

# PENNSYLVANIA BULLETIN

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**No. 418, September 2009**

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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 2009.

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# THE COURTS

## Title 204—JUDICIAL SYSTEM GENERAL PROVISIONS

### PART II. GENERAL ADMINISTRATION [ 204 PA. CODE CH. 29 ]

In Re: Promulgation of Financial Regulations Pursuant to 42 Pa.C.S. § 3502(a); No. 333 Judicial Doc.

#### Order

*Per Curiam:*

And now, this 10th day of September, 2009 it is Ordered pursuant to Article V, Section 10(c) of the Constitution of Pennsylvania and Section 3502(a) of the Judicial Code, 42 Pa.C.S. § 3502(a), that the Court Administrator of Pennsylvania is authorized to promulgate the attached Financial Regulations. The fees outlined in the Financial Regulations are effective as of January 1, 2010.

To the extent that notice of proposed rule-making may be required by Pa.R.J.A. No.103, the immediate promulgation of the regulations is hereby found to be in the interests of efficient administration.

This Order is to be processed in accordance with Pa.R.J.A. No. 103(b) and is effective immediately.

#### Annex A

### TITLE 204. JUDICIAL SYSTEM GENERAL PROVISIONS

#### PART II. GENERAL SYSTEM PROVISIONS

#### CHAPTER 29. MISCELLANEOUS PROVISIONS

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#### CHAPTER 35. BUDGET AND FINANCE

##### TITLE 42. JUDICIARY AND JUDICIAL PROCEDURE

#### PART IV. FINANCIAL MATTERS

#### CHAPTER 17. GOVERNANCE OF THE SYSTEM

#### CHAPTER 35. BUDGET AND FINANCE

##### Subchapter A. General Provisions

The Pennsylvania Supreme Court, pursuant to Art. V, § 10 of the Pennsylvania Constitution, and 42 Pa.C.S. § 1721, has authorized the Court Administrator of Pennsylvania to promulgate regulations relating to the accounting methods to be utilized in connection with the collection of fees and costs charged and collected by prothonotaries, and clerks of courts of all courts of

common pleas, or by any officials designated to perform the functions thereof, as well as by the minor judiciary, including magisterial district judges, Philadelphia Municipal Court and Philadelphia Traffic Court.

Under authority of said Administrative Order and pursuant to the authority vested in the governing authority under Section 3502(a) of the Judicial Code, 42 Pa.C.S. § 3502(a), the following regulations are adopted to implement Act 113 of 2001, 42 Pa.C.S. §§ 1725.1(f) and 3571(c)(4)(as amended).

42 Pa.C.S. § 1725.1. Costs.

(a) Civil cases.—In calendar year 2010, the costs to be charged by magisterial district judges in every civil case, except as otherwise provided in this section, shall be as follows:

(1) Actions involving \$500 or less .....	\$46.00
(2) Actions involving more than \$500 but not more than \$2,000 .....	\$61.00
(3) Actions involving more than \$2,000 but not more than \$4,000 .....	\$76.50
(4) Actions involving more than \$4,000 but not more than \$8,000 .....	\$114.50
(5) Landlord-tenant actions involving less than \$2,000 .....	\$69.00
(6) Landlord-tenant actions involving more than \$2,000 but not more than \$4,000 .....	\$84.00
(7) Landlord-tenant actions involving more than \$4,000 but not more than \$8,000 .....	\$114.50
(8) Order of execution .....	\$34.50
(9) Objection to levy .....	\$15.50
(10) Reinstatement of complaint .....	\$8.00
(11) Entering Transcript on Appeal or Certiorari .....	\$4.00

Said costs shall not include, however, the cost of postage and registered mail which shall be borne by the plaintiff.

(a.1) Custody cases.—In calendar year 2010, the cost (in addition to the cost provided by general rule) to be charged by the court of common pleas shall be as follows:

(1) Custody cases, except as provided in section 1725(c)(2)(v) .....	\$7.00
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(b) Criminal cases.—In calendar year 2010, the costs to be charged by the minor judiciary or by the court of common pleas where appropriate in every criminal case, except as otherwise provided in this section, shall be as follows:

(1) Summary conviction, except motor vehicle cases .....	\$43.50
(2) Summary conviction, motor vehicle cases, other than paragraph (3) .....	\$34.50
(3) Summary conviction, motor vehicle cases, hearing demanded .....	\$41.50



- (4) Misdemeanor ..... \$50.00
- (5) Felony ..... \$57.50

Such costs shall not include, however, the cost of postage and registered mail which shall be paid by the defendant upon conviction.

(c) Unclassified costs or charges.—**In calendar year 2010**, the costs to be charged by the minor judiciary in the following instances not readily classifiable shall be as follows:

- (1) Entering transcript of judgment from another member of the minor judiciary ..... \$8.00
- (2) Marrying each couple, making record thereof, and certificate to the parties ..... \$38.50
- (3) Granting emergency relief pursuant to 23 Pa.C.S. Ch. 61 (relating to protection from abuse) ..... \$15.50
- (4) Issuing a search warrant (except as provided in subsection (d)) ..... \$15.50
- (5) Any other issuance not otherwise provided in this subsection ..... \$15.50

42 Pa.C.S. § 3571. **In calendar year 2010**, Commonwealth portion of fines, etc.

\* \* \*

- (2) Amounts payable to the Commonwealth:
  - (i) Summary conviction, except motor vehicle cases ..... \$15.30
  - (ii) Summary conviction, motor vehicle cases other than subparagraph (iii) ..... \$15.30
  - (iii) Summary conviction, motor vehicle cases, hearing demanded ..... \$15.30
  - (iv) Misdemeanor ..... \$20.00
  - (v) Felony ..... \$30.70
  - (vi) Assumpsit or trespass involving:
    - (A) \$500 or less ..... \$19.20
    - (B) More than \$500 but not more than \$2,000 . . . \$30.50
    - (C) More than \$2,000 but not more than \$4,000 ..... \$45.90
    - (D) More than \$4,000 but not more than \$8,000 ..... \$76.35
  - (vii) Landlord-tenant proceeding involving:
    - (A) \$2,000 or less ..... \$30.70
    - (B) More than \$2,000 but not more than \$4,000 ..... \$38.15
    - (C) More than \$4,000 but not more than \$8,000 ..... \$53.45
  - (viii) Objection to levy ..... \$7.75
  - (ix) Order of execution ..... \$23.00
  - (x) Issuing a search warrant (except as provided in section 1725.1(d)(relating to costs)) .. \$10.85
  - (xi) Order of possession ..... \$15.00
  - (xii) Custody cases (except as provided in section 1725(c)(2)(v)) ..... \$5.60

[Pa.B. Doc. No. 09-1768. Filed for public inspection September 25, 2009, 9:00 a.m.]

**PART VII. ADMINISTRATIVE OFFICE OF PENNSYLVANIA COURTS**  
[ 204 PA. CODE 211 ]

**Promulgation of Consumer Price Index Pursuant to 42 Pa.C.S. §§ 1725.1(f) and 3571(c)(4) Doc. No. 332**

**Order**

*Per Curiam:*

And now, this 10th day of September, 2009, it Ordered pursuant to Article V, Section 10(c) of the Constitution of Pennsylvania and Section 3502(a) of the Judicial Code, 42 Pa.C.S. § 3502(a), that the Court Administrator of Pennsylvania is authorized to obtain and publish in the Pennsylvania is authorized to obtain and publish in the *Pennsylvania Bulletin* the percentage increase in the Consumer Price index for calendar year 2008 as required by Act 113 of 2001, 42 Pa.C.S. §§ 1725.1(f) and 3571(c)(4) (as amended).

**Annex A**

**TITLE 204. JUDICIAL SYSTEM GENERAL PROVISIONS**  
**PART VII. ADMINISTRATIVE OFFICE OF PENNSYLVANIA COURTS**  
**CHAPTER 211. CONSUMER PRICE INDEX**

Pursuant to Article V, Section 10 of the Pennsylvania Constitution, and 42 Pa.C.S. § 1721, the Supreme Court has authorized the Court Administrator of Pennsylvania to obtain and publish in the *Pennsylvania Bulletin* on or before November 30 the percentage increase in the Consumer Price Index for calendar year 2008 as required by Act 113 of 2001, 42 Pa.C.S. §§ 1725.1(f) and 3571(c)(4)(as amended). See, No. 332 Judicial Administration Docket.

The Court Administrator of Pennsylvania reports that the percentage increase in the Consumer Price Index, All Urban Consumers, U.S. City Average, for calendar year **2008** was .1% percent. (See, U.S. Department of Labor, Bureau of Labor Statistics, Series CUUROOOSAO, February 26, 2009.)

[Pa.B. Doc. No. 09-1769. Filed for public inspection September 25, 2009, 9:00 a.m.]

**Title 207—JUDICIAL DISCIPLINE**

**PART IV. COURT OF JUDICIAL DISCIPLINE**  
[ 207 PA. CODE CH. 5 ]

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

**Order**

*Per Curiam:*

And Now, this 15th day of September, 2009, the Court, pursuant to Article 5, Section 18(b)(4) of the Constitution of Pennsylvania, having adopted amendments to Rule of Procedure No. 502(D), as more specifically hereinafter set forth, *It Is Hereby Ordered:*

That the amendments to Rule 502(D) shall become effectively immediately.

STEWART L. KURTZ,  
President Judge

**Annex A**

**TITLE 207. JUDICIAL CONDUCT**

**PART IV. COURT OF JUDICIAL DISCIPLINE**

**ARTICLE II. PROCEEDINGS BASED ON THE FILING OF FORMER CHARGES**

**CHAPTER 5. TRIAL PROCEDURES**

**Rule 502. Trial. Stipulations of Fact. Conclusions of Law. Withdrawal of Complaints or Withdrawal of Counts.**

\* \* \* \* \*

**D. Stipulations of Fact.**

(1) In lieu of a trial, the parties may submit to the Court stipulations as to all facts necessary to a decision of the issues in the case. The stipulations shall be binding upon the parties and may be adopted by the Court as the facts of the case upon which a decision shall be rendered. When submitted, the stipulations shall be accompanied by a signed waiver of any right to trial granted under the Constitution and the Rules of this Court.

(2) The parties may submit stipulations as to issues of fact, but which do not resolve all relevant issues in the case. In this case, the parties shall be bound by the stipulations and the Court may adopt them and proceed to trial on all remaining factual issues.

(3) In the event the Court rejects stipulations submitted under subsection (1) or (2) above, the Court shall schedule a conference to determine whether the parties shall be afforded the opportunity to submit revised stipulations or whether the case should proceed to trial.

\* \* \* \* \*

[Pa.B. Doc. No. 09-1770. Filed for public inspection September 25, 2009, 9:00 a.m.]

**Title 237—JUVENILE RULES**

**PART I. RULES**

[ 237 PA. CODE CHS. 1 AND 11 ]

**In Re: Order Amending Rules 123 and 1123 of the Rules of Juvenile Court Procedure; No. 479; Supreme Court Rules Doc.**

**Order**

*Per Curiam*

And Now, this 16th day of September, 2009, upon the recommendation of the Juvenile Court Procedural Rules Committee and an *Explanatory Report* to be published with this *Order*:

*It Is Ordered* pursuant to Article V, Section 10 of the Constitution of Pennsylvania that the modifications to Rules 123 and 1123 are approved in the attached form.

This *Order* shall be processed in accordance with Pa.R.J.A. No. 103(b), and shall be effective immediately.

**Annex A**

**TITLE 237. JUVENILE RULES**

**PART I. RULES**

**Subpart A. DELINQUENCY MATTERS**

**CHAPTER 1. GENERAL PROVISIONS**

**Rule 123. Subpoenas.**

A. *Contents.* A subpoena in a delinquency case shall:

- 1) order the witness named to appear before the court at the date, time, and place specified;
- 2) order the witness to bring any items identified or described;
- 3) state on whose behalf the witness is being ordered to testify; and
- 4) state the identity, address, and phone number of the person who applied for the subpoena.

B. *Service.*

1) *Method of Service.* A subpoena shall be served upon a witness by:

- a) in-person delivery;
- b) registered or certified mail, return receipt requested, or
- c) by first-class mail.

2) *Proof of Service.* The following shall be prima facie evidence of service of the subpoena:

- a) A completed return receipt;
- b) Hand signed receipt of personal delivery; or
- c) Affidavit of in-person delivery signed by a process server.

C. *Duration.* A subpoena shall remain in force until the end of a proceeding.

D. *Bench Warrant.* If any subpoenaed person fails to appear for the hearing and the court finds that sufficient notice was given, the judge may issue a bench warrant pursuant to Rule 140.

E. *Parental notification.*

1) *Generally.* If a witness is a minor, the witness's guardian shall be:

- a) notified that the minor has been subpoenaed; **and**
- b) **provided with a copy of the subpoena.**

2) **Exception.** Upon prior court approval and good cause shown, a subpoena may be served upon a minor without such notification to the guardian. If and when necessary, request for such prior court approval may be obtained *ex parte*.

*Comment*

Prior to issuing a bench warrant for a minor, the judge should determine if the guardian of the witness was served. Nothing in these rules gives the guardians of witnesses legal standing in the matter being heard by the court or creates a right for witnesses to have their guardians present. In addition, lack of required notice to the guardian does not prevent the minor witness from testifying. See Rule 140 for procedures on bench warrants.

For power to compel attendance, see 42 Pa.C.S. § 6333. Nothing in this rule prohibits the court from holding a contempt hearing. See *In re Crawford*, 360 Pa.Super. 36, 519 A.2d 978 (1987) for punishing juveniles for contempt.

Any person may file a motion to quash the subpoena for a witness and/or for requested items. The court is to rule on the motion prior to the production of the witness or the items.

**Official Note:** Rule 123 adopted April 1, 2005, effective October 1, 2005. Amended February 26, 2008, effective June 1, 2008. Amended May 12, 2008, effective immediately. **Amended September 16, 2009, effective immediately.**

*Committee Explanatory Reports:*

Final Report explaining the provisions of Rule 123 published with the Court's Order at 35 Pa.B. 2214 (April 16, 2005). Final Report explaining the amendments to Rule 123 published with the Court's Order at 38 Pa.B. 2360 (May 12, 2008). **Final Report explaining the amendments to Rule 123 published with the Court's Order at 39 Pa.B. 5544 (September 26, 2009).**

**Subpart B. DEPENDENCY MATTERS**

**Chapter 11. GENERAL**

**Rule 1123. Subpoenas.**

A. **Contents.** A subpoena in a dependency case shall:

- 1) order the witness named to appear before the court at the date, time, and place specified;
- 2) order the witness to bring any items identified or described;
- 3) state on whose behalf the witness is being ordered to testify; and
- 4) state the identity, address, and phone number of the person who applied for the subpoena.

B. *Service.*

1) *Method of Service.* A subpoena shall be served upon a witness by:

- a) in-person delivery;
- b) registered or certified mail, return receipt requested; or
- c) first-class mail.

C. *Duration.* A subpoena shall remain in force until the end of a proceeding.

D. *Bench Warrant.* If any subpoenaed person fails to appear for the hearing and the court finds that sufficient notice was given, the judge may issue a bench warrant pursuant to Rule 1140.

E. *Parental notification.*

1) *Generally.* If a witness is a minor, the witness's guardian shall be:

- a) notified that the minor has been subpoenaed; **and**
- b) **provided with a copy of the subpoena.**

2) *Exception.* Upon prior court approval and good cause shown, a subpoena may be served upon a minor without such notification to the guardian. If and when necessary, request for such prior court approval may be obtained *ex parte*.

**Comment**

A subpoena is used to order a witness to appear and a summons is issued to bring a party to the proceeding.

A *subpoena duces tecum* is to set forth with particularity, the documents, records, or other papers to be produced at the hearing. The items sought are to be relevant to the proceedings. See Rule 1340 on discovery, *In re J.C.*, 412 Pa.Super. 369, 603 A.2d 627 (1992), and *In re A.H.*, 763 A.2d 873 (Pa. Super. Ct. 2000) for production of documents necessary to prepare for a hearing.

Prior to issuing a bench warrant for a minor, the judge should determine if the guardian of the witness was served. Nothing in these rules gives the guardians of witnesses legal standing in the matter being heard by the court or creates a right for witnesses to have their guardians present. In addition, lack of required notice to the guardian does not prevent the minor witness from testifying. See Rule 1140 for procedures on bench warrants.

For power to compel attendance, see 42 Pa.C.S. § 6333. Nothing in this rule prohibits the court from holding a contempt hearing. See *In re Crawford*, 360 Pa. Super. 36, 519 A.2d 978 (1987) for punishment of contempt (children). See also *In re Griffin*, 456 Pa.Super. 440, 690 A.2d 1192 (1997) (foster parents), *Janet D. v. Carros*, 240 Pa.Super. 291, 362 A.2d 1060 (1976) (county agency), and *In re Rose*, 161 Pa.Super. 204, 54 A.2d 297 (1947) (parents) for additional guidance on contempt for other parties.

Any person may file a motion to quash the subpoena for a witness and/or for requested items. The court is to rule on the motion prior to the production of the witness or the items.

**Official Note:** Rule 1123 adopted August, 21, 2006, effective February 1, 2007. Amended May 12, 2008, effective immediately. Amended March 19, 2009, effective June 1, 2009. **Amended September 16, 2009, effective immediately.**

*Committee Explanatory Reports:*

Final Report explaining the provisions of Rule 1123 published with the Court's Order at 36 Pa.B. 5599 (September 2, 2006). Final Report explaining the amendments to Rule 1123 published with the Court's Order at 38 Pa.B. 2360 (May 12, 2008). Final Report explaining the amendments to Rule 1123 published with the Court's Order at 39 Pa.B. 1614 (April 4, 2009). **Final Report explaining the amendments to Rule 1123 published with the Court's Order at 39 Pa.B. 5544 (September 26, 2009).**

*Introduction*

The Supreme Court of Pennsylvania has adopted the proposed changes to Rules 123 & 1123. The changes are effective immediately.

**Explanatory Report September 2009**

Act 98 of 2008 amended § 6333 of the Juvenile Act requiring that parents receive copies of their children's subpoenas.

The amendments to these rules reflect this change in the Juvenile Act by requiring that the guardian be given a copy of the subpoena.

[Pa.B. Doc. No. 09-1771. Filed for public inspection September 25, 2009, 9:00 a.m.]

## PART I. RULES

### [ 237 PA. CODE CHS. 16 AND 18 ]

In re: Order Amending Rules 1607 and 1800 of the Rules of Juvenile Court Procedure; No. 480; Supreme Court Rules; Doc.

#### Order

*Per Curiam*

And Now, this 16th day of September the proposal having been published for public comment before adoption at 39 Pa.B. 9 (January 3, 2009), in the Atlantic Reporter (Second Series Advance Sheets, Vol. 960, No. 2, January 9, 2009), and on the Supreme Court's web-page, and an *Explanatory Report* to be published with this Order:

*It Is Ordered* pursuant to Article V, Section 10 of the Constitution of Pennsylvania that the modifications to Rules 1607 and 1800 are approved in the attached form.

This Order shall be processed in accordance with Pa.R.J.A. No. 103(b), and shall be effective immediately.

#### Annex A

### TITLE 237. JUVENILE RULES

#### CHAPTER 16. POST-DISPOSITIONAL PROCEDURES

#### PART B. PERMANENCY HEARING

#### Rule 1607. Regular Scheduling of Permanency Hearings.

A. *Thirty days.* The court shall conduct permanency hearings within thirty days of:

1) an adjudication of dependency at which the court determined that aggravated circumstances exist and that reasonable efforts to prevent or eliminate the need to remove the child from the child's guardian or to preserve and reunify the family need not be made or continue to be made;

2) a permanency hearing at which the court determined that aggravated circumstances exist and that reasonable efforts to prevent or eliminate the need to remove the child from the child's guardian or to preserve and reunify the family need not be made or continue to be made and the permanency plan for the child is incomplete or inconsistent with the court's determination;

3) an allegation that aggravated circumstances exist regarding a child who has been adjudicated dependent; or

4) a motion alleging that the hearing is necessary to protect the safety or physical, mental, or moral welfare of a dependent child.

B. *Six months.* The court shall conduct a permanency hearing within six months of:

1) the date of the child's removal from the child's guardian for placement pursuant to 42 Pa.C.S. §§ 6324 or 6332, or pursuant to a transfer of legal custody, or other disposition pursuant to Rule 1515, whichever is earliest;

or 2) each previous permanency hearing until the child is [returned to the child's guardian or] removed from the jurisdiction of the court pursuant to Rule 1613.

#### Comment

See 42 Pa.C.S. § 6351(e)(3).

Paragraph (A) provides when permanency hearings are to be held within thirty days. If the requirements of paragraph (A) do not apply, the court is to hold a permanency hearing every six months in every case until the child is removed from the jurisdiction of the court pursuant to paragraph (B). This includes cases when the child is not removed from the home or the child was removed and subsequently returned to the guardian, but the child is under the court's supervision.

See Rule 1800(11).

**Official Note:** Rule 1607 adopted August[ , ] 21, 2006, effective February 1, 2007. Amended September 16, 2009, effective immediately.

*Committee Explanatory Reports:*

Final Report explaining the provisions of Rule 1607 published with the Court's Order at 36 Pa.B. 5599 (September 2, 2006). Final Report explaining the amendments to Rule 1607 published with the Court's Order at 39 Pa.B. (September 23, 2009).

### CHAPTER 18. SUSPENSIONS

#### Rule 1800. Suspensions of Acts of Assembly.

This rule provides for the suspension of the following Acts of Assembly that apply to dependency proceedings only:

1) The Act of July 9, 1976, P. L. 586, No. 142, § 2, 42 Pa.C.S. § 6335(c), which provides for the issuance of arrest warrants if the child may abscond or may not attend or be brought to a hearing, is suspended only insofar as the Act is inconsistent with Rule 1124, which requires a summoned person to fail to appear and the court to find that sufficient notice was given.

2) The Act of July 9, 1976, P. L. 586, No. 142, § 2, 42 Pa.C.S. § 6336(c), which provides that if a proceeding is not recorded, full minutes shall be kept by the court, is suspended only insofar as the Act is inconsistent with Rules 1127(A) & 1242(B)(2), which requires all proceedings to be recorded, except for shelter care hearings.

3) The Act of July 9, 1976, P. L. 586, No. 142, § 2, 42 Pa.C.S. § 6311(b)(9), which provide that there is not a conflict of interest for the guardian *ad litem* in communicating the child's wishes and the recommendation relating to the appropriateness and safety of the child's placement and services necessary to address the child's needs and safety, is suspended only insofar as the Act is inconsistent with Rule 1151, which allows for appointment of separate legal counsel and a guardian *ad litem* when the guardian *ad litem* determines there is a conflict of interest between the child's legal interest and best interest.

4) The Act of July 9, 1976, P. L. 586, No. 142, § 2, 42 Pa.C.S. § 6337, which provides that counsel must be provided unless the guardian is present and waives counsel for the child, is suspended only insofar as the Act is inconsistent with Rule 1152, which does not allow a guardian to waive the child's right to counsel and a child may not waive the right to a guardian *ad litem*.



5) The Act of July 9, 1976, P. L. 586, No. 142, § 2, 42 Pa.C.S. § 6305(b), which provides that the court may direct hearings in any case or classes of cases be conducted by the master, is suspended only insofar as the Act is inconsistent with Rule 1187, which allows masters to hear only specific classes of cases.

6) The Act of July 9, 1976, P. L. 586, No. 142, § 2, 42 Pa.C.S. § 6324, which authorizes law enforcement officers to take a child into custody, is suspended only insofar as the Act is inconsistent with Rule 1202, which provides for police officers taking a child into custody.

7) The Act of July 9, 1976, P. L. 586, No. 142, § 2, 42 Pa.C.S. § 6331, which provides for the filing of a petition with the court within twenty-four hours or the next business day of the admission of the child to shelter care, is suspended only insofar as the Act is inconsistent with the filing of a petition within twenty-four hours or the next business day from the shelter care hearing if the child is in protective custody under Rules 1242 and 1330(A).

8) The Act of July 9, 1976, P. L. 586, No. 142, § 2, 42 Pa.C.S. § 6334, which provides that any person may bring a petition, is suspended only insofar as the Act is inconsistent with Rules 1320, 1321, and 1330, which provide that the county agency may file a petition and any other person shall file an application to file a petition.

9) The Act of December 19, 1990, P. L. 1240, No. 206, § 2, 23 Pa.C.S. § 6339, which provides for the confidentiality of reports made pursuant to the Child Protective Services Law, 23 Pa.C.S. § 6301 *et seq.*, is suspended only insofar as the Law is inconsistent with Rule 1340(B)(1)(e), which provides for the disclosure of such reports if the reports are going to be used as evidence in a hearing to prove dependency of a child.

10) The Act of July 9, 1976, P. L. 586, No. 142, § 2, 42 Pa.C.S. § 6335, which provides that a copy of the petition is to accompany a summons, is suspended only insofar as the Act is inconsistent with Rule 1360, which provides that the summons is to include a copy of the petition unless the petition has been previously served.

**11) The Act of July 9, 1976, P. L. 586, No. 142, § 2, 42 Pa.C.S. § 6351(e)(3)(i)(B), which provides for permanency hearings within six months of each previous permanency hearing until the child is returned home or removed from the jurisdiction of the court, is suspended only insofar as the Act is inconsistent with Rule 1607, which requires permanency hearings in all cases until the child is removed from the jurisdiction of the court.**

#### Comment

The authority for suspension of Acts of Assembly is granted to the Supreme Court by Article V § 10(c) of the Pennsylvania Constitution. *See also* Rule 1102.

**Official Note:** Rule 1800 adopted August [ , ] 21, 2006, effective February 1, 2007. **Amended September 16, 2009, effective immediately.**

#### *Committee Explanatory Reports:*

Final Report explaining the provisions of Rule 1800 published with the Court's Order at 36 Pa.B. 5599 (September 2, 2006). **Final Report explaining the amendments to Rule 1800 published with the Court's Order at 39 Pa.B. ( , 2009).**

#### *Introduction*

The Supreme Court of Pennsylvania has adopted the proposed changes to Rules 1607 and 1800. The changes are effective immediately.

#### **EXPLANATORY REPORT September 2009**

It was brought to the Committee's attention that courts are not reviewing cases in which the child either was not removed from the home or the child was removed and subsequently returned to the guardian, but the dependency case has not been terminated pursuant to Rule 1613.

Although the Juvenile Act provides for hearings in these cases, some counties disputed whether they were required to conduct such hearings.

Section 6351(e)(3)(i)(B) provides that the court shall conduct permanency hearings within six months of each previous permanency hearing until the child is returned to the child's guardian or removed from the jurisdiction of the court. *See* 42 Pa.C.S. § 6351(e)(3)(i)(B).

The adopted modifications to Rule 1607 provides for permanency hearings every six months in every case. This change of language clearly sets forth the standard for hearings in all cases so it is not confusing to the court or practitioner. If a child is under the court's supervision and living at home, the court shall review those cases to determine whether the situation that brought the child under the court's supervision has been resolved, whether the goals of the permanency plan are being met, and whether supervision continues to be necessary.

It was never intended that the court could have children under its supervision and not review those cases. If the court does not need to supervise the case, then the case should be closed pursuant to Rule 1613.

When the child has been removed from the home, the court shall continue to conduct permanency hearings and make findings consistent with 42 Pa.C.S. § 6351(f) & (f.1).

To ensure compliance with this change, Rule 1800 (11) suspends the Juvenile Act only insofar as it is inconsistent with this rule change.

[Pa.B. Doc. No. 09-1772. Filed for public inspection September 25, 2009, 9:00 a.m.]

## **DISCIPLINARY BOARD OF THE SUPREME COURT**

### **Notice of Administrative Suspension**

Notice is hereby given that the following attorneys have been Administratively Suspended by Order of the Supreme Court of Pennsylvania dated August 6, 2009, under Rule 111(b) Pa.R.C.L.E., which requires that every active lawyer shall annually complete, during the compliance period for which they are assigned, the continuing legal education required by the Continuing Legal Education Board. The Order became effective September 5, 2009, for Compliance Group 3 due December 31, 2008.

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

Allen, David Alexander  
Oak Brook, IL

Bendall, Jennifer L.  
Middletown, VA

Bishow, Lauren Estee  
Los Angeles, CA

Bohn, Theodore R.  
New York, NY

Bounds, Bruce M.  
Miami, FL

Carter, Michelle Alicia  
Troy, MI

Chernosky, David Joseph  
Westlake, OH

Cindrich Jr., Frank John  
Arlington, VA

Cohen, Philice Krevolin  
Skillman, NJ

Console, Richard P.  
Mount Laurel, NJ

D'Arrigo, Cristen Philip  
Bridgeton, NJ

Daitz, Jeffrey Michael  
River Edge, NJ

DeSumma, Shannon Dawn  
Mount Laurel, NJ

Degnan, Philip J.  
Pennsauken, NJ

Evans, Mechelle  
Morristown, NJ

Gandhi, Samir R.  
Metuchen, NJ

Gibson, Christopher R.  
Haddonfield, NJ

Glason, Joyce E.  
Saint Croix, Virgin Islands

Hally, Jennifer Leigh  
Florham Park, NJ

Hauck, Bryan Glen  
New Castle, DE

Healey, William Henry  
Rumson, NJ

Hemming, Keith Robert  
Newark, NJ

Holt, Jason  
East Orange, NJ

Ivery, Nicole Thompson  
Columbia, SC

Johnston, Nancy Babick  
San Diego, CA

Latsko, John M.  
Dublin, OH

Manesis, Dennis J.  
Chicago, IL

Markey, Nancy Pennington  
White Plains, NY

McKinley, Karen Marie  
Washington, DC

Mitchell, Suzanne M.  
Austin, TX

Moores, Elizabeth C.  
Arlington, VA

Moubry, James Grant  
Saint Louis, MO

Nappen, Evan Feit  
Eatontown, NJ

Pacheco, Beatrice  
Arlington, VA

Peery II, Gordon F.  
Boston, MA

Quigley, Marissa Lenore  
Princeton, NJ

Rich, Archie Leon  
Washington, DC

Scott, Mark Edward  
Alpharetta, GA

Suber, Elke Flores  
Redmond, WA

Viggiano, Monica Michelle  
Haddonfield, NJ

Walker, Stephen Mitchell  
Chattanooga, TN

West Jr., Thomas C.  
Washington, DC

White, Francine Monique  
Marlton, NJ

Woods, Wendy Zoe  
Arlington, VA

SUZANNE E. PRICE,  
*Attorney Registrar*  
*The Disciplinary Board of the*  
*Supreme Court of Pennsylvania*

[Pa.B. Doc. No. 09-1773. Filed for public inspection September 25, 2009, 9:00 a.m.]

## Title 255—LOCAL COURT RULES

### BUTLER COUNTY

#### Local Rules of Court; MsD No. 09-40249; Administrative Order of Court

##### Administrative Order of Court

*And Now*, this 9th day of September, 2009, it is hereby ordered and decreed that Local Rules of Court listed below pertaining to Family Court, adopted February 1, 2007 are hereby amended:

- L1915.4-1—Continuances of Conciliation Conferences or Custody Hearings, Refunds, Unexcused Failure to attend Conference.
- L1915.7—Custody Conciliation Conference Consents and Recommendations.
- L1915.10—Request for Pretrial Conference. Pretrial Conference. Decision.



These amendments are effective thirty days after publication of this notice and the within Amendments to Local Rules in the *Pennsylvania Bulletin*.

It is further ordered and directed new Local Rules L1915.11, L1915.18 and L1930.2 are hereby *Adopted*. These Local Rules shall be effective thirty days after publication of this notice and the within Local Rules of Civil Procedure in the *Pennsylvania Bulletin*.

The Court directs the Court Administrator to:

1. File seven (7) certified copies of the Administrative Order and the within Local Rules of Civil Procedure with the Administrative Office of the Pennsylvania Courts.

2. File two (2) certified copies of this Administrative Order and the within Local Rules of Civil Procedure and one (1) diskette with the Legislative Reference Bureau for publication in the *Pennsylvania Bulletin*.

3. File one (1) certified copy of this Administrative Order and the within Local Rules of Civil Procedure with the Domestic Relations Procedural Rules Committee.

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

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

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

*By the Court*

THOMAS J. DOERR,  
*President Judge*

### **Explanatory Comment—2009 Amendments**

#### **Children's Fast Track Appeals**

On January 13, 2009, the Supreme Court amended the appellate court rules, designating special procedures and compressed deadlines in appeals from any order involving dependency, termination of parental rights, adoptions, custody or paternity. Such appeals are now known as "children's fast track appeals."

As the term implies, children's fast track appeals are to be processed more quickly than other appeals. A comprehensive recitation of all of the shortened deadlines associated with children's fast track appeals is beyond the scope of this comment. However, one of the rule changes invites a local rule response, specifically, that the Certified Record is to be transmitted to the appellate court within 30 days after the appeal is filed, instead of the normal 60 days.

This change places a premium on rapid transcription of the trial testimony. Pa.R.A.P. 904(c) already requires that an Order for Transcript accompany the filing of the Appeal, and that the Order for Transcript be served on the court reporter by the appellant. Rule of Judicial Administration 5006 authorizes court reporters to require deposits towards the estimated cost of transcription, and specifically authorizes the adoption of local rules specifying the recipients of those deposits. Court reporters are authorized to retain completed transcripts until payment is fully made or adequate security for payment posted.

At this time, the court chooses to exercise its local rule making authority in an effort to abet the intention of the children's fast track appeal rule changes, to insure timely payment of transcription expenses in such cases, and to clarify for the bar the appropriate procedure to be followed when ordering transcripts for children's fast track appeals in Butler County.

The new appellate rules relating to children's fast track appeals apply to a variety of cases outside the context of existing local rules, such as dependency and termination of parental rights. Rather than set up additional rule sets for each type of matter affected, and separately amending each set of existing rules affected, the decision was made to add a single Local Rule 1930.2 which would have global effect in all matters affecting children, including those encompassed within the definition of children's fast track appeals.

#### **Custody Rule Changes**

For some years there has been a trend toward requiring courts to dispose of custody matters efficiently, albeit with due regard for the need to conduct a searching inquiry into the facts. One aspect of that inquiry which the court invariably finds helpful is the input of court appointed evaluators. The local rules adopted in 2006 attempted to insure that evaluator's reports would be available to the parties in time for the pretrial conference. This has not always occurred because the evaluators have not always been informed of the pretrial conference date in a timely fashion. A simple rule change requiring notice by the prothonotary, to the evaluator, of the date of the pre-trial conference addresses this problem. The prothonotary is also charged with sending the evaluator any order scheduling a custody trial.

Another "housekeeping" change involves requests for refunds of conciliator fees, when the parties settle prior to conciliation. Although refunds are not required by rule or law, they have been customarily granted as a matter of course; however, there comes a point in time when too long delayed refunds adversely affect budgeting considerations within the judicial system and related considerations within the county budget office. Therefore, the court elects to impose a time limit within which a party seeking a refund of the conciliator's fees must apply for that refund.

A new rule provides that if the moving party to a custody action fails to appear at a conciliation conference, the conciliator will so report, and the action will be dismissed of record.

Another new rule clarifies the court's ability to require deposits from time to time to insure that guardian's *ad litem* are paid in a timely fashion and without the necessity for collection procedures.

The conciliator's office and the court have received questions from custody evaluators concerning fee arrangements for in-court testimony, refunds or partial refunds when the case settles before the testimony is given, and the availability of the evaluators to counsel for the parties, both during the evaluations and between the release of the evaluator's report and trial. The court is somewhat reluctant to address such matters by hard and fast rules, as the circumstances often vary significantly from case to case, and different evaluators have different preferences. However, certain principles do apply.

Counsel should not initiate contact with an evaluator after the evaluation is ordered for any purpose which could be construed as attempting to influence the course

or outcome of the evaluation. Any such contact should be reported to the conciliator's office, and by the conciliator to the court.

Evaluators should provide the conciliator's office with a schedule of fees for the evaluation and for trial testimony. Such fees should provide a daily rate and a half day rate and the time, prior to trial, by which payment will be required to secure the evaluator's availability in court. Both the daily rate and half day rate should include time for a 1 hour telephone or in-person preparation session with counsel who will be a proponent of the evaluator's report at trial. The cost of additional preparation time, if needed, is a contractual matter between the evaluator and counsel. Advance preparation of the evaluator's direct testimony does assist the court by insuring a well thought out presentation. The evaluator's cancellation and refund policies should also be stated in the fee schedule provided to the conciliator's office.

Although the amended rules insure that the evaluator will be notified by the prothonotary of the scheduling of a trial, it remains the responsibility of the party advocating on behalf of the report to arrange for the evaluator's testimony at trial at the earliest possible date. The evaluator is not expected to assume, merely because he/she is notified of a trial date that his/her expert testimony will be required.

The evaluator is not obligated to discuss the case with the party or counsel who will not be advocating on behalf of the report at trial; however, the evaluator may elect to do so at least 10 days before trial, for a fee to be agreed between the evaluator and the non-advocating party. In such event, the evaluator should promptly provide an oral summary of said conference to counsel for the party (or the party, if unrepresented) advocating on behalf of the report, at no additional charge to that party. If the evaluator does not agree to speak with the party or attorney opposing the evaluator's report, or refuses to read correspondence from either of them, such refusal will not support an inference that the evaluator is biased against such party or is uncertain of his/her conclusions and opinions.

Finally, while it is legal to secure the attendance of any witness, including an evaluator, through the compulsion of a subpoena, to do so is essentially fruitless in terms of compelling the witness to testify to the conclusions and opinions set forth in the report. The witness can only be required to state legally admissible facts—his/her expert opinions cannot be compelled. Accordingly, potential payment problems should be addressed frankly and in advance with the evaluator so that, if possible, arrangements can be made to secure his/her expert testimony at trial. Counsel is encouraged to extend the professional courtesy of granting as much time as possible to the evaluator to ensure that the evaluator's schedule can be set to allow for testimony before the court. It remains within the discretion of the trial court to determine if sufficient notice has been provided to the evaluator to permit appearance at trial.

**L1915.4-1. Continuances of Conciliation Conferences or Custody Hearings, Refunds, Unexcused Failure to Attend Conference.**

(a) Custody matters scheduled before the court, or in the custody conciliators office shall be continued only by leave of court, with good cause shown. General continuances will not be granted. A date certain for the rescheduled conference will be included in every order continuing a conciliation conference. For a request for a continuance

to be considered, the motion shall be filed with the court in accordance with local civil motions practice/procedure.

(b) Except in the case of a documented medical emergency, or upon consent of both parties, motions to continue, cancel or withdraw a custody conciliation conference must be presented at least 10 days prior to the scheduled conciliation.

(c) If the case is withdrawn from the conciliators consideration prior to any conciliation conference occurring, and the party paying the initial conciliators fee seeks a refund thereof, he/she shall present a motion requesting a refund not later than 10 days after the last scheduled conciliation conference.\*

(d) If the party seeking the imposition of an initial custody order, or the modification of a custody order already in existence, i.e. the moving party, fails to appear at a scheduled custody conference, the court will dismiss the case, and the conciliator's fee will not be refunded.

**Comment:** Requests for refund presented more than 10 days after the conciliation conference will not be granted. The intent of this rule is to process refunds in a timely manner consistent with budgeting and accounting needs of the judicial system and the county.

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

**L1915.7. Custody Conciliation Conference Consents and Recommendations.**

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

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

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

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

(1) recommendations that custody investigations, such as physical or mental evaluations, home studies, drug and

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

alcohol evaluations, counseling, and education seminars be undertaken, as well as equitable division of the fees for same. In order to ensure that all studies and evaluations ordered, expert testimony supplied, and seminar attendance occur without delay, the Order directing such activities shall provide that each parties share of the relevant fees be paid as allocated in the Order, subject to reallocation at a later stage of the case as provided in Rule L1915.4(c). A non-paying or non-participating party shall be subject to the contempt powers of the court;

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

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

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

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

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

(e) As part of the order resulting from the initial conciliation conference, custody cases will ordinarily<sup>6</sup> be scheduled for a pre-trial within 120 days after service of the initial pleading, in those cases when evaluations are ordered by which time the evaluations are expected to be completed and available. The initial conciliation order shall also provide that the costs of any evaluations, home studies or tests, including the cost of in-court testimony needed to authenticate and explain expert reports of the results thereof, shall be shared by the parties, initially as allocated by the court in the post-conciliation order, but subject to reallocation as part of the pre-trial conference order and the final order in the case as the equities in the case may dictate. In cases where no agreement is reached, and no evaluations are ordered, and the case is not diverted to counseling on the Conciliator's recommendation, either party may request a Pretrial Conference within 30 days. See Rule L 1915.10, *infra*. A copy of the order scheduling the pre-trial conference shall be mailed to the custody evaluator by the prothonotary, to insure that the evaluator's report is available to counsel for the parties at least 15 days prior to the pre-trial conference.\*

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

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

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

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

**Comment:** The 2006 rule is restated here in its entirety. The only change effected by the 2009 amendment is the addition of the language in bold print added to subsection (e).

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

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

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

***Caption***

**REQUEST FOR CUSTODY PRETRIAL CONFERENCE**

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

The issues to be considered are:

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

**VERIFICATION**

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

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

***Caption***

**SCHEDULING ORDER\***

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

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

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

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



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

BY THE COURT:

Date:

J.

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

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

(e) The Court will enter an order scheduling a trial if the case is not resolved at the Pre-trial Conference. The prothonotary shall mail a copy of the trial scheduling order to the evaluator appointed in the case.\*

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

**Comment:** The 2006 rule is restated here in its entirety. The only change effected by the 2009 amendment is the addition of the language in bold print added as subsection (e).

#### **L1915.11. Fees for Guardian *ad litem*.**

(a) If the court imposes the cost of a guardian *ad litem* against one or both of the parties, the court shall specify an amount the responsible part(ies) shall pay to the prothonotary as a deposit to cover the anticipated cost of the guardian's initial investigation of the case. The court shall also specify the time within which such deposit is due. A guardian *ad litem* may from time to time request additional deposits by motion, presented in motions court.

#### **L1915.18. Custody Evaluator's Fee Schedules and Communication Restrictions.**

Every court appointed custody evaluator shall maintain with the Butler County conciliator's office a fee schedule for in-court testimony, indicating at least ½ day and full day fees. The evaluator's advance deposit requirements and cancellation/refund policies shall also be clearly stated. Such fee schedule and policies may be amended from time to time at the discretion of the evaluator.

Both before and after the submission of the evaluator's written report, counsel for the parties shall not be permitted to communicate with the evaluator as to any substantive issues, without the consent or direct participation of counsel for the other party. This prohibition shall not prevent the evaluator from communicating with counsel for the purpose of preparing to present the evaluator's in-court testimony in support of the evaluator's report.

#### **L1930.2. Procedure for Fast Track Appeals.**

Each party filing a children's fast track appeal as defined in Pa.R.A.P. 102 shall:

- (A) Attach an Order for Transcript to the Notice of Appeal; and
- (B) Serve a copy of the Order for Transcript on the court reporter(s) involved; and

(C) Within 3 days after written notice from the court reporter of the estimated cost of transcript preparation, post with the court reporter one half of the estimated cost, unless proceeding *in forma pauperis*; and

(D) Within 3 days after written notice from the court reporter that the transcript has been completed, pay to the court reporter the full amount due for the costs of preparation, or post security for payment in a form and amount approved by the court, unless proceeding *in forma pauperis*.

Upon payment of all costs for preparation of the transcript (except in *in forma pauperis* cases), the court reporter shall immediately file the transcript of testimony. In *in forma pauperis* cases the transcript shall be filed immediately upon its completion.

