly monitoring may remain on reduced monitoring as long as the TTHM LRAA is equal to or less than 0.040 mg/L and the HAA5 LRAA is equal to or less than 0.030 mg/L at each monitoring location. Systems on reduced annual or less frequent monitoring may remain on reduced monitoring as long as each TTHM sample result is equal to or less than 0.060 mg/L and each HAA5 sample result is equal to or less than 0.045 mg/L. In addition, the source water TOC running annual average (based on the most recent 4 quarters of monitoring) from samples collected every 90 days at a location prior to any treatment must be equal to or less than 4.0 mg/L at each treatment plant treating surface water or GUDI sources.

(V) If the LRAA based on quarterly monitoring at any monitoring location exceeds either 0.040 mg/L for TTHM or 0.030 mg/L for HAA5 or if the annual (or less frequent) sample at any location exceeds either 0.060 mg/L for TTHM or 0.045 mg/L for HAA5, or if the source water annual average TOC level, before any treatment, is greater than 4.0 mg/L at any treatment plant treating surface water or GUDI sources, the system shall resume routine monitoring under clause (B) or begin increased monitoring if clause (D)(I) applies.

(VI) The Department retains the right to require a system that meets the requirements of this clause to resume routine monitoring.

**(D) Increased monitoring.**

(I) Systems that are required to monitor at a particular location annually or less frequently than annually under clause (B) or (C) shall increase monitoring to dual sample sets once per quarter (taken every 90 days) at all locations if any single TTHM sample result is greater than 0.080 mg/L or any single HAA5 sample result is greater than 0.060 mg/L at any location.

(II) A system may return to routine monitoring once it has conducted increased monitoring for at

least 4 consecutive quarters and the LRAA for every monitoring location is equal to or less than 0.060 mg/L for TTHM and is equal to or less than 0.045 mg/L for HAA5.

(III) Systems on increased monitoring under subparagraph (i) shall remain on increased monitoring until they qualify for a return to routine monitoring under subclause (II). Systems shall conduct increased monitoring under subclause (I) at the monitoring locations in the monitoring plan developed under § 109.701(g)(2)(ii) beginning at the date identified in clause (A) for compliance with this subparagraph and remain on increased monitoring until they qualify for a return to routine monitoring under subclause (II).

(IV) A system may remain on reduced monitoring after the dates identified in clause (A) for compliance with this subparagraph only if it qualified for a 40/30 certification under 40 CFR 141.603 (relating to 40/30 certification) as incorporated by reference or has received a very small system waiver under 40 CFR 141.603 as incorporated by reference, plus meets the reduced monitoring criteria in clause (C), and has not changed or added monitoring locations from those used for compliance monitoring in subparagraph (i). If a system's monitoring locations under this subparagraph differ from monitoring locations under subparagraph (i), the system may not remain on reduced monitoring after the dates identified in clause (A) for compliance with this subparagraph.

**(E) General monitoring and compliance requirements.**

(I) A system required to monitor quarterly shall calculate LRAAs for TTHM and HAA5 using monitoring results collected under this subparagraph and determine that each LRAA does not exceed the MCL. A system that fails to complete 4 consecutive quarters of monitoring, shall calculate compliance with the MCL based on the average of the available

data from the most recent 4 quarters. A system that takes more than one sample per quarter at a monitoring location shall average all samples taken in the quarter at that location to determine a quarterly average to be used in the LRAA calculation.

(II) A system required to monitor yearly or less frequently shall determine that each sample result is less than the MCL. If any single sample result exceeds the MCL, the system shall comply with the requirements of clause (D). If no sample result exceeds the MCL, the sample result for each monitoring location is considered the LRAA for that monitoring location.

(III) A system required to conduct quarterly monitoring, shall make compliance calculations at the end of the 4th calendar quarter that follows the compliance date and at the end of each subsequent quarter, or earlier if the LRAA calculated based on fewer than 4 quarters of data would cause the MCL to be exceeded regardless of the monitoring results of subsequent quarters. A system required to conduct monitoring at a frequency that is less than quarterly shall make compliance calculations beginning with the first compliance sample taken after the compliance date.