When cross-appeals are filed in children's fast track appeal cases, the court may allocate the transcript preparation costs between the parties, upon Motion of the first appellant; however, the first appellant shall remain fully responsible to timely pay all transcription costs unless and until a ruling by the court allocates (or retroactively reallocates) such costs between the parties.

[Pa.B. Doc. No. 09-1774. Filed for public inspection September 25, 2009, 9:00 a.m.]

## CHESTER COUNTY

### In Re: Partial Payment Processing Fee for Summary Cases Filed in the Magisterial District Courts of the Fifteenth Judicial District; No. 5-2009

#### Administrative Order

*And Now*, this 9th day of September, 2009, it is Ordered, pursuant to the provisions of 42 Pa.C.S. § 1725.1(c)(5), relating to unclassified costs, a fifteen dollars and fifty cents (\$15.50) partial payment processing fee to cover administrative costs related to such processing, is hereby imposed for all summary cases within the Magisterial District Courts of the Fifteenth Judicial District when the defendant in the summary case requests and is permitted to make installment payments as provided in Pa.R.Crim.P. 409(C)(5), 414(C)(5), 424(C)(5), 454(F)(1) and 456(C)(3)(a).

*It is Further Ordered* that the assessed fee shall increase annually based upon the increase of the Consumer Price Index as provided for in Act 113 of 2001 which renews and extends authorization for annual court costs and fee increases and was first provided for by Act 167 of 1992. The fee shall be rounded to the next fifty cents (\$.50) for purposes of accounting and operational efficiency.

This Order shall take effect thirty (30) days after its publication in the *Pennsylvania Bulletin* and shall apply to all installment payment plans issued on or after the effective date.

*It is Further Ordered* that:

One (1) certified copy of this Order shall be filed by the Court Administrator of Chester County with the Administrative Office of Pennsylvania Courts;

Two (2) certified copies and a computer diskette shall be filed with the Legislative Reference Bureau for publication in the *Pennsylvania Bulletin*;

And a copy shall be posted on the Unified Judicial System's web site.

*By the Court*

PAULA FRANCISCO OTT,  
*President Judge*

[Pa.B. Doc. No. 09-1775. Filed for public inspection September 25, 2009, 9:00 a.m.]

## ERIE COUNTY

### In the Matter of the Revision and Restatement of the Erie County Orphans' Court Rules

#### Motion

And Now, this 18th day of August, 2009, comes the Orphans' Court Rules Committee of the Erie County Bar Association, by and through its Chairperson, Raymond A. Pagliari, Esq., and hereby moves this Honorable Court to approve, adopt and promulgate the attached proposed and recommended revisions and amendments to the Local Orphans' Court Rules of the Erie County Court of Common Pleas, Sixth Judicial District, Erie, Pennsylvania.

Respectfully Submitted,

RAYMOND A. PAGLIARI Jr., ESQ.,  
*Chairperson*

#### Order

And Now, this 20th day of August, 2009, upon consideration of the foregoing Motion, it is hereby *Ordered, Adjudged and Decreed*, that the Local Orphans' Court Rules of the Erie County Court of Common Pleas, Sixth Judicial District, Erie, Pennsylvania are hereby Amended and Revised in accordance with the annexed Motion.

Amended Rules are: Rules 6.10.1(g) and 6.14.

New Rule is: Rule 5.6.2.

Petitioner shall take all steps necessary to publish these amendments in accordance with the applicable law. Such amendments shall become effective thirty (30) days after publication in the *Pennsylvania Bulletin*.

ELIZABETH K. KELLY,  
*President Judge*

## RULE 6

### ACCOUNTS AND DISTRIBUTIONS

#### 6.10.1 Objections to Account, Audit Statement or Statement of Proposed Distribution. Form, Notice and Time.

(g) Within twenty days of filing an objection, the objecting party or his/her attorney shall schedule a hearing thereon pursuant to Erie L.R. 304 allowing ample time for the objection to be heard. The accountant or his/her attorney may (but is not required to) schedule a hearing during the same period pursuant to the same procedure. The party scheduling the hearing shall notify all other parties and the Orphans' Court Auditor of the date and time thereof. Upon the failure of the objecting party or his/her attorney to schedule a hearing within the required time period and in the absence of the scheduling of a hearing by the accountant or his/her attorney within that same period then the accountant (or the court) may (after issuance of "Notice of Default By Reason of Failure to Schedule Hearing" and service thereof by delivery or

mail upon the objecting party or his/her attorney not less than ten days prior) file a praecipe (or an order if the notice was issued by the Court or at its direction) with the Clerk of the Orphans' Court to enter judgment of non pros if a hearing has not been scheduled during the ten-day period allowed in the Notice. Upon the entry of such judgment the audit of the account shall proceed as if the objection had not been filed. The Notice shall conform to that provided under Pa.R.C.P. Rule 237.1 except that the phrase "...you have failed to schedule a hearing upon your objection..." shall be substituted for the phrase "...you have failed to file a complaint..." and the heading for the said notice shall be as stated above. The Court's Auditor may periodically identify accounts for which objections have been filed and no hearing scheduled to the Court and send the Notice if so directed by the Court.

#### 6.14 Receipts for Disbursements.

Disbursement receipts or canceled checks of one thousand dollars (\$1,000.00), or more, or reproduced copies of either, shall be presented with the account; except corporate fiduciaries in lieu thereof may file copies of their ledger sheets showing disbursements. In the case of inheritance taxes, bequests and distributive shares, all receipts or canceled checks or reproduced copies of either shall be filed with the account without regard to the amount thereof.

If counsel for the fiduciary certifies that a receipt or cancelled check executed by the distributee is not available despite good faith efforts to obtain same, a photocopy of the front of the check accompanied by evidence of payment by the bank shall be acceptable or alternative verification at the discretion of the Orphans' Court Auditor.

With respect to deposits, expenses, purchases, and sales made through an investment account with a broker, insurance company, trust company, or similar entity, a copy of the periodic statements furnished by said entity shall constitute an acceptable evidence of such transactions.

## RULE 5

### NOTICE

#### 5.6.2 Procedures for Scheduling Hearings Upon Objections to Accounts and Dismissal of Objections for Which No Hearing is Scheduled.

In the event that a decedent had attained the age of fifty-five (55) years prior to his death, the Personal Representative shall, not later than the last date for service of notice required pursuant to State Rule 5.6, serve notice upon the Department of Public Welfare pursuant to 55 Pa. Code Chapter 258 "Medical Assistance Estate Recovery" in accordance with the requirements of the Code. Not later than ten days after the expiration of the period for response under the regulations, the Fiduciary shall file a Certificate of Service setting forth:

- (a) The content of the notice by a copy thereof;
- (b) The method of service;
- (c) The date of service;
- (d) A copy of any response received; or
- (e) A statement of no response.

[Pa.B. Doc. No. 09-1776. Filed for public inspection September 25, 2009, 9:00 a.m.]

# RULES AND REGULATIONS

## Title 31—INSURANCE

### INSURANCE DEPARTMENT

[ 31 PA. CODE CH. 146d ]

#### Military Sales Practices

The Insurance Department (Department), by this order, adopts Chapter 146d (relating to military sales practices) to read as set forth in Annex A.

#### *Statutory Authority*

This final-form rulemaking is adopted under the general rulemaking authority of sections 206, 506, 1501 and 1502 of The Administrative Code of 1929 (71 P. S. §§ 66, 186, 411 and 412). Likewise, the rulemaking is made under the Department's rulemaking authority under the Unfair Insurance Practices Act (UIPA) (40 P. S. §§ 1171.1—1171.14) (as is further explained in *PALU v. Insurance Department*, 371 A.2d 564 (Pa. Cmwlth. 1977)).

#### *Comments and Response*

Notice of proposed rulemaking was published at 38 Pa.B. 4101 (August 2, 2008) with a 30-day comment period. During its regulatory review, the Independent Regulatory Review Commission (IRRC) did not submit comments to the Department. During the 30-day comment period, a comment was received from Representative Fairchild (Chairperson of the Pennsylvania House Veteran's Affairs and Emergency Preparedness Committee) expressing support for the regulations. A comment was also received from the Insurance Federation of Pennsylvania, Inc. (IFP), indicating general support of the regulations to the extent that it is consistent with the NAIC's Model Regulation (the Model); but expressed concerns with various sections where the Department's proposed regulations deviated from the Model. The following is a response to the IFP's comments.

Initially, the IFP objected to the Department's deletion of the paragraph in the Model which specified that there was no private right of action under the regulation. The UIPA does not provide for a private cause of action, but permits only regulatory remedies for violations of that law. Because these regulations are promulgated under the authority set forth in the UIPA, the Department believes that inclusion of this paragraph in the regulations text is unnecessary and redundant. This approach is consistent with other regulations promulgated by the Department under its rulemaking authority under the UIPA.

The IFP made several suggestions that were incorporated into the final-form version of the regulations attached as Annex A. The IFP specifically objected to the removal of the reference to the National Guard within the Department's revisions to the definition of "active duty." To address the IFP's concern, the Department has added "National Guard or Reserve" language within the definition of "active duty." Additionally, the IFP noted that the Department eliminated the specific reference to commissioned and warrant officers within the definition of "service member." The Department has added the "commissioned and warrant" language to the definition. Likewise, the miscellaneous typographical errors noted at part 7 of the IFP letter have been corrected as set forth in Annex A.

Several of the IFP's comments expressed concern regarding changes made by the Department to conform the

Model to the standards for regulatory drafting set forth in the *Pennsylvania Code & Bulletin Style Manual (Style Manual)*. The deviations from the Model are specifically explained as follows:

The IFP indicated that the Model was not improved by changing the gender neutral "his or her" to his. This deviation from the model was made to conform the model to § 6.10 of the *Style Manual*, which provides, in pertinent part, that "words used in the masculine gender include the feminine under 1 Pa.C.S. § 1902 relating to number; gender; tense."

The IFP also objected to the Department's omission of the, "short form style of the model" and instead spell out the elements of, "Department of Defense (DoD) Personnel" when appropriate in §§ 146d.5(b)(1) and 146.d6(a)(5) and (6) (relating to practices declared false, misleading, deceptive or unfair on a military base; and practices declared false misleading, deceptive or unfair regardless of location) and (6). The Department's revisions to the Model were based upon § 6.5 (which provides that acronyms should be avoided unless absolutely necessary) and § 1.7 (which indicates that the term being defined may not be included as part of the definition; terms only should be defined in order to avoid vagueness, ambiguity or unnecessary verbosity; and substantive provisions may not be contained within a definition) of the *Style Manual*.

The IFP contended that § 146.d6(a)(7) creates a more difficult compliance standard than the Model, going further than the Model's prohibition against "knowingly" inducing service members with pay grades at or below E-4 to attend events where life applications are solicited. Specifically, within the prohibition against providing attendance inducements, the Department describes the service member as one, "whom the insurer or insurance producer knows, or in the exercise of ordinary care should have known . . ." has such a pay grade. The Department's deviation from the Model in this respect was editorial only, and made because substantive regulatory provisions are not permitted in the definition of a regulation under § 1.7 of the *Style Manual*. The IFP failed to note that the Model includes a definition of "known or knowingly" which means, depending on its use herein, the insurance producer or insurer had actual awareness, or in the exercise of ordinary care should have known, at the time of the act or practice complained of, that the person solicited: (1) is a service member; or (2) is a service member with a pay grade of E-4 or below. (Emphasis added.) The Model's definition of the terms "known or knowingly" is a substantive, regulatory requirement and is not permitted to be in a definition under § 1.7 of the *Style Manual*. For this reason, the Department incorporated the definition directly into the appropriate regulatory provision as follows:

(7) Knowingly offering or giving anything of value to a service member whom the insurer or insurance producer knows, or in the exercise ordinary care should have known has a pay grade of E-4 or below for his attendance to any event where an application for life insurance is solicited.

Accordingly, the Department's draft did not create a more difficult compliance standard than the Model as claimed by the IFP.

In part five of its comment, the IFP appeared to be objecting to the Department's failure to use the Model's "but not limited to," between "including" and "endowment"



of § 146d.6(f)(4). The, “includes but not limited to” language was deleted under § 6.16(b)(13) of the *Style Manual*, which specifically directs that the phrase “includes but not limited to” is not to be used.

Part six of the IFP’s letter objected to the “or both” language added by the Department in place of the model’s “and/or” language. This change was made as mandated by § 6.16 of the *Style Manual*, which prohibits the use of “and/or” in favor of “\_\_\_\_\_ or \_\_\_\_\_, or both.”

*Affected Parties*

The final-form regulation will apply to life insurance companies and fraternal benefit societies doing business in this Commonwealth.

*Fiscal Impact*

*State Government*

There will be no increase in cost to the Department as a result of the adoption of Chapter 146d.

*General Public*

Since these final-form regulations concern the proscription of certain improper marketing practices that are now deemed to be unfair insurance practices under the UIPA, the public will benefit from this additional consumer protection and will not incur any additional costs for these protections.

*Political Subdivisions*

The final-form regulations will not impose additional costs on political subdivisions.

*Private Sector*

The final-form regulations will not impose any additional costs on insurers or insurance producers as it merely prohibits certain improper marketing strategies aimed at members of our armed forces.

*Paperwork*

The adoption of these final-form regulations would not impose additional paperwork for the Department or any other parties.

*Effectiveness / Sunset Date*

These regulations will become effective January 1, 2010. The Department continues to monitor the effectiveness of regulations on a triennial basis; therefore, no sunset date has been assigned.

*Contact Person*

Any questions regarding these final-form regulations should be directed to Peter J. Salvatore, Regulatory Coordinator, Bureau of Administration, 1326 Strawberry Square, Harrisburg, PA 17120, (717) 787-4429. Questions may be e-mailed to psalvatore@state.pa.us or faxed to (717) 705-3873.

*Regulatory Review*

Under section 5(a) of the Regulatory Review Act (71 P. S. § 745.5(a)), the agency submitted a copy of these final-form regulations on July 20, 2009, to IRRC and to the House Insurance Committee and the Senate Banking and Insurance Committee (Committees). In addition to the submitted regulations, the agency has provided IRRC and the Committees with a copy of a detailed Regulatory Analysis Form prepared by the agency in compliance with Executive Order 1996-1, “Regulatory Review and Promulgation.” A copy of that material is available to the public upon request.

In preparing these final-form regulations, the Department considered all comments received from IRRC, the Committees and the public. The final-form regulations were deemed approved by the Committees on August 19, 2009. Under section 5(g) of the Regulatory Review Act, the final-form regulations were deemed approved, effective August 20, 2009.

*Findings*

The Commissioner finds that:

(1) Public notice of intention to adopt these final-form regulations 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 (relating to notice of proposed rulemaking required; and adoption of regulations).

(2) The adoption of this final-form rulemaking in the manner provided in this order is necessary and appropriate for the administration and enforcement of the authorizing statutes.

*Order*

The Commissioner, acting under the authorizing statutes, orders that:

(a) The regulations of the Department, 31 Pa. Code, are amended by adding §§ 146.1—146d.8, to read as set forth in Annex A.

(b) The Commissioner shall submit this order and Annex A, to the Office of General Counsel and Office of Attorney General for approval as to form and legality as required by law.

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

(d) The final-form regulation adopted by this order takes effect January 1, 2010.

JOEL SCOTT ARIO,  
*Insurance Commissioner*

*(Editor’s Note: For the text of the order of the Independent Regulatory Review Commission relating to this document, see 39 Pa.B. 5279 (September 5, 2009).)*

**Fiscal Note:** 11-241. No fiscal impact; (8) recommends adoption.

**Annex A**

**TITLE 31. INSURANCE**

**PART VIII. MISCELLANEOUS PROVISIONS**

**CHAPTER 146d. MILITARY SALES PRACTICES**

Sec.	
146d.1.	Purpose.
146d.2.	Applicability and scope.
146d.3.	Definitions.
146d.4.	Exemptions.
146d.5.	Practices declared false, misleading, deceptive or unfair on a military installation.
146d.6.	Practices declared false, misleading, deceptive or unfair regardless of location.
146d.7.	Violation.
146d.8.	Effective date

**§ 146d.1. Purpose.**

This chapter establishes standards to protect active duty service members of the United States Armed Forces from dishonest and predatory insurance sales practices by deeming and declaring certain identified practices to be false, misleading, deceptive or unfair.

### § 146d.2. Applicability and scope.

This chapter applies only to the solicitation or sale of any life insurance or annuity product by an insurer or insurance producer to an active duty service member of the United States Armed Forces.

### § 146d.3. Definitions.

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

*Active duty*—

- (i) Full-time duty in the United States Armed Forces.
- (ii) The term includes full-time duty or training in the National Guard or Reserve components of the United States Armed Forces if serving under published orders for a period of more than 31-calendar days.

*Commissioner*—The Insurance Commissioner of the Commonwealth.

*Door to door*—A solicitation or sales method whereby an insurance producer proceeds randomly or selectively from household to household without prior specific appointment.

*General advertisement*—An advertisement that promotes the concept of insurance, the insurer or the insurance producer.

*Insurer*—A life insurance company required to be licensed under section 202 of The Insurance Company Law of 1921 (40 P.S. § 382), or a fraternal benefit society required to be licensed under Article XXIV of The Insurance Company Law of 1921 (40 P.S. §§ 991.2401—991.2466), known as the Fraternal Benefit Societies Code, to provide life insurance products, including annuities.

*Insurance producer*—A person who sells, solicits or negotiates contracts of insurance as defined in section 601-A of The Insurance Department Act of 1921 (40 P.S. § 310.1).

*Life insurance*—

- (i) Insurance coverage on human lives including benefits of endowment and annuities, and may include benefits in the event of death or dismemberment by accident and benefits for disability income.
- (ii) The term includes individually issued annuities unless specifically excluded.

*Military installation*—A Federally-owned, leased, or operated base, reservation, post, camp, building, or other facility to which service members are assigned for duty, including barracks, transient housing and family quarters.

*MyPay*—A Defense Finance and Accounting Service web-based system that enables service members to process certain discretionary pay transactions or provide updates to personal information data elements without using paper forms.

*Premium deposit fund*—Amounts paid in and held for payments of future contractual obligations of policyholders or contractholders under an individual life insurance policy or an individual annuity contract.

*Service member*—A commissioned or warrant active duty officer or enlisted member of the United States Armed Forces.

*Side fund*—

- (i) A fund or reserve that is part of or otherwise attached to a life insurance policy, excluding individually

issued annuities, by rider, endorsement or other mechanism which accumulates premium or deposits with interest or by other means.

- (ii) The term does not include the following:

(A) The accumulated value, cash value or secondary guarantee provided by a universal life policy.

(B) A cash value provided by a whole life policy that is subject to standard nonforfeiture law for life insurance.

(C) A premium deposit fund that meets the following requirements:

(I) Contains only premiums paid in advance which accumulate at interest.

(II) Imposes no penalty for withdrawal.

(III) Does not permit funding beyond future required premiums.

(IV) Is not marketed or intended as an investment.

(V) Does not carry a commission, either paid or calculated.

*Specific appointment*—A prearranged, agreed upon appointment that is definite as to place and time.

*United States Armed Forces*—All components of the Army, Navy, Air Force, Marine Corps and Coast Guard.

### § 146d.4. Exemptions.

(a) This chapter does not apply to solicitations or sales involving:

- (1) Credit insurance.
- (2) Group life insurance or group annuities when there is no in-person, face-to-face solicitation of individuals by an insurance producer or when the contract or certificate does not include a side fund.

(3) An application to the existing insurer that issued the existing policy or contract when one of the following applies:

- (i) A contractual change or a conversion privilege is being exercised.
- (ii) The existing policy or contract is being replaced by the same insurer under a program filed with and approved by the Commissioner.
- (iii) A term conversion privilege is exercised among corporate affiliates.

(4) Individual stand-alone health policies, including disability income policies.

(5) Contracts offered by Servicemembers' Group Life Insurance or Veterans' Group Life Insurance, as authorized under 38 U.S.C. §§ 1965—1980A (relating to servicemembers' group life insurance).

(6) Life insurance contracts offered through or by a nonprofit military association, qualifying under section 501(c)(23) of the Internal Revenue Code of 1986 (26 U.S.C.A. § 501(c)(23)), and which are not underwritten by an insurer.

(7) Contracts used to fund:

(i) An employee pension or welfare benefit plan that is covered by the Employee Retirement and Income Security Act (ERISA) (29 U.S.C.A. §§ 1001—1461).

(ii) A plan described by sections 401(a) or (k), 403(b) or 408(k) or (p) of the Internal Revenue Code of 1986 (26 U.S.C.A. §§ 401(a) or (k), 403(b) or 408(k) or (p)), if established or maintained by an employer.

(iii) A government or church plan defined in section 414 of the Internal Revenue Code of 1986 (26 U.S.C.A. § 414) or a deferred compensation plan of a state or local government or tax exempt organization under section 457 of the Internal Revenue Code of 1986 (26 U.S.C.A. § 457).

(iv) A nonqualified deferred compensation arrangement established or maintained by an employer or plan sponsor.

(v) Settlements of or assumptions of liabilities associated with personal injury litigation or any dispute or claim resolution process.

(vi) Prearranged funeral contracts.

(b) Nothing in this chapter abrogates the ability of nonprofit organizations or other organizations, or both, to educate members of the United States Armed Forces in accordance with Department of Defense Instruction 1344.07—PERSONAL COMMERCIAL SOLICITATION ON DOD INSTALLATIONS or successor directive.

(c) For purposes of this chapter, general advertisements, direct mail and internet marketing do not constitute “solicitation.” Telephone marketing does not constitute “solicitation,” when the caller explicitly and conspicuously discloses that the product concerned is life insurance and makes no statements that evade a clear and unequivocal statement that life insurance is the subject matter of the solicitation. Nothing in this section exempts an insurer or insurance producer from this chapter in any in-person, face-to-face meeting established as a result of the “solicitation” exemptions identified in this section.

**§ 146d.5. Practices declared false, misleading, deceptive or unfair on a military installation.**

(a) The following acts or practices when committed on a military installation by an insurer or insurance producer with respect to the in-person, face-to-face solicitation of life insurance are deemed and declared to be false, misleading, deceptive or unfair:

(1) Knowingly soliciting the purchase of any life insurance product door to door or without first establishing a specific appointment for each meeting with the prospective purchaser.

(2) Soliciting service members in a group or mass audience or in a captive audience where attendance is not voluntary.

(3) Knowingly making appointments with or soliciting service members during their normally scheduled duty hours.

(4) Making appointments with or soliciting service members in barracks, day rooms, unit areas, transient personnel housing or other areas where the installation commander has prohibited solicitation.

(5) Soliciting the sale of life insurance without first obtaining permission from the installation commander or the commander’s designee.

(6) Posting unauthorized bulletins, notices or advertisements.

(7) Failing to present DD Form 2885, *Personal Commercial Solicitation Evaluation*, to service members solicited or encouraging service members solicited not to complete or submit a DD Form 2885.

(8) Knowingly accepting an application for life insurance or issuing a policy of life insurance on the life of an enlisted member of the United States Armed Forces without first obtaining for the insurer’s files a completed

copy of any required form confirming that the applicant has received counseling or fulfilled any other similar requirement for the sale of life insurance established by regulations, directives or rules of the Department of Defense or any branch of the Armed Forces.

(b) The following acts or practices when committed on a military installation by an insurer or insurance producer constitute corrupt practices, improper influences or inducements and are deemed and declared to be false, misleading, deceptive or unfair:

(1) Directly or indirectly using an active duty service member or a civilian, nonappropriated fund, or special government employee of the Department of Defense as a representative or agent in any official or business capacity, with or without compensation, with respect to the solicitation or sale of life insurance to service members.

(2) Using an insurance producer to participate in any United States Armed Forces sponsored education or orientation program.

**§ 146d.6. Practices declared false, misleading, deceptive or unfair regardless of location.**

(a) The following acts or practices by an insurer or insurance producer constitute corrupt practices, improper influences or inducements and are deemed and declared to be false, misleading, deceptive or unfair:

(1) Submitting, processing or assisting in the submission or processing of any allotment form or similar device used by the United States Armed Forces to direct a service member’s pay to a third party for the purchase of life insurance, including using or assisting in using a service member’s “MyPay” account or other similar internet or electronic medium for this purpose. This paragraph does not prohibit assisting a service member by providing insurer or premium information necessary to complete any allotment form.

(2) Knowingly receiving funds from a service member for the payment of premium from a depository institution with which the service member has no formal banking relationship. For purposes of this paragraph, a formal banking relationship is established when the depository institution does all of the following:

(i) Provides the service member a deposit agreement and periodic statements and makes the disclosures required by the Truth in Savings Act (12 U.S.C.A. §§ 4301—4313) and the regulations promulgated thereunder.

(ii) Permits the service member to make deposits and withdrawals unrelated to the payment or processing of insurance premiums.

(3) Employing a device or method or entering into an agreement whereby funds received from a service member by allotment for the payment of insurance premiums are identified on the service member’s Leave and Earnings Statement or equivalent or successor form as “Savings” or “Checking” and when the service member has no formal banking relationship as defined in paragraph (2).

(4) Entering into an agreement with a depository institution for the purpose of receiving funds from a service member whereby the depository institution, with or without compensation, agrees to accept direct deposits from a service member with whom it has no formal banking relationship.

(5) Directly or indirectly using an active duty service member or a civilian, nonappropriated fund, or special government employee of the Department of Defense, as a



representative or agent in an official or unofficial capacity with or without compensation with respect to the solicitation or sale of life insurance to service members who are junior in rank or grade, or to the family members of the personnel.

(6) Offering or giving anything of value, directly or indirectly, to an active duty service member or a civilian, nonappropriated fund, or special government employee of the Department of Defense to procure assistance in encouraging, assisting or facilitating the solicitation or sale of life insurance to another service member.

(7) Knowingly offering or giving anything of value to a service member whom the insurer or insurance producer knows, or in the exercise of ordinary care should have known, has a pay grade of E-4 or below for a service member's attendance to an event where an application for life insurance is solicited.

(8) Advising a service member with a pay grade of E-4 or below to change his income tax withholding or state of legal residence for the sole purpose of increasing disposable income to purchase life insurance.

(b) The following acts or practices by an insurer or insurance producer lead to confusion regarding source, sponsorship, approval or affiliation and are declared to be false, misleading, deceptive or unfair:

(1) Making any representation, or using any device, title, descriptive name or identifier that has the tendency or capacity to confuse or mislead a service member into believing that the insurer, insurance producer or product offered is affiliated, connected or associated with, endorsed, sponsored, sanctioned or recommended by the United States Government, the United States Armed Forces, or any State or Federal agency or government entity.

(i) Examples of titles prohibited include "Battalion Insurance Counselor," "Unit Insurance Advisor," "Service-member's Group Life Insurance Conversion Consultant" or "Veteran's Benefits Counselor."

(ii) Notwithstanding the prohibitions of this paragraph, a person may use a professional designation awarded after the successful completion of a course of instruction in the business of insurance by an accredited institution of higher learning. Examples include "Chartered Life Underwriter," "Chartered Financial Consultant," "Certified Financial Planner," "Master of Science In Financial Services" or "Master of Science In Financial Planning."

(2) Soliciting the purchase of a life insurance product through the use of or in conjunction with, a third-party, organization that promotes the welfare of or assists members of the United States Armed Forces in a manner that has the tendency or capacity to confuse or mislead a service member into believing that either the insurer, insurance producer or insurance product is affiliated, connected or associated with, endorsed, sponsored, sanctioned or recommended by the United States Government, the United States Armed Forces or any State or Federal agency or governmental entity.

(c) The following acts or practices by an insurer or insurance producer lead to confusion regarding premiums, costs or investment returns and are declared to be false, misleading, deceptive or unfair:

(1) Using or describing the credited interest rate on a life insurance policy in a manner that implies that the credited interest rate is a net return on premium paid.

(2) Excluding individually issued annuities, misrepresenting the mortality costs of a life insurance product, including stating or implying that the product "costs nothing" or is "free."

(d) The following acts or practices by an insurer or insurance producer regarding Servicemembers Group Life Insurance or Veterans' Group Life Insurance are declared to be false, misleading, deceptive or unfair:

(1) Making a representation regarding the availability, suitability, amount, cost, exclusions or limitations to coverage provided to a service member or dependents by service members' group life insurance or veterans' group life insurance, which is false, misleading or deceptive.

(2) Making any representation regarding conversion requirements, including the costs of coverage, or exclusions or limitations to coverage of Servicemembers' Group Life Insurance or Veterans' Group Life Insurance to private insurers which is false, misleading or deceptive.

(3) Suggesting, recommending or encouraging a service member to cancel or terminate a Servicemembers' Group Life Insurance policy or issuing a life insurance policy which replaces an existing Servicemembers' Group Life Insurance policy unless the replacement takes effect upon or after the service member's separation from the United States Armed Forces.

(e) The following acts or practices by an insurer or insurance producer, or both, regarding disclosure are deemed and declared to be false, misleading, deceptive or unfair:

(1) Deploying, using or contracting for any lead generating materials designed exclusively for use with service members that do not clearly and conspicuously disclose that the recipient will be contacted by an insurance producer, if that is the case, for the purpose of soliciting the purchase of life insurance.

(2) Failing to disclose that a solicitation for the sale of life insurance will be made when establishing a specific appointment for an in-person, face-to-face meeting with a prospective purchaser.

(3) Excluding individually issued annuities, failing to clearly and conspicuously disclose the fact that the product being sold is life insurance.

(4) Failing to make the written disclosures required under section 10 of the Military Personnel Financial Services Protection Act (10 U.S.C. § 992 nt), at the time of sale or offer to an individual who the insurer or insurance producer knows, or in the exercise of ordinary care should have known, is a service member.

(5) Excluding individually issued annuities, when the sale is conducted in-person face-to-face with an individual whom the insurer or insurance producer knows, or in the exercise of ordinary care should have known, to be a service member, failing to provide the applicant at the time the application is taken with the following:

(i) An explanation of any free look period with instructions on how to cancel if a policy is issued.

(ii) Either a copy of the application or a written disclosure that clearly and concisely sets out the type of life insurance, the death benefit applied for and its expected first year cost. A basic illustration that meets the requirements of sections 407-A and 408-A, of The Insurance Company Law of 1921 (40 P.S. §§ 625-7 and 625-8), regarding illustrations and life insurance illustrations, shall be deemed sufficient to meet this requirement for a written disclosure.

(f) The following acts or practices by an insurer or insurance producer with respect to the sale of life insurance products, excluding individually issued annuities, are deemed and declared to be false, misleading, deceptive or unfair:

(1) Recommending the purchase of a life insurance product which includes a side fund to a service member in pay grades E-4 and below unless the insurer has reasonable grounds for believing that the life insurance death benefit, standing alone, is suitable.

(2) Offering for sale or selling any life insurance contract which includes a side fund unless all the following conditions are met:

(i) Interest credited accrues from the date of deposit to the date of withdrawal and permits withdrawals without limit or penalty.

(ii) The applicant has been provided with a schedule of effective rates of return based upon cash flows of the combined product. For this disclosure, the effective rate of return will consider all premiums and cash contributions made by the policyholder and all cash accumulations and cash surrender values available to the policyholder in addition to life insurance coverage. This schedule will be provided for at least each policy year from 1 to 10 and for every fifth policy year thereafter ending at age 100, policy maturity or final expiration.

(iii) The contract does not, by default, divert or transfer funds accumulated in the side fund to pay, reduce or offset any premiums due.

(3) Offering for sale or selling any life insurance contract which after considering all policy benefits, including endowment, return of premium or persistency, does not comply with standard nonforfeiture law for life insurance.

(g) The following acts or practices by an insurer or insurance producer with respect to the sale of life insurance products are deemed and declared to be false, misleading, deceptive or unfair:

(1) Offering for sale or selling a life insurance product that includes a side fund to a service member in pay grades E-4 and below who is currently enrolled in Service Members' Group Life Insurance. This practice is presumed unfair unless the following conditions are met:

(i) The insurer conducts a needs assessment which includes consideration of the risks associated with premature death, the financial obligations and immediate and future cash needs of the applicant's estate, or survivors or dependents, or both.

(ii) The insurer demonstrates that the applicant's service members group life insurance death benefit, together with other military survivor benefits, savings and investments, survivor income, and other life insurance are insufficient to meet the applicant's insurable needs for life insurance. For purposes of this subparagraph, "other military survivor benefits" include the Death Gratuity, Funeral Reimbursement, Transition Assistance, Survivor and Dependents' Educational Assistance, Dependency and Indemnity Compensation, TRICARE Healthcare Benefits, Survivor Housing Benefits and Allowances, Federal Income Tax Forgiveness and Social Security Survivor Benefits.

(2) Selling a life insurance product to an individual whom the insurer or insurance producer knows, or in the exercise of ordinary care should have known, to be a service member that excludes coverage if the insured's death is related to war, declared or undeclared, or an act

related to military service except for an accidental death coverage, for example, double indemnity, which may be excluded.

**§ 146d.7. Violation.**

Violations of this chapter are deemed and defined by the Commissioner to be an unfair method of competition and an unfair or deceptive act or practice and shall be subject to applicable penalties or remedies contained in the Unfair Insurance Practices Act (40 P. S. §§ 1171.1—1171.15).

**§ 146d.8. Effective date.**

This chapter will become effective January 1, 2010, and apply to acts or practices committed on or after January 1, 2010.

[Pa.B. Doc. No. 09-1777. Filed for public inspection September 25, 2009, 9:00 a.m.]

**Title 58—RECREATION**

**PENNSYLVANIA GAMING CONTROL BOARD**

**[ 58 PA. CODE CH. 437a ]**

**Vendor Permission to Conduct Business Prior to Certification or Registration**

The Pennsylvania Gaming Control Board (Board), under its general authority in 4 Pa.C.S. § 1202(b)(30) (relating to general and specific powers) and the specific authority in 4 Pa.C.S. § 1321 (relating to additional licenses and permits and approval of agreements), amends Chapter 437a (relating to vendor certification and registration) to read as set forth in Annex A.

*Purpose of the Final-Form Rulemaking*

This final-form rulemaking amends § 437a.9 (relating to permission to conduct business prior to certification or registration) which allows the Bureau of Licensing to (Bureau) authorize a vendor to provide goods or services to a slot machine applicant or licensee while the vendor's application for certification or registration is being reviewed. Under this amendment, the Bureau could rescind that permission if the Office of Enforcement Counsel has issued a Notice of Recommendation for Denial to an applicant for certification or registration.

*Explanation of Amendments to Chapter 437a*

Currently, vendors may request permission to provide goods or services to a slot machine applicant or licensee while their application is being reviewed. The Board feels this practice is reasonable and necessary due to the demands of slot machine licensees to conduct business with hundreds of vendors on a day-to-day basis. Due to the volume of vendor applicants and the limited resources of the Board and its staff, it may take as long as 6 months to complete the review of an application from a business and render a decision on its suitability to be a part of the gaming industry in this Commonwealth.

Under this rulemaking, if the Office of Enforcement Counsel issues a Notice of Recommendation for Denial to a vendor applicant that has received this interim permission, the Bureau could rescind that permission, and the applicant would have to cease providing goods or services to the slot machine applicant or licensee. The Bureau would also notify the affected slot machine applicants or licensees that they may no longer do business with the vendor applicant.

*Comment and Response Summary*

Notice of proposed rulemaking was published at 39 Pa.B. 1003 (February 21, 2009).

The Board received comments from HSP Gaming, LP (HSP), Chester Downs and Marina, LLC (Chester), Greenwood Gaming and Entertainment, Inc. (Greenwood) and Downs Racing, LP (Downs). On April 22, 2009, The Independent Regulatory Review Commission (IRRC) also filed comments. These comments were considered by the Board and are discussed as follows.

The commentators asserted that the regulation should allow for a period of time after receiving a notice under this section during which a vendor applicant could continue to conduct business with a slot machine facility. The purpose of such a period would be to permit the vendor applicant to wind up its work with the slot machine licensee, and provide the slot machine licensee a reasonable time to secure a replacement vendor.

It is not the intent of this rulemaking to impose additional costs on slot machine licensees. The Board acknowledges that abrupt work stoppages or the interruption of supplies or services could increase the costs for slot machine licensees that have contracted with vendors in good faith. To avoid this result, the Board has changed the proposed amendment to permit the Bureau to include a prospective date in its notice by which the vendor applicant must cease conducting business with the slot machine licensee. This will give the Bureau the ability to establish a winding-up period based on the type of work or services being provided by the vendor applicant, and the reason for the Office of Enforcement Counsel's Notice of Recommendation for Denial.

HSP and Downs expressed concern that under the proposed amendment, the vendor applicant has no opportunity to cure the concerns identified in the Office of Enforcement Counsel's Notice of Recommendation for Denial. The Board disagrees with this assessment of the vendor applicant's remedies under the regulation.

A vendor applicant that receives a Notice of Recommendation for Denial would have the right to request an administrative hearing to contest the issues outlined in the notice. This hearing would be held in accordance with 2 Pa.C.S. (relating to administrative law and procedure), 1 Pa. Code Part II (relating to general rules of administrative practice and procedure) and 58 Pa. Code Part VII, Subpart H (relating to practice and procedure).

At this hearing, the vendor applicant would have the opportunity to present evidence and examine witnesses before a hearing officer. The recommendation of the hearing officer made under the record established during this administrative hearing would then be reviewed by the Board. The Board has the option of accepting some or all of the hearing officer's recommendations, conducting a de novo hearing, or making an adjudication based on the record. See § 494a.5 (relating to review). A final order of the Board denying the applicant's certification or registration is appealable to the Commonwealth Court. See § 494a.11 (relating to appeals).

Greenwood, Downs and IRRC expressed concern that rescission of permission granted under § 437a.9 deprives the vendor applicant of its right to due process. The industry commentators suggested that the vendor applicant must be given an opportunity for a hearing prior to the rescission of that permission. In its comments, IRRC asked the Board to clarify how the proposed amendment affected the vendor applicant's due process rights.

The Board disagrees that a vendor applicant is due a hearing prior to the permission granted under § 437a.9 being rescinded. The grant of permission to a vendor applicant to do business with a slot machine licensee prior to certification or registration is completely within the discretion of the Board. A vendor provisionally conducting business with a slot machine licensee pursuant to the permission has merely an expectation of a favorable decision by the Board on its application. Since this expectation is not equivalent to the protected interest that attaches when a vendor attains certification or registration, rescinding permission granted under § 437a.9 without a prior hearing does not offend the vendor applicant's due process rights.

Greenwood and Downs also questioned whether the proposed rulemaking represented an impermissible commingling of the prosecutorial and adjudicative functions of the Board. These commentators felt that requiring the vendor applicant to cease doing business with the slot machine facility upon action of the Office of Enforcement Counsel was counter to the standards set by the Pennsylvania Supreme Court in *Lyness v. State Board of Medicine*, 605 A.2d 1204 (1992). In that case, the Court held that if an administrative agency has both prosecutorial and adjudicative authority over a regulated community, then due process demands that walls of division be constructed between the two arms of that agency so that the threat or appearance of bias in the administration of its authority is eliminated. IRRC also asked the Board to address this issue.

The Board agrees that the proposed rulemaking could have been construed in a manner that would render it inconsistent with the rule established by *Lyness*. For this reason, the final-form rulemaking clarifies that the permission granted by the Bureau under § 437a.9 can only be rescinded by the Bureau.

Finally, both Greenwood and IRRC recommended that the rulemaking expressly require that notice to the vendor applicant and the slot machine licensee regarding the rescission of permission be made in writing and posted. The Board agrees with this suggestion and the final-form rulemaking requires notice by the Bureau be made to both the vendor applicant and the slot machine licensees by registered mail.

*Affected Parties*

This rulemaking will affect applicants for vendor certification or registration that have been granted permission to provide goods or services to a slot machine applicant or licensee while its application is being reviewed. It may also affect slot machine applicants and licensees.

*Fiscal Impact**Commonwealth*

The final-form rulemaking will have no fiscal impact on the Board or other agencies of the Commonwealth.

*Political Subdivisions*

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

*Private Sector*

Vendors who have been granted permission to provide goods or services while their application is being reviewed could lose that privilege. If the Office of Enforcement Counsel issues a Notice of Recommendation for Denial to a vendor applicant, the Bureau may require that the applicant cease providing goods or services to an applicant for or holder of a slot machine license.



Similarly, the slot machine applicant or licensee will have to find a different vendor to provide the goods or services that the vendor applicant had been providing.

*General Public*

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

*Paperwork requirements*

The Bureau may need to issue additional notices to a vendor applicant and the slot machine licensee or applicant with which it is conducting business. The issuance of a Notice of Recommendation for Denial to an applicant by the Office of Enforcement Counsel is part of the current application process.

*Effective Date*

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

*Contact Person*

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

*Regulatory Review*

In accordance with section 5(a) of the Regulatory Review Act (71 P. S. § 745.5(a)), on February 11, 2009, the Board submitted a copy of the proposed rulemaking, published at 39 Pa.B. 1003, and a copy of the Regulatory Analysis Form, to IRRC and to the Chairpersons of the House Gaming Oversight Committee and the Senate Community, Economic and Recreational Development Committee (Committees).

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

Under section 5.1(j.2) of the Regulatory Review Act (71 P. S. § 745.5a(j.2)), the final-form rulemaking was deemed approved by the Committees on August 19, 2009. Under section 5.1(e) of the Regulatory Review Act IRRC met on August 20, 2009, and approved the final-form rulemaking.

*Findings*

The Board finds that:

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

(2) The final-form rulemaking is necessary and appropriate for the administration and enforcement of 4 Pa.C.S. Part II (relating to gaming).

*Order*

The Board, acting under 4 Pa.C.S. Part II, orders that:

(1) The regulations of the Board, 58 Pa. Code Chapter 437a, are amended by amending § 437a.9 to read as set forth in Annex A.

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

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

GREGORY C. FAJT,  
Chairperson

*(Editor's Note: For the text of the Independent Regulatory Review Commission relating to this document, see 39 Pa.B. 5279 (September 5, 2009).)*

**Fiscal Note:** Fiscal Note 125-97 remains valid for the final adoption of the subject regulation.

**Annex A**

**TITLE 58. RECREATION**

**PART VII. GAMING CONTROL BOARD**

**Subpart B. LICENSING, PERMITTING, CERTIFICATION AND REGISTRATION**

**CHAPTER 437a. VENDOR CERTIFICATION AND REGISTRATION**

**§ 437a.9. Permission to conduct business prior to certification or registration.**

(a) Notwithstanding § 437.1 (relating to general vendor requirements), the Board may allow an applicant for a vendor certification or registration to conduct business with a slot machine applicant in the following criteria met:

(1) A completed Vendor Registration Form—Un-sponsored has been filed by the vendor, a completed Vendor Registration Form—Sponsored has been filed by the slot machine applicant or licensee or a completed Vendor Certification Application and Disclosure Information Form has been filed by the slot machine applicant or licensee in accordance with § 437a.2 or § 437a.3 (relating to vendor registration applications; and vendor certification applications).

(2) The slot machine applicant or licensee certifies that it has performed due diligence on the vendor.

(b) If the Office of Enforcement Counsel issues a Notice of Recommendation for Denial to an applicant for certification or registration, the Bureau of Licensing may rescind the permission granted to the applicant for certification or registration to conduct business with a slot machine applicant or licensee under subsection (a). If the permission is rescinded, the applicant for certification or registration shall cease conducting business with the slot machine applicant or licensee by the date specified in the notice of the rescission by the Bureau of Licensing under subsection (c).

(c) The Bureau of Licensing will notify the applicant for certification or registration and the slot machine applicant or licensee by registered mail that permission for the applicant for certification or registration to conduct business with the slot machine applicant or licensee under subsection (a) has been rescinded and that the slot machine applicant or licensee shall cease conducting business with the applicant for certification or registration by the date specified in the notice.

(d) Permission to conduct business under this section will be for 6 months.

(e) The Board may extend the relief for additional 6-month periods upon a showing of good cause by the slot machine applicant or licensees.

[Pa.B. Doc. No. 09-1778. Filed for public inspection September 25, 2009, 9:00 a.m.]

## PENNSYLVANIA GAMING CONTROL BOARD

[ 58 PA. CODE CHS. 439a, 461a, 463a, 465a AND 499a ]

### Junkets; Slot Machines; and Practice and Procedures; Omnibus Amendments

The Pennsylvania Gaming Control Board (Board), under its general authority in 4 Pa.C.S. § 1202(b)(30) (relating to general and specific powers) and the specific authority in 4 Pa.C.S. §§ 1205, 1207 and 1322 (relating to license or permit application hearing process; public input hearings; regulatory authority of board; and slot machine accounting controls and audits), amends Chapters 439a, 461a, 463a, 465a and 499a to read as set forth at 39 Pa.B. 1662 (April 4, 2009).

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

The final-form rulemaking contains numerous editorial changes to improve the clarity of existing provisions, brings the Board's regulations in line with current practices, and eliminates or streamlines existing requirements and procedures to improve the effectiveness of the Board's regulatory programs.

#### *Explanation of Amendments to Chapters 439a, 461a, 463a, 465a and 499a*

Throughout this final-form rulemaking, the Board replaced references to the "Office of Gaming Operations" with the new name, "Bureau of Gaming Operations." Additionally, the Board deleted the definition of "Slots Lab" and references to this term and to "Gaming Lab," replacing them with the "Bureau of Gaming Laboratory Operations (BGLO)," the name used for this Bureau in other chapters.

In § 461a.12 (relating to progressive slot machines), a new subsection (g) was added to require that the BGLO test and certify progressive slot machines prior to the progressive slot machines' availability to the public for play. This reflects the current practice of the BGLO, but it will now also be a regulatory requirement.

In § 463a.1(c) (relating to possession of slot machines generally), the Board limited the requirement to file a petition requesting permission to possess slot machines to educational institutions; unlicensed manufacturers, manufacturer designees or suppliers who want to exhibit or demonstrate slot machines; and the general category of "other persons." There is no need for the other entities previously listed in subsection (b) to file a petition because they are either licensed by the Board or are law enforcement agencies. The Board will be able to monitor slot machines in the possession of these entities through the periodic reports they are required to file. The Board also believes that requiring common carriers to file a petition is impracticable and unnecessary because of the short duration of time common carriers will have the slot machines in their possession, and because information related to all shipments is filed with the Board under § 463a.2 (relating to transportation of slot machines into, within and out of this Commonwealth).

In § 463a.7 (relating to off premises storage of slot machines), the Board simplified the process for reviewing requests from slot machine licensees to store slot machines off the premises of a licensed facility. These amendments replace the requirement that these requests be filed as a petition and approved by the Board with the requirement that these requests be filed as a written request with the Bureau of Gaming Operations which will be approved by the Board's Executive Director. This should reduce the amount of time required to process these requests.

In § 465a.9(c) (relating to surveillance system; surveillance department control; surveillance department restrictions), the Board deleted the requirement that slot machine licensees have audio surveillance capability in the count room. Because of changes in count room equipment technology and the capabilities of the central control computer system to track gaming revenues, there is no need to have audio recordings of count room activities.

In subsections (c) and (e), "automated teller machines" (ATMs) have been added to the lists of items that require camera coverage and video recording. Slot machine licensees' surveillance systems already cover ATMs, but they were not previously included in the Board's regulations. Gaming conducted at slot machines has also been added to the list in subsection (e) for the same reason. Additionally in subsection (e), the reference to "satellite cage" has been moved from paragraph (2), which covers the main bank and vault, to paragraph (1), which covers the cashier cage.

In § 465a.9(j), the Board reduced the time period for retention of surveillance recordings from 30 days to 7 days for the main bank and vault, the drop, the count and gaming conducted at slot machines. Following the internal control requirements associated with the activities conducted in these areas, any problems for which these recordings would be needed will have occurred within the 7-day time frame.

In § 465a.25 (relating to counting and recording of slot cash storage boxes), the Board deleted, "at least 48 hours" from the advance notice requirement for changes to the time the slot cash storage boxes are to be counted. Video surveillance utilized during the count process and the continuing presence of the Board's casino compliance representatives at the licensed facilities makes the 2 days advanced notice on changes to this schedule unnecessary.

In § 465a.26 (relating to jackpot payouts), the requirement in subsection (b)(3) and (7)(viii)(A) that the witness of a jackpot between \$1,200 and \$9,999.99 be "a lead slot attendant or higher" has been replaced with "a security department member or a slot operations department member other than the preparer." This will make it easier for slot machine licensees to verify jackpots and allow more efficient use of personnel.

In § 499a.1 (relating to appearance in person), a new subsection (b) has been added, clarifying who may represent a party in nonadversarial proceedings before the Board. It is modeled on the provisions in 1 Pa. Code § 31.21 (relating to appearance in person) and will reduce the need for some parties to hire legal counsel to represent them.

#### *Comment and Response Summary*

Notice of proposed rulemaking was published at 39 Pa.B. 1662 (April 4, 2009).

During the public comment period, the Board received a letter from International Gaming Technology thanking

the Board for the opportunity to comment, but not offering any comments on the substance of the rule-making. By letter dated June 3, 2009, the Independent Regulatory Review Commission (IRRC) notified the Board that it had no comments on the proposed rulemaking.

No changes have been made to the proposed rule-making in the final-form version of this rulemaking.

*Affected Parties*

Slot machine licensees will benefit from the simplified process for reviewing requests for off premise storage of slot machines and for verifying jackpots, the elimination of the requirement for audio surveillance capability in the count room, the reduction in the time periods for retention of some video recordings and the elimination of the 48 hours minimum notice on changes to the count schedule. Slot machine licensees will also be required to have progressive slot machines certified by the BGLO prior to their use by the gaming public. Licensed and governmental entities and common carriers will no longer have to file petitions to possess slot machines. Parties in some Board proceedings will not be required to be represented by legal counsel.

*Fiscal Impact*

*Commonwealth*

To the extent that this final-form rulemaking simplifies some administrative processes, there may be some slight savings to the Board. The Department of Revenue and the State Police may also experience small savings because filing a petition to possess slot machines is no longer required.

*Political Subdivisions*

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

*Private Sector*

Slot machine licensees will experience some cost savings due to revisions and elimination of unnecessary regulatory requirements. There should be little to no costs associated with the new requirement that progressive slot machines be certified prior to the use because this represents the current practice of the BGLO.

*General Public*

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

*Paperwork requirements*

This final-form rulemaking may reduce the paperwork associated with filing requests for off premise storage of slot machines. Licensed and governmental entities and common carriers will no longer have to file petitions to possess slot machines.

*Effective Date*

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

*Contact Person*

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

*Regulatory Review*

Under section 5(a) of the Regulatory Review Act (71 P. S. § 745.5(a)), on March 24, 2009, the Board submitted a copy of the proposed rulemaking, published at 39 Pa.B. 1662 and a copy of the Regulatory Analysis Form to IRRC and to the House Gaming Oversight Committee and the Senate Community, Economic and Recreational Development Committee (Committees).

Under section 5(c) of the Regulatory Review Act IRRC and the Committees were provided with copies of the comments received during the public comment period, as well as other documents when requested. In preparing the final-form rulemaking, the Board has considered all comments received 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)), the final-form rulemaking was deemed approved by the Committees on August 19, 2009. Under section 5(g) of the Regulatory Review Act, the final-form rulemaking was deemed approved by IRRC effective August 19, 2009.

*Findings*

The Board finds that:

(1) Public notice of intention to adopt these amendments 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 (relating to notice of proposed rulemaking required; and adoption of regulations).

(2) The final-form rulemaking is necessary and appropriate for the administration and enforcement of 4 Pa.C.S. Part II (relating to gaming).

*Order*

The Board, acting under 4 Pa.C.S. Part II, orders that:

(a) The regulations of the Board, 58 Pa. Code Chapters 439a, 461a, 463a, 465a and 499a are amended by amending §§ 439a.7, 439a.8, 439a.10, 439a.11, 461a.1, 461a.4, 461a.5, 461a.7, 461a.8, 461a.10, 461a.12, 461a.18, 461a.22, 461a.26, 463a.1, 463a.2, 463a.7, 465a.2, 465a.4, 465a.5, 465a.8, 465a.9, 465a.18, 465a.25, 465a.26 and 499a.1 to read as set forth at 39 Pa.B. 1662.

(b) The Chairperson of the Board shall certify this order, 39 Pa.B. 1662 and deposit them with the Legislative Reference Bureau as required by law.

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

GREGORY C. FAJT,  
*Chairperson*

**Fiscal Note:** 125-99 remains valid for the final adoption of the subject regulations.

*Editor's Note:* For the text of the order of the Independent Regulatory Review Commission relating to this document, see 39 Pa.B. 5279 (September 5, 2009.)

[Pa.B. Doc. No. 09-1779. Filed for public inspection September 25, 2009, 9:00 a.m.]



# PROPOSED RULEMAKING

## CANINE HEALTH BOARD

[ 7 PA. CODE CHS. 28 AND 28a ]

### Canine Health Board Standards for Commercial Kennels; Correction

The Department of Agriculture has submitted a correction to the paragraph regarding the *Public Comment Period* of the preamble to the proposed rulemaking which appeared at 39 Pa.B. 5315, 5316 (September 12, 2009).

The correct version of the paragraph is as follows:

Interested persons are invited to submit written comments regarding the proposed regulation within 45 days following publication in the *Pennsylvania Bulletin*. These comments are public documents that will be posted on the Independent Regulatory Review Commission (IRRC) web site. The comments may be either: (1) mailed to the Canine Health Board, c/o Department of Agriculture, Bureau of Dog Law Enforcement, 2301 North Cameron Street, Room 102, Harrisburg, PA 17110; or (2) sent by e-mail, to: CHBComments@state.pa.us.

DENNIS C WOLFF,  
*Secretary*

[Pa.B. Doc. No. 09-1682. Filed for public inspection September 11, 2009, 9:00 a.m.]

## DEPARTMENT OF AGRICULTURE

[ 7 PA. CODE CH. 128 ]

### Pesticides

#### *Statutory Authority*

The Department of Agriculture (Department) proposes to amend Chapter 128 (relating to pesticides) as set forth in Annex A. This proposal is adopted under the specific authority of the Secretary of Agriculture (Secretary) to promulgate appropriate regulations for the safe handling, transportation, storage, display, distribution and disposal of pesticides as set forth in section 7(b)(2) Pesticide Control Act of 1973 (act) (3 P. S. § 111.27(b)(2)).

#### *Purpose*

The purpose of this proposed rulemaking is to clarify, update and in some instances, delete, the existing pesticide regulations to ensure that the regulated community has a better understanding of the regulatory requirements and to maintain the Department's statutory mandate to protect the public health and welfare. Some of the Department's changes were also included to make the regulations gender neutral, bring the existing requirements into compliance with changes in Commonwealth law, and comply with additional restrictions put forth by the United States Environmental Protection Agency (EPA). Additional requirements set forth in the regulations were included for State registration of EPA-approved pesticides, especially in the areas relating to sales of restricted use pesticides and the identification of individuals seeking to sell or receive restricted use pesticides. These changes were added to address homeland security issues.

The Department also removed several sections from the regulations to ease the requirements on applicators and provide substantial cost savings to the Commonwealth, commercial and public pesticide application businesses.

#### *Background*

In developing and drafting the proposed amendments, the Department has continuously sought the input and comments from numerous industry entities including the Pesticide Advisory Board (PAB), members of the general public, members of the regulated community, as well as various pesticide trade groups, associations and organizations. These regulations have been the subject of significant discussions at PAB public meetings starting in 2002 through 2008. To date, the PAB continues to monitor the proposed rulemaking and its impact upon the regulated community and advise the Secretary accordingly.

Specifically, as part of its public outreach and input, the Department conducted direct mailing to over 650 persons on the Hypersensitivity Registry since December 2002. The Department mailed newsletters discussing the proposed regulations to 6,000 pesticide application businesses. The Department also conducted presentations regarding the proposed changes at numerous meetings attended by pesticide business owners and dealers, including, but not limited to, the annual meeting of the PA Christmas Tree Growers Association.

As a result of years of public and pesticide industry input, the Department has subsequently incorporated many of the suggested comments and other changes to the proposed rulemaking. The Department believes that the input from the industry has been vital in producing a reasonable and prudent proposal, designed to protect the public health and welfare of the citizens of this Commonwealth.

#### *Summary of the Major Provisions of the Proposed Rulemaking*

##### *Subchapter A. General Provisions*

Section 128.2 (relating to definitions) contains several new definitions, including constructive notification, dosage or rate of application, FIFRA, perimeter treatment, person, pesticide dealer manager, therapeutic swimming pool and worker protection standard. The definition of "formulations" was deleted.

Section 128.3(a) (relating to fees) clarifies that the annual fee for a pesticide dealer's license is \$10 "per location." Many pesticide dealers have more than one location, but for years have been able to utilize only one license. The Department believed it necessary to control the dealer's license by location.

Paragraph 1 creates a \$15 annual fee for the new pesticide dealer manager's license per individual and paragraph 2 creates a \$3 duplicate pesticide dealer manager's license fee.

Section 128.3(f)(3) (relating to examination fees) creates a \$50 fee for the "pesticide dealer manager's examination. Paragraph 5 previously numbers (3) and (4) are renumbered to (4) and (5) respectively.

Section 128.3(g) renumbered paragraphs (i) and (ii) for purpose of consistency.

Section 128.3(i) increases the annual fee to register pesticide products from \$135 to \$250. The last increase was in 2001 when the fee was changed from \$100 to



§135. The Department believes that this fee increase is reasonable and consistent with the fees other states charge to register pesticide products and in certain circumstances, the proposed fee increase is far less than that charged by New York (\$300), California (\$1000) and Louisiana (\$700), for example. With respect to these fee increases, the Department has weighed the impact the increase will have on the regulated community with the increase in the operational costs associated with administering and regulating this industry.

#### *Subchapter B. Licenses, Certificates and Permits*

##### *Pesticide Dealers*

Section 128.10 (relating to license requirements for pesticide dealer) establishes new licensing requirements for businesses and individuals that resell or distribute restricted use pesticides. Each pesticide dealer must employ one person as a “pesticide dealer manager.”

This section prohibits the pesticide dealer from distributing restricted use pesticides to persons without proof of proper identification.

Section 128.11 (relating to recordkeeping) changes the word “sale” to “distribution” and the recordkeeping information regarding distribution of restricted use pesticides. Individuals were not keeping proper records and documentation because the restricted use pesticide was not being technically sold, but distributed. The Department believes that this amendment will clarify the recordkeeping requirement.

Section 128.12 (relating to licensing of a pesticide dealer manager) establishes the parameters of a pesticide dealer manager’s license, including age, qualifications, renewal and expiration.

Section 128.13 (relating to determination of competence) establishes the components of the written examination and the procedure for obtaining the pesticide dealer manager’s license upon successful completion of the written examination.

##### *Pest Management Consultants*

Section 128.24 (relating to recordkeeping) deletes the requirement to maintain the “formulation” of pesticides in light of the deletion of the definition of “formulation” in § 128.2.

##### *Pesticide Application Businesses*

Section 128.31(c) (relating to license requirements) requires that the pesticide application business license number assigned to that business be applied in a contrasting color.

Section 128.31(d)(1) and (2) requires a pesticide application business to return voided applicator certificates or registered technician cards to the Department if those individuals are no longer employed by that business, or a written explanation why the applicator certificates or registered technician cards, or both, are unavailable.

Section 128.31(f) requires application businesses which include aerial applicators to provide the Department proof of compliance with Federal Aviation Administration regulations relating to agricultural aircraft operations.

Section 128.32 (relating to categories of business licenses) creates a new applicator category for sewer root control under the business category (D) and expands right-of-way to include “weeds” in category (E). This section deletes the industrial “weeds” category from category (F).

Section 128.33 (relating to assignment of work) changed the word “permit” to “allow” to avoid confusion.

Section 128.34 (relating to financial responsibility) raises the maximum allowable deductible amount from \$1,000 to \$2,500.

Section 128.35 (relating to recordkeeping) modifies, updates, clarifies and renumbers the recordkeeping requirements and provisions relating to pesticide applications by pesticide businesses. The Department believes that reordering and renumbering this section provides a more clear understanding of the pesticide businesses’ responsibilities.

##### *Commercial and Public Applications*

Section 128.41 (relating to requirements for certification) clarifies the language of this section as it relates to commercial and public applicators. The proposed amendment also includes the use of pesticides which are otherwise deemed exempted from Federal registration. In subsection (b), the proposal deletes the references to private-residential swimming pools and adds a specific exemption for therapeutic pools.

Section 128.42 (relating to categories of commercial and public applicators) clarifies applicator Category 26—Sewer Root control (§ 128.32), which formally adopts and complies with the EPA’s pesticide classification change. The proposed amendment combines pesticide applicator Categories 10 and 14 into one single category covering both areas of “right-of-way and weed” control. The proposed amendment also rewords the language of applicator categories 11, 12 and 15 with no change to the meaning.

Section 128.43 (relating to determination of competence) sets forth the identical criteria and areas of knowledge and competence for the written examination which is set forth in section 16.1 of the act (3 P. S. § 111.36a). The proposed amendment also requires proper proof of identity when taking a proctored examination and increases the time for completing the core examination plus at least one category from 180 days to 1 year.

Section 128.44 (relating to eligibility) establishes the minimum age a person is eligible for certification at 18 years of age. It also requires compliance with the provisions contained in 14 CFR Part 137 (relating to Agricultural Operations).

Section 128.45 (relating to recertification) updates the security issues in core training and requires that the trainer have at least 3 years experience as a certified applicator or equivalent education to conduct the training. The proposed amendment also provides for penalties for falsification of training or attendance at recertification courses.

##### *Pesticide Application Technicians*

Section 128.51 (relating to training program) reiterates the knowledge areas of training required by the act for pesticide application technicians.

Section 128.52 (relating to registration) provides that a pesticide application technician must be at least 16 years of age at the time of registration. The amendment also clarifies that the training period for pesticide application technicians must be at least 30-calendar days long.

Section 128.53 (relating to recordkeeping) requires, as a security measure, the retention of pesticide business employees’ photo identification and other forms of valid identification. The proposed amendment also requires

that identification records must be completed and made available to the Department no later than 24 hours after the training set forth in § 128.51.

#### *Private Applicators*

Section 128.61 (relating to determination of competence) reiterates the knowledge areas of training required by the act for private applicators, including security relating to pesticide use. The proposed amendment requires that private applicators must provide personal identification, including photo identification to the examination proctor.

Section 128.62 (relating to eligibility) provides that a private applicator must be at least 16 years of age to be eligible for a permit for the application of pesticides. The proposed amendment clarifies that a private applicator with an expired permit cannot use a restricted use pesticide, unless under the direct supervision of a certified applicator.

Section 128.63 (relating to recertification) sets forth the required core and category courses for the recertification of private applicators as specified in the act. The proposed amendment enumerates the penalties for the falsification of course attendance and course information.

Section 128.64 (relating to fumigation by a private applicator) clarifies that a private applicator must hold a permit in the proper fumigation category to purchase or use a restricted use fumigation product. The proposed amendment also clarifies that only materials approved by the Department may be used during an examination for private applicators. It also requires that the private applicator provide the examination proctor with proper and valid photo identification.

Section 128.65 (relating to recordkeeping) removes the requirement of "formulation" in a private applicator's recordkeeping and reorders the topics in this section for clarity. The proposed amendment requires that a restricted use pesticide application record must be completed in writing and made available to the Department within 24 hours after the application date.

#### *Reciprocity*

Section 128.71 (relating to general provision) allows for additional out-of-State obtained pesticide categories to be added to an existing reciprocal certification.

Section 128.72 (relating to procedure) requires that any person seeking reciprocity with the Commonwealth shall be at least 18 years of age and provide valid photo identification and proof of out-of-State residency.

#### *Subchapter C. Prior Notification*

Section 128.81 (relating to right-of-way application) clarifies and provides uniformity with other prior notification sections within the regulations. The language does not alter the meaning.

Section 128.82 (relating to nonagricultural specific site application) clarifies and provides uniformity with other prior notification sections within the regulations. The language does not alter the meaning.

Section 128.83 (relating to ornamental or turf application) of the existing regulations has been rescinded and reconstructed as § 128.85a. The Department moved this section to arrange the types of notification requirements together for purposes of consistency and uniformity.

Section 128.83a is new and contains provisions found in § 128.85 (relating to agricultural applications). The De-

partment moved provisions of this section to arrange the types of notification requirements together for purpose of consistency and uniformity).

Section 128.84 (relating to nonagricultural area-wide application) of the proposed amendment clarifies and provides uniformity with other prior notification sections.

Section 128.85 is new and contains provisions previously found in existing § 128.83.

Section 128.86 (relating to constructive notification) has been rescinded in its entirety and moved to the definitions in § 128.2.

Section 128.87 (relating to prior notification by certified mail) has been deleted and reserved.

Section 128.88 (relating to recordkeeping) establishes that records created under this provision must be completed within 24 hours after the application date.

#### *Subchapter D. Registration of Pesticides*

Section 128.91 (relating to EPA approval required) completely modifies this section to allow for EPA approval or registration for standards for state registration. EPA's changes to pesticide registration requirements exempted some pesticides from the EPA registration process. The proposed amendment will clarify that those exempted pesticides are included within the Department's registration process.

#### *Subchapter E. Miscellaneous*

Section 128.101 (relating to reporting of significant pesticide accidents or incidents) adds the word "incident" to the reporting requirement and further defines the term significant pesticide accident or incident" to provide clarity in the existing regulation. The proposed amendment will require the reporting to the Department of unexpected adverse effects resulting from a pesticide product even when applied consistent with the label directions.

Section 128.102 (relating to protected designated areas) expands the list of protected areas to include conservation areas and those areas containing endangered or threatened plant or animal species as those terms are defined by various statutes. The proposed amendment requires the Secretary to approve or deny within 60 days of the receipt of a request for a waiver to apply pesticides in an otherwise protected designated area.

Section 128.103 (relating to handling, transportation, storage, use and disposal of pesticides) eliminates references to open burning of pesticide containers and brings the regulation into compliance with the Department of Environmental Protection's air and solid waste regulations. The proposed amendment also clarifies the Department's ability to enforce the Federal Worker Protection Standard as set forth in 40 CFR Part 170.

Section 128.104 (relating to experimental use permits) clarifies that it is the responsibility of the registrant of a pesticide to notify the Department of an EPA-approved experimental use permit.

Section 128.106 (relating to additional responsibilities within school buildings) specifically includes "school grounds" in the existing prohibition from applying pesticides in common access areas within a school building when students are expected to be in that area for normal academic instruction or other related activities. The proposed amendment provide a list of exemptions to the pesticide application prohibition.

Section 128.107 (relating to providing information upon request) is a new provision which requires that all pesticide businesses and individuals maintain records regarding the sales, application, distribution, storage and

transportation of pesticides and to provide those records to the Department upon request.

*Subchapter F. Pesticide Hypersensitivity Registry*

Section 128.111 (relating to the registry) allows the Department to distribute the hypersensitive registry by means other than mail. To reduce costs, the proposed amendment allows the Department to reduce the number of publications of the registry from four times per year to only two. The amendment changes the registry renewal date from January to October of each year.

Section 128.112 (relating to notification of hypersensitive individuals) allows additional means of notification to the pesticide hypersensitive individual by pesticide businesses. The proposed amendment clarifies existing exemptions to the notification requirement and specifically exempts notification regarding an application of a pesticide in the normal care and maintenance of a swimming pool.

*Fiscal Impact*

**Commonwealth:** The Department has determined that the proposal will have little or no adverse financial impact on the Commonwealth since all funds budgeted for the Program are derived from the Pesticide Restricted Account. The funds in that account are obtained from licensing, permitting and registration fees and civil penalties placed upon pesticide manufacturers, dealers and applicators doing business within this Commonwealth.

There will, however, be some cost savings in the amount of time needed to review and process Hypersensitivity Registries as a result of the reduced number of times the registry is published.

**Political Subdivisions:** The proposal will impose no costs and have no adverse fiscal impact on political subdivisions.

**Private Sector:** The proposal will have a direct fiscal impact on the private sector. Specifically, pesticide manufacturers will have increased fees for the registration of their pesticide product. Pesticide dealers will also have an increased fee. The regulation will, however, provide some cost savings to the private sector by raising the insurance deductible levels.

**General Public:** The proposal will not have any fiscal impact on the general public.

*Paperwork Requirements*

The proposal would not appreciably increase the paperwork burden of the Department or other government units or citizens, including the regulated community since there are already paperwork record-keeping requirements in the existing regulations.

*Effective Date*

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

*Subset Date*

There is no sunset date for the regulations. The Department will review the efficacy of these regulations on an ongoing basis.

*Contact Person*

Interested persons are invited to submit written comments regarding the proposed amendments within 30 days following publication in the *Pennsylvania Bulletin*. Comments are to be submitted to the Department of

Agriculture, Bureau of Plant Industry, 2301 North Cameron Street, Harrisburg, PA 17110-9408, Attention: Earl Haas.

*Regulatory Review*

Under section 5(a) of the Regulatory Review Act (71 P. S. § 745.5(a)), on September 15, 2009, the Department submitted a copy of the proposed regulation and a copy of a Regulatory Analysis Form to the Independent Regulatory Review Commission (IRRC) and to the Chairpersons of the House and Senate Standing Committees on Agriculture and Rural Affairs. 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 regulation 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 sets forth detailed procedures for review, prior to final publication of the regulations, by the Department, the General Assembly and the Governor of comments, recommendations or objections raised.

DENNIS C WOLFF,  
*Secretary*

**Fiscal Note:** 2-149. (1) General Fund; Implementing Year 2008-09 is \$0; 1st Succeeding Year 2009-10 is \$2,000; 2nd Succeeding Year 2010-11 is \$ 2,000; 3rd Succeeding Year 2011-12 is \$ 2,000; 4th Succeeding Year 2012-13 is \$2,000; 5th Succeeding Year 2013-014 is \$2,000; 2007-08 Program—\$3,163,000; 2006-07 Program—\$2,684,000; 2005-06 Program—\$2,706,000; (7) Pesticide Regulatory Account; (8) recommends adoption.

**Annex A**

**TITLE 7. AGRICULTURE**

**PART V. BUREAU OF PLANT INDUSTRY**

**CHAPTER 128. PESTICIDES**

**Subchapter A. GENERAL PROVISIONS**

**§ 128.2. Definitions.**

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

\* \* \* \* \*

**Constructive notification**—A person shall be deemed to have received notification if an adult residing in the same dwelling unit is so notified; orally, or by certified mail, or by a message left on an answering device activated by contacting the residence, including electronic mail or facsimile.

\* \* \* \* \*

**Dosage or rate of application**—The concentration of each pesticide, such as, a percent, ounces or quarts per gallon, pounds per 100 gallons, applied to a specific application site or target such as a crop, ornamental, cut stump, weed, animal, utility pole, reported as gallons per acre, pounds per 1,000 square feet, ounces per linear foot, ounces per cubic foot or ounces per animal.

**EPA**—The United States Environmental Protection Agency.

**FIFRA**—The Federal Insecticide, Fungicide, and Rodenticide Act of 1947 (FIFRA) (7 U.S.C. A. §§ 136—136y) .

**[ Formulation**—The physical composition of the pesticide product; for example, “dust,” “emulsifiable



concentrate," "wettable powder" and "granular" are ways to describe the formulation of a pesticide product. ]

\* \* \* \* \*

**Perimeter treatment—**

(i) The application of pesticide to the exterior of a structure to a maximum distance of 10 feet from the structure, unless the pesticide label clearly states otherwise, to prevent pests from invading the structure.

(ii) The term excludes tamper resistant bait stations.

**Person**—An individual, partnership, association, corporation, or any organized group of persons whether incorporated or not.

**Pesticide dealer manager**—An owner or individual employed by a licensed pesticide dealer who is responsible for storage and distribution of restricted use pesticides.

\* \* \* \* \*

**Prior notification**—Notification of a proposed application of pesticides given not more than 45 days and not less than 14 days prior to the date of application which contains the following information:

\* \* \* \* \*

(iii) The name, address and telephone number of [ a person ] the pesticide application business to whom requests for additional information should be directed.

(iv) A request for prior notification shall expire on December 31 in the year in which it is made.

\* \* \* \* \*

**Swimming pool**—An outdoor or indoor place used for bathing or for amateur, professional or recreational swimming, excluding single-family residential pools.

**Therapeutic swimming pool**—An indoor swimming pool or spa with a water temperature above 85°F used solely for rehabilitation or medically recommended treatment.

**Under the direct supervision of**—The term includes the following:

(i) For a commercial or public certified applicator, the application of a pesticide by a registered pesticide application technician acting with the instructions and under the control of a certified applicator who is responsible for the actions of the technician and who is available when needed; or the application of a pesticide by a nonregistered or noncertified [ employe ] person acting with the instructions and under the continuous voice and visual control of a certified applicator who is responsible for the actions of the [ employee ] person and physically present at the application site. The supervising applicator shall be certified in the appropriate category relating to the application.

\* \* \* \* \*

**Worker Protection Standard**—Includes all provisions of the Federal Worker Protection Standard as set forth in 40 CFR Part 170 (relating to worker protection standard).

**§ 128.3. Fees.**

(a) **Pesticide dealer's license.** The annual fee for a pesticide dealer's license is \$10 per location. The fee for a duplicate pesticide dealer's license is \$3.

(1) The annual fee for a pesticide dealer manager's license is \$15 per individual.

(2) The fee for a duplicate pesticide dealer manager's license is \$3.

\* \* \* \* \*

(d) **Commercial applicator's certificate.** The annual fee for the commercial applicator's certificate is \$40. When the initial certification requires examination, no fee will be charged. The fee for a duplicate commercial applicator's certificate is \$10. If an applicator is employed by more than one pesticide application business, a separate certificate and fee is required.

\* \* \* \* \*

(f) **Examination fees.** Examination fees are nonrefundable. The following examination fees, with payment made in advance, will be charged:

\* \* \* \* \*

(3) **Pesticide dealer manager's examination—\$50.**

(4) Private applicator's examination—no charge.

[ (4) ] (5) Pest management consultant's examination—no charge except that a fee of \$5 will be charged if an examination is requested on other than a regularly scheduled examination date.

(g) **Registration fee for a pesticide application technician.**

[ (i) ] (1) **Commercial pesticide application technician.** An annual registration fee of \$30 will be charged to register a commercial pesticide application technician with the Department. The fee for a duplicate technician registration is \$7.

[ (ii) ] (2) **Public pesticide application technician.** An annual registration fee of \$20 will be charged to register a public pesticide application technician with the Department. The fee for a duplicate technician registration is \$7.

\* \* \* \* \*

(i) **Product registration.** The annual fee to register a pesticide is [ \$135 ] \$250.

**PESTICIDE DEALERS**

**§ 128.10. Licensing requirements for pesticide dealer.**

(a) A person may not purchase or attempt to purchase a restricted use pesticide for resale or distribution unless the person has a current and valid dealer license.

(b) Each pesticide dealer shall, at all times, employ at least one licensed pesticide dealer manager.

(1) A licensed pesticide dealer shall notify the Department in writing within 15 days of a change in its license information including the employment status of its licensed pesticide manager.



(2) A licensed pesticide dealer shall return to the Department within 15 days the voided pesticide dealer manager's card of an employee that is no longer employed by the pesticide dealer. If the pesticide dealer manager's card issued by the Department is not available, the pesticide dealer shall notify the Department in writing within 15 days of the employee's termination and provide an explanation of why the card is unavailable and the last known home address for the individual.

(c) A pesticide dealer may not distribute a restricted use pesticide unless the receiver provides proof of appropriate valid certification or license and proof of personal identification by presenting a photo identification document issued by an agency of the United States Government or affiliated jurisdiction (that is, state or territory), such as a driver license, valid passport, military identification card, or an immigration card; or at least two nonphoto identification documents one of which must be a United States Government issued document bearing the person's signature, such as a Social Security card. The other nonphoto identification documents must identify the holder by name and address.

§ 128.11. Recordkeeping.

(a) A pesticide dealer shall keep for each [ sale ] distribution of a restricted use pesticide a record containing the following information:

\* \* \* \* \*

(2) The brand name [ and formulation ] of the restricted use pesticide [ that was purchased ].

(3) The EPA registration number of the restricted use pesticide.

(4) The amount of the restricted use pesticide [ that was purchased ].

[ (4) ] (5) The date of the [ purchase ] distribution.

(6) A signature and identification information of the individual accepting delivery.

(b) A record required to be kept under this section shall be completed within 24 hours of the distribution in written or printable form, maintained for at least 3 years and shall be made immediately available to the Department upon request or immediately available to medical personnel in an emergency.

§ 128.12. Licensing of a pesticide dealer manager.

(a) The Department will issue a pesticide dealer manager license to an applicant of 18 years of age or older, upon verification of passing a written competency examination and payment of the appropriate fee. Renewal of the dealer manager license will be based on receipt by the Department of an application accompanied by the appropriate fee.

(b) If a pesticide dealer manager fails to renew his license for 1 or more years, the dealer shall reestablish eligibility as described in § 128.13 (relating to determination of competence).

(c) The license for a pesticide dealer manager will expire on December 31st of each year.

(d) For currently licensed pesticide dealer locations, the requirements for employment of a pesticide dealer manager will become effective \_\_\_\_\_ (Editor's Note: The blank refers to a date)

1 year from the effective date of adoption of this proposed rulemaking) (Editor's Note: The blank refers to a date). Initial examination fee will be waived until \_\_\_\_\_. (Editor's Note: The blank refers to a date 1 year from the effective date of adoption of this proposed rulemaking.) The requirements for a dealer manager will be immediately effective for pesticide dealer locations licensed on or after \_\_\_\_\_. (Editor's Note: The blank refers to the effective date of adoption of the proposed rulemaking)

§ 128.13. Determination of competence.

(a) At least one individual at each pesticide dealer location shall show competence in the storage and distribution requirements for restricted pesticides. Competence will be determined on the basis of a written examination. The examination will include the following:

- (1) Safety.
- (2) Labeling and label comprehension.
- (3) Storage and security.
- (4) Spill control.
- (5) Transportation.
- (6) Pesticide disposal.
- (7) Recognition of pesticide poisoning symptoms and first aid.

(b) An application to take an examination shall be filed along with the appropriate fee with the Department at least 10-working days prior to the date of the examination.

(c) The examination will be proctored. Successful completion of the examination will entitle a person to hold a pesticide dealer managers license. An opportunity will be provided to retake an examination if a passing grade has not been achieved.

(d) The applicant shall provide to the proctor proof of personal identification by presenting a photo identification document issued by an agency of the United States Government or affiliated jurisdiction (that is, state or territory), such as a driver license, valid passport, military identification card, or an immigration card; or at least two nonphoto identification documents one of which must be a United States Government issued document bearing the persons signature, such as a Social Security card. The other nonphoto identification documents must identify the holder by name and address.

(e) A person may not use reference materials during an examination unless approved by the Department or its designated agents.

(f) An application for a new pesticide dealer manager's license will be accepted throughout the calendar year. A full year's license fee will be required for a portion of a year, except that the Department may issue a license for an additional year when a new application is filed during the last 2 months of the license year.

PEST MANAGEMENT CONSULTANTS

§ 128.24. Recordkeeping.

(a) A pest management consultant shall keep for each instance in which he provides technical advice, supervision or aid or makes a recommendation to the user of a restricted use pesticide, the following information:

\* \* \* \* \*

(2) The brand name [ **and formulation** ] of the pesticides recommended to be used.

\* \* \* \* \*

**PESTICIDE APPLICATION BUSINESSES**

**§ 128.31. Licensing requirements.**

\* \* \* \* \*

(c) A pesticide application business shall prominently display on every vehicle involved in the pesticide application phase of its business the license number assigned by the Department. The number [ **shall** ] **must** be in figures at least 3 inches high and [ **shall** ] be located on both sides of the vehicle at a readily visible location **in a contrasting color**.

(d) A licensed business shall notify the Department in writing within 15 days of a change in information in its application for licensing, or if it is no longer engaged in the application of pesticides.

**(1) A licensed pesticide application business shall return to the Department within 15 days the voided applicator certification or registered technician card of an employee that is no longer employed by the pesticide application business.**

**(2) If the certification or registered technician card issued by the Department is not available, the pesticide application business shall notify the Department in writing within 15 days of the employees termination and provide an explanation of why the card is unavailable and the last known home address for the individual.**

(e) A business that meets the definition of a commercial applicator as defined in section 4(6)(C) of the act (3 P. S. § 111.24(6)(C)) may not apply a pesticide without having a **valid** certified applicator physically present at the application site unless all application personnel on site are **valid** registered technicians.

**(f) If the application business includes aerial applications, the applicant shall provide proof of compliance with the Federal Aviation Administration regulations as described in 14 CFR Part 137 (relating to agricultural aircraft operations).**

**§ 128.32. Categories of business licenses.**

A commercial or public business shall identify in its application those business categories in which it desires to operate. A business shall employ for each business category in which it makes a pesticide application at least one applicator who is certified in a specific applicator category recognized under the general business category and shall limit its applications to those applicator categories in which it employs at least one certified applicator. The business categories are listed in paragraphs (1)—(10). The applicator categories recognized under a particular business category are listed under that business category.

\* \* \* \* \*

(4) *Category (D)*—Aquatic Pest Control.

09 Aquatic Pest Control

24 Swimming Pools

**26 Sewer Root Control**

(5) *Category (E)*—Right-of-Way Pest Control.

10 Right-of-Way **and Weeds**

(6) *Category (F)*—Industrial, Institutional, Structural and Health Related.

11 Household and Health Related

12 Wood Destroying Pests

14 [ **Industrial Weeds** ] (Reserved)

15 Public Health Vertebrate Pest Control

16 Public Health Invertebrate Pest Control

19 Wood Preservation

23 Park or [ **school** ] **School** Pest Control

\* \* \* \* \*

**§ 128.33. Assignment of work.**

A pesticide application business may not [ **permit** ] **allow** an individual to make a pesticide application in an applicator category in which the individual has not been certified as an applicator or trained and registered as a technician.

**§ 128.34. Financial responsibility.**

(a) The Department will consider a certificate of insurance from an insurer or surety to be evidence of financial responsibility if the insurer or surety is licensed to do business under section [ **7 of the act of January 24, 1966 (P. L. 1509, No. 531) (40 P. S. § 1006.7), known as the Surplus Lines Insurance Law** ] **1605 of the Insurance Company Law of 1921 (40 P. S. §§ 991.1605), or otherwise permitted by Federal law or the Insurance Department to do business in this Commonwealth, if the following conditions are met:**

\* \* \* \* \*

(4) The maximum deductible amount does not exceed [ **\$1,000** ] **\$2,500** of the combined policy limits. If a pesticide application business has not satisfied the deductible amount in a prior claim, the policy may not contain a deductible amount.

\* \* \* \* \*

**§ 128.35. Recordkeeping.**

(a) A pesticide application business shall keep for every application of a pesticide a record containing the following information:

(1) The date of application. For a pesticide requiring a reentry time, the date of application [ **shall** ] **must** include the hour completed. **For continuous applications, such as swimming pools and chemigation, the record must include start and finish dates and the total amount of pesticide products used during that time period. For each addition of a pesticide to the system, an entry to the record is required.**

\* \* \* \* \*

(3) The brand name [ **and formulation** ] of the pesticides used.

(4) **The EPA product registration number.**

[ (4) ] (5) **The total** amount of every pesticide used in pounds, ounces, gallons, liters, applied to a treated area.

[ (5) ] (6) The dosage or rate **of application**, of every pesticide used.

[ (6) ] (7) The [ **name** ] **names** and the [ **certificate** ] **certification** or technician's registration number [ **, whichever is applicable,** ] of each person making or

supervising the application. **When applicable the names of noncertified/nonregistered persons involved in the application.**

[ (7) The EPA product registration number. ]

\* \* \* \* \*

(c) Pesticide product and application information shall be made immediately available to medical personnel in an emergency.

(d) A pesticide application record must be completed in written or printable form no later than 24 hours after the application date and made immediately available to the Department upon request.

[ (c) ] (e) A record required to be kept under this section shall be maintained for at least 3 years [ and shall be made immediately available to the Department upon request or to medical personnel in an emergency ].

COMMERCIAL AND PUBLIC APPLICATIONS

§ 128.41. Requirements for certification.

(a) A person is deemed to be a commercial or public applicator and required to be certified if one or more of the following criteria are met:

(1) A person [ , whether or not he is a private applicator with respect to some uses, ] who applies or supervises the application of a pesticide **on an easement or on the property or premises of another [ , including an easement ] (other than his employer). This includes the use of a pesticide exempted from Federal registration under § 128.91 (relating to EPA approval required).**

\* \* \* \* \*

(b) The following are exceptions to subsection (a)(3)(viii):

\* \* \* \* \*

(2) The use of general use pesticides [ **by an owner or resident** ] in the care and maintenance of a swimming pool at a private single-family residence.

(3) **The use of a general use pesticide by an owner or employee in the care or maintenance of a swimming pool used solely as a therapeutic swimming pool.**

§ 128.42. Categories of commercial and public applicators.

A commercial or public applicator applying or supervising the application of a pesticide shall be certified in one or more of the following applicator categories:

\* \* \* \* \*

(10) **Right-of-way and weeds**—The use of a pesticide to maintain a public road, an electrical power line, a pipeline, a railway right-of-way or a similar type of area **or to control vegetation around a structure, such as an oil tank, utility sub stations, an industrial railway siding, an airport, a parking lot, a fence or an industrial building or for the control of an invasive weed species in other areas.**

(11) **Household and health related**—The use of a pesticide in, on or around a food handling establishment, a human or nonagricultural animal dwelling, an institution such as a school or hospital, an industrial establishment, a warehouse, a grain elevator and other types of struc-

tures whether public or private. The application of a pesticide to protect a stored, processed or manufactured product is also included. The use of a [ **fumigant, except where applied out-of-doors to a rodent burrow which does not lead into a dwelling or other structure, and except in the case of termite or other structural pest control is included. The treatment of an emergence crevice, an ant runway or a surface to control carpenter bees or the surface application of a pesticide to a wooden box, furniture or lumber is included** ] **rodenticide or avicide is permitted in this category. The use of a pesticide in outdoor perimeter treatments to control pests, which may infest the structure, is included.**

(12) **Wood destroying pests**—The use of a pesticide to control or prevent termites, powder post beetles or other wood destroying pests infesting a residence, school, hospital, store, warehouse or other structures or structural components, **including wooden objects contained in or associated with the structure and [ an ] the area adjacent to those structures.**

\* \* \* \* \*

(14) [ **Industrial weeds**—The use of a pesticide to control vegetation around a structure, such as an oil tank, an industrial railway siding, an airport runway, a parking lot, a fence or an industrial building

(15) [ **Public health vertebrate pest control**—The use of a pesticide to manage and control a vertebrate pest **such as rodents or birds**, affecting public health.

[ (16) ] (15) **Public health invertebrate pest control**—The use of a pesticide to manage and control an invertebrate pest affecting public health.