(IV) A system is in violation of the MCL when the LRAA at any location exceeds the MCL for TTHM or HAA5, calculated based on 4 consecutive quarters of monitoring, or the LRAA calculated based on fewer than 4 quarters of data if the MCL would be exceeded regardless of the monitoring results of subsequent quarters. A system is in violation of the monitoring requirements for each quarter that a monitoring result would be used in calculating an LRAA if it fails to monitor.

(iii) *Clorite.* \* \* \* \* \*

[ (iii) ] (iv) *Bromate.* Community water systems and nontransient noncommunity water systems that use ozone for disinfection or oxidation shall monitor for bromate.

\* \* \* \* \*

(B) *Reduced monitoring.*

(I) [ For ] Until March 31, 2009, systems that have an average source water bromide concentration that is less than 0.05 mg/L based upon representative monthly bromide measurements for 1 year, the required monitoring is reduced from monthly to quarterly. Systems on reduced monitoring shall continue to take monthly samples for source water bromide. If the running annual average source water bromide concentration, computed quarterly, equals or exceeds 0.05 mg/L based upon representative monthly measurements, the system shall revert to routine monitoring as prescribed by clause (A).

(II) Beginning April 1, 2009, a system required to analyze for bromate may reduce monitoring from monthly to quarterly, if the system's running annual average bromate concentration computed quarterly is less than or equal to 0.0025 mg/L based on monthly measurements as prescribed in clause (A) for the most recent 4 quarters. Systems qualifying for reduced bromate monitoring under subclause (I) may remain on reduced monitoring as long as the running annual average of quarterly

bromate samples is less than or equal to 0.0025 mg/L. If the running annual average bromate concentration is greater than 0.0025 mg/L, the system shall resume routine monitoring as prescribed under clause (A).

[ (iv) ] (v) [ Disinfection byproducts ] DBP precursors. \* \* \* \* \*

Subchapter G. SYSTEM MANAGEMENT RESPONSIBILITIES

§ 109.701. Reporting and recordkeeping.

(a) *Reporting requirements for public water systems.* Public water systems shall comply with the following requirements:

\* \* \* \* \*

(8) *Reporting requirements for disinfectant residuals.* [ Public ] In addition to the reporting requirements specified in paragraph (1), public water systems shall report MRDL monitoring data as follows:

(i) [ For systems ] Systems monitoring for chlorine dioxide under § 109.301(13) [ :

(A) The dates, results, and locations of the samples that were taken during the previous month.

(B) Whether the MRDL was exceeded.

(C) Whether the MRDL was exceeded during any 2-consecutive daily samples and whether the resulting violation was acute or nonacute ] shall report the number of days chlorine dioxide was used at each entry point during the last month.

(ii) [ For systems ] Systems monitoring for either chlorine or chloramines under § 109.301(13) [ : shall report the arithmetic average of all distribution samples taken in the last month.

(A) The number of samples taken during each month of the previous quarter.

(B) The monthly arithmetic average of all samples taken in each month for the last 12 months.

(C) The arithmetic average of all monthly averages for the last 12 months.

(D) Whether the MRDL was exceeded. ] shall report the arithmetic average of all distribution samples taken in the last month.

(9) Reporting requirements for disinfection byproducts.

(i) Systems monitoring for TTHMs and HAA5 under § 109.301(12) shall report the following:

(A) Systems monitoring on a quarterly or more frequent basis shall report the following:

(I) The number of samples taken during the last quarter.

(II) The date, location and result of each sample taken during the last quarter.

(III) The arithmetic average of all samples taken in the last quarter.

(IV) The annual arithmetic average of the quarterly arithmetic averages for the last 4 quarters.

(V) Whether the annual arithmetic average exceeds the MCL for either TTHM or HAA5.

(B) Systems monitoring less than quarterly, but no less than annually shall report the following:

(I) The number of samples taken during the last year.

(II) The date, location and result of each sample taken during the last monitoring period.

(III) The arithmetic average of all samples taken in the last year.

(IV) Whether the annual arithmetic average exceeds the MCL for either TTHM or HAA5.