[ (17) ] (16) **Regulatory pest control**—The use of a pesticide to control an organism designated by the Commonwealth or the Federal government to be a pest requiring regulatory restrictions or control procedures to protect man or the environment.

[ (18) ] (17) **Demonstration and research pest control**—The use of a pesticide to demonstrate to the public the proper method of application for a pesticide and the use of a pesticide in research such as that undertaken by an extension specialist, county agent or vocational agriculture teacher.

[ (19) ] (18) **Wood preservation**—The use of a pesticide in wood impregnation to control or prevent fungi, insects, bacteria, marine borers and other wood destroying pests and includes pole treating or restoration and the use of a fumigant for in-place treatment of utility poles.

[ (20) ] (19) **Commodity and space fumigation**—The use of a fumigant in or to a structure, trailer, railcar, onboard ship, or in any type of fumigation chamber, such as under a tarpaulin for the control of pests in stored or in-transit commodities.

[ (21) ] (20) **Soil fumigation**—The application of a fumigant to a soil environment.

[ (22) ] (21) **Interior plantscape**—The use of a pesticide to control plant pests when the soil or plant to be treated is located within an enclosed structure.

[ (23) ] (22) **Park or school pest control**—The use of a pesticide in a campground or recreational area of a public or private park or on school property.



[ (24) ] (23) *Swimming pools*—The use of a pesticide in the care and maintenance of swimming pools.

[ (25) ] (24) *Aerial applicator*—The use of a pesticide applied by aircraft to any crop or land area. Applicators in this category shall comply with § [ 128.83 ] 128.85 (relating to ornamental or turf application) when making ornamental or turf applications.

(25) *Sewer root control*—The use of a pesticide to control vegetative growth in public and private sewage collection and distribution lines.

§ 128.43. Determination of competence.

(a) For each of the categories [ listed ] in § 128.42 (relating to categories of commercial and public applicators), competence in the use and handling of pesticides [ shall ] will be determined on the basis of a written examination. The examination will include the following:

(1) Areas of knowledge and competence set forth [ at ] in section 16.1 of the act (3 P. S. § 111.36a).

(i) Identification of pests to be controlled and the damages caused by the pests.

(ii) The appropriate control measures to be used, including pesticides.

(iii) The hazards that may be involved in applying pesticides, to protect people and the environment.

(iv) The proper use of pesticide application equipment, including calibration and dosage calculations.

(v) Protective clothing and respiratory equipment required during application and handling of pesticides.

(vi) General precautions to be followed in cleaning and maintaining equipment used.

(vii) Transportation, storage, security and disposal of pesticides.

(viii) Applicable Federal and State pesticide laws and regulations.

\* \* \* \* \*

(c) An examination [ shall ] will be proctored. [ A person may use approved reference sources during an examination. ] The applicant shall provide to the proctor proof of personal identification by presenting a photo identification document issued by an agency of the United States Government or affiliated jurisdiction (that is, state or territory), such as a driver license, valid passport, military identification card, or an immigration card; or at least two nonphoto identification documents one of which must be a United States Government issued document bearing the persons signature, such as a Social Security card. The other nonphoto identification documents must identify the holder by name and address. Only reference materials approved by the Department may be used during the examination. Successful completion of the core area and, successful completion of part two of the examination in a specific category will entitle a person to certification in that category. A person desiring certification for additional categories will be required to be examined for each additional category. An opportunity will be provided to retake an examination when a passing grade has not been achieved.

(d) If a person successfully completes only one part of the two-part examination, successful completion of the remaining part of the examination shall be obtained within [ 180-calendar days ] 1 year from the date the initial part of the examination was successfully completed.

(e) An application to take an examination shall be filed along with the appropriate fee with the Department [ within ] at least 10-working days prior to the date of the examination.

\* \* \* \* \*

§ 128.44. Eligibility.

(a) A person is eligible for certification upon reaching 18 years of age and fulfilling the requirements under §§ 128.41—128.43 (relating to requirements for certification; categories of commercial and public applicators; and determination of competence). In addition to the requirements for a commercial applicator’s certification, an aerial applicator shall have a current commercial agricultural aircraft operator’s certificate issued by the Federal Aviation Administration [ under ] or show evidence of compliance with 14 CFR [ § 137.19(a) (relating to certification requirements) ] Part 137 (relating to agricultural aircraft Operations).

(b) Within 12 months of becoming eligible to be certified as a commercial applicator, a person shall file with the Department an application for certification. A person who fails to file an application within this 12-month period will lose certification eligibility and shall again establish eligibility in accordance with §§ 128.41—128.43. An application for initial certification will be accepted from an eligible person throughout the year. A certificate [ shall ] will expire on September 30 following the date of application, except that the Department may issue a certificate for an additional year when an application is initially filed during the last 2 months of the certification year.

\* \* \* \* \*

(e) If a person fails to complete delinquent recertification credits within 1 year from the triennial certification expiration date or fails to renew certification for any reason during that time period, the person is required to [ meet ] reestablish eligibility by meeting the requirements of §§ 128.3, 128.43 and 128.44 (relating to fees; determination of competence; and eligibility).

§ 128.45. Recertification.

(a) At intervals of 3 years, a certified commercial or public applicator shall provide evidence of having received current update training in technology relating to pesticides in the specific categories in which [ he ] the applicator is certified to maintain certification. Training will be divided into core and category specific areas as follows:

\* \* \* \* \*

(b) Recertification credits will be given on the basis of attendance at [ meetings ] courses or other appropriate training approved by the Department. Training will be evaluated by the Department and assigned credits. A person is required to meet the credit requirements in the “Pennsylvania State Plan for Certification of Pesticide Applicators.” This plan has been filed with and approved by the EPA in accordance with [ the Federal Insecticide, Fungicide, and Rodenticide Act (7 U.S.C.A.



§§ 136—136y FIFRA ] Records of training will be maintained by the Department and a yearly statement will be sent to each certified commercial or public applicator describing credits obtained and credits due to meet recertification standards.

(c) Training will be approved based on the following criteria:

\* \* \* \* \*

(3) Sponsors of recertification training shall submit a written request for course approval to the Department's regional office for the region in which the meeting will be held. A request to approve out-of-State training shall be submitted to the Department of Agriculture, Bureau of Plant Industry, [Agronomic Services] Health and Safety Division, 2301 North Cameron Street, Harrisburg, Pennsylvania 17110-9408. A request shall be submitted at least 15 working days prior to the training date.

(4) A request for training approval [shall] meet include the following information:

(i) The name, address and phone number of the contact person who is coordinating the meeting.

\* \* \* \* \*

(iii) The date and time of the meeting.

(iv) A listing of the [speakers] trainers, subject matter and time allotted to each subject.

(v) The trainer has at least 3 years experience as a certified applicator in the appropriate category or has submitted documentation of other qualifications to serve as a trainer such as educational background.

[(v)] (vi) A statement of whether the meeting is opened to the public and if there is a charge to attend.

\* \* \* \* \*

(9) Falsification by a pesticide business or other course sponsor of information required under this subsection may result in a warning, a fine, suspension and the withdrawal of course [approval] approvals as set forth in this section.

(10) A person may not falsify attendance or that of another person's attendance at a recertification meeting. Falsification of attendance at a recertification course by a person may result in a warning, a fine or suspension or revocation of the applicator's certification and require recertification as required in §§ 128.3 and 128.61 (relating to fees; determination of competence).

PESTICIDE APPLICATION TECHNICIANS

§ 128.51. Training program.

(a) A pesticide application technician shall obtain instruction in, and possess adequate knowledge of, the proper use and handling of pesticides. The training program [shall] must include:

(1) Those areas of knowledge described in section 16.2 of the act (3 P. S. § 111.36b).

(i) Identification of pests relative to job responsibility.

(ii) The proper use of pesticides and use of application equipment, including calibration and maintenance equipment used on the job.

(iii) Protective clothing and respiratory equipment required during the application and handling of pesticides.

(iv) Transportation and disposal of pesticides used in and around the workplace.

(v) Applicable State and Federal regulations as they affect the work assignments.

\* \* \* \* \*

§ 128.52. Registration.

(a) A business shall submit to the Department [by first class mail, postage prepaid, on a form provided by the Department,] a list of persons it intends to register as technicians. The postmarked date or date of receipt will indicate the beginning of a training period to consist of at least 30 calendar days of training.

\* \* \* \* \*

(g) A technician shall be 16 years of age or older years of age at the time of application for registration.

§ 128.53. Recordkeeping.

\* \* \* \* \*

(b) The pesticide application business shall keep as part of its records proof of personal identification by retaining copies of a photo identification document issued by an agency of the United States Government or affiliated jurisdiction (that is, state or territory), such as a driver license, valid passport, military identification card, or an immigration card; or at least two nonphoto identification documents one of which must be a United States Government issued document bearing the persons signature, such as a Social Security card. The other nonphoto identification documents must identify the holder by name and address.

(c) A record required to be kept under this section shall be maintained for at least 3 years and completed in written or printable form no later than 24 hours after the training and shall be made immediately available to the Department upon request.

PRIVATE APPLICATORS

§ 128.61. Determination of competence.

(a) Competency in the use and handling of restricted use pesticides by a private applicator will be determined on the basis of a proctored written examination. The examination will include the following:

(1) Areas of knowledge described [at] in section 17.2 of the act (3 P. S. § 111.37b).

(i) Labeling and label comprehension.

(ii) Safety and health.

(iii) Environmental protection.

(iv) Pests.

(v) Pesticides.

(vi) Integrated pest management.

(vii) Equipment.

(viii) Application techniques and technology.

(ix) Laws and regulations.

(2) Transportation, storage, security and disposal.

\* \* \* \* \*

(c) Only reference materials approved by the Department may be used during the examination.

(d) The applicant shall provide to the proctor proof of personal identification by presenting a photo identification document issued by an agency of the United States Government or affiliated jurisdiction (that is, state or territory), such as a driver license, valid passport, military identification card, or an immigration card; or at least two nonphoto identification documents one of which must be a United States Government issued document bearing the persons signature, such as a Social Security card. The other nonphoto identification documents must identify the holder by name and address.

§ 128.62. Eligibility.

(a) A private applicator will be eligible for a permit upon reaching 16 years of age or older and fulfilling the requirements of § 128.61 (relating to determination of competence) and subsection (b).

(b) Within 1 year of fulfilling the requirements of § 128.61, a private applicator shall file with the Department an application for a permit accompanied by the appropriate fee. A person who fails to file within this 1 year period shall again establish eligibility under § 128.61.

\* \* \* \* \*

(d) A private applicator with an expired permit may not make an application of a restricted use pesticide (unless the individual is working under the direct supervision of a certified applicator).

§ 128.63. Recertification.

(a) At intervals of 3 years, a private applicator shall have accumulated credits as a result of having received update training approved by the Department in technology relating to the proper and safe use of pesticides to continue as a permitted private pesticide applicator. Training will be divided into core and category specific areas as specified in § 128.45(a) (relating to recertification).

- (1) Core.
  - (i) Safety and health.
  - (ii) Labeling and label comprehension.
  - (iii) Environmental protection.
  - (iv) Equipment use, calibration and dosage calculations.
  - (v) Protective clothing and respirator equipment.
  - (vi) Cleaning and maintaining equipment.
  - (vii) Transportation, storage, security and disposal.
  - (viii) Applicable State and Federal laws.
- (2) Category specific.
  - (i) Identification of pests.
  - (ii) Appropriate control measures.
  - (iii) Integrated pest management.

(b) Recertification credits will be given on the basis of attendance at meetings or other appropriate training approved by the Department. Training will be evaluated by the Department and assigned credits. A person is required to meet the credit requirements in the Pennsylvania State Plan for Certification of Pesticide Applicators. This plan has been filed with and approved by the EPA

under [ the Federal Insecticide, Fungicide, and Rodenticide Act (7 U.S.C.A. §§ 136—136y) ] FIFRA. Records of training will be maintained by the Department and a yearly statement will be sent to each private applicator describing credits obtained and credits due to meet recertification standards. Training will be approved as described under § 128.45(c).

(c) If a private applicator fails to renew his permit by the date of expiration, renewal requires the following:

\* \* \* \* \*

(2) Completion of the examination requirements as described in §§ 128.3, 128.61 and 128.62 (relating to fees; determination of competence; and eligibility) by the applicator if the due recertification credits are not completed within 1 year from the expiration date of the permit or the permit is expired for more than 1 year for any reason.

(d) Falsification by a pesticide business or other course sponsor of information required under this section may result in a warning, fine and suspension or the withdrawal of course approvals as set forth in § 128.45 and this section.

(e) A person may not falsify attendance or that of another person's attendance at a recertification meeting. Falsification of attendance at a recertification course by a person may result in a warning, fine or suspension or revocation of the applicator's certification and require recertification as required in § 128.61.

§ 128.64. Fumigation by a private applicator.

(a) A private applicator shall hold a permit in the proper fumigation category in order to purchase or attempt to purchase or use a restricted use fumigant product.

(b) In addition to the requirements in § 128.61 (relating to determination of competence), a private applicator using [ structural, ] commodity and space, or soil fumigants shall demonstrate competence in the proper and safe use of these pesticides. Competency shall be demonstrated by passing a proctored written examination specifically relating to each type of fumigant the applicator intends to use. Only reference materials approved by the Department may be used during the examination. The applicant shall provide to the proctor proof of personal identification by presenting a photo identification document issued by an agency of the United States Government or affiliated jurisdiction (that is, state or territory), such as a driver license, valid passport, military identification card, or an immigration card; or at least two nonphoto identification documents one of which must be a United States Government issued document bearing the persons signature, such as a Social Security card. The other nonphoto identification documents must identify the holder by name and address.

[ (b) ] (c) A special permit will be issued, relating to fumigation, and will be valid for a 3-year period. A fee will not be charged for this special permit. A special permit will not be issued for the use of a fumigant unless the applicant has a private applicator's permit.

[ (c) ] (d) Recertification requirements shall be met through attendance at approved meetings and [ shall ] consist of at least two credits of category specific education relating to the appropriate area of fumigation in which the applicator is certified. The credits obtained by

a private applicator to meet the requirements of this subsection may also be used to meet the requirements of § 128.63 (relating to recertification).

§ 128.65. Recordkeeping.

(a) A private applicator shall keep for each application of a restricted use pesticide a record containing the following information:

(1) The date of application. For a restricted use pesticide requiring a reentry time, the date of application [ shall ] must include the hour completed.

\* \* \* \* \*

(3) The size of the area treated.

[ (3) ] (4) The brand name [ and formulation ] of every restricted use pesticide used.

(5) The EPA product registration number.

[ (4) ] (6) The total amount of every restricted use pesticide used in pounds, ounces, gallons, liters, applied to a treated area.

[ (5) ] (7) The dosage or rate of application, of every restricted use pesticide used.

[ (6) ] (8) The names and [ , when applicable, ] the permit or certification numbers of the persons making or supervising the application. When applicable, the names of the noncertified applicators acting, under the direct supervision of the private applicator, shall be recorded.

[ (7) The EPA product registration number.

(8) The size of the area treated. ]

(b) A record required to be kept under this section shall be maintained for at least 3 years [ and shall be made immediately available to the Department upon request or immediately available to medical personnel in an emergency ].

(c) Pesticide product and application information shall be made immediately available to medical personnel in an emergency.

(d) A restricted use pesticide application record shall be completed in written or printable form no later than 24 hours after the application date and made immediately available to the Department upon request.

RECIPROCITY

§ 128.71. General.

A person who is not a resident of this Commonwealth, but who has a valid license, certificate or permit from another state, may obtain an appropriate Pennsylvania license, certificate or permit if the state in which [ he ] the person is licensed has a reciprocal agreement with the Commonwealth under section 22 of the act (3 P.S. § 111.42). A license, certificate or permit [ shall ] will be issued under this section only for the initial period of issuance for that eligible category.

§ 128.72. Procedure.

A person desiring a license under § 128.71 (relating to general) shall submit to the Department a properly completed application, the appropriate fee and evidence of financial responsibility as required along with a copy of the person's current license, certificate or permit, proof of having reached 18 years of age, out-of-State

residency and proof of personal identification by presenting a photo identification document issued by an agency of the United States Government or affiliated jurisdiction (that is, state or territory), such as a driver license, valid passport, military identification card or an immigration card; or at least two nonphoto identification documents one of which must be a United States Government issued document bearing the persons signature, such as a Social Security card. The other nonphoto identification documents must identify the holder by name and address.

Subchapter C. PRIOR NOTIFICATION

§ 128.81. Right-of-way application.

\* \* \* \* \*

(b) Alternative form of notification. In lieu of the notification requirements described in subsection (a), an applicator may give prior notification [ orally or by certified mail to every ] by constructive notification to a person residing in [ a ] every dwelling unit on land contiguous to the restricted use pesticide application site. [ This subsection does not apply to an aerial application of a restricted use pesticide. ]

(c) Additional information.

(1) At least 7 days prior to the proposed application date, a person residing in a dwelling on land contiguous to the application site may request additional information from the [ person designated to receive requests for additional information ] pesticide application business. Upon the request, the [ applicator ] pesticide application business shall make constructive notification and provide the following additional information at least 12 hours prior to the time of application:

\* \* \* \* \*

(2) Upon written request the [ designated person ] pesticide application business shall, within 10 days of receiving a request under this subsection, provide a copy of the label for every restricted use pesticide used or to be used.

\* \* \* \* \*

§ 128.82. Nonagricultural specific site application.

(a) Prior notification required. A commercial/public applicator may not make a specific site application of a restricted use pesticide without first giving prior notification [ orally or by certified mail to every ] by constructive notification to a person residing in [ a ] every dwelling unit on land contiguous to the application site.

(b) Additional information.

(1) [ Upon request made by a person entitled to notice at ] At least 7 days prior to the proposed application date [ to the person designated to receive requests for additional information, the applicator shall ], a person residing in a dwelling on land contiguous to the application site may request additional information from the pesticide application business. Upon the request, the pesticide application business shall make constructive notification and provide the following additional information at least 12 hours prior to the time of application.

\* \* \* \* \*



(2) Upon written request the [ designated person ] pesticide application business shall within 10 days of receiving a request under this subsection provide a copy of the label for every restricted use pesticide used or to be used.

(c) *Exceptions.* The following types of application do not require prior notification:

\* \* \* \* \*

(4) An application of a restricted use pesticide that is injected into trees or utility poles.

§ 128.83. [ Ornamental or turf application ] (Reserved).

[ (a) *Notification.*

(1). A pesticide business that meets the definitions of category 06 (ornamental and shade trees) or 07 (lawn and turf) of § 128.42 (relating to categories of commercial and public applicators) regarding general use pesticides shall at least 12 hours prior to the time of application provide every person residing in a dwelling on land contiguous to the application site with the following information:

- (i) The proposed date and time of application.
- (ii) The brand name of every pesticide to be applied including the EPA registration number.

(2) Within 10 days of receiving a request , the pesticide application business shall provide a copy of the label for every pesticide to be used.

(b) *Exceptions.*—A person is not entitled to notification under subsection (a) unless the person makes a written request at least 7 days prior to the proposed date of application.

(c) *Premises sharing mutual border.* The request described in subsection (b) shall list by street address premises which share a mutual border with the premises owned by the person making the request. ]

§ 128.83a. Agricultural application.

(a) *Prior notification required.* A commercial/public applicator may not apply a restricted use pesticide for an agricultural purpose without first giving prior notification in the form of a notice published in two newspapers of general circulation in the affected area.

(b) *Additional information.*

(1) At least 7 days prior to the proposed application date, a person residing in a dwelling on land contiguous to the restricted use pesticide application site may request additional information from the pesticide application business. Upon the request, the pesticide application business shall make constructive notification at least 12 hours prior to the time of application, and provide the following additional information:

- (i) The proposed date and time of application.
- (ii) The brand name of every restricted use pesticide to be applied including the EPA registration number.
- (iii) The business name, address, and phone number.

(2) The person making a request under this subsection shall identify in the request the name and

address of every person operating agricultural land which shares a common border with property resided on by the person making the request.

(3) Upon written request, the pesticide application business shall, within 10 days of receiving a request under this subsection, provide a copy of the label for every restricted use pesticide used or to be used.

(c) *Alternate forms of notification.*

(1) In lieu of requirements in subsection (a) a pesticide application business may give constructive notification to a person residing in every dwelling unit on land contiguous to the restricted use pesticide application site at least 18 hours prior to the time of application. The pesticide application business shall provide the proposed date and location of the application, the brand name of every restricted use pesticide to be applied including the EPA registration number and the business name, address and phone number.

(2) In lieu of requirements in subsection (a), an applicator may post placards at usual points of entry to the application site and at the borders with adjoining properties owners at least 18 hours prior to the time of application. This placard must remain posted until the conclusion of any restricted reentry time listed on the pesticide label. The placards must be at least 8 1/2 inches by 11 inches in size and be printed with the following words; "Public Notice of Pesticide Application" and contain the pesticide application business's name, address, phone number and the brand name of every restricted use pesticide to be applied including the EPA registration number.

(d) *Exceptions.* An application of a restricted use pesticide does not require prior notification where applied directly below the soil surface, except where a well or spring is located within 25 feet of the application site or a soil fumigant is used.

§ 128.84. Nonagricultural area-wide application.

\* \* \* \* \*

(b) *Additional information.*

(1) At least 7 days prior to the proposed application date, a person residing in a dwelling on land contiguous to the application site may request additional information from [ a person designated to receive requests for additional information ] the pesticide application business. Upon the request, the [ applicator ] pesticide application business shall make constructive notification and provide the following information at least 12 hours prior to the time of application.

\* \* \* \* \*

(iii) The business name, address and phone number.

(2) [ Within ] Upon written request, the pesticide application business shall within 10 days of receiving a request under this subsection, [ the designated person shall ] provide a copy of the label for every restricted use pesticide used or to be used.

§ 128.85. [ Agricultural application ] (Reserved).

[ (a) *Prior notification required.* A commercial/public applicator may not apply a restricted use



pesticide for an agricultural purpose without first giving prior notification in the form of a notice published in two newspapers of general circulation in the affected area.

(b) *Additional information.*

(1) At least 7 days prior to the proposed application date, a person residing in a dwelling on land contiguous to the restricted use pesticide application site may request additional information from a person designated to receive requests for additional information. Upon the request, the applicator shall at least 12 hours prior to the time of application, provide the following additional information:

- (i) The proposed date and time of application.
- (ii) The brand name of every restricted use pesticide to be applied including the EPA registration number.

(2) Within 10 days of receiving a request under this subsection, the designated person shall provide a copy of the label for every restricted use pesticide to be used.

(3) The person making a request under this subsection shall identify in his request the name and address of every person operating agricultural land which shares a common border with property owned by the person making the request.

(c) *Use of placards.* In lieu of requirements contained in subsections (a) and (b), an applicator may give prior notification orally or by certified mail to every person residing in a dwelling on land contiguous to the restricted use pesticide application site or may post placards around the application site at least 18 hours prior to the time of application. If the applicator uses placards, the placards shall contain the information required by this section for prior notification.

(d) *Exceptions.* An application of a restricted use pesticide does not require prior notification where applied directly below the soil surface, except where a well or spring is located within 25 feet of the application site or a soil fumigant is used. ]

§ 128.85a. Ornamental or turf application notification.

(a) *Notification.*

(1) A person shall submit a written request for notification of lawn, turf, ornamental, or shade tree pesticide applications, applicator categories 06 or 07 as described in § 128.42 (relating to categories of commercial and public applicators) to the pesticide application business for notification of pesticide applications by that business.

(i) This written request for notification is limited to and must list by owners name and street address of the premises sharing a mutual border with the residence of the person making the request.

(ii) The notification requirement becomes effective 7 days following receipt of the request by the pesticide application business.

(2) Upon receiving a written request at least 7 days prior to the application date, a pesticide business making lawn, turf, ornamental or shade tree applications shall make constructive notification

of applications on contiguous lands at least 12 hours prior to the application providing the following information:

- (i) The proposed date and time of application.
- (ii) The brand name of every pesticide to be applied including the EPA registration number.
- (iii) The business name, address and phone number.

(3) If specifically requested in writing, the pesticide application business shall within 10 days of receiving a request provide a copy of the labels for every pesticide used or to be used.

(b) Expiration of request. A request for notification made under this subchapter shall expire on December 31 in the year in which it is made.

(c) Records. The pesticide application business shall keep records of all requests for notification and records of notifications made for 3 years.

(d) *Exceptions.* An application of a pesticide to a tree by means of injection is not subject to notification.

§ 128.86. [ Constructive notification ] (Reserved).

[ A person shall be deemed to have received notification under this subchapter if an adult residing in the same dwelling is so notified. ]

§ 127.87. [ Prior notification by certified mail ] (Reserved).

[ If this subchapter authorizes an applicator to give prior notification by certified mail, the prior notification shall be effective upon receipt. ]

§ 128.88. Recordkeeping for prior notification.

(a) The [ applicator ] pesticide application business shall keep, for each occasion in which prior notification is required, a record containing the following information:

\* \* \* \* \*

(4) A copy of correspondence relating to prior notification or additional information.

(b) A record required to be kept under this section shall be completed in written or printable form no later than 24 hours after the application date, maintained for at least 3 years and shall be made immediately available to the Department upon request.

Subchapter D. REGISTRATION OF PESTICIDES

§ 128.91. EPA [ registration ] approval required.

[ Only a pesticide with an approved EPA registration will be accepted for registration by the Department. ]

(a) Only pesticides which have been approved by EPA for registration under section 3 of FIFRA (7 U.S.C.A. § 136a) or are permitted to be distributed under a Federal exemption under section 18 or 25(b) of FIFRA (7 U.S.C.A. § 136p and 136w(o)) may be registered by the State.

(b) State registration of products sold only under an emergency exemption approved under section 18 of FIFRA will remain in effect only for the period specified by the EPA in granting approval of an exemption, and will require the registrant to

provide to the State all information required under 40 CFR 166.32 (relating to reporting and recordkeeping requirements for specific, quarantine and public health exemptions).

(c) Pesticide registration is required for all pesticides exempted from regulation under FIFRA under 40 CFR 152.25(f) (relating to exemptions for pesticides of a character not requiring FIFRA regulation). State registration of products under this exemption will be permitted only when the product labeling, composition, efficacy and risks are consistent with the terms for Federal exemption.

Subchapter E. MISCELLANEOUS

§ 128.101. Reporting of pesticide significant accidents or incidents.

\* \* \* \* \*

(b) [ An applicator, a pesticide application technician or another person ] A person after becoming aware of a significant pesticide accident or incident or who has knowledge of a significant pesticide accident or incident shall immediately report it to the Department.

(c) As used in this section, the term "significant pesticide accident or incident" means an accident or incident involving a pesticide which [ creates a danger to human beings or results in damage to plant or animal life ] requires a person to obtain medical treatment, results in illness requiring veterinary treatment of any wild or domestic animal, results in the unintended death of a human or animal, pollutes the waters of this Commonwealth, or causes damage which results in an economic loss of plants, organisms, structures or stored commodities.

(d) Regulated person who following a pesticide application becomes aware of an unexpected adverse effect resulting from the pesticide product when applied in a manner consistent with the label directions shall contact the Department and provide information on the application and its effects.

(e) This section does not supersede the reporting procedures of other statutes or the regulations promulgated thereunder.

§ 128.102. Protected designated areas.

(a) An application of a restricted use pesticide within 100 feet of certain publicly-owned or designated lands will not be permitted unless a waiver is granted by the Secretary. Lands affected by this restriction include:

(1) State forest land designated [ "Natural Areas and Wild Areas." ] as a Conservation Area under 17 Pa. Code Chapter 44 (relating to conservation areas) or as a natural area or Wild Area under 17 Pa. Code Chapter 27 (relating to State Forest natural areas—statement of policy), and State park land designated as a conservation area under 17 Pa. Code Chapter 44 (relating to conservation areas) or as a Natural Area under 17 Pa. Code Chapter 17 (relating to state parks natural areas—statement of policy).

(2) Areas containing endangered or [ rare organisms ] threatened plant or animal species. These [ organisms ] species are [ identified at ] listed in 17 Pa. Code [ Chapter 45 (relating to conservation of Pennsylvania native wild plants); and 58 Pa. Code

Chapters 75 and 133 (relating to endangered species; and wildlife classification) ] §§ 45.12 and 45.13 (relating to Pennsylvania endangered; and Pennsylvania threatened); fish identified in §§ 75.1. and 75.2 (relating to endangered species; and endangered species); and 58 Pa. Code Chapter 133; § 133.21. (relating to Pennsylvania classification of birds as Endangered and Threatened), § 133.41. (relating to Pennsylvania classification of mammals as Endangered and Threatened).

\* \* \* \* \*

(d) The Secretary will approve or deny the application within 60 days of receipt of the application.

§ 128.103. Handling, transportation, storage, use and disposal of pesticides.

(a) A person may not use, handle, transport, store, dispose, display or distribute a pesticide in a manner that endangers man or [ his ] the environment or contaminates food, feed, feed supplements, medications, fertilizers, seed or other products that may be handled, transported, stored, displayed or distributed with the pesticides or otherwise is in conflict with State or Federal laws or regulations.

(b) A person may not use, or cause to be used a pesticide inconsistent with its labeling (as defined in § 128.2 (relating to definitions)). A pesticide label containing an advisory instruction concerning the use of the pesticide being an environmental hazard shall be considered by the Secretary as a further restriction on the pesticide's use.

(d) A person may not dispose of, store or receive for disposal or storage a pesticide, pesticide container or pesticide container residue in a manner that does one or more of the following:

\* \* \* \* \*

(2) [ Causes or allows the open dumping of pesticides or pesticide containers. Open burning by the owner of small quantities of combustible containers that do not exceed 50 pounds is exempt if the pesticide residue does not contain organic mercury, chlorates, lead, cadmium or arsenic compounds and the Commonwealth or local regulations permit the burning. When the burning takes place, regard shall be given to wind direction in relation to the protection of crops, animals and people from pesticide vapors created through burning.

(3) [ Causes or allows dumping of pesticides in [ a stream, river, pond, sewer or lake ] sewers or surface waters of this Commonwealth, except in conformance with permits issued [ jointly ] by the Department of Environmental Protection [ and ], the Fish and Boat Commission, or other Commonwealth agencies having jurisdiction regarding water pollution.

[ (4) ] (3) Violates an applicable State or Federal [ pollution control standard ] acts and regulations.

[ (e) A person shall dispose and store pesticides, pesticide containers and pesticide container residue in accordance with acts and regulations administered by the EPA and the Department of Environmental Protection. ]

(4) Causes or allows the open dumping of pesticides or pesticide containers. All pesticide contain-

ers shall be triple rinsed or equivalent pressure rinsed and free of all visible pesticide residues, emptied and punctured prior to disposal. Plastic pesticide containers should be offered for recycling or reconditioning where programs are available. If not, they may be disposed of in a permitted sanitary landfill, or a permitted commercial incinerator.

(e) A person may not use, or cause to be used, a pesticide inconsistent with its labeling. A pesticide containing an advisory instruction concerning the use of the pesticide subject to the Federal Worker Protection Standard (See 40 CFR Part 170 (relating to worker protection standard)) will be considered by the Secretary as a further restriction on the pesticide's use.

(f) A [ person ] business may not directly apply pesticides to the property of another without first obtaining permission of the owner, or occupant having care, custody or control of the property to do so, except in the case of easements or right-of-ways or when done under the direction of a governmental entity to protect the health and welfare of the public.

\* \* \* \* \*

§ 128.104. Experimental use permits.

The Department shall be notified by the registrant prior to the use in this Commonwealth of a pesticide with an approved EPA experimental use permit. Notification [ shall ] must include copies of the EPA approval letter, a properly completed product label as defined in 40 CFR 172.6 (relating to labeling) and a list of the participants and cooperators involved in the program.

§ 128.106. Additional responsibilities [ within school buildings ] relating to schools.

(a) General. A pesticide [ other than a disinfectant or sanitizer ] may not be applied in a common access area within a school building or on school grounds when students are expected to be in the common access area for normal academic instruction or organized extracurricular activities within 7 hours following the application. The applicator shall also comply with reentry time restrictions contained on the pesticide label, whichever is greater and the requirements of section 772.2 of the Public School Code of 1949 (24 P. S. § 7.772.2) (regarding notification of pesticide treatments at schools).

(b) Exemptions. The following type of pesticide applications are exempt from this section.

- (1) Disinfectants and sanitizers.
- (2) Self-containerized baits placed in areas not accessible to students.
- (3) Gel type baits placed in cracks, crevices or voids.
- (4) Swimming pool maintenance chemicals used in the care and maintenance of a swimming pool.

§ 128.107. Providing information upon request.

(a) A producer, distributor or other person shall maintain all books and records as required in section 8 of FIFRA (7 U.S.C.A. § 136f). The records shall be made available for inspection and reproduction when requested by the Department.

(b) A pesticide application business, pesticide dealer or person who handles, distributes, stores, transports, or applies any pesticide shall upon request provide to the Department, information about the pesticides including brand name, EPA registration number and active ingredients.

(c) A pesticide application business, pesticide dealer or person who handles, distributes, stores, transports or applies pesticide shall in an emergency upon request immediately provide to medical personnel information about the pesticides involved including brand name, EPA registration number and active ingredients.

Subchapter F. PESTICIDE HYPERSENSITIVITY REGISTRY

§ 128.111. Registry.

\* \* \* \* \*

(c) [ A pesticide ] Pesticide-hypersensitive [ individual ] individuals who [ wants ] want to be on the registry shall provide to the Department [ his ] their name and primary residence including street address, city, state, zip code, county, daytime telephone number and nighttime telephone number. Each individual shall also provide an alternate telephone number where notification information can be conveyed. Individuals may also provide secondary locations, addresses and associated telephone numbers to be maintained as part of their listing. An individual submitting a request for listing less than 2 months preceding the effective date, as described in subsection (e), may not be included on the current registry with that effective date, but will be included in the next registry.

(d) To remain on the registry, an individual shall notify the Department annually during the month of [ January ] October of the individual's intent to remain on the registry for the next 12 months. Medical verification will not be required for this renewal.

(e) The Department will [ mail ] distribute the current registry to each licensed commercial and public pesticide application business on or before the effective dates of March 1, [ June 1, September 1 and December 1 ] and July 15 of each year. [ An individuals ] Individuals will not be considered officially included on the registry unless [ his name appears ] their names appear on the current registry.

§ 128.112. Notification of hypersensitive individuals.

(a) General. Prior to a pesticide application being made by a commercial or public pesticide application business the following conditions shall be met:

\* \* \* \* \*

(4) Notification shall be made by telephone, or personal contact or certified mail or if available, electronic mail or facsimile.

(i) Notification requirements are met [ if the information is placed on a telephone answering device activated by calling the registrant's telephone number ], through constructive notification by contacting the hypersensitive person's daytime or nighttime listings in the register or if the information is given to an adult contacted by dialing the [ daytime, nighttime or ] alternate telephone number.



(ii) If notification cannot be made after at least two telephone contact attempts, notification may be made by placing the written notification information on the front door of the listed residence or **secondary location listed in the registry within 500 feet of the application site 12 to 72 hours prior to the application.**

(iii) A record shall be kept of every [ **telephone** ] contact and contact attempt made under this paragraph.

(b) *Exceptions.* The following types of application do not require notification under this section:

(1) An application of a pesticide within a [ **single family residential** ] **detached structure not listed as a secondary location.**

\* \* \* \* \*

(4) An application of a pesticide to a tree **or utility pole** by means of injection. [ **Prior notification requirements contained in § 128.83 (relating to ornamental or turf application) remain applicable.** ]

\* \* \* \* \*

(6) **Application of a pesticide in the care and maintenance of a swimming pool.**

(c) *Recordkeeping.* A record of the notification information required under this section, including the time and method of notification, shall be **made within 24 hours following the application and** maintained for at least 3 years and shall be made immediately available to the Department upon request [ **or to medical personnel in an emergency** ].

[Pa.B. Doc. No. 09-1780. Filed for public inspection September 25, 2009, 9:00 a.m.]

# DEPARTMENT OF STATE

## [ 49 PA. CODE CH. 43b ]

### Schedule of Civil Penalties—Chiropractors

The Commissioner of Professional and Occupational Affairs (Commissioner) proposes to add § 43b.22 (relating to schedule of civil penalties—chiropractors) to read as set forth in Annex A.

#### *Effective Date*

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

#### *Statutory Authority*

Section 5(a) of the act of July 2, 1993 (P. L. 345, No. 48) (Act 48) (63 P. S. § 2205(a)) authorizes the Commissioner, after consultation with licensing boards in the Bureau of Professional and Occupational Affairs (Bureau), to promulgate a schedule of civil penalties for violations of the acts or regulations of these licensing boards. Section 506(a)(9) of the Chiropractic Practice Act (act) (63 P. S. § 625.506(a)(9)) authorizes the State Board of Chiropractic (Board) to take disciplinary action against a licensee for violating any provisions of the regulations of the Board. Section 506(a)(13) of the act (63 P. S. § 625.506(a)(13)) authorizes the Board to take disciplinary action against a licensee for failing to perform any statutory obligation placed upon a licensed chiropractor. Section 507(a) of the act (63 P. S. § 625.507(a)) requires a licensed chiropractor to complete at least 24 hours of

continuing education during each biennial renewal cycle. Section 703 of the act (63 P. S. § 625.703) authorizes the Board to levy a civil penalty of up to \$1,000 on any licensee who violates any provision of the act.

#### *Background and Need for the Regulation*

Act 48 authorizes agents of the Bureau to issue citations and impose civil penalties under schedules adopted by the Commissioner in consultation with the Bureau's licensing boards. Act 48 citations streamline the disciplinary process by eliminating the need for formal orders to show cause, answers, adjudications and orders, and consent agreements. At the same time, licensees who receive an Act 48 citation retain their due process right of appeal prior to the imposition of discipline. The use of Act 48 citations has increased steadily since 1996, when the program was first implemented, and they have become an important part of the Bureau's enforcement efforts, with approximately 30% of all sanctions imposed by the licensing boards being accomplished through the Act 48 citation process. The Board has not previously had an Act 48 schedule of civil penalties.

As is being done for other licensing boards with continuing education requirements, the Commissioner is proposing a civil penalty schedule for violation of the continuing education requirements for licensees of the Board, because the Commissioner and Board believe the Act 48 citation process will be a much more efficient method of handling violations, while still ensuring licensees due process. Payment of the civil penalty will not relieve a licensee of the obligation to complete the required amount of mandatory continuing education. Under the separate rulemaking being proposed by the Board, a licensee who fails to complete the required amount of mandatory continuing education during the biennial renewal period will also be required to complete the required continuing education during the next 6 months; failure to complete the required continuing education by that deadline will subject the licensee to formal disciplinary action. See 39 Pa.B. (September 26, 2009).

Also, the Board's current regulation at 49 Pa. Code § 5.17(g) (relating to biennial registration; unregistered status and inactive status; failure to renew; address of record) prohibits a licensee whose license has lapsed from practicing chiropractic in this Commonwealth. As is being done for other licensing boards, the Commissioner is proposing a civil penalty schedule for practice on a lapsed or expired license, because the Commissioner and Board believe the Act 48 citation process will be a much more efficient method of handling violations, while still ensuring licensees due process. Because failure to renew a license might be an attempt to avoid the continuing education or malpractice insurance requirements, use of an Act 48 citation for lapsed license practice will be limited to those first-time offenders who are in compliance with the continuing education requirements. A licensee who practiced on a lapsed license without having complied with the continuing education or malpractice insurance requirements will instead be subject to formal disciplinary action where the Board has the authority to suspend or revoke a license.

#### *Description of the Proposed Amendments*

The Commissioner, in consultation with the Board, proposes for a first offense violation of failing to complete the required amount of mandatory continuing education during the biennial renewal period a civil penalty \$50 for each credit hour that the licensee is deficient, up to a maximum of \$1,000. Second and subsequent offenses would not be subject to an Act 48 citation, but rather



would proceed through the formal disciplinary process. The Commissioner, in consultation with the Board, also proposes for a first offense violation of practicing on a lapsed or expired license while in compliance with continuing education and malpractice insurance requirements a civil penalty \$250 for practicing less than 6 months, \$500 for 6 to 12 months, and \$1,000 for 12 to 24 months. Second and subsequent offenses would not be subject to an Act 48 citation, but rather would proceed through the formal disciplinary process.

*Compliance with Executive Order 1996-1*

The Board considered and approved the proposed regulation at regularly scheduled public meetings. The Commissioner reviewed the proposed regulation and considered the purpose and likely impact upon the public and the regulated community under the directives of Executive Order 1996-1. The proposed rulemaking addresses a compelling public interest as described in this Preamble and otherwise complies with Executive Order 1996-1.

*Fiscal Impact and Paperwork Requirements*

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

*Sunset Date*

Professional licensure statutes require each board to be self-supporting. Therefore, the Commissioner and the Boards continuously monitor the cost effectiveness of their regulations. As a result, no sunset date has been assigned.

*Regulatory Review*

Under section 5(a) of the Regulatory Review Act (71 P. S. § 745.5(a)), on September 11, 2009, the Commissioner submitted a copy of this proposed rulemaking and a copy of a Regulatory Analysis Form to the Independent Regulatory Review Commission (IRRC) and to the Senate Consumer Protection and Professional Licensure Committee and the House Professional Licensure Committee. A copy of this material is available to the public upon request.

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

*Public Comment*

Interested persons are invited to submit written comments, recommendations or objections regarding this proposed rulemaking to Regulatory Unit Counsel, Department of State, P. O. Box 2649, Harrisburg, PA 17105-2649 or by e-mail at st-chiro@state.pa.us, within 30 days of publication of this proposed rulemaking in the *Pennsylvania*

*nia Bulletin*. Use reference No. 16-44 (Act 48 chiro schedule of civil penalties), when submitting comments.

BASIL L. MERENDA,  
*Commissioner*

**Fiscal Note:** 16-44. No fiscal impact; (8) recommends adoption.

**Annex A**

**TITLE 49. PROFESSIONAL AND VOCATIONAL STANDARDS**

**PART I. DEPARTMENT OF STATE**

**Subpart A. PROFESSIONAL AND VOCATIONAL AFFAIRS**

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

**§ 43b.22. Schedule of civil penalties—chiropractors.**

**STATE BOARD OF CHIROPRACTIC**

Violation Under	Title/Description	Penalties
63 P. S.		
Section 625.507(a)	Failure to timely complete the required amount of continuing education	First offense—\$50 per hour of deficiency, not to exceed \$1,000 Subsequent offense—formal action

Violation Under	Title/Description	Penalties
49 Pa. Code		
§ 5.17(g)	Practice on a lapsed license in compliance with CE and malpractice insurance requirements—first offense	Less than 6 months—\$250 6 months to 12 months—\$500 12 months to 24 months—\$1,000

[Pa.B. Doc. No. 09-1781. Filed for public inspection September 25, 2009, 9:00 a.m.]

**ENVIRONMENTAL QUALITY BOARD**

**[ 25 PA. CODE CH. 109 ]**

**Lead and Copper Rule Short Term Revisions**

The Environmental Quality Board (Board) proposes to amend Chapter 109 (relating to safe drinking water). The amendments will provide for increased protection against, and consumer awareness of, exposure to lead in public water systems. The Lead and Copper Rule Short Term (LCR) Revisions (LCRSTR) build upon the existing Lead and Copper Rule and strengthens implementation of the monitoring, public education, customer awareness and lead service line replacement provisions.

This proposal was adopted by the Board at its meeting of June 16, 2009.

### 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 Lisa Daniels, Division of Operations Monitoring and Training, P. O. Box 8467, Rachel Carson State Office Building, Harrisburg, PA 17105-8467, (717) 772-2189, or Marylou Barton, 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 <http://www.depweb.state.pa.us>.

### C. *Statutory Authority*

This 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*

This proposed rulemaking will amend the existing LCR. The LCR was published at 24 Pa.B. 6404 (December 24, 1994). The primary goal of the LCR is to reduce lead and copper levels at consumers' taps, thereby reducing the health risks associated with lead and copper. The pervasiveness of lead contamination in public drinking water systems is well documented. Lead and copper leach into the drinking water from solder, pipes and fixtures. The severity of contamination depends on the amount of lead or copper in the distribution system and the consumers' home plumbing, and the corrosiveness of the water. The original LCR established comprehensive monitoring requirements for lead and copper at the consumer's tap and treatment technique requirements for optimal corrosion control which include public education and lead service line replacement.

The proposed amendments will incorporate the provisions of the Federal Lead and Copper Rule: Short Term Regulatory Revisions that were promulgated by the United States Environmental Protection Agency (EPA) on October 10, 2007. This proposed rulemaking package will amend the Department's Safe Drinking Water Regulations as follows:

1. Clarify the definition of "tap" for lead and copper sampling to be a tap that provides water for drinking.
2. Rescind the provision that allows water systems to remain on a reduced monitoring frequency if either the lead or copper action level is exceeded. Water systems must meet both water quality parameter ranges and the lead and copper action levels to remain on a reduced monitoring schedule. Note that this is more stringent than the Federal regulation; EPA allows systems to exceed copper and remain on a reduced frequency.
3. Require water suppliers to provide a "consumer tap notice" to consumers whose taps are sampled. This notice must include the lead results for the tap that was sampled, an explanation of the health effects of lead and a list of steps consumers can take to reduce exposure to lead in drinking water.

4. Revise the public education and Consumer Confidence Report (CCR) provisions, with respect to lead, to clarify the mandatory language, expand delivery requirements and require an informational statement in all CCRs.

5. Require water systems to reevaluate lead service lines (LSL) previously deemed "replaced" through testing if the system resumes an LSL replacement program.

The draft proposed amendments were submitted to the Small Water Systems Technical Assistance Center Advisory Board (TAC) for review and discussion on August 21, 2008. The TAC Board provided comments on three of the proposed rulemaking provisions.

Specifically, TAC commented on the number of sample sites required by the LCR stating, "The requirement to have a minimum of five sample sites does not make sense. . . . Taking a minimum of five samples for statistical validity is not a correct assumption." The existing LCR requires a minimum of five samples for small systems serving less than 100 people because there is a high degree of variability in lead and copper levels between and within systems as well as between individual taps. Given the high degree of variability in lead and copper levels, collection of too few samples can result in false conclusions regarding the need for treatment. As a result, a sufficient number of samples is required to be confident that the measured lead levels are accurately assessed. Increased sampling helps improve the likelihood that the true need for treatment is accurately characterized.

The EPA believes the number of samples required in the LCR sufficiently accounts for the variability in lead and copper levels and reflects system-wide contaminant level distributions. The number of samples also takes into account the cost of sampling, and the EPA believes the numbers of samples required are reasonable and implementable.

In the Federal Lead and Copper Rule: Short Term Regulatory Revisions, the EPA again maintains that systems must take a minimum of five samples to adequately capture the variability of lead levels. However, the Federal Lead and Copper Rule: Short Term Regulatory Revisions also allow states the discretion to allow systems with fewer than five taps for human consumption to collect one sample per tap. Under this option, the compliance value is the sample with the highest test result, rather than the result from the 90th % sample. The EPA's intent is that only systems with fewer than five taps be allowed to collect fewer than five samples. Additionally, the water system must submit a written request and the state must approve the request in writing or by onsite verification.

Reducing the minimum number of samples could cause systems with 90th% values currently in compliance with the lead and copper action levels to exceed either or both action levels if fewer than five sites were sampled. These systems would then be faced with additional monitoring and treatment installation and operation costs.

It is more cost effective for small systems to take five samples than to chance exceeding an action level and be required to install and operate corrosion control or source water treatment based on a smaller pool of samples. Therefore, the Department is choosing not to implement this option and will continue to require a minimum of five samples.

TAC also commented on the public education delivery requirements contained in this rulemaking as they relate

to contacting local or county health agencies and any other organizations identified by these local health agencies. This proposed rulemaking requires that, as part of a public education program, systems must contact local public health agencies, such as the county or State Health Department, even if the agency is outside the water system's service area. TAC's comment states, "... The water systems should only have to contact those individuals on the list that are in the system's service area." It should be noted that the Department regulations must be at least as stringent as the corresponding EPA requirements. The public education delivery requirements in this proposed rulemaking are consistent with, but no more stringent than, the Federal requirements.

To assist public water systems in identifying the local health agencies they must contact as part of a public education program, a list is provided as follows: This list will also be provided in guidance.

#### Department of Health District Offices

##### *Southeast District*

Berks, Delaware, Lancaster,  
Montgomery, Philadelphia, Schuylkill  
442 Reading State Office Building  
625 Cherry Street  
Reading, PA 19602  
(610) 378-4352

##### *Southcentral District*

Adams, Bedford, Blair, Cumberland,  
Dauphin, Franklin, Fulton, Huntingdon,  
Juniata, Lebanon, Mifflin, Perry, York  
30 Kline Plaza  
Harrisburg, PA 17104  
(717) 787-8092

##### *Southwest District*

Armstrong, Beaver, Butler, Cambria,  
Fayette, Greene, Indiana, Somerset,  
Washington, Westmoreland  
514 Pittsburgh State Office Building  
300 Liberty Avenue  
Pittsburgh, PA 15222  
(412) 565-5101

##### *Northeast Division*

Carbon, Lacawanna, Lehigh,  
Luzerne, Monroe, Northampton,  
Pike, Susquehanna, Wayne, Wyoming  
665 Carey Avenue, Suite 5  
Wilkes-Barre, PA 18705-5485  
(570) 826-2062

##### *Northcentral District*

Bradford, Centre, Clinton, Columbia,  
Lycoming, Montour, Northumberland,  
Potter, Snyder, Sullivan, Tioga, Union  
Water Tower Square, Suite 109  
1000 Commerce Park Drive  
Williamsport, PA 17701-5475  
(570) 327-3400

##### *Northwest District*

Cameron, Clarion, Clearfield, Crawford,  
Elk, Forest, Jefferson, Lawrence,  
McKean, Mercer, Venango, Warren  
19 McQuiston Drive  
Jackson Center, PA 16133  
(724) 662-6068

#### County Health Department (CHD) Offices

##### *Allegheny CHD*

Public Drinking Water Program  
Frank B. Clack Health Center  
3901 Penn Avenue, Building 5  
Pittsburgh, PA 15224-1318  
(412) 578-8047

##### *Chester CHD*

Government Services Center  
601 Westtown Road, Suite 090  
P. O. Box 2747  
West Chester, PA 19380-0990  
(610) 344-6225

##### *Bucks CHD*

Public Drinking Water Program  
1282 Almshouse Road  
Doylestown, PA 18901  
(215) 345-3318

##### *Erie CHD*

606 West 2nd Street  
Erie, PA 16507  
(814) 451-6700

TAC commented on the requirement for consumer tap notice, requesting suggested language for the content of the notice. The EPA has already developed guidance for the public education requirements, and the language provided by the EPA for the lead health effects and steps consumers can take to reduce exposure in the public education materials, may also be used for the consumer tap notices.

#### E. Summary of Regulatory Requirements

*Section 109.1102(b)(relating to action levels and treatment technique requirements)* Paragraph (1) is reformatted, splitting subparagraph (ii) to create clause (A) and subparagraph (iv) becomes clause (B) in subparagraph (ii). Section 109.1102(b)(1)(ii) clarifies that a system with optimized corrosion control treatment shall conduct monitoring at least once every 3 years.

Paragraph (2) is amended with language that is consistent with the Federal rule. Section 109.1102(b)(2)(ii) clarifies that the compliance deadlines for corrosion control treatment installation are based on the end of the monitoring period in which an action level was exceeded.

*Section 109.1103(a)(3) (relating to monitoring requirements)*. This paragraph is amended to be consistent with the federal deadline to conduct source water monitoring found in 40 CFR 141.88(b).

*Section 109.1103(b)(4)*. Paragraph (4) is amended to be consistent with the Federal rule and to clarify that systems that must resume corrosion control treatment installation activities resume compliance activities from the point where treatment installation was discontinued.

*Section 109.1103(c)(3)*. This paragraph is amended to be consistent with the Federal deadline to conduct source water monitoring found in 40 CFR 141.88(b).

*Section 109.1103(d)*. This subsection is amended to be consistent with the Federal monitoring requirements found in 40 CFR 141.87(d) (relating to monitoring requirements for water quality parameters).

*Section 109.1103(d)(3)*. Paragraph (3) is amended to be consistent with the Federal deadline to conduct source water monitoring found in 40 CFR 141.88(b).

*Section 109.1103(e)(1)(i)(B) and (C)*. Clause (B) is revised to clarify that a water system that has installed



corrosion control treatment must meet both the lead and copper action levels during follow-up monitoring to qualify for a reduced annual monitoring frequency. This clause is further amended to delete the requirement that water systems request reduced annual monitoring. These revisions are to be consistent with the Federal rule, but the Department is more stringent than the Federal rule in requiring that both action levels be met to qualify for a reduced monitoring frequency. This is more protective of public health. However, water suppliers that meet both the lead and copper action levels in addition to maintaining the range of water quality parameter values will automatically be granted a reduced annual monitoring frequency. The Federal rule requires that only the lead action level be met before water suppliers may request a reduced monitoring frequency. Clause (C) is amended to be consistent with the Federal monitoring requirements found in 40 CFR 141.86(d)(4)(ii) (relating to monitoring requirements for lead and copper in tap water).

*Section 109.1103(e)(1)(ii)(B).* Clause (B) is revised to clarify that a water system that has installed corrosion control treatment shall meet both the lead and copper action levels during reduced annual monitoring to qualify for a triennial monitoring frequency. This clause is further amended to delete the requirement that water systems request this reduced monitoring. These revisions are to be consistent with the Federal rule, but the Department is more stringent than the Federal rule in requiring that both action levels be met to qualify for a triennial monitoring frequency. This is more protective of public health. However, water suppliers that meet both the lead and copper action levels in addition to maintaining the range of water quality parameter values will automatically be granted a triennial monitoring frequency. The Federal rule requires that only the lead action level be met before water suppliers may request reduced triennial monitoring.

*Section 109.1103(e)(1)(iii).* This subparagraph is deleted because water systems will no longer need to request reduced monitoring. For systems that have installed corrosion control treatment, reduced monitoring will be automatically granted once the system meets both the lead and copper action levels and maintains the range of values for water quality parameters during follow-up or reduced annual monitoring.

*Section 109.1103(e)(1)(iv).* This subparagraph is renumbered to replace the deleted subparagraph (iii) and revised to be consistent with the Federal rule.

*Section 109.1103(e)(1)(v).* This subparagraph is deleted and moved to new paragraph (3).

*Section 109.1103(e)(2)(i).* This subparagraph is revised to correct the citation for entry point water quality parameter monitoring. The current citation references the water quality parameter monitoring required during follow-up monitoring after construction or modification of corrosion control treatment facilities; the correct reference should be the water quality parameter monitoring required after performance requirements are established.

*Section 109.1103(e)(2)(ii)(A) and (B).* Clause (A) is amended to be consistent with the Federal monitoring requirements found in 40 CFR 141.87(e)(2)(i) (relating to monitoring requirements for water quality parameters) and to correct the citation for entry point water quality parameter monitoring. The current citation references the water quality parameter monitoring required during follow-up monitoring after construction or modification of corrosion control treatment facilities; the correct reference

should be the water quality parameter monitoring required after performance requirements are established. Clause (B) is amended to be consistent with the Federal rule and to clarify that triennial monitoring is required during specific years at 3-year intervals.

*Section 109.1103(e)(2)(iii)—(v).* These subparagraphs are deleted because they are moved to new paragraph (3).

*Section 109.1103(e)(3).* This paragraph is added to combine subparagraphs § 109.1103(e)(1)(v) and (2)(iii)—(v) for ease of reference and to clarify the compliance requirements when reduced monitoring is revoked. The language has also been amended to be consistent with the Federal rule and to clarify that the compliance activities are required if either action level is exceeded. The Department is more stringent than the Federal rule in requiring that both action levels be met to remain on a reduced monitoring frequency, but this is consistent with the criteria to qualify for a reduced tap monitoring frequency in § 109.1103(e)(1) and is more protective of public health.

*Section 109.1103(g)(2).* Paragraph 2 is reformatted to clarify site selection requirements for both community and nontransient, noncommunity water systems. Text has been added to the new subparagraph (iii) to clarify how sampling must be done when the system has fewer than five taps. Text has also been added to the new subparagraph (iv) to clarify when a system may use non-first draw samples. The additional text is added to be consistent with Federal language found in 40 CFR 141.86(c).

*Section 109.1103(k)(4)(i).* This subparagraph is amended to be consistent with the Federal rule and to clarify that monitoring is required during specific years at 9-year intervals.

*Section 109.1104(a) (relating to public education and notification).* This subsection is amended to be consistent with the Federal public education content requirements found in 40 CFR 141.85(a) and the Federal public education delivery requirements found in 40 CFR 141.85(b) (relating to public education and supplement monitoring requirements).

*Section 109.1104(b).* This subsection is amended to be consistent with the federal requirements for notification of results found in 40 CFR 141.85(d).

*Section 109.1104(c).* This subsection is renumbered.

*Section 109.1107(a)(3)(i) (relating to system management responsibilities).* This subparagraph is amended to correct a typographical error.

*Section 109.1107(a)(5).* This paragraph is amended to incorporate the Federal reporting requirements found in 40 CFR 141.90(f)(3) (relating to requirements).

*Section 109.1107(a)(6).* This paragraph is renumbered.

*Section 109.1107(a)(7).*

*Section 109.1107(d)(1).* This paragraph is amended to incorporate the Federal lead service line replacement requirements found at 40 CFR 141.84(b)(1) (relating to lead service line replacement).

*Section 109.1107(d)(6).* This paragraph is added to incorporate the federal lead service line replacement requirements found in 40 CFR 141.84(b)(2).

## F. Benefits, Costs and Compliance

### Benefits

The intent of this rulemaking is to improve implementation of the lead and copper regulations by clarifying



monitoring requirements, improving customer awareness and modifying lead service line “test-out” procedures. The increase in the administrative activities resulting from these revisions will generate new information which may prompt public water systems to take measures to further abate lead and copper exposure and thus reduce the associated risk, resulting in additional health benefits to consumers.

Because the precise impact of these revisions on the behavior of individual consumers and public water systems is not known, the EPA has not quantified the changes in associated health benefits for these revisions. However, the overall benefits from the LCR will increase as a result of the indirect effects of these revisions on public water systems and individual consumers.

*Compliance Costs*

Some of the cost increases estimated by the EPA will not apply to public water systems in this Commonwealth because this Commonwealth already implements similar provisions under the existing LCR. However, there are four provisions of the Lead and Copper Rule: Short Term Regulatory Revisions included in this rulemaking that are likely to increase costs for public systems in this Commonwealth:

1. Return to routine monitoring frequency if an action level is exceeded (larger systems will have higher costs because more samples are required than for the smaller systems).
2. Consumer tap notice requirements.
3. Public Education content and delivery requirements.
4. Consumer Confidence Report content requirements.

The number of systems in this Commonwealth affected by this proposed rulemaking is based on the total number of community and nontransient, noncommunity water systems as well as LCR monitoring information from 2007. Not all systems will need to implement each provision each year, therefore the number of systems likely to be affected by each provision and an average cost per system has been estimated. There is an additional one-time, up front cost for reviewing, training and implementing the LCRSTR that will be incurred by all water systems affected by this rulemaking. The cost estimates per system for each of these provisions are based on costs estimated by the EPA for public water systems nationwide.

The direct annual costs to implement each of these provisions for this Commonwealth’s public water systems, based on estimates from EPA, are as follows:

<i>Provision #</i>	<i>No. of Systems Affected</i>	<i>Annual Cost / System</i>	<i>Total Annual Costs</i>
1	140	(up to) \$2,930	\$410,200
2	3,228	\$20	\$64,560
3	107	(average of) \$134.47	\$14,388
4	2,078	\$6.79	\$14,110
Total			\$503,258

The one-time, up front cost for public water systems is estimated to be \$152.33 for each of the 3,228 public water systems, for a total cost of \$491,721.

For the Commonwealth, there are costs associated with oversight and costs to State-owned public water systems. Of the 3,228 public water systems affected by this rulemaking, 42 (or 1.3%) are State-owned facilities, so 1.3% of the public water system costs detailed previously, could be incurred by this Commonwealth if all 42 systems implement all of these provisions each year. The details for the Commonwealth costs are as follows:

	<i>One-Time Cost</i>	<i>Annual Costs</i>	<i>Total</i>
Oversight Costs	\$28,948	\$5,404	\$34,352
State-Owned Water Systems Costs	\$6,393	\$6,543	\$12,936
Total	\$35,341	\$11,947	\$47,288

*Compliance Assistance Plan*

The proposed revisions clarify and strengthen existing regulation. As a result, financial assistance should not be necessary. The Bureau of Water Standards and Facility Regulation has staff dedicated to providing both training and outreach support services to public water system operators. The Department web site contains the Drinking Water and Wastewater Treatment System Operator Information Center, which provides a bulletin board of timely, useful information for treatment plant operators. Additionally, the Department staff will provide educational, technical and compliance assistance through newsletters, guidance documents, training sessions and surveillance activities.

*Paperwork Requirements*

The requirements of the existing LCR include monitoring, reporting, public education and public notice. The only additional requirement of the LCRSTR is for water

suppliers to provide a notice of the monitoring results to those consumers whose taps were sampled and a certification to the Department that this notice was delivered.

*G. Pollution Prevention*

Not applicable.

*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*

Under section 5(a) of the Regulatory Review Act (71 P. S. § 745.5(a)), on September 9, 2009, the Department submitted a copy of these proposed amendments to the Independent Regulatory Review Commission (IRRC) and the House and Senate Environmental Resources and

Energy Committees. In addition to submitting the proposed amendments, the Department has provided IRRC and the Committees with a copy of the 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 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 Department, the General Assembly and the Governor prior to final publication of the amendments.

*J. Public Comments*

Interested persons are invited to submit comments, suggestions or objections 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 17101-2301). Comments submitted by facsimile will not be accepted. Comments, suggestions or objections must be received by the Board by October 19, 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 October 26, 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. Comments may be submitted electronically to the Board at RegComments@state.pa.us and must also be received by the Board by October 26, 2009. A subject heading of the proposal and a return name and address must be included in each transmission.

JOHN HANGER,  
*Chairperson*  
*Environmental Quality Board*

**Fiscal Note:** 7-437. (1) General Fund; (2) Implementing Year 2009-10 is \$28,948; 1st Succeeding Year 2010-11 is \$5,404; 2nd Succeeding Year 2011-12 is \$5,404; 3rd Succeeding Year 2012-13 is \$5,404; 4th Succeeding Year 2013-14 is \$5,404; 5th Succeeding Year 2014-15 is \$5,404; 2008-09 Program—\$102,149,000; (3) 2007-08 Program—\$98,582,000; 2006-07 Program—\$89,847,000; (7) State owned water system may incur costs to implement this regulation however the cost to any one agency is expected to be minimal, since the total cost to State-owned systems is expected to be estimated at \$13,000; (8) recommends adoption.

**Annex A**

**TITLE 25. ENVIRONMENTAL PROTECTION**

**PART 1. DEPARTMENT OF ENVIRONMENTAL PROTECTION**

**Subpart C. PROTECTION OF NATURAL RESOURCES**

**ARTICLE II. WATER RESOURCES**

**CHAPTER 109. SAFE DRINKING WATER**

**Subchapter K. LEAD AND COPPER**

**§ 109.1102. Action levels and treatment technique requirements.**

\* \* \* \* \*

(b) *Treatment technique requirement for corrosion control.*

(1) *Optimal corrosion control treatment.* A community water system or nontransient noncommunity water system shall provide optimal corrosion control treatment which minimizes the lead and copper concentrations at users' taps while ensuring that the treatment does not cause the system to violate a primary MCL. Water systems deemed to have optimized corrosion control treatment under this subsection shall operate in compliance with Department designated water quality parameters and continue to conduct lead and copper tap monitoring. A system may achieve optimal corrosion control treatment in one of the following ways:

\* \* \* \* \*

(ii) A water system is deemed to have optimized corrosion control if the system demonstrates to the Department that for two consecutive 6-month monitoring periods conducted in accordance with § 109.1103 that the system does not exceed a lead or copper action level and the difference between the 90th percentile tap water lead level and the highest source water lead concentration is less than 0.005 mg/L, which is the Practical Quantitation Level for lead.

(A) To make this demonstration, the system shall collect one sample for lead from each entry point during a monitoring period prior to initiation of construction or modification of corrosion control treatment facilities. If the system thereafter exceeds an action level during a monitoring period, the system shall complete applicable compliance activities under paragraph (2). The Department may require a system to repeat compliance activities previously completed when the Department determines that this is necessary for the system to achieve optimal corrosion control treatment.

(B) A water system deemed to have optimized corrosion control in accordance with this subparagraph shall continue monitoring for lead and copper at the tap no less frequently than once every 3-calendar years using the reduced number of sites specified in § 109.1103(e), and collecting the samples at times and locations specified in § 109.1103(e)(1)(iii).

\* \* \* \* \*

[ (iv) Any water system deemed to have optimized corrosion control in accordance with this subsection shall continue monitoring for lead and copper at the tap no less frequently than once every 3-calendar years using the reduced number of sites specified in § 109.1103(e), and collecting the samples at times and locations specified in § 109.1103(e)(iv). ]

(2) *Corrosion control treatment compliance schedule.* A system shall comply with the following schedule unless the system achieves optimal corrosion control treatment under paragraph (1)(i) or (ii) prior to initiation of construction or modification of corrosion control treatment facilities.

\* \* \* \* \*

(ii) A large water system triggered into corrosion control because it is no longer deemed to have optimized corrosion control under [ subsection (b)(1) ] paragraph (1), or any medium or small water system that exceeds an action level shall:

(A) Submit a corrosion control treatment feasibility study that complies with paragraph (3) within 18 months of [ **exceeding** ] the end of the monitoring period in which the action level was exceeded.

(B) Submit a permit application or otherwise comply with the permit application requirements under § 109.1105(b) for construction or modification of corrosion control treatment facilities within 30 months of [ **exceeding** ] the end of the monitoring period in which the action level was exceeded.

(C) Initiate construction or modification of corrosion control treatment facilities within 48 months of [ **exceeding** ] the end of the monitoring period in which the action level was exceeded.

(D) Complete construction or modification of corrosion control treatment facilities and begin operation of these facilities within 60 months of [ **exceeding** ] the end of the monitoring period in which the action level was exceeded.

\* \* \* \* \*

§ 109.1103. Monitoring requirements.

(a) *Initial monitoring.*

\* \* \* \* \*

(3) *Initial source water monitoring.* A system which exceeds either the lead or copper action level shall collect one source water sample from each entry point within 6 months after the [ **exceedance** ] end of the monitoring period in which the action level was exceeded. Monitoring is required only for the parameter for which the action level was exceeded.

(b) *Special lead and copper tap monitoring.*

\* \* \* \* \*

(4) If a medium or small water system exceeds an action level during a monitoring period after discontinuing compliance activities under paragraph (3), the system shall [ **recommence completion of** ] complete the applicable compliance activities under § 109.1102(b)(2). [ **The Department may require a system to repeat compliance activities previously completed or undertake additional activities when the Department determines that the action is necessary to properly comply with corrosion control treatment requirements.** ]

\* \* \* \* \*

(c) *Follow-up monitoring after construction or modification of corrosion control treatment facilities.* A system which completes construction or modification of corrosion control treatment facilities in accordance with § 109.1102(b)(2) shall conduct the applicable monitoring specified in this subsection. A system which exceeds the lead action level after construction or modification of corrosion control treatment facilities shall begin lead service line replacement in accordance with § 109.1107(d) (relating to system management responsibilities).

\* \* \* \* \*

(3) *Source water monitoring.* A system which installs source water treatment under § 109.1102(b)(4) shall monitor the source water at source water treatment entry points for the parameters for which the source water treatment was installed. The system shall monitor source water during the two consecutive 6-month monitoring periods specified in paragraph (1). Other systems which

exceed either the lead or copper action level while conducting lead and copper tap monitoring in accordance with paragraph (1) shall collect one source water sample from each entry point within 6 months after the [ **exceedance** ] end of the monitoring period in which the action level was exceeded for the parameters exceeding the action level.

(d) *Monitoring after performance requirements are established.* A system shall conduct the applicable monitoring under this subsection beginning no later than the next 6-month monitoring period that begins on **January 1 or July 1** following the Department's designation of optimal corrosion control treatment water quality parameter performance requirements under § 109.1102(b)(5) or source water performance requirements under § 109.1102(b)(4).

\* \* \* \* \*

(3) *Source water monitoring.* A system which is conducting lead and copper tap monitoring in accordance with paragraph (1) shall monitor for the parameters exceeding the action level at each entry point within 6 months of the **end of the monitoring period in which the action level [exceedance] was exceeded.** For systems which have installed source water treatment, the results of this monitoring will be used by the Department in determining compliance with source water treatment performance requirements established under § 109.1102(b)(4). The Department may require additional source water monitoring if the Department determines that the additional monitoring is necessary to assure compliance with the source water treatment performance requirements. A system that is not in compliance with the source water treatment performance requirements established under § 109.1102(b)(4) shall provide public notification in accordance with § 109.1104(b)(2).

(e) *Reduced monitoring.*

(1) *Reduced lead and copper tap monitoring.* A community water system conducting reduced lead and copper tap monitoring shall collect one sample from the number of sample sites listed in the following column. A nontransient noncommunity water system may reduce the number of sample sites to five, regardless of population served.

System size (# of people served)	# of Sample Sites
> 100,000 . . .	50
10,001 to 100,000 . . .	30
3,301 to 10,000 . . .	20
501 to 3,300 . . .	10
500 or fewer . . .	5

(i) *annual lead and copper tap monitoring.*

\* \* \* \* \*

(B) A system that [ **maintains the range of values for the optimal corrosion control treatment water quality parameter performance requirements specified by the Department under § 109.1102(b)(5) during each of two consecutive 6-month monitoring periods in accordance with subsection (d)(2)** ] has installed or modified corrosion control treatment facilities in accordance with § 109.1102(b)(2) may [ **request that the Department allow the system to** ] reduce the number of lead and copper sample sites and reduce the frequency of monitoring to once per year



[ and reduce the number of lead and copper sample sites. ] if the following conditions are met:

(I) The system does not exceed the lead and copper action levels during each of two consecutive 6-month monitoring periods.

(II) The system maintains the range of values for the optimal corrosion control treatment water quality parameter performance requirements specified by the Department under § 109.1102(b)(5) during each of two consecutive 6-month monitoring periods in accordance with subsection (d)(2).

(C) Annual monitoring shall begin during the calendar year immediately following the end of the second consecutive 6-month monitoring period.

(ii) *Triennial lead and copper tap monitoring.*

\* \* \* \* \*

(B) A system that [ maintains the range of values for optimal corrosion control treatment water quality parameter performance requirements specified by the Department under § 109.1102(b)(5) during 3 consecutive years of monitoring ] has installed or modified corrosion control treatment facilities in accordance with § 109.1102(b)(2) may [ request that the Department allow the system to ] reduce the frequency of lead and copper tap monitoring from annually to once every 3 years[ . ] if the following conditions are met:

(I) The system does not exceed the lead and copper action levels during 6-month or annual monitoring.

(II) The system maintains the range of values for the optimal corrosion control treatment water quality parameter performance requirements specified by the Department under § 109.1102(b)(5) during 3 consecutive years of monitoring.

\* \* \* \* \*

(iii) [ *Request for reduced monitoring.* A system requesting reduced lead and copper tap monitoring under subparagraph (i)(B) or (ii)(B) shall submit that request on forms acceptable to the Department. The request shall include a summary of lead and copper tap and water quality parameter monitoring results and the results shall demonstrate that the system qualifies for reduced monitoring. The Department will review the information submitted and notify the water supplier of its decision and the basis for that decision.

(iv) ] *Sample sites and timing.* A system that reduces the number of sample sites and frequency of sampling shall collect samples from sample sites included in the pool of targeted sampling sites identified in subsection (g)(2). Systems sampling annually or less frequently shall conduct the lead and copper tap sampling between June 1 and September 30. The Department may approve a different period for conducting lead and copper tap monitoring sampling for systems [ **collecting a reduced number of samples** ] on annual or less frequent monitoring. The period may be no longer than 4 consecutive months and shall represent a time of normal operation when the highest levels of lead are most likely to occur.

[ (v) *Reduced lead and copper tap monitoring revocation.*

(A) A large water system authorized to conduct reduced lead and copper tap monitoring that fails to operate within the range of performance requirements for the water quality parameters specified by the Department under § 109.1102(b)(5) on more than any 9 days in a 6-month period shall resume lead and copper tap sampling in accordance with subsection (d)(1).

(B) A small or medium water system authorized to conduct reduced lead and copper tap monitoring that exceeds either the lead or copper action level shall comply with the following:

(I) The water supplier shall conduct water quality parameter monitoring during the monitoring period in which the action level is exceeded.

(-a-) If the system has installed corrosion control treatment in compliance with § 109.1102(b)(2), water quality parameter monitoring shall be conducted in accordance with subsection (c)(2). If the results of this monitoring indicate that the system failed to operate within the range of performance requirements for the water quality parameters specified by the Department under § 109.1102(b)(5) on more than any 9 days in a 6-month period, the water supplier shall resume lead and copper tap sampling in accordance with subsection (d)(1).

(-b-) If the system has not installed corrosion control treatment, water quality parameter monitoring shall be conducted in accordance with subsection (a)(2) and the system shall conduct corrosion control treatment activities in accordance with § 109.1102(b)(1)(i).

(II) The water supplier shall conduct source water monitoring in accordance with subsection (a)(3).

(III) If the lead action level is exceeded, the water supplier shall conduct a public education program in accordance with § 109.1104(a). ]

(2) *Reduced water quality parameter monitoring for large water systems.* A large water system conducting reduced water quality parameter monitoring shall collect two sets of distribution samples from the following reduced number of sample sites. The sets of samples shall be collected from the same sample sites on different days and analyzed for the applicable water quality parameters.

<i>System size (# of people served)</i>	<i># of Sample Sites</i>
> 100,000 . . .	10
50,001 to 100,000 . . .	7

(i) *Reduced sites.* A large water system that maintains the range of values for water quality parameter performance requirements reflecting optimal corrosion control treatment specified by the Department under § 109.1102(b)(5) during each of two consecutive 6-month monitoring periods conducted in accordance with subsection (d)(2) may collect distribution samples from the reduced number of sites during subsequent 6-month monitoring periods until the system qualifies for reduced frequency under subparagraph (ii). The system shall continue monitoring at each entry point as specified in subsection [ (c)(2)(iii)(B) ] (d)(2).

(ii) *Reduced water quality parameter monitoring.*

(A) A large water system that maintains the range of values for water quality parameter performance requirements reflecting optimal corrosion control treatment



specified by the Department under § 109.1102(b)(5) during 3 consecutive years of monitoring at the reduced number of sites under subparagraph (i) may reduce the frequency with which it collects sets of water quality parameter distribution samples from every 6 months to annually. **Annual monitoring begins during the next calendar year.** A system conducting annual sampling shall collect these sets of samples evenly throughout the year to reflect seasonal variability. The system shall continue monitoring at each entry point as specified in subsection [ (c)(2)(iii)(B) ] (d)(2).

(B) A large water system may reduce the frequency with which it collects tap water samples for applicable water quality parameters specified in § 109.1102(b)(5) to every 3 years if it demonstrates during two consecutive monitoring periods that its tap water lead level at the 90th percentile is less than or equal to the PQL for lead of 0.005 mg/L, that its tap water copper level at the 90th percentile is less than or equal to 0.65 mg/L, and that it also has maintained the range of values for the water quality parameters reflecting optimal corrosion control treatment specified by the Department under § 109.1102(b)(5). **Triennial monitoring shall be conducted during the last year of each 3-year compliance period—for example 1998, 2001, 2004 and so forth.**

[ (iii) *Reduced water quality parameter monitoring revocation.* A large water system subject to reduced water quality parameter monitoring that fails to operate within the range of performance requirements for the water quality parameters specified by the Department under § 109.1102(b)(5) on more than any 9 days in any 6-month period shall resume water quality parameter distribution sampling in accordance with the number and frequency requirements specified in subsection (d)(2).

(iv) A large system may resume annual monitoring for water quality parameters at the tap at the reduced number of sites specified in subsection (e)(2) after it has completed two subsequent consecutive 6-month rounds of monitoring that meet the criteria of subsection (e)(2)(i).

(v) A large system may resume triennial monitoring for water quality parameters at the tap at the reduced number of sites specified in subsection (e)(2) after it demonstrates through subsequent rounds of monitoring that it meets the criteria of subsection (e)(2)(ii). ]

(3) *Reduced monitoring revocation.*

(i) *Reduced monitoring revocation for large water systems.* A large water system authorized to conduct reduced monitoring under this subsection that fails to meet the lead or copper action level during any 4-month monitoring period or that fails to operate within the range of performance requirements for the water quality parameters specified by the Department under § 109.1102(b)(5) on more than any 9 days in a 6-month period shall comply with the following:

(A) The water supplier shall resume lead and copper tap monitoring in accordance with subsection (d)(1).

(B) The water supplier shall resume water quality parameter distribution sampling in accordance with the number and frequency requirements specified in subsection (d)(2).

(I) A large system may resume annual monitoring for water quality parameters at the tap at the reduced number of sites specified in paragraph (2) after it has completed two subsequent consecutive 6-month rounds of monitoring that meet the criteria of paragraph (2)(i).

(II) A large system may resume triennial monitoring for water quality parameters at the tap at the reduced number of sites specified in paragraph (2) after it demonstrates through subsequent rounds of monitoring that it meets the criteria of paragraph (2)(ii).

(C) The water supplier shall conduct source water monitoring in accordance with subsection (d)(3). Monitoring is required only for the parameter for which the action level was exceeded. For systems on annual or less frequent monitoring, the end of the monitoring period is September 30 of the calendar year in which sampling occurs, or, if the Department has designated an alternate monitoring period, the end of the monitoring period is the last day of the 4-month period in which sampling occurs.

(i) *Reduced monitoring revocation for small or medium water systems.* A small or medium water system authorized to conduct reduced lead and copper tap monitoring under this subsection that fails to meet the lead or copper action level during any 4-month monitoring period, or a small or medium system that has installed corrosion control treatment in compliance with § 109.1102(b)(2) and that fails to operate within the range of performance requirements for the water quality parameters specified by the Department under § 109.1102(b)(5) on more than any 9 days in a 6-month period, shall comply with the following:

(A) The water supplier shall conduct water quality parameter monitoring during the monitoring period in which the action level is exceeded. The start of the 6-month monitoring period for the water quality parameter monitoring required under this clause must coincide with the start of the annual or triennial tap monitoring period in which the action level was exceeded.

(I) If the system has installed corrosion control treatment in compliance with § 109.1102(b)(2), water quality parameter monitoring shall be conducted in accordance with subsection (c)(2).

(II) If the system has not installed corrosion control treatment, water quality parameter monitoring shall be conducted in accordance with subsection (a)(2) and the system shall conduct corrosion control treatment activities in accordance with § 109.1102(b)(1)(i).

(B) The water supplier shall collect one source water sample from each entry point within 6 months of the end of the monitoring period in which the action level was exceeded. Monitoring is required only for the parameter for which the action level was exceeded. For systems on annual or less frequent monitoring, the end of the monitoring period is September 30 of the calendar year in which sampling occurs, or, if the Department has designated an alternate monitoring period, the end of the monitoring period is the last day of the 4-month period in which sampling occurs.

(C) If a system has installed corrosion control treatment in compliance with § 109.1102(b)(2), the water supplier shall resume lead and copper tap monitoring in accordance with subsection (d)(1).

\* \* \* \* \*

(g) *Sample site location plan.* The water supplier shall complete a sample site location plan which includes a materials evaluation of the distribution system, lead and copper tap sample site locations, water quality parameter sample site locations, and certification that proper sampling procedures are used. The water supplier shall complete the steps in paragraphs (1)—(3) by the applicable date for commencement of lead and copper tap monitoring under subsection (a)(1) and the step in paragraph (4) following completion of the monitoring. The water supplier shall keep the sample site location plan on record in accordance with § 109.1107(a)(1). If the system is required to prepare a corrosion control treatment feasibility study in accordance with § 109.1102(b)(3)(i), the system shall include the sample site location plan as part of the study.

\* \* \* \* \*

(2) *Lead and copper tap sample site selection.* Lead and copper tap sampling sites are classified as tier 1, tier 2 or tier 3. Tier 1 sites are the highest priority sample sites.

\* \* \* \* \*

(ii) *Site selection for nontransient noncommunity water systems.*

(A) The water supplier shall select all tier 1 sample site locations, if possible. A nontransient noncommunity water system with an insufficient number of tier 1 sampling sites shall complete its sampling pool with sampling sites that contain copper pipes with lead solder installed before 1983. If additional sites are needed to complete the sampling pool, the system shall use representative sites throughout the distribution system in which the plumbing materials used at the site would be commonly found at other sites served by the system.

[ (A) ] (B) Tier 1 sampling sites [ shall ] must consist of buildings that have one or more of the following:

\* \* \* \* \*

[ (B) If a nontransient noncommunity water system or a community water system that meets the criteria of § 109.1104(a)(2)(i)(E) contains a fewer number of buildings than the required number of sampling sites, the water supplier shall sample from different taps within a representative number of buildings. The taps shall be those most commonly used for drinking and the samples shall be taken on different days. If the system has an insufficient number of these taps to take each sample from a different tap, the water supplier may apply to the Department, in writing, to substitute non-first-draw samples. Those systems shall collect as many first-draw samples from appropriate taps as possible and identify sampling times and locations that would likely result in the longest standing time for the remaining sites. Non-first-draw samples must be 1-liter in volume and collected from an interior tap that is typically used to provide drinking water. ]

\* \* \* \* \*

(iii) [ *Sample sites with lead service lines.* A system that has a distribution system containing lead

service lines shall draw 50% of the samples it collects during each monitoring period from sites that contain lead pipes or copper pipes with lead solder, and 50% of those samples from sites served by a lead service line. If a water system cannot identify a sufficient number of sampling sites served by a lead service line, the system shall collect first draw samples from each site identified as being served by a lead service line. ]

*Site selection for community and nontransient noncommunity water systems that have fewer than five taps.* A system that has fewer than five taps that can be used for drinking that meet the sample site criteria specified in this paragraph shall collect at least one sample from each tap and then collect additional samples from those taps on different days during the monitoring period to meet the required number of sites.

(iv) [ *Sample sites with point-of-use or point-of-entry devices.* Samples may not be taken from taps that have point-of-use or sites that have point-of-entry treatment devices designed to remove inorganic contaminants. ]

*Site selection for community and nontransient noncommunity facilities that operate continuously.* A community water system meeting the conditions in § 109.1104(a)(2)(i)(I) (relating to public education and notification), or a nontransient noncommunity water system, that operates continuously that has an insufficient number of taps commonly used for drinking to take each first-draw sample from a different tap, may apply to the Department, in writing, to substitute non-first-draw samples. These systems shall collect as many first-draw samples from appropriate taps as possible and identify sampling times and locations that would likely result in the longest standing time for the remaining sites. Non-first-draw samples must be 1-liter in volume and collected from an interior tap that is typically used to provide water for human consumption.

(v) *Sample sites with lead service lines.* A system that has a distribution system containing lead service lines shall draw 50% of the samples it collects during each monitoring period from sites that contain lead pipes or copper pipes with lead solder, and 50% of those samples from sites served by a lead service line. If a water system cannot identify a sufficient number of sampling sites served by a lead service line, the system shall collect first draw samples from each site identified as being served by a lead service line.

(vi) *Sample sites with point-of-use or point-of-entry devices.* Samples may not be taken from taps that have point-of-use or sites that have point-of-entry treatment devices designed to remove inorganic contaminants.

\* \* \* \* \*

(h) *Sample collection methods.*

(1) *Lead and copper tap samples.* Tap samples for lead and copper collected in accordance with this subchapter, with the exception of lead service line samples collected under § 109.1107(d)(3) and tap monitoring samples collected under § 109.1103(g)(2)(ii)(B), shall be first-draw samples and the following sample collection methods shall be used:

\* \* \* \* \*

(ii) First-draw samples from residential housing shall be collected from the cold water kitchen tap or bathroom sink tap. First-draw samples from a nonresidential building shall be collected at an interior tap from which water is typically drawn for [ consumption ] drinking.

\* \* \* \* \*

(k) *Monitoring waivers for small systems.* [ Any ] A small system that meets the criteria of this subsection may apply to the Department to reduce the frequency of monitoring for lead and copper under this section to once every 9 years if it meets all of the materials criteria specified in [ subsection (k) ] paragraph (1) and all of the monitoring criteria specified in [ subsection (k) ] paragraph (2). A system that meets the criteria in [ subsection (k) ] paragraphs (1) and (2) only for lead, or only for copper, may apply to the Department for a waiver to reduce the frequency of tap water monitoring to once every 9 years for that contaminant only.

\* \* \* \* \*

(4) *Monitoring frequency for systems with waivers.*

(i) A system shall conduct tap water monitoring for the contaminant waived in accordance with subsection (e)(1)(iv) at the reduced number of sites identified in subsection (e) at least once every 9 years and provide the materials certification specified in paragraph (1) for the contaminants waived along with the monitoring results. **Monitoring shall be conducted during the last year of each 9-year compliance cycle-for example 2010, 2019, 2028 and so forth.**

\* \* \* \* \*

§ 109.1104. **Public education and notification.**

(a) *Public education program.* The water supplier for a system that exceeds the lead action level based on tap monitoring conducted under § 109.1103 (relating to monitoring requirements) shall implement a public education program in accordance with this section. The public education program [ will ] **must** remain in effect until the system qualifies for discontinuation under paragraph (3).

(1) *Content.* The water supplier shall include mandatory language established by the EPA under 40 CFR 141.85 (relating to public education and supplemental monitoring requirements), which is incorporated by reference, in all of the printed and broadcast materials distributed through the lead public education program. Additional information presented by a system [ shall ] **must** be consistent with the information specified in this section and be in plain English that can be understood by laypersons. If appropriate or as designated by the Department, public education materials [ shall ] **must** be bilingual or multilingual. Systems may delete information pertaining to lead service lines, upon approval by the Department, if no lead service lines exist in the system's service area.

(i) [ *Mandatory language for newspapers and water bill inserts.* The community water supplier shall include the information contained in 40 CFR 141.85(a) in all printed material submitted to newspapers and inserted with customers' water bills. In addition to the water bill insert, the water supplier shall provide the following alert on the water bill itself in large print:

"Some homes in this community have elevated lead levels in their drinking water. Lead can pose a

significant risk to your health. Please read the enclosed notice for further information."