(C) Systems monitoring less than annually shall report the following:

(I) The date, location and result of the last sample taken.

(II) Whether the sample exceeds the MCL for either TTHM or HAA5.

(ii) Systems monitoring for chlorite under § 109.301(12) shall report the following:

(A) The number of samples taken during the last month.

(B) The date, location and result of each entry point and distribution sample taken during the last month.

(C) The arithmetic average of each three-sample set of distribution samples taken during the last month.

(D) Whether the monthly arithmetic average exceeds the MCL.

(iii) Systems monitoring for bromate under § 109.301(12) shall report the following:

(A) The number of samples taken during the last quarter.

(B) The date, location and result of each sample taken during the last quarter.

(C) The arithmetic average of the monthly arithmetic averages of all samples taken in the last year.

(D) Whether the annual arithmetic average exceeds the MCL. ]

[ (10) Reporting requirements for [ disinfection byproducts ] DBP precursors. \* \* \*  
\* \* \* \* \*

(d) *Record maintenance.* The public water supplier shall retain on the premises of the public water system or at a convenient location near the premises the following:

(1) Records of bacteriological analyses and turbidity analysis which shall be kept for at least 5 years, and records of chemical analyses which shall be kept for at least 12 years. Actual laboratory reports may be kept, or data may be transferred to tabular summaries, if the following information is included:  
\* \* \* \* \*

(g) *Monitoring plans for disinfectants, [ disinfection byproducts ] DBPs and [ disinfection byproduct ] DBP precursors.*

(1) *Stage 1 DBP Rule.* Systems required to monitor for disinfection byproducts under § 109.301(12)(i) or

disinfection byproduct precursors under § 109.301(12)(v) or disinfectant residuals under § 109.301(13) shall develop and implement a monitoring plan. The system shall maintain the plan and make it available for inspection by the Department and the general public no later than 30 days following the applicable compliance dates. All systems that use either surface water or GUDI sources shall submit a copy of the monitoring plan to the Department no later than 30 days prior to the date of the first report required under this subchapter. The Department may also require the plan to be submitted by any other system, regardless of size or source water type. After review, the Department may require changes in any of the plan components.

[ (1) ] (i) The plan [ shall ] must include the following components:

- [ (i) ] (A) \* \* \*
- [ (ii) ] (B) \* \* \*
- [ (iii) ] (C) \* \* \*
- [ (iv) ] (D) \* \* \*
- [ (2) ] (ii) \* \* \*

(iii) Copies of Stage 1 DBP Rule monitoring plans developed under this paragraph shall be kept for the same period of time as the Stage 1 DBP Rule records of analyses are required to be kept under subsection (d)(1).

(2) *Stage 2 DBP Rule.* Systems required to monitor for disinfection byproducts under § 109.301(12)(ii) shall comply with the following:

(i) *IDSE requirements.* The IDSE requirements established by the EPA under the National Primary Drinking Water Regulations in 40 CFR 141.600—141.605 (relating to initial distribution system evaluations) are incorporated by reference except as otherwise established by this chapter.

(ii) *Stage 2 DPB Rules Compliances monitoring plan.*

(A) A public water system shall develop and implement a monitoring plan to be kept on file for Department and public review. The monitoring plan must contain the elements in subclauses (I)—(IV) and be completed no later than the date systems conduct their initial monitoring under this subpart.

- (I) Monitoring locations,
- (II) Monitoring dates,
- (III) Compliance calculation procedures,

(IV) Monitoring plans for any other systems in the combined distribution system if the Department has reduced monitoring requirements under the Department authority.

(B) Public water systems not required to submit an IDSE report under either 40 CFR 141.601 or 141.602 (relating to standard monitoring; and system specific studies) as incorporated by reference, and do not have sufficient § 109.301(12)(i) monitoring locations to identify the required number of compliance monitoring locations, shall identify additional locations by alternating selection of locations representing high TTHM levels and high HAA5 levels until the required number of compliance monitoring locations have been identified. The

system shall also provide the rationale for identifying the locations as having high levels of TTHM or HAA5. Systems that have more monitoring locations than required for compliance monitoring shall identify which locations will be used for compliance monitoring by alternating selection of locations representing high TTHM levels and high HAA5 levels until the required number of compliance monitoring locations have been identified.

(C) A public water system shall submit a copy of its monitoring plan to the Department prior to the date for initial monitoring specified in § 109.301(12)(ii), unless the system submits to the Department an IDSE report containing all the information required by clause (A).

(D) A public water system may revise its monitoring plan to reflect changes in treatment, distribution system operations and layout (including new service areas), or other factors that may affect TTHM or HAA5 formation, or for Department-approved reasons, after consultation with the Department regarding the need for changes and the appropriateness of changes. A system that changes monitoring locations, shall replace existing compliance monitoring locations with the lowest LRAA with new locations that reflect the current distribution system locations with expected high TTHM or HAA5 levels. The Department may also require modifications in the system's monitoring plan. A system using surface water or GUDI sources and serving more than 3,300 people, shall submit a copy of its modified monitoring plan to the Department prior to the date the system is required to comply with the revised monitoring plan.

(iii) *Operational evaluation levels.*

(A) The operational evaluation level for TTHM and HAA5 is the sum of the two previous quarterly results plus twice the current quarter's result, divided by 4. Each quarter, public water systems shall calculate the TTHM and HAA5 operation evaluation levels for each monitoring location.

(B) If the TTHM operational evaluation level exceeds 0.080 mg/L, or the HAA5 operational evaluation level exceeds 0.060 mg/L at any monitoring location, the system shall conduct an operational evaluation to identify the cause of the exceedence and submit a written report of the evaluation to the Department no later than 90 days after being notified of the analytical result that causes the system to exceed the operational evaluation level. The written report must be made available to the public upon request.

(C) The operational evaluation must include an examination of system treatment and distribution operational practices, including storage tank operations, excess storage capacity, distribution system flushing, changes in sources or source water quality, and treatment changes or problems that may contribute to TTHM and HAA5 formation and what steps could be considered to minimize future exceedences.

(I) A system may request and the Department may allow a system to limit the scope of evaluation if the system is able to identify the cause of the operational evaluation level exceedance.

(II) The request to limit the scope of the evaluation does not extend the schedule in subclause (I)

for submitting the written report. The Department must approve this limited scope of evaluation in writing and systems shall keep that approval with the completed report.

(iv) *Reporting and recordkeeping requirements.*

(A) For each monitoring location, public water systems shall report to the Department within 10 days of the end of any quarter in which monitoring is required any TTHM operational evaluation level that exceeded 0.080 mg/L and any HAA5 operational evaluation level that exceeded 0.060 mg/L during the quarter and the location, date, and the TTHM and HAA5 calculated operation evaluation level.

(B) Copies of Stage 2 DBP Rule monitoring plans developed under this subparagraph shall be kept for the same period of time as the Stage 2 DBP Rule records of analyses are required to be kept under subsection (d)(1).

\* \* \* \* \*

**Subchapter J. BOTTLED WATER AND VENDED WATER SYSTEMS, RETAIL WATER FACILITIES AND BULK WATER HAULING SYSTEMS**

**§ 109.1003. Monitoring requirements.**

(a) *General monitoring requirements.* Bottled water and vended water systems, retail water facilities and bulk water hauling systems shall monitor for compliance with the MCLs and MRDLs in accordance with § 109.301 (relating to general monitoring requirements) and [ shall ] comply with § 109.302 (relating to special monitoring requirements), and § 109.1202 (relating to monitoring requirements). (Editor's Note: The Department is proposing to add § 109.1202 at 38 Pa.B. 7035 (December 20, 2008).) The monitoring requirements shall be applied as follows, except that systems which have installed treatment to comply with a primary MCL shall conduct quarterly operational monitoring for the contaminant which the facility is designed to remove:

(1) Bottled water systems, retail water facilities and bulk water hauling systems, for each entry point shall:

\* \* \* \* \*

(viii) *TTHM and HAA5 Stage 1 DBP Rule.* Beginning January 1, 2004, monitor annually for TTHMs and HAA5 if the system uses a chemical disinfectant or oxidant, or obtains finished water from another public water system that uses a chemical disinfectant or oxidant to treat the [ finished ] water. Bottled water systems are not required to monitor for TTHMs and HAA5 if the system does not use a chlorine-based disinfectant or oxidant and does not obtain finished water from another public water system that uses a chlorine-based disinfectant or oxidant to treat the [ finished ] water.