If a water supplier is unable to include the alert verbatim on the water bill because of insufficient space on the bill, the water supplier may request, and the Department may allow, a minor wording change so long as the content remains essentially unaffected. Public education language in 40 CFR 141.85(a)(1)(iv)(B)(5) and (D)(2) may be modified regarding building permit record availability and consumer access to these records, upon approval by the Department. ]

*Content of written materials.* Community water suppliers and nontransient noncommunity water suppliers shall include the mandatory language and other content requirements established under 40 CFR 141.85(a)(1) and (2), which is incorporated by reference.

(ii) [ *Mandatory language for pamphlets and brochures.* The water supplier shall include the information contained in 40 CFR 141.85(a)(1)(ii) and (iv) in all pamphlets or brochures printed and distributed in accordance with this section. ]

*Information for non-English-speaking populations.* For each non-English-speaking group that exceeds 10% of the residents for systems serving at least 1,000 people or 100 residents for systems serving less than 1,000 people, and speak the same language other than English, the written materials must contain information in the appropriate languages regarding the importance of the materials or contain a telephone number or address where persons served may contact the water system to obtain a translated copy of the materials or to request assistance in the appropriate language.

(iii) [ *Mandatory language for public service announcements.* The water supplier shall include the information contained in 40 CFR 141.85(b) in public service announcements submitted for broadcast. ]

*Submission prior to delivery.* Water systems shall submit copies of all written public education materials to the Department prior to delivery.

[ (iv) *Mandatory language for nontransient noncommunity water systems.* The water supplier for a nontransient noncommunity water system shall include either the information contained in 40 CFR 141.85(a)(1), or the information contained in 40 CFR 141.85(a)(2), in public education materials printed and distributed in accordance with this section. ]

(2) *Delivery.*

(i) *Community water system requirements.* Within 60 days after [ exceeding ] the end of the monitoring period in which the lead action level was exceeded, unless it is already repeating public education tasks under this subsection [ (a) ], the water supplier for a community water system shall deliver the public education materials to its customers in accordance with clauses (A)—[ (D) ] (G). The water supplier shall repeat the tasks contained in clauses (A)—[ (C) ] (D) and (H) every 12 months, and in clause [ (D) ] (G) every 6 months for as long as the system exceeds the lead action level. **For systems that are required to conduct monitoring annually or less frequently, the end of the monitor-**



ing period is September 30 of the calendar year in which sampling occurs, or, if the Department has designated an alternate monitoring period, the end of the monitoring period is the last day of the 4-month period in which sampling occurs.

(A) The water supplier shall [insert notices with and include the alert on each customer's water bill containing the information in paragraph (1)(i). If the billing cycle or billing form prevents distribution of this notice within 60 days of the lead action level exceedance, the water supplier may deliver the information required in paragraph (1) within 60 days of the lead action level exceedance in one of the following ways:] deliver printed materials meeting the content requirements of paragraph (1) to all bill paying customers.

[ (I) A separate direct mailing.

(II) Hand delivery. ]

(B) The water supplier shall [submit the information in paragraph (1)(i) to the editorial departments of the major daily and weekly newspapers circulated throughout the community] deliver education materials meeting the content requirements of paragraph (1) to local public health agencies, such as the county or State Health Department, even if they are not located within the water system's service area, along with an informational notice that encourages distribution to all the potentially affected consumers. The water supplier shall contact the local public health agencies directly by phone or in person. The local public health agencies may provide a specific list of additional community based organizations serving target populations which may include organizations outside the service area of the water system. If a list is provided, the water supplier shall deliver education materials that meet the content requirements of paragraph (1) to all the organizations on the list.

(C) The water supplier shall deliver [pamphlets or brochures, or both, that contain the information in paragraph (1)(ii) to facilities and organizations, including the following] education materials meeting the content requirements of paragraph (1) to the organizations listed in subclauses (I)-(VI) that are located within the water system's service area, along with an informational notice that encourages distribution to all the organization's potentially affected customers or water system's users:

(I) Public and private schools or local school boards, or both.

(II) [City or county health department.

(III) ] Women, Infants, and Children or Head Start Programs whenever available.

[ (IV) ] (III) Public and private hospitals and medical clinics.

[ (V) ] (IV) Pediatricians.

[ (VI) ] (V) Family planning clinics.

[ (VII) ] (VI) Local welfare agencies.

(D) The water supplier shall [submit a public service announcement which includes the information in paragraph (1)(iii) to at least five of the radio and

television stations with the largest audiences that broadcast to the community served by the water system.] make a good faith effort to locate the following organizations within the water system's service area and deliver education materials meeting the content requirements of paragraph (1) to them along with an informational notice that encourages distribution to all the organization's potentially affected customers or users. The good faith effort to contact at-risk customers may include requesting a specific contact list of the organizations in subclauses (I)-(III) from the local public health agencies even if the agencies are not located within the water system's service area:

(I) Licensed childcare centers.

(II) Public and private preschools.

(III) Obstetricians-gynecologists and midwives.

(E) [A community water system may apply to the Department, in writing, to use the text specified in 40 CFR 141.85(a)(2) in lieu of the text in 40 CFR 141.85(a)(1), and to perform the tasks listed under subparagraph (ii)(A) in lieu of the tasks under clauses (A)-(D) if:]

The water supplier shall provide information on or in each water bill at least quarterly. The message on the water bill must include the following statement exactly as written except for the text in brackets for which the water system must include system-specific information:

*(Editor's Note: The text in capital letters and brackets is to indicate that the water supplier needs to insert its own information to replace this text.)*

"[INSERT WATER SYSTEM NAME] found high levels of lead in drinking water in some homes. Lead can cause serious health problems. For more information please call [INSERT WATER SYSTEM NAME] (or visit [INSERT WEB SITE ADDRESS])."

[ (I) The system is a facility, such as a prison or a hospital, where the population served is not capable of or is prevented from making improvements to the plumbing or installing point-of-use treatment devices.

(II) The system provides water as part of the cost of services provided and does not charge for water consumption. ]

(F) [A community water system serving 3,300 or fewer persons may omit the task contained in clause (D) if notices containing the information required under paragraph (1) are distributed to every household served by the system at least once during each calendar year the system exceeds the lead action level. ]

The water supplier shall post education materials meeting the content requirements of paragraph (1) on the water system's web site if the system serves a population greater than 100,000 for as long as the system exceeds the lead action level.

(G) The water supplier shall submit a press release to newspaper, radio and television stations.

(H) In addition to the requirements of clauses (A)-(F), community water suppliers shall imple-

ment at least three activities from the categories listed in subclauses (I)—(IX). The educational content and selection of these activities shall be determined in consultation with the Department.

- (I) Public service announcements.
- (II) Paid advertisements.
- (III) Public area information displays.
- (IV) E-mails to customers.
- (V) Public meetings.
- (VI) Household deliveries.
- (VII) Targeted individual customer contact.
- (VIII) Direct distribution of education materials to all multifamily homes and institutions.
- (IX) Other methods approved by the Department.

(I) A community water system may apply to the Department, in writing, to omit the text required in 40 CFR 141.85(a)(2) and to perform the tasks listed under subparagraph (ii) in lieu of the tasks under clauses (A)-(H) if the following apply:

(I) The system is a facility, such as a prison or a hospital, where the population served is not capable of or is prevented from making improvements to the plumbing or installing point-of-use treatment devices.

(II) The system provides water as part of the cost of services provided and does not charge for water consumption.

(J) A community water system serving 3,300 or fewer persons may modify its public education program as follows:

(I) The system may limit distribution of public education materials required under clauses (B) and (C) to facilities and organizations served by the system that are most likely to be visited by pregnant women and children.

(II) The system may omit the task in clause (G) if notices meeting the content requirements of paragraph (1) are distributed to every household served by the system.

(III) The system shall implement at least one of the tasks specified in clause (H).

(ii) *Nontransient noncommunity water system requirements.* Within 60 days after [ **exceeding** ] the end of the monitoring period in which the lead action level was exceeded, the water supplier for a nontransient noncommunity water system shall deliver the public education materials contained in paragraph (1)[ (iv) ] to its consumers, unless it is already repeating public education tasks under this subsection. **For systems that are required to conduct monitoring annually or less frequently, the end of the monitoring period is September 30 of the calendar year in which sampling occurs, or, if the Department has designated an alternate monitoring period, the end of the monitoring period is the last day of the 4-month period in which sampling occurs.**

\* \* \* \* \*

(iii) *Extension of the 60-day delivery deadline.* Water systems may request an extension of the 60-day delivery deadline, but the water system must receive written approval from the Department prior to the 60-day deadline.

(3) *Discontinuation of public education program.* A water supplier may discontinue [ **implementation of its public education program** ] **delivery of public education materials** if the system does not exceed the lead action level during the most recent 6-month monitoring period conducted under § 109.1103. The system shall resume public education in accordance with this section if it exceeds the lead action level at any time during a future monitoring period.

(4) *Notification of customer monitoring.* A water supplier that fails to meet the lead action level on the basis of tap monitoring conducted in accordance with § 109.1103 shall provide information regarding laboratories certified by the Department for lead and copper testing to any customer who requests it.

(b) *Notification of results.* Water systems shall deliver a consumer tap notice of lead tap water monitoring results to persons served by the water at sites that are sampled under § 109.1103.

(1) *Content.* The consumer notice must include the following:

(i) The results of lead tap water monitoring for the tap that was sampled.

(ii) An explanation of the health effects of lead.

(iii) A list of steps consumers can take to reduce exposure to lead in drinking water.

(iv) Contact information for the water system.

(2) *Timing.* Water systems shall provide the consumer notice within 30 days after the system learns of the tap monitoring results.

(3) *Delivery.* The consumer notice shall be delivered to persons served at the tap that was sampled either by mail or by another method approved by the Department. The system shall provide notice to all persons served by the tap that was sampled, including consumers who do not receive water bills.

(c) **Public notification requirements. \* \* \***  
\* \* \* \* \*

§ 109.1107. System management responsibilities.

(a) *Reporting and recordkeeping.* Systems shall comply with the following requirements and otherwise comply with § 109.701 (relating to reporting and recordkeeping):

\* \* \* \* \*

(3) *Corrosion control treatment reporting requirements.*

(i) A water supplier demonstrating optimal corrosion control treatment under § 109.1102(b)(1)(ii) (relating to action levels and treatment technique requirements) shall submit information in writing sufficient for the Department to evaluate and determine whether optimal treatment has been achieved. [ **281961** ]

\* \* \* \* \*

(5) *Consumer notice of lead tap monitoring results reporting requirements.* The water supplier shall submit to the Department within 3 months of the end of the monitoring period in which lead tap monitoring was conducted a sample copy of the consumer notice of lead tap monitoring results along with a certification that the notices were distributed in accordance with § 109.1104(b).

(6) Lead service line replacement reporting. \* \* \*

\* \* \* \* \*  
 [ (6) ] (7) Record maintenance. \* \* \*  
 \* \* \* \* \*

(d) *Lead service line replacement.*

(1) *Initiation of lead service line replacement.* A system that exceeds the lead action level when conducting lead and copper tap monitoring in accordance with § 109.1103(c)(1) or (d)(1) after construction or modification of corrosion control treatment facilities shall initiate lead service line replacement. The first year of lead service line replacement begins **[ with the next 6-month monitoring period following the action level exceedance ]** on the first day following the end of the monitoring period in which the action level was exceeded. **If monitoring is required annually or less frequently, the end of the monitoring period is September 30 of the calendar year in which sampling occurred. If the Department has designated an alternate monitoring period in writing, the end of the monitoring period is the last day of the designated alternate monitoring period.**

\* \* \* \* \*

(5) *Discontinuation of lead service line replacement.* A water supplier may cease replacing lead service lines if the system meets the lead action level during two consecutive 6-month monitoring periods when conducting lead and copper tap monitoring. Thereafter, if the system exceeds the lead action level, the water supplier shall recommence replacing lead service lines in accordance with paragraph [ (2) ] (6).

(6) *Resumption of lead service line replacement.* **Water systems that resume a lead service line replacement program shall update their lead service line inventory to include those sites that were previously excluded under paragraph (3). Systems shall divide the updated number of remaining lead service lines by the number of remaining years in the replacement program to determine the number that must be replaced each year. If the system has completed a 15-year lead service line replacement program, the Department will determine a schedule for replacing or retesting lead service lines that were previously tested out under the replacement program (when the system reexceeds the lead action level).**

[Pa.B. Doc. No. 09-1782. Filed for public inspection September 25, 2009, 9:00 a.m.]

**STATE BOARD OF  
 CHIROPRACTIC**

[ 49 PA. CODE CH. 5 ]

**Continuing Education Violations**

The State Board of Chiropractic (Board) proposes to amend its regulations to amend § 5.77(d) (relating to failure to meet continuing education requirements), by adding subsection (d) to read as set forth in Annex A.

*Effective Date*

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

*Statutory Authority*

The amendment is authorized under sections 302(3), 506(a)(9) and 507(a) of the Chiropractic Practice Act (act) (63 P. S. §§ 625.302(3), 625.506(a)(9) and 625.507(a)).

*Background and Need for the Amendment*

Section 507(a) of the act requires each licensee to complete at least 24 hours of continuing education during each biennial renewal period. Under section 506(a)(13) of the act, the Board may take disciplinary action against a licensee who fails to perform any statutory obligation placed upon a licensed chiropractor. Disciplinary actions for failing to complete the continuing education requirement in a timely manner invariably result in the licensee being required to pay a civil penalty proportionate to the amount of deficiency and to make up the deficiency promptly. Accordingly, the Board proposes to utilize the more streamlined procedures under section 5(a) of the act of July 2, 1993 (P. L. 345, No. 48) (Act 48) (63 P. S. § 2205(a)) where in the Commissioner of Professional and Occupational Affairs, after consultation with licensing boards in the Bureau of Professional and Occupational Affairs, may promulgate a schedule of civil penalties for violations of the acts or regulations of these licensing boards.

*Description of the Proposed Amendments*

The proposed rulemaking would add subsection (d). Because continuing education is generally required as a condition of renewal, under existing § 5.77(c) a licensee who has not completed the mandatory continuing education may, without any penalty, permit his license to become inactive (and not practice chiropractic in this Commonwealth) until the licensee completes the required amount continuing education. Proposed subsection (d) would permit a licensee who did not complete the required amount of continuing education to renew (and practice), but would also require the licensee to pay an Act 48 civil penalty and make up the deficient credit hours within 6 months. A licensee who does not make up the deficiency timely and provide proof will be subject to formal disciplinary action.

*Fiscal Impact and Paperwork Requirements*

The proposed amendments will have no adverse fiscal impact on the Commonwealth or its political subdivisions. The amendment will impose no additional paperwork requirements upon the Commonwealth, political subdivisions or the private sector.

*Sunset Date*

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

*Regulatory Review*

Under section 5(a) of the Regulatory Review Act (71 P. S. § 745.5(a)), on September 11, 2009, the Board submitted a copy of this proposed rulemaking and a copy of a Regulatory Analysis Form to the Independent Regulatory Review Commission (IRRC) and to the Senate Consumer Protection and Professional Licensure Committee and the House Professional Licensure Committee. A copy of this material is available to the public upon request.

Under section 5(g) of the Regulatory Review Act, IRRC may convey comments, recommendations or objections to the proposed rulemaking within 30 days of the close of the public comment period. The comments, recommendations or objections shall specify the regulatory review criteria which have not been met. The Regulatory Review



Act specifies detailed procedures for review, prior to final publication of the rulemaking, by the Board, the General Assembly and the Governor of comments, recommendations or objections raised.

*Public Comment*

Interested persons are invited to submit written comments, suggestions or objections regarding this proposed rulemaking to Regulatory Unit Counsel, Department of State, P. O. Box 2649, Harrisburg, PA 17105-2649, or by email at st-chiro@state.pa.us, within 30 days following publication of this proposed rulemaking in the *Pennsylvania Bulletin*. Use reference No. 16A-4318 (continuing education violations), when submitting comments.

KATHLEEN G. MCCONNELL, D. C.,  
*Chairperson*

**Fiscal Note:** 16A-4318. No fiscal impact; (8) recommends adoption.

**Annex A**

**TITLE 49. PROFESSIONAL AND VOCATIONAL STANDARDS**

**PART I. DEPARTMENT OF STATE**

**Subpart A. PROFESSIONAL AND OCCUPATIONAL AFFAIRS**

**CHAPTER 37. STATE BOARD OF CHIROPRACTIC**

**Subchapter G. CONTINUING EDUCATION**

**§ 5.77. Failure to meet continuing education requirements.**

\* \* \* \* \*

(d) Unless otherwise excused by the act or this chapter, a licensee who fails to complete the minimum required amount of continuing education during the applicable renewal period is subject to discipline under § 43b.22 (relating to schedule of civil penalties—chiropractors). Within 6 months after the end of the renewal period during which the required amount of continuing education was not completed, the licensee shall make up the deficiency and provide proof of attendance at continuing education courses as required under section 507 of the act (63 P. S. § 625.507) and § 5.14 (relating to certification to use adjunctive procedures) for the previous biennial registration period. In addition to any civil penalty assessed under this subsection, failure to provide the Board with proof of the required amount of continuing education within 6 months after the beginning of a biennial period in which the licensee renewed without having completed the required amount of continuing education shall subject the licensee to disciplinary action under section 506(a)(9) of the act (63 P. S. § 625.506(a)(9)). Failure to complete all of the required amount of continuing education within 6 months after the beginning of a biennial period in which the licensee renewed without having completed the required amount of continuing education shall subject the licensee to disciplinary action under section 506(a)(13) of the act.

[Pa.B. Doc. No. 09-1783. Filed for public inspection September 25, 2009, 9:00 a.m.]

**STATE BOARD OF DENTISTRY**

**[ 49 PA. CODE CH. 33 ]  
Clinical Examinations**

The State Board of Dentistry (Board) proposes to amend § 33.103 (relating to examinations) to read as set forth in Annex A.

*Effective Date*

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

*Statutory Authority*

The proposed rulemaking is authorized under section 3(c), (d), (e) and (o) of the Dental Law (63 P. S. § 122(c), (d), (e) and (o)). Section 3(c) and (d) authorize the Board to license dentists and dental hygienists by examination. Section 3(e) authorizes the Board to provide for the conduct of licensure examinations. Section 3(o) provides the general authority of the Board “to adopt, promulgate and enforce such rules and regulations as may be deemed necessary by the Board.”

*Background and Purpose*

Currently, the Board requires that applicants for licensure as a dentist or dental hygienist take and pass the National Board Dental or Dental Hygiene Examination administered by the Joint Commission on National Dental Examinations, Inc. (written examination) and the clinical examination administered by the Northeast Regional Board of Dental Examiners, Inc. (NERB). Over the last few years, the Board has been, and will continue to be involved in the efforts to adopt a National clinical examination, but to date, it has not come to fruition. In the absence of a National clinical examination, the Board has determined that applicants for licensure by examination should be able to take any of the five regional clinical examinations; that is, those examinations administered by NERB, the Southern Regional Testing Agency, Inc. (SRTA), the Western Regional Examining Board (WREB), the Central Regional Dental Testing Service, Inc. (CRDTS), or the Council of Interstate Testing Agencies, Inc. (CITA).

In March of 2009, the Board solicited comments from stakeholders and interested parties regarding the proposal to expand the list of acceptable clinical examinations to include those administered by each of these five regional examining agencies. All of the commentators agreed in theory with the proposal to expand the list of acceptable examinations. However, the Pennsylvania Dental Association (PDA) suggested that the Board consider, instead of listing the five regional testing agencies, defining the criteria by which a clinical examination will be considered valid and reliable. However, the Board believes that, while many of the Board members are experienced dentists and dental hygienists, they are not psychometricians, nor are they trained in education measurement or quantitative psychology. Therefore, the Board is not able to evaluate whether a particular examination is psychometrically sound, valid, reliable or legally defensible. The Board currently relies on NERB to develop and administer an examination that is valid, reliable and legally defensible. The Board will continue to rely on each of the regional testing agencies to defend their examinations if challenged. The Board, however, has reviewed the content of the examinations, and finds them to be sub-

stantially similar. In addition, the American Dental Association (ADA) has advocated that each state dental board consider accepting all of the examinations administered by the various regional testing agencies, all of which, with the exception of CITA, have been in existence for decades.

The PDA also noted that the proposed rulemaking does not address State-administered clinical examinations, nor does it include the American Board of Dental Examiners' ADLEX (dental) or ADHLEX (dental hygiene) examinations. The examinations administered by the five regional testing agencies, in combination, are accepted in all but a few states that administer their own examinations. In addition, some states that administer their own examinations also accept the results of at least one of the regional examinations. If an applicant for this Commonwealth licensure has not passed an examination administered by one of the five regional testing agencies as proposed by this rulemaking, that individual could still apply for licensure under § 33.107 (relating to licensure by criteria approval). Therefore, the Board determined that it would not address state administered examinations in this proposal. In addition, the ADLEX/ADHLEX examinations are not administered by the American Board of Dental Examiners (ADEX), but by a regional testing agency. In fact, NERB currently administers the ADLEX examination. To the Board's knowledge, no regional testing agency currently administers the ADHLEX examination. Therefore, the Board determined that it was not necessary to address these examinations in the proposed rulemaking at this time.

The Board did not make any changes to the proposed rulemaking based on the PDA's comments. In general, the Board has determined that it was most prudent at this time to look to the existing regional examining agencies as a means of opening up the possibility of licensure in this Commonwealth to as many qualified individuals as possible. Most of the interested parties that commented on the proposal indicated that this is a positive step to permit more qualified individuals to obtain licensure, to increase access to dental care for residents in this Commonwealth, and to allow dentists and dental hygienists more flexibility and mobility.

#### *Description of Proposed Amendments*

The Board proposes to amend § 33.103 to provide that applicants for licensure by examination may take and pass a clinical examination administered by any of the five regional examining agencies.

#### *Fiscal Impact and Paperwork Requirements*

The proposed amendment should have no fiscal impact on the Commonwealth or its political subdivisions because the costs associated with examinations will be borne by candidates for licensure. The proposed amendments should not have an adverse fiscal impact on applicant because the fees for the various regional examinations are comparable and an applicant could choose the most cost-effective examination to take.

The proposed amendment should not result in any additional legal, accounting or reporting requirements for the Commonwealth or the regulated community.

#### *Sunset Date*

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

#### *Regulatory Review*

Under section 5(a) of the Regulatory Review Act (71 P. S. § 745.5(a)), on September 16, 2009, the Board submitted a copy of this proposed rulemaking and a copy of a Regulatory Analysis Form to the Independent Regulatory Review Commission (IRRC) and to the House Professional Licensure Committee and the Senate Consumer Protection and Professional Licensure Committee. A copy of this material is available to the public upon request.

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

#### *Public Comment*

Interested persons are invited to submit written comments, suggestions or objections regarding the proposed amendments to Cynthia Montgomery, Regulatory Counsel, State Board of Dentistry, P. O. Box 2649, Harrisburg, PA 17105-2649, within 30 days following publication of this proposed rulemaking.

JOHN V. REITZ, D.D.S.,  
Chairperson

**Fiscal Note:** 16A-4620. No fiscal impact; (8) recommends adoption.

#### **Annex A**

### **TITLE 49. PROFESSIONAL AND VOCATIONAL STANDARDS**

#### **PART I. DEPARTMENT OF STATE**

#### **Subpart A. PROFESSIONAL AND OCCUPATIONAL AFFAIRS**

#### **CHAPTER 33. STATE BOARD OF DENTISTRY**

#### **Subchapter B. LICENSURE OF DENTISTS AND DENTAL HYGIENISTS**

#### **§ 33.103. Examinations.**

(a) *Dentists.* Candidates for licensure shall pass the National Board Dental Examination (written examination) and the [ **Northeast Regional Board (NERB) Dental Examination (clinical examination)** ] dental clinical examination administered by one of the following:

- (1) **The Northeast Regional Board of Dental Examiners, Inc. (NERB).**
- (2) **The Southern Regional Testing Agency, Inc. (SRTA).**
- (3) **The Western Regional Examining Board (WREB).**
- (4) **The Central Regional Dental Testing Service, Inc. (CRDTS).**
- (5) **The Council of Interstate Testing Agencies, Inc. (CITA).**

(b) *Dental hygienists.* Candidates for licensure shall pass the National Board Dental Hygiene Examination (written examination) and the [ **NERB Dental Hygiene**

**Examination (clinical examination) ] dental hygiene clinical examination administered by one of the following:**

- (1) The North East Regional Board of Dental Examiners, Inc. (NERB).**
- (2) The Southern Regional Testing Agency, Inc. (SRTA).**
- (3) The Western Regional Examining Board (WREB).**
- (4) The Central Regional Dental Testing Service, Inc. (CRDTS).**
- (5) The Council of Interstate Testing Agencies, Inc. (CITA).**

\* \* \* \* \*

(d) *Additional requirement.* The Board will recognize successful completion of the [ **NERB Dental Examination or NERB Dental Hygiene Examination** ] dental or dental hygiene clinical examinations or the expanded function dental assistant examination approved by the Board for up to 5 years from the date scores are reported to the Board. After 5 years, the Board will accept passing scores on the examinations only if the candidate has been engaged in postgraduate training or in the practice of dentistry, as a dental hygienist or as an expanded function dental assistant in another jurisdiction.

[Pa.B. Doc. No. 09-1784. Filed for public inspection September 25, 2009, 9:00 a.m.]

**[ 49 PA. CODE CH. 33 ]  
EFDA Program Approval**

The State Board of Dentistry (Board) proposes to amend § 33.103 (relating to examinations), to read as set forth in Annex A.

*Effective Date*

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

*Statutory Authority*

The proposed rulemaking is authorized under section 3(c), (d), (e) and (o) of the Dental Law, (63 P. S. § 122(c), (d), (e) and (o)). Section 3(c) and (d) authorize the Board to license dentists and dental hygienists by examination. Section 3(e) authorizes the Board to provide for the conduct of licensure examinations. Section 3(o) provides the general authority of the Board “to adopt, promulgate and enforce such rules and regulations as may be deemed necessary by the Board.”

*Background and Purpose*

Currently, the Board requires that applicants for licensure as a dentist or dental hygienist take and pass the National Board Dental or Dental Hygiene Examination administered by the Joint Commission on National Dental Examinations, Inc. (written examination) and the clinical examination administered by the Northeast Regional Board of Dental Examiners, Inc. (NERB). Over the last few years, the Board has been, and will continue to be involved in the efforts to adopt a National clinical examination, but to date, it has not come to fruition. In the absence of a National clinical examination, the Board has determined that applicants for licensure by examina-

tion should be able to take any of the five regional clinical examinations, that is, those examinations administered by NERB, the Southern Regional Testing Agency, Inc. (SRTA), the Western Regional Examining Board (WREB), the Central Regional Dental Testing Service, Inc. (CRDTS) or the Council of Interstate Testing Agencies, Inc. (CITA).

In March of 2009, the Board solicited comments from stakeholders and interested parties regarding the proposal to expand the list of acceptable clinical examinations to include those administered by each of these five regional examining agencies. All of the commentators agreed in theory with the proposal to expand the list of acceptable examinations. However, the Pennsylvania Dental Association (PDA) suggested that the Board consider, instead of listing the five regional testing agencies, defining the criteria by which a clinical examination will be considered valid and reliable. However, the Board believes that, while many of the Board members are experienced dentists and dental hygienists, they are not psychometricians, nor are they trained in education measurement or quantitative psychology. Therefore, the Board is not able to evaluate whether a particular examination is psychometrically sound, valid, reliable or legally defensible. The Board currently relies on NERB to develop and administer an examination that is valid, reliable and legally defensible. The Board will continue to rely on each of the regional testing agencies to defend their examinations if challenged. The Board, however, has reviewed the content of the examinations, and finds them to be substantially similar. In addition, the American Dental Association (ADA) has advocated that each state dental board consider accepting all of the examinations administered by the various regional testing agencies, all of which, with the exception of CITA, have been in existence for decades.

The PDA also noted that the proposed rulemaking does not address State-administered clinical examinations, nor does it include the American Board of Dental Examiners’ ADLEX (dental) or ADHLEX (dental hygiene) examinations. The examinations administered by the five regional testing agencies, in combination, are accepted in all but a few states that administer their own examinations. In addition, some states that administer their own examinations also accept the results of at least one of the regional examinations. If an applicant in this Commonwealth licensure has not passed an examination administered by one of the five regional testing agencies as proposed by this rulemaking, that individual could still apply for licensure under § 33.107 (relating to licensure by criteria approval). Therefore, the Board determined that it would not address State administered examinations in this proposal. In addition, the ADLEX/ADHLEX examinations are not administered by the American Board of Dental Examiners (ADEX), but by a regional testing agency. In fact, NERB currently administers the ADLEX examination. To the Board’s knowledge, no regional testing agency currently administers the ADHLEX examination. Therefore, the Board determined that it was not necessary to address these examinations in the proposed rulemaking at this time.

The Board did not make any changes to the proposed rulemaking based on the PDA’s comments. In general, the Board has determined that it was most prudent at this time to look to the existing regional examining agencies as a means of opening up the possibility of licensure in this Commonwealth to as many qualified individuals as possible. Most of the interested parties that commented on the proposal indicated that this is a



positive step to permit more qualified individuals to obtain licensure in this Commonwealth, to increase access to dental care for residents of this Commonwealth, and to allow dentists and dental hygienists more flexibility and mobility.

*Description of Proposed Amendments*

The Board proposes to amend § 33.103 to provide that applicants for licensure by examination may take and pass a clinical examination administered by any of the five regional examining agencies.

*Fiscal Impact and Paperwork Requirements*

The proposed amendment should have no fiscal impact on the Commonwealth or its political subdivisions because the costs associated with examinations will be borne by candidates for licensure. The proposed amendment should not have an adverse fiscal impact on applicants because the fees for the various regional examinations are comparable and an applicant could choose the most cost-effective examination to take.

The proposed amendment should not result in any additional legal, accounting or reporting requirements for the Commonwealth or the regulated community.

*Sunset Date*

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

*Regulatory Review*

Under section 5(a) of the Regulatory Review Act (71 P. S. § 745.5(a)), on September 16, 2009, the Board submitted a copy of this proposed rulemaking and a copy of a Regulatory Analysis Form to the Independent Regulatory Review Commission (IRRC) and to the Chairpersons of the House Professional Licensure Committee and the Senate Consumer Protection and Professional Licensure Committee. A copy of this material is available to the public upon request.

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

*Public Comment*

Interested persons are invited to submit written comments, suggestions or objections regarding the proposed amendments to Cynthia Montgomery, Regulatory Counsel, State Board of Dentistry, P. O. Box 2649, Harrisburg, PA 17105-2649, within 30 days following publication of this proposed rulemaking.

JOHN V. REITZ, D.D.S.  
Chairperson

**Fiscal Note:** 16A-4616. No fiscal impact; (8) recommends adoption.

**Annex A**

**TITLE 49. PROFESSIONAL AND VOCATIONAL STANDARDS**

**PART I. DEPARTMENT OF STATE**

**Subpart A. PROFESSIONAL AND OCCUPATIONAL AFFAIRS**

**CHAPTER 33. STATE BOARD OF DENTISTRY**

**Subchapter A. GENERAL PROVISIONS**

**§ 33.1. Definitions.**

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

\* \* \* \* \*

**EFDA program—An expanded function dental assisting training program.**

\* \* \* \* \*

**§ 33.3. Fees.**

(a) Following is a schedule of fees charged by the Board:

\* \* \* \* \*

**EFDA program approval application fee . . . . \$ 80**

\* \* \* \* \*

**Subchapter B. LICENSURE OF DENTISTS AND DENTAL HYGIENISTS AND CERTIFICATION OF EXPANDED FUNCTION DENTAL ASSISTANTS**

**§ 33.102. Professional education.**

\* \* \* \* \*

(c) *Expanded function dental assistants.*

(1) Candidates for certification as expanded function dental assistants shall show compliance with section 3(d.1) of the act by submitting verification of one of the following:

(i) Graduation from [ **an expanded function dental assisting program** ] a **Board-approved EFDA program** at a 2-year college or other institution accredited or provisionally accredited by an accrediting agency approved by the United States Department of Education Council on Postsecondary Accreditation which offers an Associate Degree.

(ii) Graduation from a dental hygiene school which required the successful completion of at least 75 hours of clinical and didactic instruction in restorative functions accredited or provisionally accredited by the Commission on Dental Accreditation (**CODA**) of the American Dental Association.

(iii) Completion of a **Board-approved** certification program in expanded function dental assisting of at least 200 hours of clinical and didactic instruction from a dental assisting program accredited by one of the following:

(A) The Commission on Dental Accreditation (**CODA**) of the American Dental Association.

\* \* \* \* \*

(2) **The Board will approve EFDA programs that meet the criteria in § 33.117 (relating to EFDA program approval).**

[ (2) ](3) Candidates for certification who receive their professional education outside the United States or from

a nonaccredited program may satisfy the education requirement by submitting their credentials to a program listed in paragraph (1) and obtaining additional training that will lead to the awarding of a degree by that school.

[ (3) ] (4) This subsection does not apply to persons who are not required to meet the educational requirements under section (3)(d.1)(2) of the act.

(*Editor's Note:* Proposed § 33.117 is new and is printed in regular text enhance readability.)

§ 33.117. EFDA program approval.

(a) *Definitions.* The following words and terms, when used in this section, have the following meanings, unless the context clearly indicates otherwise:

*Clinical setting*—

(i) A setting in which expanded function dental assisting procedures are performed through direct patient care.

(ii) The term does not include any setting where procedures are performed on typodonts, manikins or by other simulation methods.

*Clinical evaluation*—An evaluation system based on observation of a student's performance of clinical skills in contexts that resemble those the student will be expected to encounter as an expanded function dental assistant in a dental office.

*Clinical instruction*—A learning experience in a clinical setting where the student performs expanded functions on patients under the supervision of an instructor.

*Competencies*—Statements describing the necessary requirements to perform each procedure in § 33.205a (relating to practice as an expanded function dental assistant) to the level required to meet the acceptable and prevailing standard of care within the dental community in this Commonwealth.

*Competent*—Having sufficient knowledge, skill and expertise in performing expanded functions to meet and maintain the acceptable and prevailing standard of care within the dental community in this Commonwealth.

*Laboratory or preclinical instruction*—A learning experience in which students perform expanded functions using study models, typodonts, manikins or other simulation methods under the supervision of the instructor.

(b) *Application.* EFDA programs shall apply for Board approval on forms to be provided by the Board and pay the fee set forth in § 33.3 (relating to fees). The application must include the following information:

- (1) EFDA program goals and objectives.
- (2) Criteria for measuring competencies.
- (3) Documentation of accreditation as required under section 3(d.1) of the act (63 P. S. § 122(d.1)).
- (4) The curriculum vitae and job description of the EFDA program director.
- (5) The curriculum vitae and job description of each faculty member assigned to the EFDA program.
- (6) A description of the physical facilities and equipment used by the EFDA program for laboratory, preclinical and clinical instruction.
- (7) A copy of the formal written agreement for the use of off-campus laboratory, preclinical or clinical facilities, if applicable.
- (8) Course outlines, course descriptions or syllabi for the EFDA program curriculum.

(9) Other information requested by the Board.

(c) *Requirements for approval.* The Board will approve EFDA programs that meet the following requirements:

(1) *Planning and assessment.*

(i) The EFDA program shall delineate its program goals and objectives for preparing individuals in the expanded function dental assisting procedures set forth in § 33.205a to a level consistent with the acceptable and prevailing standard of care within the dental community in this Commonwealth.

(ii) The EFDA program shall develop specific criteria for measuring levels of competency for the procedures set forth in § 33.205a which must reflect the acceptable and prevailing standards and expectations of the dental community. Students shall be evaluated by faculty according to these predetermined criteria.

(iii) The EFDA program shall record and retain student clinical evaluations as documentation of student competency for a minimum of 5 years from the student's graduation or completion of the EFDA program.

(2) *Institutional accreditation.* The EFDA program shall comply with the accreditation requirements of section 3(d.1) of the act and § 33.102(c) (relating to professional education).

(3) *Program director.* The EFDA program shall identify a program director who is responsible for and involved in the following:

- (i) Student selection.
- (ii) Curriculum development and implementation.
- (iii) Ongoing evaluation of program goals, objectives, content and outcomes assessment.
- (iv) Annual evaluations of faculty performance including a discussion of the evaluation with each faculty member.
- (v) Evaluation of student performance and maintenance of competency records for 5 years from graduation or completion of the EFDA program.
- (vi) Participation in planning for and operation of facilities used in the EFDA program.
- (vii) Evaluation of the clinical training and supervision provided in affiliated offices and off-campus facilities, as applicable.
- (viii) Maintenance of records related to the EFDA program, including instructional objectives and course outcomes.

(ix) Instruction of all licensed dentists overseeing off-campus clinical procedures performed by EFDA students to ensure that the policies and procedures of the off-campus facility are consistent with the philosophy and objectives of the EFDA program.

(4) *Faculty.* An EFDA program faculty member shall either be a dentist who holds a current license in good standing from the Board, or shall have or possess the following:

- (i) A current expanded function dental assistant certificate issued by the Board.
- (ii) A minimum of 2 years of practical clinical experience as an expanded function dental assistant.
- (iii) Current National certification as a certified dental assistant (CDA) issued by the Dental Assisting National Board.

(iv) Completed, or is in the process of completing, a course in education methodology of at least 3 credits or 45 hours offered by an accredited institution of postsecondary education.

(5) *Facilities.*

(i) The EFDA program shall provide adequate physical facilities and equipment for laboratory, preclinical and clinical instruction.

(ii) If the EFDA program contracts for off-campus laboratory, preclinical or clinical instruction facilities, the following conditions must be met:

(A) There must be a formal written agreement between the EFDA program and the laboratory, preclinical or clinical facility.

(B) In off-campus clinical facilities, a licensed dentist shall oversee all dental procedures performed on patients by EFDA program students. The licensed dentist shall receive instruction to ensure that the policies and procedures of the off-campus facility are consistent with the philosophy and objectives of the EFDA program.

(iii) The standards in this paragraph are equally applicable to extramural dental offices or clinic sites used for clinical practice experiences, such as internships or externships.

(6) *Curriculum.* The curriculum of an EFDA program must consist of the following components:

(i) *General education.* The EFDA program shall include general education subjects as determined by the educational institution with a goal of preparing the student to work and communicate effectively with patients and other health care professionals.

(ii) *Dental sciences.* The EFDA program shall include content in general dentistry related to the expanded functions set forth in § 33.205a, including courses covering the following topics:

- (A) Dental anatomy.
- (B) Occlusion.
- (C) Rubber dams.
- (D) Matrix and wedge.
- (E) Cavity classification and preparation design.
- (F) Bases and liners.
- (G) Amalgam restoration.
- (H) Composite restoration.
- (I) Sealants.
- (J) Crown and bridge provisional fabrication.
- (K) Dental law and ethics.

(iii) *Clinical experience component.* The EFDA program shall include a minimum of 120 hours of clinical experience performing expanded function dental assisting procedures as an integral part of the EFDA program. The clinical experience component shall be designed to achieve a student's clinical competence in each of the expanded function dental assisting procedures set forth in § 33.205a.

(7) *Demonstrating competency.*

(i) *General education.* Students of the EFDA program shall be required to demonstrate competency in general education subjects by attaining a passing grade on written or oral examinations.

(ii) *Laboratory and preclinical instruction.* Students of the EFDA program shall be required to demonstrate competency by attaining a score of at least 80% in all laboratory and preclinical courses. Students shall be required to demonstrate the knowledge and skills required to:

(A) Carve the anatomy of all teeth.

(B) Establish proper contact areas, embrasures, marginal adaptation, as well as facial and lingual heights of contour so as to restore the proper tooth form and function in all restorative materials.

(C) Apply the basic concepts and terms of occlusion and carving concepts in the restoration of proper occlusal relationships.

(D) Describe the problems associated with improper contouring of restorations.

(E) Identify and differentiate G.V. Black's cavity classifications.

(F) Select, prepare, assemble, place and remove a variety of matrices and wedges.

(G) Place and finish Class I-VI restorations with correct marginal adaptation contour, contact and occlusion.

(H) Assemble, place and remove rubber dams.

(I) Place sealants.

(J) Crown and bridge provisional fabrication.

(K) Understand the act and this chapter as they apply to an expanded function dental assistant's responsibilities.

(iii) *Clinical experience.* EFDA program students shall be evaluated and deemed clinically competent by at least one licensed dentist evaluator in a clinical setting. The EFDA program director shall instruct the dentist clinical evaluators regarding the required competencies to ensure consistency in evaluation. Clinical competency is achieved when the dentist evaluator confirms the student has sufficient knowledge, skill and expertise in performing expanded functions to meet and maintain the acceptable and prevailing standard of care within the dental community in this Commonwealth.

(iv) *Documenting competency.*

(A) The EFDA program faculty and program director shall document the student's general education, preclinical and laboratory competency attainment.

(B) The licensed dentist evaluator shall document the student's clinical competency attainment prior to graduation from the EFDA program.

(C) The EFDA program director shall provide documentation of the student's competency attainment to the Board as part of the student's application for certification as an expanded function dental assistant.

(D) The EFDA program shall retain the student's competency documentation for a minimum of 5 years from graduation or completion of the EFDA program.

(d) *Refusal or withdrawal of approval.* The Board may refuse to approve an EFDA program or may remove an EFDA program from the approved list if it fails to meet and maintain the requirements in this section, in accordance with the following:

(1) The Board will give an EFDA program notice of its provisional denial of approval or of its intent to remove the program from the approved list.



(2) The notice will set forth the requirements that are not being met or maintained by the EFDA program.

(3) A program served with a provisional denial or notice of intent to remove will be given 45 days in which to file a written answer to the notice.

(4) The EFDA program will be provided an opportunity to appear at a hearing to demonstrate why approval should not be refused or withdrawn.

(5) The Board will issue a written decision.

(6) The Board's written decision is a final decision of a governmental agency subject to review under 2 Pa.C.S. § 702 (relating to appeals)

[Pa.B. Doc. No. 09-1785. Filed for public inspection September 25, 2009, 9:00 a.m.]

# NOTICES

## DEPARTMENT OF AGING

### Redesignation of Area Agency on Aging for Bradford, Sullivan, Susquehanna and Tioga Counties; Notice of Intent and Public Hearings

The Secretary of the Department of Aging (Department), under authority in the act of June 20, 1978 (P. L. 477, No. 70) (71 P. S. §§ 581-1—581-12), in conformity with the Older Americans Act of 1965 (42 U.S.C.A. §§ 3001—3058ee) and in accordance with the provisions in 6 Pa. Code Chapter 30 (relating to designation and redesignation of area agencies on aging), intends to redesignate an Area Agency of Aging for Planning and Service Area (PSA) Number 36, which has the same boundaries as Bradford, Sullivan, Susquehanna and Tioga Counties.

On June 12, 2009, the Department received a formal request from the Chairperson of the Governing Board of the Bradford, Sullivan, Susquehanna and Tioga Counties Area Agency on Aging to redesignate the Area Agency on Aging from its current public designation to a nonprofit organization. The Governing Board, which is comprised of Commissioners from each of the four counties that comprise the Area Agency on Aging, voted unanimously in favor of the request at their May 2009 Board meeting.

This notice of intent to redesignate the Area Agency of Aging is issued to initiate a review of the requested action. The Department seeks additional information from all concerned parties, including the public residing in Bradford, Sullivan, Susquehanna and Tioga Counties. The Department is required under 45 CFR 1321 and by the provisions in 6 Pa. Code Chapter 30 to hold public hearings on this proposed action. Accordingly, the Department will hold public hearings in each of the four affected counties to provide interested parties an opportunity to present testimony on the following issues:

- (1) The effectiveness of services for older persons provided under the administration of the current Area Agency of Aging.
- (2) The basis for naming a new nonprofit agency to administer those services.
- (3) The qualifications and capabilities of the intended nonprofit agency to develop and carry out an effective area plan for older persons in the PSA.
- (4) The continuing appropriateness of the PSA boundaries based on demographic, economic and geographic factors.
- (5) The potential positive and negative effects of redesignation on agency personnel, older adults in the PSA, and the costs and quality of agency services.

In conjunction with its consideration of public testimony, the Department will be reviewing the current Area

Agency Aging's overall compliance with departmental policy and service goals, as the agency has asserted that its anticipated operations as a private nonprofit agency will be comparable to its current operations as a multicounty agency.

Public hearings will be held as follows:

#### **Tioga County**

Wednesday, October 14, 2009  
9 a.m. to 10 a.m.  
Tioga County Courthouse  
Commissioners Conference Room  
116—118 Main Street  
Wellsboro, PA 16901

#### **Bradford County**

Wednesday, October 14, 2009  
1 p.m. to 2 p.m.  
Lackawanna College  
Conference Room 2/3  
One Progress Plaza, Suite 2  
Towanda, PA 18848

#### **Susquehanna County**

Thursday, October 15, 2009  
9 a.m. to 10 a.m.  
Montrose Bible Conference  
Dreyer Lodge Chapel  
5 Locust Street  
Montrose, PA 18801

#### **Sullivan County**

Thursday, October 15, 2009  
1 p.m. to 2 p.m.  
Sullivan County Courthouse  
Courtroom  
Main and Muncy Streets  
Laporte, PA 18626

Persons who wish to present oral testimony at one of these scheduled hearings regarding these issues are asked to notify William Farley, Executive Director, B/S/S/T Area Agency of Aging, 220 Main Street, Unit 2, Towanda, PA 18848, (570) 265-6121 or fax (570) 265-5680, in advance of the hearing.

The Department will also accept written testimony on these issues until October 15, 2009, from any interested parties who are unable to attend the public hearings or present oral testimony. Written testimony should be mailed to Michael Smith, Chief of Staff, Department of Aging, 555 Walnut Street, 5th Floor, Harrisburg, PA 17101-1919.

JOHN MICHAEL HALL,  
*Secretary*

[Pa.B. Doc. No. 09-1786. Filed for public inspection September 25, 2009, 9:00 a.m.]

## DEPARTMENT OF BANKING

### Actions and 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 19, 1990 (P. L. 834, No. 198), known as the Credit Union Code, has taken the following action on applications received for the week ending September 15, 2009.

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, at 17 North Second Street, Suite 1300, Harrisburg, PA 17101-2290. Comments must be received no later than 30 days from the date notice regarding receipt of the application is published in the *Pennsylvania Bulletin*. The nonconfidential portions of the applications are on file at the Department of Banking and are available for public inspection, by appointment only, during regular business hours. To schedule an appointment, contact the Corporate Applications Division at (717) 783-2253. Photocopies of the non-confidential portions of the applications may be requested consistent with the Department of Banking's Right-to-Know Law Records Request policy.

### BANKING INSTITUTIONS

#### Section 112 Acquisitions

<i>Date</i>	<i>Name and Location of Applicant</i>	<i>Action</i>
9-11-2009	Black River BancVenture, Inc. Memphis, TN  Application for approval to acquire up to 24.9% of the shares of Allegiance Bank of North America, Bala Cynwyd.	Approved
9-15-2009	Ask America, LLC Fairfield, NJ Anita Khubani; Ashok Khubani; and Anand V. Khubani  Application for approval to acquire up to 11% of the common stock of New Century Bank, Phoenixville.	Filed
9-15-2009	Jay S. Sidhu  Application for approval to acquire up to 13% of the common stock of New Century Bank, Phoenixville.	Filed

#### Consolidations, Mergers, and Absorptions

<i>Date</i>	<i>Name and Location of Applicant</i>	<i>Action</i>
8-28-2009	TriState Capital Bank Pittsburgh Allegheny County  Purchase of assets and assumption of liabilities of one branch of Sterling Bank, Mount Laurel, New Jersey, located at:  101 Gaither Drive Mount Laurel Burlington County, NJ	Authorized Surrendered

#### Branch Applications

##### De Novo Branches

<i>Date</i>	<i>Name and Location of Applicant</i>	<i>Location of Branch</i>	<i>Action</i>
9-11-2009	Beneficial Mutual Savings Bank Philadelphia Philadelphia County	1901 Route 70 East Cherry Hill Camden County, NJ	Approved

##### Branch Relocations

<i>Date</i>	<i>Name and Location of Applicant</i>	<i>Location of Branch</i>	<i>Action</i>
9-15-2009	Citizens Bank of Pennsylvania Philadelphia Philadelphia County	<i>To:</i> 100 Settlers Ridge Center Drive Pittsburgh Allegheny County  <i>From:</i> 6511 Steubenville Pike Pittsburgh Allegheny County	Filed



## SAVINGS INSTITUTIONS

No activity.

## CREDIT UNIONS

## Branch Applications

## De Novo Branches

<i>Date</i>	<i>Name and Location of Applicant</i>	<i>Location of Branch</i>	<i>Action</i>
9-15-2009	TruMark Financial Credit Union Trevose Bucks County	984 Second Street Pike Richboro Bucks 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. 09-1787. Filed for public inspection September 25, 2009, 9:00 a.m.]

### Maximum Lawful Rate of Interest for Residential Mortgages for the Month of October 2009

The Department of Banking (Department), under the authority contained in section 301 of the act of January 30, 1974 (P. L. 13, No. 6) (41 P. S. § 301), determines that the maximum lawful rate of interest for residential mortgages for the month of October 2009, is 6 1/2%.

The interest rate limitations under the State's usury statute were preempted to a great extent by Federal law, the Depository Institutions Deregulation and Monetary Control Act of 1980 (Pub. L. 96-221). Further preemption was instituted with the signing of Pub. L. 96-399, which overrode State interest rate limitations on any individual who finances the sale or exchange of residential real property which such individual owns and which such individual occupies or has occupied as the principal residence.

Each month the Department is required by State law to compute and announce the ceiling rate on residential mortgages in Pennsylvania. This maximum rate is determined by adding 2.50 percentage points to the yield rate on long-term government bonds as published by the Federal Reserve Board and/or the U.S. Treasury. The latest yield rate on long-term government securities is 3.96 to which was added 2.50 percentage points for a total of 6.46 that by law is rounded off to the nearest quarter at 6 1/2%.

STEVEN KAPLAN,  
*Secretary*,

[Pa.B. Doc. No. 09-1788. Filed for public inspection September 25, 2009, 9:00 a.m.]

## DEPARTMENT OF COMMUNITY AND ECONOMIC DEVELOPMENT

### Commonwealth's Action Plan

The Department of Community and Economic Development (Department) is proposing a minor amendment to the Commonwealth's Action Plan for FFY 2008 and the Program Year that began on January 1, 2008. The 2008

Action Plan is an update of the Commonwealth's Consolidated Plan for FFY 2004-2008.

The United States Department of Housing and Urban Development (HUD) awarded the Commonwealth an allocation of \$23,411,484 for the Homelessness Prevention and Rapid Re-housing Program (HPRP), as authorized by the American Recovery and Reinvestment Act of 2009. HPRP funds provide financial assistance and stabilization services to prevent homelessness and to assist people who are homeless.

The Department is making a minor amendment to the County housing partnerships component of the Action Plan for HRRP, because four counties either did not submit applications or did not submit them in a timely manner for the county housing partnerships component of the Department's Action Plan for HPRP, which was allocated by means of a formula, the Department is making a minor amendment to the Action Plan. The Department will increase the funds provided to the underserved populations and pilot initiatives component of the Action Plan for HPRP by \$300,487, for a total of \$1,800,487. The amount of funds distributed to the county housing partnerships component of HPRP, by means of a formula, will be reduced comparably to \$20,065,428. The Department also reserves the right to re-allocate funds in future years if grantees do not spend funds in a manner that meets the timeliness requirements of the program.

The Action Plan includes the final allocations for the county housing partnerships that the Department will provide using HPRP funds. This minor amendment to the Action Plan was submitted to HUD on September 16, 2009.

Copies of the Action Plan and list of allocations can be obtained at: <http://www.newpa.com/strengthen-your-community/technical-assistance/index.aspx>.

Persons who would like additional information about this amendment should contact Jody Michael, Department of Community and Economic Development, Center for Community Development, 400 North Street, 4th Floor, Harrisburg, PA 17120.

GEORGE CORNELIUS,  
*Acting Secretary*

[Pa.B. Doc. No. 09-1789. Filed for public inspection September 25, 2009, 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 Service at (800) 654-5984.

#### I. NPDES Renewal Applications

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

<i>NPDES No. (Type)</i>	<i>Facility Name &amp; Address</i>	<i>County &amp; Municipality</i>	<i>Stream Name (Watershed #)</i>	<i>EPA Waived Y/N ?</i>
PA0037737 (Sew)	Elizabethville Area Authority 4154 North Route 225 Elizabethville, PA 17023-9704	Dauphin County Washington Township	Wiconisco Creek 6-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>
PA0020672 (Sewage)	Washingtonville Municipal Authority STP Route 254 Washingtonville, PA 17884	Montour County Derry Township	Chillisquaque Creek WWF 10D	Y
PA0228745 (Sewage)	Carl N. and Karen J. Beaver 63 Beaver Meadow Road Catawissa, PA 17820	Columbia County Locust Township	UNT to Roaring Creek 5E	Y
PA0114332	Former Dresser Industries Facility Dresser Road Wellsboro, PA 16901	Tioga County Delmar Township	UNT to Baldwin Run 9A	Y
PA0112895 (Sewerage)	Daniel L. Roeder 205-B Independent Street Catawissa, PA 17820	Columbia County Roaring Creek Township	UNT to Roaring Creek 5E	Y
PA0112372 (Sewage) Nonpublic	Mayfair Village Mobile Homes Park 612 North Shamokin Street Shamokin, PA 17872	Northumberland County Shamokin Township	UNT to Shamokin Creek SWP 6B	Y
PA0045993 SP	Ulysses Municipal Authority 522 Main Street Ulysses, PA 16948-0392	Potter County Ulysses Borough	UNT to Genesee River 14	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.*

**PA0011282**, Industrial Waste, SIC 4941, **Aqua Pennsylvania, Inc.**, 762 West Lancaster Avenue, Bryn Mawr, PA 19010. This proposed facility is located in Springfield Township, **Delaware County**.

Description of Proposed Activity: Renewal of an NPDES permit to discharge treated process wastewater from the Crum Creek Water Filtration Plant.

The receiving stream, Crum Creek, is in the State Water Plan Watershed 3G and is classified for: WWF, aquatic life, water supply and recreation. There is no downstream public water supply intake below the point of discharge.

The proposed effluent limits for Outfall 001 are based on an emergency discharge flow:

<i>Parameters</i>	<i>Concentration (mg/l)</i>		<i>Instantaneous</i>
	<i>Average Monthly</i>	<i>Maximum Daily</i>	<i>Maximum (mg/l)</i>
TSS	30	60	75
Aluminum, Total	1.24	2.48	3.10
Iron, Total	2.0	4.0	5.0
Manganese, Total	1.0	2.0	2.5
pH	6.0 to 9.0 Standard Units at all times		
TRC	0.5	1.0	1.2
Chlorodibromomethane	Monitor and Report		
Chloroform	Monitor and Report		
Dichlorobromomethane	Monitor and Report		

The proposed effluent limits for Outfall 002 are based on a design flow of 0.89 mgd:

<i>Parameters</i>	<i>Concentration (mg/l)</i>		<i>Instantaneous</i>
	<i>Average Monthly</i>	<i>Maximum Daily</i>	<i>Maximum (mg/l)</i>
TSS	30	60	75
Aluminum, Total	4.0	8.0	10.0
Iron, Total	2.0	4.0	5.0
Manganese, Total	2.0	4.0	5.0
pH	6.0 to 9.0 Standard Units at all times		
TRC	0.5	1.0	1.2
Chlorodibromomethane	Monitor and Report		
Chloroform	Monitor and Report		



<i>Parameters</i>	<i>Concentration (mg/l)</i>		<i>Instantaneous</i>
	<i>Average Monthly</i>	<i>Maximum Daily</i>	<i>Maximum (mg/l)</i>
Dichlorobromomethane		Monitor and Report	

The proposed effluent limits for Outfalls 003 and 004 are based on emergency discharge flows:

<i>Parameters</i>	<i>Concentration (mg/l)</i>
	<i>Maximum Daily</i>
TSS	Monitor and Report
Aluminum, Total	Monitor and Report
Iron, Total	Monitor and Report
Manganese, Total	Monitor and Report
pH	6.0 to 9.0 Standard Units at all times

The proposed effluent limits for Outfall 013 are based on a design flow of 0.094 mgd:

<i>Parameters</i>	<i>Concentration (mg/l)</i>	<i>Instantaneous</i>
	<i>Average Monthly</i>	<i>Maximum (mg/l)</i>
TRC	0.5	1.0
pH	6.0 to 9.0 Standard Units at all times	

Outfalls 006—009 and 014 are not required to monitor based on the groundwater flow.

Outfalls 010 and 011 are not required to monitor based on the raw creek water flow.

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

1. Remedial Measures if Unsatisfactory Effluent.
2. Small Stream Discharge.
3. ELG Reopener.
4. Change in Ownership.
5. Proper Sludge Disposal.
6. TRC Restriction for Potable Drinking Water Discharge.
7. Notification to DEP.

**PA0056413**, Sewage, **Lower Salford Township Authority**, P. O. Box 243, Harleysville, PA 19438. This facility is located in Lower Salford Township, **Montgomery County**.

Description of Proposed Activity: Renewal of an NPDES permit to discharge treated sewage from Mainland STP.

The receiving stream, Skippack Creek, is in the State Water Plan Watershed 3E and is classified for: TSE, aquatic life, water supply and recreation. The nearest downstream public water supply intake for the Aqua Pennsylvania is located on Perkiomen Creek.

The proposed effluent limits for Outfall 001 based on an average design flow of 0.900 mgd:

<i>Parameters</i>	<i>Average Monthly (mg/l)</i>	<i>Average Weekly (mg/l)</i>	<i>Maximum Daily (mg/l)</i>	<i>Instantaneous Maximum (mg/l)</i>
CBOD <sub>5</sub>				
(5-1 to 10-31)	10	15		20
(11-1 to 4-30)	20	30		40
Suspended Solids	30	45		60
Ammonia (as N)				
(5-1 to 10-31)	1.4			2.8
(11-1 to 4-30)	4.2			8.4
NO <sub>2</sub> + NO <sub>3</sub> as N	Monitor and Report			
Total Kjeldahl Nitrogen	Monitor and Report			
Phosphorous (as P)				
first 12 months				
(4-1 to 10-31)	2.0			4.0
(11-1 to 3-31)	Monitor and Report			
after 12 months				
(4-1 to 10-31)	1.0			2.0
(11-1 to 3-31)	2.0			4.0

<i>Parameters</i>	<i>Average Monthly (mg/l)</i>	<i>Average Weekly (mg/l)</i>	<i>Maximum Daily (mg/l)</i>	<i>Instantaneous Maximum (mg/l)</i>
Fecal Coliform		200 #/100 ml as a Geometric Mean, nor greater than 1,000 #/100 ml in more than 10% of samples		
Dissolved Oxygen		Minimum of 6.0 mg/l at all times		
pH		Within limits of 6.0 to 9.0 Standard Units at all times		
Copper, Total	Monitor and Report			
Hardness, Total	Monitor and Report			
Iron, Total	Monitor and Report			
Iron, Dissolved	Monitor and Report			
Aluminum, Total	Monitor and Report			

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

1. Designation of Responsible Operator.
2. Remedial Measures if Public Nuisance.
3. No Stormwater to Sewers.
4. Necessary Property Rights.
5. Small Stream Discharge.
6. Change in Ownership.
7. Proper Sludge Disposal.
8. TMDL/WLA Analysis.
9. UV Disinfection.
10. Laboratory Certification.

**PA0026603**, Sewage, SIC 4952, **Borough of Ambler**, 122 East Butler Avenue, Ambler, PA 19002-4476. This existing facility is located in Upper Dublin Township, **Montgomery County**.

Description of Proposed Activity: Renewal of NPDES permit for discharge of treated effluent and site stormwater from Ambler Borough Sewage Treatment Plant.

The receiving stream, Wissahickon Creek, is in the State Water Plan Watershed 3F and is classified for: TSF, MF, water supply, recreation and fish consumption. The nearest downstream public water supply intake for Philadelphia Water Department is located on the Schuylkill River and is approximately 13 miles below the point of discharge.

The proposed effluent limits for Outfall 001 are based on an average annual design flow of 6.5 mgd.

<i>Parameters</i>	<i>Average Monthly (mg/l)</i>	<i>Average Weekly (mg/l)</i>	<i>Maximum Daily (mg/l)</i>	<i>Instantaneous Maximum (mg/l)</i>
CBOD <sub>5</sub>				
(5-1 to 10-31)	10	15		20
(11-1 to 4-30)	20	30		
Total Suspended Solids	30	45		40
NH <sub>3</sub> -N				
(5-1 to 10-31)	1.5			60
(11-1 to 4-30)	4.5			3.0
Dissolved Oxygen	7.0, I-Minimum			9.0
pH (Standard Units)	6.0, I-Minimum			
Fecal Coliform (col/100 ml)	200			9.0
Ortho-Phosphorus as P:				
(4-1 to 10-31)	1.0			1,000*
(11-1 to 3-31)	4.0			2.0
Aluminum				
(Issuance—Year 3)	Monitor		Monitor	8.0
(Year 4—Expiration)	0.742		1.158	
Copper, Total	Monitor		Monitor	
Chromium, Hexavalent	Monitor		Monitor	
Chromium, Total	Monitor		Monitor	
Silver, Total	Monitor		Monitor	
Lead, Total	Monitor		Monitor	
Arsenic, Total	Monitor		Monitor	
Cadmium, Total	Monitor		Monitor	
Mercury, Total	Monitor		Monitor	
Nickel, Total	Monitor		Monitor	
Zinc, Total	Monitor		Monitor	
Cyanide, Free	Monitor		Monitor	
Selenium, Total	Monitor		Monitor	
Phenolics, Total	Monitor		Monitor	

<i>Parameters</i>	<i>Average Monthly (mg/l)</i>	<i>Average Weekly (mg/l)</i>	<i>Maximum Daily (mg/l)</i>	<i>Instantaneous Maximum (mg/l)</i>
Hardness as CaCO <sub>3</sub>	Monitor		Monitor	
Total Residual Chlorine (NO <sub>2</sub> + NO <sub>3</sub> ) as N	0.1 Monitor			0.3 Monitor
Total Dissolved Solids	1,000			2,500

\* Not to exceed 1,000 col/100 ml in greater than 10% of the samples.

The proposed effluent limits for Stormwater Outfall 006 are based on a design flow of an average storm event:

<i>Parameters</i>	<i>Average Annual (mg/l)</i>	<i>Average Semi-Annual (mg/l)</i>	<i>Maximum Daily (mg/l)</i>	<i>Instantaneous Maximum (mg/l)</i>
CBOD <sub>5</sub>	Monitor		Monitor	
COD	Monitor		Monitor	
Oil and Grease	Monitor		Monitor	
pH	Monitor		Monitor	
Total Suspended Solids	Monitor		Monitor	
Total Kjeldahl Nitrogen	Monitor		Monitor	
Total Phosphorus	Monitor		Monitor	
Iron, Dissolved	Monitor		Monitor	
Fecal Coliform (col/100 ml)	Monitor		Monitor	

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

1. Definition of Average Weekly.
2. Remedial Measures if Public Nuisance.
3. No Stormwater to Sanitary Sewers.
4. Necessary Property Rights.
5. Specification of Test Methods.
6. Upstream Monitoring.
7. Instantaneous Maximum Limitations.
8. Proper Sludge Handling.
9. Whole Effluent Toxicity Testing with Renewal.
10. Pretreatment Program.
11. Stormwater Requirements.
12. Notification of Designation of Responsible Operator.
13. Operator Training.
14. Operations and Maintenance Plan.
15. Laboratory Certification.
16. Fecal Coliform Reporting.

The EPA waiver is not in effect.

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

**Application No. PA 0261386**, Sewage, **Albert C. Kuhn**, P. O. Box 121, Carlisle, PA 17013. This facility is located in North Middleton Township, **Cumberland County**.

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

The receiving stream, Conodoguinet Creek, is in Watershed 7-B, and classified for WWF, water supply, recreation and fish consumption. The nearest downstream public water supply intake for Carlisle Borough is located on the Conodoguinet Creek, approximately 2.8 miles downstream. The discharge is not expected to affect the water supply.

The proposed effluent limits for Outfall 001 for a design flow of 0.0005 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	XXX	50
Total Suspended Solids	30	XXX	60
Total Residual Chlorine			XXX
	Report	XXX	



<i>Parameter</i>	<i>Average Monthly (mg/l)</i>	<i>Average Weekly (mg/l)</i>	<i>Instantaneous Maximum (mg/l)</i>
pH		From 6.0 to 9.0 inclusive	
Fecal Coliform (5-1 to 9-30)		200/100 ml as a Geometric Average	
(10-1 to 4-30)		2,000/100 ml as a Geometric Average	

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

The EPA waiver is in effect.

**Application No. PA 0021601**, Sewage, **Hamburg Municipal Authority**, 61 North Street, Hamburg, PA 19526. This facility is located in Hamburg Borough, **Berks County**.

Description of activity: The application is for renewal of an NPDES permit for an existing discharge of treated sewage.

The receiving stream, Schuylkill River, is in Watershed 3-B, and classified for WWF, water supply, recreation and fish consumption. The nearest downstream public water supply intake for Pottstown Borough Water and Sewer Authority is located on the Schuylkill River, approximately 41 miles downstream. The discharge is not expected to affect the water supply.

The proposed effluent limits for Outfall 001 for a design flow of 1.5 mgd are:

<i>Parameter</i>	<i>Average Monthly (mg/l)</i>	<i>Average Weekly (mg/l)</i>	<i>Instantaneous Maximum (mg/l)</i>
CBOD <sub>5</sub>	25	40	50
Total Suspended Solids	30	45	60
NH <sub>3</sub> -N	20		40
Total Residual Chlorine	0.5		1.6
Dissolved Oxygen		Minimum of 5.0 at all times	
pH		From 6.0 to 9.0 inclusive	
Fecal Coliform (5-1 to 9-30)		200/100 ml as a Geometric Average	
(10-1 to 4-30)		2,000/100 ml as a Geometric Average	

#### Schuylkill River TMDL

<i>Parameter</i>	<i>Concentration (mg/L) Monthly Average</i>
Total PCBs	Monitor and Report

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

The EPA waiver is not in effect.

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

**PA0020613**, Sewage, **Waynesburg Borough**, 90 East High Street, Waynesburg, PA 15370. This application is for renewal of an NPDES permit to discharge treated sewage from Waynesburg STP in Franklin Township, **Greene County**.

The following effluent limitations are proposed for discharge to the receiving waters, known as South Fork Tenmile Creek, 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 Tri-County Joint Municipal Authority on the Monongahela River.

*Outfall 001*: existing discharge, design flow of 0.8 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	38		50
Suspended Solids	30	45		60
Ammonia Nitrogen (5-1 to 10-31)	2.0	3.0		4.0
(11-1 to 4-30)	4.0	6.0		8.0

Parameter	Concentration (mg/l)			
	Average Monthly	Average Weekly	Maximum Daily	Instantaneous Maximum
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	0.15			0.50
Dissolved Oxygen	not less than 5.0 mg/l			
pH	not less than 6.0 nor greater than 9.0			

Other Conditions: Outfalls 002 and 003, which discharge to the receiving waters known as South Fork Tenmile Creek, serve as combined sewer overflows necessitated by stormwater entering the sewer system and exceeding the hydraulic capacity of the sewers and/or the treatment plant. These are permitted to discharge only for such reason. There are at this time no specific effluent limitations on the outfalls. Each discharge shall be monitored for cause, frequency, duration, and quantity of flow.

The EPA waiver is in effect.

**PA0025798**, Sewage, **Centerville Borough Sanitary Authority**, P. O. Box 332, Richeyville, PA 15358. This application is for renewal of an NPDES permit to discharge treated sewage from Richeyville Sewage Treatment Plant in Centerville Borough, **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 Authority on the Monongahela River.

*Outfall 001*: existing discharge, design flow of 0.17 mgd.

Parameter	Concentration (mg/l)			
	Average Monthly	Average Weekly	Maximum Daily	Instantaneous Maximum
CBOD <sub>5</sub> (5-1 to 10-31)	20	30		40
(11-1 to 4-30)	25	38		50
Suspended Solids	30	45		60
Ammonia Nitrogen (5-1 to 10-31)	5.0	7.5		10.0
(11-1 to 4-30)	15.0	22.5		30.0
Fecal Coliform (5-1 to 9-30)	200/100 ml as a Geometric Mean			
(10-1 to 4-30)	2,000/100 as a Geometric Mean			
pH	not less than 6.0 nor greater than 9.0			

The EPA waiver is in effect.

**PA0204064**, Sewage, **Jeffrey S. and Laura A. Robson**, 829 Bailey's Run Road, Tarentum, PA 15084. This application is for renewal of an NPDES permit to discharge treated sewage from Robson Single-Residence STP in Frazer Township, **Allegheny County**.

The following effluent limitations are proposed for discharge to the receiving waters, known as Bailey 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 Cheswick Borough Water Department.

*Outfall 001*: existing discharge, design flow of 0.0004 mgd.

Parameter	Concentration (mg/l)			
	Average Monthly	Average Weekly	Maximum Daily	Instantaneous Maximum
CBOD <sub>5</sub>	25			50
Suspended Solids	30			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	Monitor and Report			
pH	not less than 6.0 nor greater than 9.0			

The EPA waiver is in effect.

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

**PA0263605**, Sewage, **Joanne F. and Richard A. Mosier SFTF**, 26833 Highway 408, Cambridge Springs, PA 16403. This proposed facility is located in Rockdale Township, **Crawford County**.

Description of Proposed Activity: a new discharge of treated residential sewage from a Small Flow Treatment Facility.

The receiving water is the UNT to Dead Creek. The receiving stream is in State Water Plan 16-A and is classified for the following uses: HQ-TSF, aquatic life, water supply and recreation. The nearest downstream potable water supply, Cambridge Springs Borough water intake, is located on the French Creek and is approximately 10.0 miles below the point of discharge.

The proposed effluent limits for Outfall 001 are based on a design flow of 0.0004 mgd.

Parameter	Concentrations		
	Average Monthly (mg/l)	Average Weekly (mg/l)	Instantaneous Maximum (mg/l)
Flow		XX	
CBOD <sub>5</sub>	10		20
Total Suspended Solids	20		40
Fecal Coliform	200/100 ml as a Geometric Average		
pH	6.0 to 9.0 Standard Units at all times		

XX—Monitor and report.

The EPA waiver is in effect.

**PA0240133, Amendment No. 1**, Industrial Waste, **Mahoning Distribution, Inc.**, 35 Main Street, Corsica, PA 15829-6115. This proposed facility is located in Knox Borough, **Clarion County**.

Description of Proposed Activity: A new NPDES permit for a new discharge of remediated groundwater contaminated with unleaded gasoline.

The receiving water is UNT to Canoe Creek. The receiving stream is in State Water Plan 17-B and is classified for the following uses: HQ-CWF, aquatic life, water supply and recreation. The nearest downstream potable water supply, Parker City Water System intake, is located on the Allegheny River and is approximately 18.8 miles below the point of discharge.

The proposed effluent limits for Outfall 001 based on a design flow of 0.004608 mgd.

Parameters	Loadings		Concentrations		
	Average Monthly (lb/day)	Maximum Daily (lb/day)	Average Monthly (mg/l)	Maximum Daily (mg/l)	Instantaneous Maximum (mg/l)
Flow	XX				
Benzene			0.001		0.0025
Total BTEX			0.1		0.25
Toluene			0.01		0.025
Ethylbenzene			0.01		0.025
Total Xylenes			0.01		0.025
MTBE			XX		XX
pH	6.0 to 9.0 Standard Units at all times				
Oil and Grease			10		20
Dissolved Iron				1.7	
Total Suspended Solids			10		20

XX—Monitor and Report

The EPA waiver is in effect.

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

**PA0105295**, Industrial Waste, **Minard Run Oil Company—Dent Water Treatment Facility**, P. O. Box 18, Bradford, PA 16701. This existing facility is located in Lafayette Township, **McKean County**.

Description of Proposed Activity: renewal of an existing discharge of treated industrial waste.

For the purpose of evaluating effluent requirements for TDS, phenolics, sulfate and chloride, the existing/proposed downstream potable water supply (stream and Public Water Supplier) considered during the evaluation is Tunungwant Creek at the PA/NY state border, approximately 13 miles below the point of discharge.

The receiving stream, Lewis Run, is in Watershed 16-C and classified for: HQ-CWF, aquatic life, water supply and recreation.



The proposed effluent limits for Outfall 002 are based on a maximum flow of 0.016 mgd.

Parameters	Loadings		Concentrations		
	Average Monthly (lb/day)	Maximum Daily (lb/day)	Average Monthly (mg/l)	Maximum Daily (mg/l)	Instantaneous Maximum (mg/l)
Flow (mgd)		0.016			
Total Suspended Solids			30		60
Oil and Grease			15		30
Total Iron			3.5		7.0
TDS					
(January)		39,026	XX	XX	
(February)		39,853	XX	XX	
(March)		68,236	XX	XX	
(April)		83,341	XX	XX	
(May)		40,362	XX	XX	
(June)		20,194	XX	XX	
(July)		13,948	XX	XX	
(August)		9,431	XX	XX	
(September)		8,765	XX	XX	
(October)		11,541	XX	XX	
(November)		29,132	XX	XX	
(December)		50,168	XX	XX	
Benzene			0.380	0.761	0.951
Acidity				Less than Alkalinity	
Alkalinity			XX		
Chloride			XX		
Sulfate			XX		
pH			6.0 to 9.0 Standard Units at all times		

XX—Monitor and Report

The EPA waiver is in effect.

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

**PA0263516**, Industrial Waste, **Pennsylvania Brine Treatment, Inc.—Rouseville Facility**, 5148 US Route 322, Franklin, PA 16323. This proposed facility is located in Cornplanter Township, **Venango County**.

Description of Proposed Activity: a new discharge of treated industrial waste.

The receiving water is Oil Creek. The receiving stream is in State Water Plan 16-E and is classified for the following uses: WWF, aquatic life, water supply and recreation. The nearest downstream potable water supply, Aqua Pennsylvania at Emlenton, is located on the Allegheny River and is approximately 44 miles below the point of discharge.

The proposed effluent limits for Outfall 001 based on a design flow of 0.08 mgd.

Interim Limits—These limits will be applicable from issuance date through December 31, 2010.

Parameter	Loadings		Concentrations		
	Average Monthly (lb/day)	Maximum Daily (lb/day)	Average Monthly (mg/l)	Maximum Daily (mg/l)	Instantaneous Maximum (mg/l)
Flow (mgd)		0.08			
Oil and Grease			15		30
TSS			30		60
BOD <sub>5</sub>			53	163	16.3
Iron (Total)			3	6	7.5
Ammonia			25	50	62.5
Barium			10	20	25
Strontium			10	20	25
Manganese			2	4	5
Copper			0.757	0.865	1.893
Zinc			0.420	0.497	1.05
Acetone			7.97	30.2	30.2
Acetophenone			0.0562	0.114	0.140
2-Butanone			1.85	4.81	4.81
o-Cresol			0.561	1.92	1.92
p-Cresol			0.205	0.699	0.699
Phenol			1.08	3.65	3.65
Pyridine			0.182	0.37	0.455
2,4,6-Trichlorophenol			0.106	0.155	0.263
TDS					

Parameter	Loadings		Concentrations		
	Average Monthly (lb/day)	Maximum Daily (lb/day)	Average Monthly (mg/l)	Maximum Daily (mg/l)	Instantaneous Maximum (mg/l)
(January)		631,798	XX	XX	
(February)		757,738	XX	XX	
(March)		1,269,933	XX	XX	
(April)		1,284,434	XX	XX	
(May)		767,389	XX	XX	
(June)		375,923	XX	XX	
(July)		239,949	XX	XX	
(August)		189,660	XX	XX	
(September)		155,779	XX	XX	
(October)		213,298	XX	XX	
(November)		415,315	XX	XX	
(December)		682,124	XX	XX	
Acidity				Less than Alkalinity	
Sulfate			XX	XX	
Chloride			XX	XX	
Benzene			XX	XX	
Lead			XX	XX	
Aluminum			XX	XX	
Alkalinity			XX	XX	
pH	Within limits of 6.0 to 9.0 Standard Units at all times.				

The proposed effluent limits for Outfall 001 based on a design flow of 0.08 mgd.

Final Limits: These limits will be applicable from January 1, 2011, until the permit expires.

Parameter	Loadings		Concentrations		
	Average Monthly (lb/day)	Maximum Daily (lb/day)	Average Monthly (mg/l)	Maximum Daily (mg/l)	Instantaneous Maximum (mg/l)
Flow (mgd)		0.08			
Oil and Grease			15		30
TSS			30		60
BOD <sub>5</sub>			53	163	16.3
Iron (Total)			3	6	7.5
Ammonia			25	50	62.5
Barium			10	20	25
Strontium			10	20	25
Manganese			2	4	5
Copper			0.757	0.865	1.893
Zinc			0.420	0.497	1.05
Acetone			7.97	30.2	30.2
Acetophenone			0.0562	0.114	0.140
2-Butanone			1.85	4.81	4.81
o-Cresol			0.561	1.92	1.92
p-Cresol			0.205	0.699	0.699
Phenol			1.08	3.65	3.65
Pyridine			0.182	0.37	0.455
2,4,6-Trichlorophenol			0.106	0.155	0.265
TDS			500	1000	1250
Acidity				Less than Alkalinity	
Sulfate			250	500	625
Chloride			250	500	625
Benzene			XX	XX	
Lead			XX	XX	
Aluminum			XX	XX	
Alkalinity			XX	XX	
pH	Within limits of 6.0 to 9.0 Standard Units at all times.				

XX—Monitor and report on monthly DMRs.

The EPA waiver is not in effect.

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

*Southeast Region: Water Management Program Manager, 2 East Main Street, Norristown, PA 19401.*

**WQM Permit No. 1509409**, Sewerage, **Lower Oxford Township**, 220 Township Road, Oxford, PA 19363. This proposed facility is located in Lower Oxford Township, **Chester County**.

Description of Action/Activity: Construct an LPS system to collect sewers along a section of Route 10 and construct a force main for a proposed pump station not included in this project.

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

**WQM Permit No. 4509403**, Sewerage, **Tobyhanna Army Depot**, 11 Hap Arnold Boulevard, Tobyhanna, PA 18466-5100. This proposed facility is located in Coolbaugh Township, **Monroe County**.

Description of Proposed Action/Activity: This project is for an upgrade to the existing wastewater treatment plant process and structures at the Tobyhanna Army Depot wastewater treatment plant.

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

**WQM Permit No. 0692402, Amendment 09-1**, Sewerage, **Exeter Township, Berks County, Authority**, 4975 De Moss Road, Reading, PA 19606. This proposed facility is located in Birdsboro Borough, **Berks County**.

Description of Proposed Action/Activity: Replace existing dewater equipment and provide sludge drying equipment at existing plant.

*Northcentral Region: Water Management Program Manager, 208 West Third Street, Williamsport, PA 17701.*

**WQM Permit No. 4909402**, Sewerage, SIC 4952, **Shamokin-Coal Township Joint Sewer Authority**, 114 Bridge Street, Shamokin, PA 17872-9603. This proposed facility will be located in Coal Township and the City of Shamokin, **Northumberland County**.

Description of Proposed Action/Activity: The applicant proposes the Springfield Area Sanitary Sewer Separation.

**WQM Permit No. 4709402**, Sewage, SIC 4952, **Danville Municipal Authority**, P. O. Box 179, 12 West Market Street, Danville, PA 17821. This proposed facility is located in Danville, **Montour County**.

Description of Proposed Action/Activity: The applicant proposes to renovate their sewage plant for total nitrogen and phosphorus removal.

*Southwest Region: Water Management Program Manager, 400 Waterfront Drive, Pittsburgh, PA 15222-4745.*

**WQM Permit No. WQG016177**, Sewerage, **Jamie Gaus**, 137 Mt. Vernon Road, Pittsburgh, PA 15229. This proposed facility is located in Jefferson Township, **Washington County**.

Description of Proposed Action/Activity: Application for the construction and operation of a Single-Residence sewage treatment plant.

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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.*

<i>NPDES Permit No.</i>	<i>Applicant Name &amp; Address</i>	<i>County</i>	<i>Municipality</i>	<i>Receiving Water/Use</i>
PAI011509030	Stillwater Presbyterian Church P. O. Box 641 Kennett Square, PA 19348	Chester	London Grove Township	UNT East Branch White Clay Creek EV

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

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

<i>NPDES Permit No.</i>	<i>Applicant Name &amp; Address</i>	<i>County</i>	<i>Municipality</i>	<i>Receiving Water/Use</i>
PAI025409002	Greater Tamaqua Industrial Development Enterprises 114 West Broad Street Tamaqua, PA 18252	Schuylkill	Rush Township	Nesquehoning Creek HQ-CWF, MF
PAI025409003	Greater Tamaqua Industrial Development Enterprises 114 West Broad Street Tamaqua, PA 18252	Schuylkill	Rush Township	Nesquehoning Creek HQ-CWF, MF

## NOTICES

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

<i>NPDES Permit No.</i>	<i>Applicant Name &amp; Address</i>	<i>County</i>	<i>Municipality</i>	<i>Receiving Water/Use</i>
PAI032809003	Lex and Louise Skelly 3631 North Front Street Harrisburg, PA 17110	Franklin	Guilford Township	Falling Spring Creek HQ
PAI032805007-1	Department of Military and Veterans Affairs PA Army National Guard Building 0-47 Fort Indiantown Gap Annville, PA 17003	Franklin	Guilford and Quincy Townships	Raccoon Creek HQ-CWF

*Northcentral Region: Watershed Management Program Manager, 208 West Third Street, Williamsport, PA 17701.*

<i>NPDES Permit No.</i>	<i>Applicant Name &amp; Address</i>	<i>County</i>	<i>Municipality</i>	<i>Receiving Water/Use</i>
PAI041409009	Northeastern ITS 6779 Engle Road Middleburg Heights, OH 44130-7926	Mercer	West Salem, Sugar Grove, Hempfield, Salem, Sandy Creek, Deer Creek, New Vernon and Mill Creek Townships Sheakleyville and New Lebanon Boroughs	UNT to Shenango River WWF UNTs to Booth Run WWF Big Run WWF UNTs to Big Run WWF Shenango River WWF UNTs to Little Shenango River TSF Little Shenango River TSF UNT to Morrison Run TSF Morrison Run TSF UNT to Mill Run WWF Mill Run WWF UNTs to Morrison Run TSF UNT to Mill Creek CWF Sandy Creek WWF UNTs to Sandy Creek WWF Schofield Run WWF UNTs to Sandy Creek WWF UNT to Little Sandy Creek HQ-CWF UNT to Sandy Run WWF UNTs to Little Sandy Creek HQ-CWF



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<i>NPDES Permit No.</i>	<i>Applicant Name &amp; Address</i>	<i>County</i>	<i>Municipality</i>	<i>Receiving Water/Use</i>
		Venango	Frenchcreek, Cranberry, Sandy Creek and Rockland Townships City of Franklin	UNT to Little Sandy Creek HQ-CWF UNTs to French Creek WWF Allegheny River WWF Lower Two Mile Run CWF UNT to Allegheny River WWF Burford Run CWF Halls Run CWF UNTs to East Sandy Creek CWF East Sandy Creek CWF UNT to Little East Sandy Creek CWF UNT to Halls Run CWF

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<i>NPDES Permit No.</i>	<i>Applicant Name &amp; Address</i>	<i>County</i>	<i>Municipality</i>	<i>Receiving Water/Use</i>
		Clarion	Ashland, Elk, Paint, Clarion and Limestone Townships Shipperville, Clarion and Strattanville Boroughs	UNT Pine Run CWF UNTs to Little East Sandy Creek CWF UNTs to Canoe Creek HQ-CWF UNTs to Deer Creek CWF Deer Creek CWF Paint Creek CWF UNTs to Clarion River CWF Clarion River CWF UNTs to Brush Run CWF UNT to Douglass Run CWF Douglass Run CWF UNTs to Little Piney Creek CWF UNT to Paint Creek CWF UNT to Douglass Run CWF Little Piney Creek CWF

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<i>NPDES Permit No.</i>	<i>Applicant Name &amp; Address</i>	<i>County</i>	<i>Municipality</i>	<i>Receiving Water/Use</i>
		Jefferson	Union, Rose, Pine Creek and Winslow Townships Corsica, Brookville and Reynoldsville Boroughs	North Fork River HQ-CWF Mill Creek TSF UNTs to Sandy Lick Creek TSF UNTs to O'Donnell Run CWF O'Donnell Run CWF UNTs to Schoolhouse Run HQ-CWF Schoolhouse Run HQ-CWF Sandy Lick Creek TSF UNTs to Soldier Run CWF Soldier Run CWF Fehley Run CWF Rathmel Run CWF UNT to Campbell Run CWF Clement Run CWF Pitchpine Run CWF

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<i>NPDES Permit No.</i>	<i>Applicant Name &amp; Address</i>	<i>County</i>	<i>Municipality</i>	<i>Receiving Water/Use</i>
		Clearfield	Sandy, Brady, Union, Bloom, Pike, Lawrence, Boggs, Decatur Townships Curwensville Borough	Soldier Run CWF Little Anderson Creek CWF UNTs to Anderson Creek CWF Katzner Run CWF Anderson Creek CWF West Branch Susquehanna River CWF Laurel Run CWF Clearfield Creek WWF UNTs to Clearfield Creek CWF UNT to Simeling Run HQ-CWF Simeling Run HQ-CWF UNT to Pentz Run CWF UNT to Limestone Run CWF Limestone Run CWF UNT to Luthersburg Branch CWF UNT to Stump Creek CWF Stump Creek CWF Hughey Run CWF UNTs to West Branch Susquehanna River CWF Hartshorn Run CWF Little Clearfield Creek HQ-CWF UNT to Morgan Run CWF UNTs to Laurel Run CWF



<i>NPDES Permit No.</i>	<i>Applicant Name &amp; Address</i>	<i>County Centre</i>	<i>Municipality</i>	<i>Receiving Water/Use</i>
			Rush, Worth, Huston, Patton, Ferguson, Harris, Potter, Gregg, Penn and Haines Townships	Moshannon Creek TSF Cold Stream Creek CWF Laurel Run CWF
			Philipsburg, Port Matilda and Millheim Boroughs	Oliver Run CWF UNTs to Bald Eagle Creek CWF Bald Eagle Creek TSF Buffalo Run HQ-CWF UNTs to Buffalo Run HQ-CWF UNT to Spring Creek HQ-CWF UNT to Slab Cabin Run HQ-CWF Slab Cabin Run HQ-CWF UNT to Slab Cabin Run HQ-CWF Roaring Run HQ-CWF UNTs to Spring Creek HQ-CWF Spring Creek HQ-CWF UNT to Cedar Run CWF Penns Creek CWF UNTs to Penns Creek CWF UNTs to Elk Creek EV Elk Creek EV UNTs to Pine Creek HQ-CWF UNTs to Pine Creek EV Pine Creek EV UNT to Black Bear Run EV Sixmile Run HQ-CWF UNTs to Laurel Run CWF UNT to Buffalo Run HQ-CWF



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<i>NPDES Permit No.</i>	<i>Applicant Name &amp; Address</i>	<i>County</i>	<i>Municipality</i>	<i>Receiving Water/Use</i>
		Northumberland	Upper Augusta, Rockefeller, Shamokin, Ralpho, Coal and Mt. Carmel Townships City of Sunbury	Shamokin Creek WWF Little Shamokin Creek CWF UNT to Plum Creek CWF UNTs to Shamokin Creek CWF UNT to Lick Creek CWF Millers Run CWF UNTs to Millers Run CWF UNT to South Branch Roaring Creek HQ-CWF North Branch Shamokin Creek CWF UNTs to North Branch Shamokin Creek CWF Lick Creek CWF South Branch Roaring Creek HQ-CWF Locust Creek CWF

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<i>NPDES Permit No.</i>	<i>Applicant Name &amp; Address</i>	<i>County</i>	<i>Municipality</i>	<i>Receiving Water/Use</i>
		Schuylkill	Butler, Newcastle, West Mahanoy, Mahanoy, Ryan, Schuylkill, Walker and West Penn Townships Frackville Borough	UNTs to Mahanoy Creek CWF Mahanoy Creek WWF Little Mahanoy Creek CWF Stony Creek UNT to Mill Creek CWF UNTs to Mill Creek CWF UNT to Codorus Creek CWF Locust Creek CWF UNTs to Locust Creek CWF Schuylkill River CWF Little Schuylkill River CWF UNTs Little Schuylkill River CWF Lizard Creek CWF UNTs to Lizard Creek CWF UNT to Mahanoy Creek CWF UNT to Schuylkill River CWF UNTs to Beaver Creek CWF Stump Run CWF UNT to Stump Run CWF



<i>NPDES Permit No.</i>	<i>Applicant Name &amp; Address</i>	<i>County</i>	<i>Municipality</i>	<i>Receiving Water/Use</i>
		Lehigh	Lynn, Heidelberg, North Whitehall and Whitehall Townships	UNT to Ontelaunee Creek EV Ontelaunee Creek EV School Creek EV UNTs to School Creek EV UNTs to Jordan Creek HQ-CWF Jordan Creek TSF UNTs Mill Creek CWF Mill Creek CWF Coplay Creek CWF UNTs to Coplay Creek CWF Lehigh River TSF
		Northampton	Allen, East Allen, Hanover, Lower Nazareth, Palmer and Forks Townships Northampton Borough City of Easton	Indian Creek CWF Quarry Creek CWF UNT to Lehigh River CWF Catasauqua Creek CWF East Branch Monocacy Creek HQ-CWF UNT to Bushkill Creek HQ-CWF Bushkill Creek HQ-CWF Delaware River WWF UNTs to Catasauqua Creek CWF UNT to Monocacy Creek HQ-CWF

*Southwest Region: Watershed Management Program Manager, 400 Waterfront Drive, Pittsburgh, PA 15222-4745.*

*Somerset County Conservation District, 6024 Glades Pike, Suite 103, Somerset, PA 15501 (814) 445-4652.*

<i>NPDES Permit No.</i>	<i>Applicant Name &amp; Address</i>	<i>County</i>	<i>Municipality</i>	<i>Receiving Water/Use</i>
PAI055609004	Turnpike Commission P. O. Box 67676 Harrisburg, PA 17106	Somerset	Jefferson Township	UNT to Laurel Hill Creek HQ-CWF

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

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

**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 Service 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>
Jeff F. Flemmens 158 Leathery Road East Berlin, PA 17316	Adams	38.1	300.7	Turkeys	NA	New
Lakeland Dairy 272 Angel Road and New Wilmington, PA 16142	Mercer Lawrence	650	1,155	Dairy	NA	Application

**PUBLIC WATER SUPPLY (PWS)  
PERMIT**

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

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

Following the comment period, the Department will make a final determination regarding the proposed permit. Notice of this final determination will be published

in the *Pennsylvania Bulletin* at which time this determination may be appealed to the Environmental Hearing Board.