(A) *Routine monitoring.* \* \* \*

(B) *Reduced monitoring.* \* \* \*

(I) Systems that use groundwater sources shall reduce monitoring to [ 1 ] one sample per 3-year cycle per entry point if the annual TTHM average is no greater than 0.040 mg/L and the annual HAA5 average is no greater than 0.030 mg/L for 2 consecutive years or the annual TTHM average is no greater than 0.020 mg/L and the annual HAA5 average is no greater than 0.015 mg/L for 1 year. The sample shall be taken during the month of warmest water temperature. The 3-year cycle shall begin

on January 1 following the quarter in which the system qualifies for reduced monitoring.

(II) Systems that use groundwater sources that qualify for reduced monitoring shall remain on reduced monitoring if the TTHM **annual** average is no greater than 0.060 mg/L and the HAA5 **annual** average is no greater than 0.045 mg/L. Systems that exceed these levels shall resume routine monitoring as prescribed in **clause (A)**, except that systems that exceed either a TTHM or HAA5 MCL shall increase monitoring to at least **[ 1 ] one** sample per quarter per entry point beginning in the quarter immediately following the quarter in which the system exceeds the TTHM or HAA5 MCL.

(ix) **TTHM and HAA5 Stage 2 DBP Rule. Beginning October 1, 2013, monitor annually for TTHMs and HAA5 if the system uses a chemical disinfectant or oxidant to treat the water, or obtains finished water from another public water system that uses a chemical disinfectant or oxidant to treat the water as follows:**

(A) **Routine monitoring.** Systems shall take at least one dual sample set per year per entry point during the month of warmest water temperature.

(B) **Increased monitoring.** If any sample results exceed either a TTHM or HAA5 MCL, the system shall take at least one dual sample set per quarter per entry point. The system shall return to the sampling frequency of one dual sample set per year per entry point if, after at least 1 year of monitoring, each TTHM sample result is no greater than 0.060 mg/L and each HAA5 sample result is no greater than 0.045 mg/L.

(x) Beginning January 1, 2004, monitor daily for chlorite if the system uses chlorine dioxide for disinfection or oxidation. Systems shall take at least one daily sample at the entry point. If a daily sample exceeds the chlorite MCL, the system shall take three additional samples

within 24 hours from the same lot, batch, machine, carrier vehicle or point of delivery. The chlorite MCL is based on the average of the required daily sample plus any additional samples.

**[ (x) ] (xi)** Beginning January 1, 2004, monitor monthly for bromate if the system uses ozone for disinfection or oxidation.

(A) *Routine monitoring.* \* \* \*

(B) *Reduced monitoring.* \* \* \*

**(I) [ Systems ] Until March 31, 2009, systems** shall reduce monitoring for bromate from monthly to quarterly if the average source water bromide concentration is less than 0.05 mg/L based upon representative monthly bromide measurements for 1 year. Systems on reduced monitoring shall continue monthly source water bromide monitoring. If the running annual average source water bromide concentration, computed quarterly, is equal to or exceeds 0.05 mg/L, the system shall revert to routine monitoring as prescribed by clause (A).

**(II) Beginning April 1, 2009, a system required to analyze for bromate may reduce monitoring from monthly to quarterly, if each sample result is less than or equal to 0.0025 mg/L based on monthly measurements as prescribed in clause (A) for the most recent 12 months. Systems qualifying for reduced bromate monitoring under subclause (I) may remain on reduced monitoring as long as each sample result from the previous 12 months is less than or equal to 0.0025 mg/L. If any sample result exceeds 0.0025 mg/L, the system shall resume routine monitoring as prescribed under clause (A).**

\* \* \* \* \*

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