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

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

**SAFE DRINKING WATER**

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

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

**Application No. 4009521**, Public Water Supply.

Applicant **Eagle Rock Community Association**  
 1031 Valley of Lakes  
 Hazleton, PA 18201

Township or Borough Hazle Township

Responsible Official Randy Grace  
 VP Double Diamond  
 1031 Valley of Lakes  
 Hazleton, PA 18201

Type of Facility PWS

Consulting Engineer John O. Hammell, P. E.  
 CMX  
 941 Marcon Boulevard  
 Suite 801  
 Allentown, PA 18109

Application Received Date July 30, 2009

Description of Action Applicant proposes to construct a new PWS system including two new sources of supply, treatment facilities, storage and distribution system to serve the Mountain View Phases I and II residential development project located in Hazle Township, Luzerne County.

*Central Office: Bureau Director, Water Standards and Facility Regulation, P. O. Box 8467, Harrisburg, PA 17105-8467.*

**Permit No. 9996408**, Public Water Supply.

Applicant **Nestle Waters North America, Inc.**

Township or Borough Lorton, Virginia

Responsible Official J. Marks Evan  
 Vice President

Type of Facility Out-of-State Bottled Water System

Application Received Date September 8, 2009

Description of Action Applicant requesting a permit amendment to change company name from Ionics, Incorporated to Nestle Waters North America, Inc. Bottled water to be sold in Pennsylvania under the brand name: Deer Park Purified Water.

**Biosolids Individual Permits (PABIG and PABIS)**

The following parties have applied for either an Individual Site Permit (PABIS) or an Individual Generator Permit (PABIG) for beneficial use of sewage sludge (biosolids) by land application. Unless otherwise indicated, on the basis of preliminary review and application of lawful standards and regulations, the Department of Environmental Protection (Department) proposes to issue a permit to land apply biosolids subject to certain requirements set forth in the permit.

Persons wishing to comment on the proposed permit are invited to submit a statement to the responsible Department's Regional Office noted above the application within 30 days from the date of this public notice. Comments received within this 30-day period will be considered in the formulation of the final determination regarding this application. Responses should include the name, address, and telephone number of the writer and a concise statement of a comment and the relevant facts upon which it is based. A public hearing may be held if the Regional Office considers the public response significant.

Following the 30-day comment period, the Water Management Regional Manager will make a final determination regarding the proposed permit. Notice of this determination will be published in the *Pennsylvania Bulletin* at which time this determination may be appealed to the Environmental Hearing Board.

The application and related documents, comments received, and other information are on file and may be inspected and arrangements made for copying at the responsible Department's Regional Office indicated above the application.

Persons with a disability that require an auxiliary aid, service or other accommodation to participate in the proceedings should contact the Secretary to the Board at (717) 787-3483. TDD users may contact the Department through the Pennsylvania AT&T Relay Service at (800) 654-5984.

**Biosolids Individual Permits (PABIG and PABIS)**

The following parties have received a renewal for an Individual Generator Permit (PABIG) for beneficial use of sewage sludge (biosolids) by land application.

*General Permit Type—PABIG*

<i>Facility Location &amp; Municipality</i>	<i>Permit No.</i>	<i>Applicant Name &amp; Address</i>	<i>Site Name &amp; Location</i>	<i>Contact Office &amp; Phone No.</i>
Baltimore, MD (Mobile line unite)	PABIG9903	Synagro Mid-Atlantic 7014 East Baltimore Street Baltimore, MD 21224	Synagro Mid-Atlantic 7014 East Baltimore Street Baltimore, MD 21224	BWSFR (717) 787-8184

**AIR QUALITY**  
**PLAN APPROVAL AND OPERATING PERMIT**  
**APPLICATIONS**  
**NEW SOURCES AND MODIFICATIONS**

The Department of Environmental Protection (Department) has developed an "integrated" plan approval, State operating permit and Title V operating permit program. This integrated approach is designed to make the permitting process more efficient for the Department, the regulated community and the public. This approach allows the owner or operator of a facility to complete and submit all the permitting documents relevant to its application one time, affords an opportunity for public input and provides for sequential issuance of the necessary permits.

The Department has received applications for plan approvals and/or operating permits from the following facilities.

Copies of the applications, subsequently prepared draft permits, review summaries and other support materials are available for review in the regional office identified in this notice. Persons interested in reviewing the application files should contact the appropriate regional office to schedule an appointment.

Persons wishing to receive a copy of a proposed plan approval or operating permit must indicate their interest to the Department regional office within 30 days of the date of this notice and must file protests or comments on a proposed plan approval or operating permit within 30 days of the Department providing a copy of the proposed document to that person or within 30 days of its publication in the *Pennsylvania Bulletin*, whichever comes first. Interested persons may also request that a hearing be held concerning the proposed plan approval and operating permit. Comments or protests filed with the Department regional offices must include a concise statement of the objections to the issuance of the Plan approval or operating permit and relevant facts which serve as the basis for the objections. If the Department schedules a hearing, a notice will be published in the *Pennsylvania Bulletin* at least 30 days prior the date of the hearing.

Persons with a disability who wish to comment and require an auxiliary aid, service or other accommodation to participate should contact the regional office identified before the application. TDD users should contact the Department through the Pennsylvania AT&T Relay Service at (800) 654-5984.

Final plan approvals and operating permits will contain terms and conditions to ensure that the source is constructed and operating in compliance with applicable requirements in 25 Pa. Code Chapters 121—143, the Federal Clean Air Act (act) and regulations adopted under the act.

**PLAN APPROVALS**

**Plan Approval Applications Received under the Air Pollution Control Act (35 P. S. §§ 4001—4015) and 25 Pa. Code Chapter 127, Subchapter B that may have special public interest. These applications are in review and no decision on disposition has been reached.**

*Northeast Region: Air Quality Program, 2 Public Square, Wilkes-Barre, PA 18711-0790, Ray Kempa, New Source Review Chief, (570) 826-2507.*

**54-399-044: Future Power PA** (72 Glenmaura National Boulevard, Moosic, PA 18507) for construction and

operation of an Anthracite Coal fired IGCC plant with controls at their facility to be in Porter Township, **Schuylkill County**.

*Southwest Region: Air Quality Program, 400 Waterfront Drive, Pittsburgh, PA 15222-4745, M. Gorog and B. Hatch, Environmental Engineer Managers, (412) 442-4163/5226.*

**65-01006A: Ameresco Greenridge LLC** (111 Speen Street, Suite 410, Framingham, MA 01701) for installation of engines at their Greenridge Landfill in East Huntingdon Township, **Westmoreland County** to use treated landfill gas to power engines/gensets to produce electricity for distribution to power grid.

**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.**

*Southcentral Region: Air Quality Program, 909 Elmerton Avenue, Harrisburg, PA 17110, William R. Weaver, New Source Review Chief, (717) 705-4702.*

**36-05106A: Premier Custom Built, Inc.** (110 Short Street, New Holland, PA 17557) for use of the emissions averaging program under 25 Pa. Code § 129.102(2) for coatings used at their cabinet manufacturing facility in East Earl Township, **Lancaster County**. Allowable emissions will not increase at the facility since the facility is currently limited to 50 tons of VOC, 25 tons of multiple HAPs and 10 tons of any one HAP per year. The plan approval will include monitoring, recordkeeping, reporting and work practice standards 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.*

**25-069N: BASF Catalysts, LLC** (1729 East Avenue, Erie, PA 16503) for authorization to operate a chrome oxide powder load hopper with a dust collector and a fluidized bed reactor to complete the calcination as described in their application of February 2, 2009, for their plant in the City of Erie, **Erie County**.

Under 25 Pa. Code §§ 127.44(a) and 127.424(b), the Department of Environmental Protection (Department) intends to issue a Plan Approval for their plant located in the City of Erie, Erie County. This plan approval will authorize the applicant to operate a chrome oxide powder load hopper with a dust collector and a fluidized bed reactor to complete the calcination as described in the applicant's application of February 2, 2009. The Plan Approval will subsequently be incorporated into a State-only Operating Permit through an administrative amendment in accordance with 25 Pa. Code § 127.450.

The control unit has an estimated 99.99 plus percent removal efficiency and shall not exceed the PM emissions of 0.02 gr/dscf. The source is not considered major precontrolled, therefore, CAM is not applicable. The facility will demonstrate compliance with the restrictions by performing daily pressure drop readings and quarterly preventative maintenance.

Copies of the application, the Department's analysis, and other documents used in the evaluation are available for public inspection between 8 a.m. and 4 p.m. weekdays at the address shown. To make an appointment, contact Records Management at (814) 332-6340, for an appointment.



Anyone wishing to provide the Department with additional information they believe should be considered, may submit the information to the address shown. Comments must be received, by the Department, within 30 days of the last day of publication. Written comments should include the following:

1. Name, address and telephone number of the person submitting comments.
2. Identification of the proposed Plan Approval; No. 25-069N.
3. Concise statement regarding the relevancy of the information or any objections to issuance of the Plan Approval.

A public hearing may be held, if the Department, in its discretion, decides that such a hearing is warranted on the comments received during the public comment period. All persons submitting comments or requesting a hearing will be notified of the decision to hold a hearing by publication in a local newspaper of general circulation or the *Pennsylvania Bulletin* or by telephone, where the Department determines such notification is sufficient. Written comments or requests for a public hearing should be directed to John Guth, Regional Air Quality Manager, Department of Environmental Protection, Northwest Regional Office, 230 Chestnut Street, Meadville, PA 16335, (814) 332-6940.

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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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*Southcentral Region: Air Quality Program, 909 Elmerton Avenue, Harrisburg, PA 17110, William R. Weaver, New Source Review Chief, (717) 705-4702.*

**22-03049: Turbine Airfoils Design, Inc.** (1400 North Cameron Street, Harrisburg, PA 17103) for their turbine parts manufacturing facility in the City of Harrisburg, **Dauphin County**. This is a renewal of the State-only operating permit issued in 2004.

**67-05106: Donsco, Inc.** (P. O. Box 2001, Wrightsville, PA 17368) for operation of the company's gray iron foundry in Wrightsville Borough, **York County**. This renewal of the State-only operating permit will retain the previous requirements for monitoring, recordkeeping, emission limits and work practice standards to ensure the facility complies with the applicable air quality regulations.

*Southwest Region: Air Quality Program, 400 Waterfront Drive, Pittsburgh, PA 15222-4745, Barbara Hatch, Facilities Permitting Chief, (412) 442-4174.*

**04-00466: NSPC, LLC** (P. O. Box 311, Zelienople, PA 16063-0311) for continued operation of the New Sewickley Pet Crematory, in New Sewickley Township, **Beaver County**. This is for renewal of the State-only Operating Permit issued in 2005.

**04-00709: Colona Transfer, LP** (P. O. Box 311, Portersville PA 16051-0311) for continued operation of the Colona Dock No. 2, in Monaca Borough, **Beaver County**. This is for renewal of the State-only Operating Permit issued in 2005.

*Northwest Region: Air Quality Program, 230 Chestnut Street, Meadville, PA 16335-3481, Matthew Williams, New Source Review Chief, (814) 332-6940.*

**37-00280: Ennstone Inc., d/b/a Three Rivers Aggregates** (1288 Reese Road, Slippery Rock, PA 16057-6028) for issuance of a Synthetic Minor Operating Permit to

operate a sand and gravel processing facility. in Plain Grove Township, **Lawrence County**. The facility's primary emission sources include a sand and gravel processing plant and a diesel engine.

*Department of Public Health, Air Management Services: 321 University Avenue, Philadelphia, PA 19104, Edward Brawn, Chief, (215) 685-9476.*

**S08-004: St. Christopher's Hospital for Children, LLC** (Erie Avenue at Front Street, Philadelphia, PA 19134) for operation of a hospital in the City of Philadelphia, **Philadelphia County**. The facility's air emission source includes one 200 hp boiler, one 300 hp boiler, one 500 hp boiler, two less than 50 hp boilers, two 1,520 hp emergency generators and one 145 hp emergency generator.

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 above 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.

**S03-010: General Services Administration—William J. Green Jr.—Federal Building** (600 Arch Street, Philadelphia, PA 19106) for operation of a Federal building in the City of Philadelphia, **Philadelphia County**. The facility's air emission sources include three 13.39 mmBtu/hr boilers, three hot water heaters, one 746 kW Emergency Generator and one 175 kW emergency generator.

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 above 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. AMS may modify the operating permit or schedule a public hearing based upon the information received during the public comment period. 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—86.34.

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.

When 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:

*Table 1*

<i>Parameter</i>	<i>30-Day Average</i>	<i>Daily Maximum</i>	<i>Instantaneous Maximum</i>
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

<i>Parameter</i>	<i>30-Day Average</i>	<i>Daily Maximum</i>	<i>Instantaneous Maximum</i>
Aluminum (Total) pH <sup>1</sup>	0.75 to 2.0 mg/l	1.5 to 4.0 mg/l	2.0 to 5.0 mg/l
Alkalinity greater than acidity <sup>1</sup>		greater than 6.0; less than 9.0	

<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.*

**30841316 and NPDES Permit No. PA0213535, Consol Pennsylvania Coal Company, LLC**, (P. O. Box J, 1525 Pleasant Grove Road, Claysville, PA 15323), to revise the permit for the Bailey Mine and Prep Plant in Richhill and Aleppo Townships, **Greene County** to amend 1,173.70 subsidence control plan area acres from development mining to longwall mining. No additional discharges. Application received July 6, 2009.

**30841317 and NPDES Permit No. PA0213527, Consol Pennsylvania Coal Company, LLC**, (P. O. Box J, 1525 Pleasant Grove Road, Claysville, PA 15323), to revise the permit for the Enlow Fork Mine in East Finley, South Franklin, and Morris Townships, **Washington County** to revise the longwall mining plan and perform stream restoration as may be necessary to two areas of Crafts Creek UNT as shown on the Prosperity USGS Quad from N: 10.28 inches; W: 9.31 to N: 11.20 inches; W: 9.72 inches, two areas of Sawhill Run as shown on the Claysville USGS Quad from N: 18.02 inches; W: 0.45 inch to N: 18.89 inches; W: 16.55 inches on the Prosperity USGS Quad, six areas of Buffalo Creek and Buffalo Creek UNT as shown on the Prosperity USGS Quad from N: 15.74 inches; W: 17.19 inches to N: 19.14 inches; W: 15.73 inches, and five areas of Tenmile Creek as shown on the Prosperity USGS Quad from N: 12.00 inches; W: 8.5 inches to N: 15.33 inches; W: 10.92 inches. No additional discharges. Application received June 29, 2009.

**30960701 and NPDES Permit No. PA0215201, Emerald Coal Resources, LP**, (158 Portal Road, P. O. Box 1020, Waynesburg, PA 15370), to renew the permit for the Emerald Mine No. 1—Coal Refuse Disposal Area No. 2 in Franklin Township, **Greene County** and related NPDES permit. No additional discharges. Application received March 27, 2009.

*Cambria District Mining Office: 286 Industrial Park Road, Ebensburg, PA 15931, (814) 472-1900.*

**11070202. NPDES No. PA0262439 and General Permit GP-12-11070202, Ebensburg Power Company**, 2840 New Germany Road, P. O. Box 845, Ebensburg, PA 15931, revision of an existing bituminous coal refuse site to obtain coverage for coal refuse reprocessing under air quality general permit GP-12 in Jackson Township and Nanty Glo Borough, **Cambria County**, affecting 57.8 acres. Receiving streams: UNT to Pergrin Run and Southern Branch of Blacklick Creek classified for the following use: CWF. There are no potable water supply intakes within 10 miles downstream. Application received September 1, 2009.

**32090201 and NPDES No. PA0262854. Britt Energies, Inc.**, 2450 Philadelphia Street, Indiana, PA 15701, commencement, operation and restoration of a bituminous coal refuse reprocessing surface mine in Conemaugh Township, **Indiana County**, affecting 11.9 acres. Receiving streams: UNTs to/and Sulfur Run classified for the following use: CWF. There are no potable water supply intakes within 10 miles downstream. Application received August 26, 2009.

**56793091 and NPDES No. PA0119296. Hardrock Coal Company**, 275 Saddle Ridge Road, Berlin, PA 15530, permit renewal for the continued operation and restoration of a bituminous surface and auger mine in Brothersvalley Township, **Somerset County**, affecting 559.9 acres. Receiving streams: UNTs to/and Tubs Run and UNT to Millers Run classified for the following use: CWF. There are no potable water supply intakes within 10 miles downstream. Application received August 27, 2009.

**56813104 and NPDES No. PA0599115. Finzel Coal**, 12152 National Pike, Grantsville, MD 21536-2105, permit renewal for reclamation only of a bituminous surface mine and operate water treatment facilities in Brothersvalley Township, **Somerset County**, affecting 344.7 acres. Receiving streams: UNTs to/and Tubs Run Creek classified for the following use: CWF. There are no potable water supply intakes within 10 miles downstream. Application received August 24, 2009.

*Greensburg District Mining Office: Armbrust Professional Center, 8205 Route 819, Greensburg, PA 15601, (724) 925-5500.*

**63090103 and NPDES Permit No. PA0251747. Amerikohl Mining, Inc.** (1384 SR 711, Stahlstown, PA 15687). Application for commencement, operation and reclamation of a bituminous surface mine, located in Fallowfield and Somerset Townships, **Washington County**, affecting 222.2 acres. Receiving streams: Sawmill Creek and UNTs to Sawmill Creek, classified for the following use: WWF. There is no potable water supply intake within 10 miles downstream from the point of discharge. Application received September 2, 2009.

*Moshannon District Mining Office: 186 Enterprise Drive, Philipsburg, PA 16866, (814) 342-8200.*

**17070107 and NPDES No. PA0256536. P & N Coal Company, Inc.** (P. O. Box 332, Punxsutawney, PA 15767). Revision of an existing bituminous surface mine to amend the permit boundary in Penn Township, **Clearfield County**, affecting 119.2 acres. Receiving stream: Kratzer Run, classified for the following use: CWF. There are no potable water supply intakes within 10 miles downstream. Application received July 24, 2009.

**17070107 and NPDES No. PA0256536. P & N Coal Company, Inc.** (P. O. Box 332, Punxsutawney, PA 15767). Revision of an existing bituminous surface mine to request a variance to conduct surface mining and coal removal within 100 feet of SR 729, in Penn Township, **Clearfield County**, affecting 114.6 acres. Receiving stream: UNT to Kratzer Run, classified for the following



use: CWF. There are no potable water supply intakes within 10 miles downstream. Application received September 3, 2009.

*Pottsville District Mining Office: 5 West Laurel Boulevard, Pottsville, PA 17901, (570) 621-3118.*

**54970101C2 and NPDES Permit No. PA0223832. Premium Fine Coal, Inc.,** (P. O. Box 268, Tamaqua, PA 18252), correction to an existing anthracite surface mine, coal refuse reprocessing and refuse disposal operation in Schuylkill Township, **Schuylkill County** to increase the permitted acreage from 632 acres to 727 acres, receiving stream: UNT of Mary D Mine Pool, classified for the following use: CWF. Application received August 12, 2009.

**49090101. Fox Coal Company, Inc.,** (1380 Tioga Street, Shamokin, PA 17866), commencement, operation and restoration of an anthracite surface mine operation in Zerbe Township, **Northumberland County** affecting 1298 acres, receiving stream: Zerbe Run, classified for the following use: CWF. Application received August 31, 2009.

**54840206R5. William Penn Breaker, Inc.,** (46 Public Square, Suite 600, Wilkes-Barre, PA 18701), renewal of an existing anthracite surface mining operation for reclamation activities only in West Mahanoy Township, **Schuylkill County** affecting 164.3 acres, receiving stream: none. Application received September 2, 2009.

**54890102R4 and NPDES Permit No. PA0594504. White Pine Coal Co., Inc.,** (P. O. Box 119, Ashland, PA 17921), renewal of an existing anthracite surface mine and coal refuse reprocessing operation in Cass, Foster and Reilly Townships, **Schuylkill County** affecting 729.78 acres, receiving stream: Muddy Branch Creek. Application received September 8, 2009.

#### *Noncoal Applications Received*

*Effluent Limits*—The following effluent limits will apply to NPDES permits issued in conjunction with a noncoal mining permit:

Parameter	Table 2		
	30-day Average	Daily Maximum	Instantaneous Maximum
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.

*Cambria District Mining Office: 286 Industrial Park Road, Ebensburg, PA 15931, (814) 472-1900.*

**32082801. Ridge Limestone, Inc.,** 1094 Lantz Road, Avonmore, PA 15618, bond release on a small noncoal (industrial minerals) operation in Young Township, **Indiana County**, affecting 2 acres. Receiving stream: no discharge. Application received September 1, 2009.

**28990803. Paul Clapsaddle,** 11401 Creek Road, Fannettsburg, PA 17221, bond release on a small noncoal (industrial minerals) operation in Metal Township, **Franklin County**, affecting 0.75 acres. Receiving stream: no discharge. Application received September 1, 2009.

**05090801. Troy A. Crist,** 2496 North Imler Valley Road, Imler, PA 16655, commencement, operation and restoration of a small noncoal (industrial minerals) operation in Kimmel Township, **Bedford County**, affecting 5.0 acres, receiving streams: UNTs to the Frankstown Branch of the Juniata River; Beaverdam Creek. Permit received September 1, 2009.

*Pottsville District Mining Office: 5 West Laurel Boulevard, Pottsville, PA 17901, (570) 621-3118.*

**09920302C4 and NPDES Permit No. PA0595497. Delaware Valley Landscape Stone, Inc.,** (P. O. Box 778, New Hope, PA 18938), renewal of NPDES Permit for discharge of treated mine drainage from a quarry operation in Middletown Township, **Bucks County**, receiving

stream: UNT to Neshaminy Creek, classified for the following use: WWF. Application received September 2, 2009.

## FEDERAL WATER POLLUTION CONTROL ACT, SECTION 401

The following permit applications, requests for Environmental Assessment approval and requests for 401 Water Quality Certification have been received by the Department of Environmental Protection (Department). Section 401 of the Federal Water Pollution Control Act (FWPCA) (33 U.S.C.A. § 1341) requires the State to certify that the involved projects will not violate the applicable provisions of sections 301—303, 306 and 307 of the FWPCA (33 U.S.C.A. §§ 1311—1313, 1316 and 1317) as well as relevant State requirements. Persons objecting to approval of a request for certification under section 401 of the FWPCA or to the issuance of a Dam Permit, Water Obstruction and Encroachment Permit or the approval of an Environmental Assessment must submit comments, suggestions or objections within 30 days of the date of this notice, as well as questions, to the regional office noted before the application. Comments should contain the name, address and telephone number of the person commenting, identification of the certification request to which the comments or objections are addressed and a concise statement of comments, objections or suggestions including the relevant facts upon which they are based.

The Department may conduct a fact-finding hearing or an informal conference in response to comments if deemed necessary. Individuals will be notified, in writing, of the time and place of a scheduled hearing or conference concerning the certification request to which the comment, objection or suggestion relates. Maps, drawings and other data pertinent to the certification request are



available for inspection between 8 a.m. and 4 p.m. on each working day at the regional office noted before the application.

Persons with a disability who wish to attend a hearing and require an auxiliary aid, service or other accommodation to participate in the proceedings should contact the specified program. TDD users should contact the Department through the Pennsylvania AT&T Relay Service at (800) 654-5984.

**Applications received under the Dam Safety and Encroachments Act (32 P. S. §§ 693.1—693.27) and section 302 of the 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

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

**E36-858: Wonderland Amusement Management, LLC, Richard Stammel**, 2249 Lincoln Highway East, Lancaster, PA 17602, East Lampeter Township, **Lancaster County**, United States Army Corps of Engineers, Baltimore District.

To remove six single-span pedestrian stream crossings, each having a width of 7 feet and spans of 28 feet, 25 feet, 24.5 feet, 26 feet, 29 feet and 28 feet, in a canal located in the floodway of Mill Creek (WWF). Also to construct and maintain an 8.5-foot wide dual span bridge having normal spans of 30 feet and 36 feet and an underclearance of 5.4 feet, a 6-inch depressed, 42-foot long 36-inch diameter RCP culvert pipe in a canal located in the floodway of Mill Creek (WWF). A temporary road crossing consisting of two 29-foot long, 48-inch diameter culvert pipes in Mill Creek, and a 30-foot by 56-foot pavilion located in the floodway of Mill Creek (WWF), all for the purpose of improvements at the Dutch Wonderland Family Amusement Park located off of Route 30 (Leola, PA Quadrangle: 5.75 inches North; 13.12 inches West, Latitude: 40 1' 53.9" N; Longitude: 76 13' 6.7" W) in East Lampeter Township, Lancaster County.

**E67-871: Stonebridge Crossing, LP, William P. Eichelberger**, 124 West Church Street, P. O. Box 459, Dillsburg, PA 17019-0459, Carroll Township, **York County**, United States Army Corps of Engineers, Baltimore District.

The applicant proposes: (1) to install and maintain a 50-foot length of Con-Span Bridge with concrete wing walls having a single waterway opening 32-feet wide by 9-feet high across Fishers Run (CWF); (2) to install and maintain five 42-inch culvert pipes 100 feet in length in a wetland associated with Fishers Run (CWF); and (3) to install a utility line stream crossing across Fishers Run (CWF). The purpose of the project is for the construction of a residential subdivision (Dillsburg, PA Quadrangle N: 22.5 inches; W: 1.5 inches, Latitude: 40° 07' 30"; Longitude: 77° 00' 37") Watershed 7E.

*Northcentral Region: Watershed Management Program Manager, 208 West Third Street, Williamsport, PA 17701, (570) 327-3636.*

**E08-457. Department of Transportation, Engineering District 3-0**, P. O. Box 218, Montoursville, PA 17754-0218. SR 1049 Section 001 Bridge Structure Replacement over Pendleton Creek, Warren Township, **Bradford**

**County**, United States Army Corps of Engineers, Baltimore District (Little Meadows, PA Quadrangle N: 41° 55' 34"; W: 76° 14' 19").

The Department of Transportation, Engineering District 3-0 proposes to replace the existing bridge structure located over Pendleton Creek, Warren Township, Bradford County. The existing structure is a single-span steel I-beam bridge with a 59° skew, 8-foot underclearance, and 24-foot clear span. The structure will be replaced with a single span 11-foot by 28-foot concrete arch culvert. The proposed culvert will be placed on the existing horizontal and vertical alignment. The project proposes 0.12 acre of floodway fill associated with the required approach work. Pendleton Creek is classified as a CWF by 25 Pa. Code Chapter 93 Water Quality Standards. The bridge replacement will not result in any wetland impacts.

**E17-452. City of DuBois**, P. O. Box 408, 16 West Scribner Avenue, DuBois, PA 15801. Pedestrian Bridge Across Beaver Run, DuBois City, **Clearfield County**, United States Army Corps of Engineers, Pittsburgh District (DuBois, PA Quadrangle Latitude: 41° 07' 16.44"; Longitude: 78° 44' 32.64").

The applicant proposes to construct, operate and maintain a pedestrian bridge crossing Beaver Run for public access to recreational facilities. The bridge across Beaver Run shall be constructed as a single span structure having a minimum span of 50 feet, underclearance of 4.5 feet, and width of 4 feet. The project poses no wetland impact, while permanently impacting 50 feet of Beaver Run that is located along the southern right-of-way of Beaver Drive approximately 3,250 feet west of Shaffer Road and Beaver Drive intersection. This permit application was received for review under Section 105.13(e) "Small Projects."

**E19-278. Department of Transportation, Engineering District 3-0**, P. O. Box 218, Montoursville, PA 17754-0218. SR 0080 Section 078 Bridge Structure Replacement and Rehabilitation over the Susquehanna River, Mifflin and South Centre Townships, **Columbia County**, United States Army Corps of Engineers, Baltimore District (Mifflinville, PA Quadrangle N: 41° 01' 42"; W: 76° 19' 34").

The Department of Transportation, Engineering District 3-0 proposes to rehabilitate the existing SR 0080 Eastbound and replace the SR 0080 Westbound bridge structures located over the Susquehanna River in Mifflin and South Centre Townships, Columbia County. Both existing structures are 19-foot span reinforced concrete bridges. The Eastbound superstructure will be replaced and the existing piers will be modified to accommodate the new superstructure. The Westbound Structure will be completely replaced. The proposed westbound structure will be a 17-foot span prestressed concrete T-beam Bridge. The proposed Westbound bridge will be located between the existing east and westbound bridge structures. The project will utilize a half width causeway in the Susquehanna River. The total project includes additional work over SR 339 and SR 11, which will not have an effect on any water resources. The Susquehanna River is classified as a WWF by 25 Pa. Code Chapter 93 Water Quality Standards. The Westbound bridge replacement will result in approximately 1,062 ft<sup>2</sup> of impact to the Susquehanna River and no wetland impacts.

**E59-490. Department of Transportation, Engineering District 3-0**, P. O. Box 218, Montoursville, PA 17754-0218. SR 3014 Section 001 Bridge Structure Replacement over Zimmerman Creek, Liberty Township, **Tioga**

**County**, United States Army Corps of Engineers, Baltimore District (Nauvoo, PA Quadrangle N: 41° 33' 54"; W: 77° 12' 30").

The Department of Transportation, Engineering District 3-0 proposes to replace the existing bridge structure located over Zimmerman Creek, Liberty Township, Tioga County. The existing structure is a two span steel I-beam bridge with a timber deck. The existing bridge has a span of 25 feet on both spans and an underclearance of 10.8 feet. The project proposes to shift the horizontal alignment upstream approximately 10 feet. The proposed structure is a single-span prestressed concrete spread box beam bridge. The proposed structure will have a span of 50 ft. and an underclearance of 9.7 ft. The project proposes to construct a wall to protect the existing barn located adjacent to the existing bridge. The wall will be constructed on the right downstream bank. Zimmerman Creek is classified as a HQ-CWF by 25 Pa. Code Chapter 93 Water Quality Standards. The bridge replacement will not result in any wetland impacts.

*Southwest Region: Watershed Management Program Manager, 400 Waterfront Drive, Pittsburgh, PA 15222-4745.*

**E02-1621. Department of Transportation, District 11**, 45 Thoms Run Road, Bridgeville, PA 15017. To regrade and maintain streambank in Etna Borough, **Allegheny County**, United States Army Corps of Engineers, Pittsburgh District (Pittsburgh East, PA Quadrangle N: 21.4 inches; W: 9.7 inches, Latitude: 40° 1' 34"; Longitude: 79° 56' 50"). The applicant proposes to regrade and maintain 700 feet of stream bank along Pine Creek (TSF) required to stabilize the slope for the widening of SR 28. The project is located in Etna Borough and centered approximately 3,000 feet upstream of Pine Creek's confluence with the Allegheny River.

**E03-449. Department of Transportation, District 10**, P. O. Box 429, Indiana, PA 15701. To remove existing and replace with new, bridge between Redbank Township, **Clarion County** and Redbank Township, **Armstrong County** (New Bethlehem, PA Quadrangle: N: 6.0 inches; W: 0.1 inch, Latitude: 41° 1' 54"; Longitude: 79° 15' 3.4"). The applicant proposes to remove the existing 28-foot wide, 220-foot long, two span, SR 536 bridge with a 90° skew and to construct and maintain a new 29.5-foot wide, 250-foot long, two span bridge and underclearance of 20.9-foot with a 73° skew over Redbank Creek (TSF); to construct and maintain associated outfalls; and construct a temporary causeway. The new bridge is located adjacent to and upstream of the existing bridge with the skew change to better align the Armstrong county approach road.

**E63-618. Department of Transportation, District 12-0**, 825 Gallatin Avenue Extension, P. O. Box 459, Uniontown, PA 15401-0459. To construct and maintain culvert, drainage area, replacement bridge, temporary crossings and stormwater outfalls, and permanent fill of PEM/PSS wetlands in South Strabane and Somerset Townships, **Washington County**, United States Army Corps of Engineers, Pittsburgh District (Washington East, PA Quadrangle N: 5.6 inches; W: 1.25 inches, Latitude 40° 9' 22.8"; Longitude 80° 8' 2.1" and extending east to Hackett, PA Quadrangle North 5 inches; West 17.0 inches, Latitude: 40° 9' 27"; Longitude: 80° 7' 16.3"). The applicant proposes to construct and maintain:

1. a 174-foot long extension of an existing 168-foot long, 21-foot span arch culvert with a drainage area of 6 square miles under the to-be widened SR 70 and recon-

structed SR 519 access ramps in Little Chartiers Creek (HQ-WWF) (Washington East, PA Quadrangle North 5.6 inches; West 1.25 inches, Latitude: 40° 9' 22.8" and Longitude: 80° 8' 2.1");

2. a 70 ft. long extension of an existing 183.5 ft. long, 5 ft. span, 6 ft clearance box culvert under the to be widened SR 70 in a UNT of Opossum Run (HQ-WWF) (Hackett, PA Quadrangle North 5.9 inches; West 17.0 inches, Latitude: 40° 9' 27"; Longitude: 80° 7' 16.3");

3. a 22 ft. span, 51.9 ft. wide with a 3.4 ft. underclearance replacement bridge with a drainage area of 1.3 square miles for the existing 31.5 ft. wide bridge under the to be widened SR 519 and in Opossum Run (HQ-WWF). (Washington East, PA Quadrangle North 5.0 inches; West 0.75 inch, Latitude: 40° 9' 11"; Longitude: 80° 7' 49.8");

4. Road construction associated temporary crossings and stormwater outfalls;

5. In addition a total of 0.095 acre of permanent fill and maintenance of PEM/PSS wetlands;

Constructed wetland mitigation is intended to be provided onsite. This project is associated with SR 70 and SR 519 interchange improvements starting approximately 4.5 miles east of Washington, PA and extending east approximately 1.5 miles and is located in South Strabane and Somerset Townships (Washington East, PA Quadrangle North 5.6 inches; West 1.25 inches, Latitude: 40° 9' 22.8"; Longitude: 80° 8' 2.1"; and extending east to Hackett, PA Quadrangle North 5 inches; West 17.0 inches, Latitude: 40° 9' 27" Longitude: 80° 7' 16.3"), Washington County.

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

**E42-347, University of Pittsburgh**, 3400 Forbes Avenue, Pittsburgh, PA 15260. Bradford Campus Parking Lot Addition, **McKean County**, United States Army Corps of Engineers, Pittsburgh District (Bradford, PA Quadrangle N: 41° 56' 35"; W: 78° 40' 32").

The applicant proposes to construct and maintain a parking lot in the northwestern portion of the University of Pittsburgh Bradford Campus within the FEMA 100-year floodplain of Marilla Brook the West Branch of Tunungwant Creek south of Taylor Drive involving a net removal of 345 cubic yards of material/earth from the FEMA floodplain. West Branch of Tunungwant Creek and Marilla Brook are perennial streams classified as a CWF.

#### ENVIRONMENTAL ASSESSMENTS

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

**EA21-005: The Nature Conservancy**, 2101 North Front Street, Building 1, Suite 200, Harrisburg, PA 17110, Dickinson Township, **Cumberland County**, United States Army Corps of Engineers, Baltimore District.

The applicant proposes to restore six isolated vernal pools totaling 0.41 acre of wetland: two by use of HDPE liners, three by excavation of subsoil to groundwater table, and one by excavation/compaction of subsoil clay, all in the Watershed of a UNT to Yellow Breeches Creek (HQ-CWF) on The Nature Conservancy's Forest Pools Preserve at King's Gap (Dickinson, PA Quadrangle N: 18.56 inches; W: 4.74 inches, Latitude: 40° 06' 08"; Longitude: -77° 17' 02") in Dickinson Township, Cumberland County.

Central Office: Bureau of Waterways Engineering, Rachel Carson State Office Building, Floor 3, 400 Market Street, Harrisburg, PA 17105.

**D40-020EA. Theta Land Corporation**, 1004 Exeter Avenue, Exeter, PA 18643. Hanover Township, **Luzerne County**, United States Army Corps of Engineers, Baltimore District.

Project proposes to breach and remove Pine Run No. 1 Dam across Pine Creek (CWF) for the purpose of eliminating a threat to public safety and restoring the stream to a free flowing condition. The project will restore approximately 600 feet of stream channel. The dam is located approximately 4,500 feet south of the intersection of US 81 and SR 309 (Wilkes-Barre, West, PA Quadrangle Latitude: 41° 11' 47"; Longitude: -75° 53' 30").

**D40-023EA. Theta Land Corporation**, 1004 Exeter Avenue, Exeter, PA 18643. Plains Township, **Luzerne County**, United States Army Corps of Engineers, Baltimore District.

Project proposes to breach and remove Laurel Run No. 2 Dam across Laurel Run (CWF) for the purpose of eliminating a threat to public safety and restoring the stream to a free flowing condition. The project will restore approximately 1,100 feet of stream channel. The dam is located approximately 1,200 feet southeast of the intersection of US 81 and SR 309 (Wilkes-Barre, East, PA Quadrangle Latitude: 41° 14' 53"; Longitude: -75° 49' 04").

**D64-148EA. Department of Conservation and Natural Resources**, Rachel Carson State Office Building, 400 Market Street, Harrisburg, PA 17101, Lehigh Township, **Wayne County**, United States Army Corps of Engineers, Philadelphia District.

To remove an existing sheet pile cut-off wall and construct and maintain an earthen berm to control runoff at Gouldsboro Lake Dam across Oakes Swamp Run (HQ-CWF). The dam is located at a point on the Tobyhanna, PA Quadrangle Latitude: 41° 14' 05"; Longitude: -75° 27' 07").

The proposed cut-off berm will permanently impact 0.016-acre of PEM wetland. Construction will necessitate temporary impacts to 0.01-acre of PEM wetland.

**D37-031EA. The Salvation Army, Western Pennsylvania Division**, 424 Third Street, Pittsburgh, PA 15219, Wayne and Perry Townships, **Lawrence County**, United States Army Corps of Engineers, Pittsburgh District.

Project proposes to breach and remove Fairless Murray Dam across Slippery Rock Creek (CWF) for the purpose of eliminating a threat to public safety and restoring the stream to a free flowing condition. The project will restore approximately 800 feet of stream channel. The dam is located approximately 1.4 miles north of the intersection of SR 488 and Vangorder Mill Road (T529) (Portersville, PA Quadrangle Latitude: 40° 53' 6"; Longitude: -80° 13' 52").

**ACTIONS**

**THE CLEAN STREAMS LAW AND THE FEDERAL CLEAN WATER ACT  
FINAL ACTIONS TAKEN FOR NATIONAL POLLUTION DISCHARGE  
ELIMINATION SYSTEM (NPDES) PERMITS AND WATER QUALITY  
MANAGEMENT (WQM) PERMITS**

The Department of Environmental Protection (Department) has taken the following actions on previously received applications for new, amended and renewed NPDES and WQM permits, applications for permit waivers and Notices of Intent (NOI) for coverage under general permits. This notice is provided in accordance with 25 Pa. Code Chapters 91 and 92 and 40 CFR Part 122, implementing provisions of The Clean Streams Law (35 P. S. §§ 691.1—691.1001) and the Federal Clean Water Act.

<i>Location</i>	<i>Permit Authority</i>	<i>Application Type or Category</i>
Section I	NPDES	Renewals
Section II	NPDES	New or amendment
Section III	WQM	Industrial, sewage or animal wastes; discharges to groundwater
Section IV	NPDES	MS4 individual permit
Section V	NPDES	MS4 permit waiver
Section VI	NPDES	Individual permit stormwater construction
Section VII	NPDES	NOI for coverage under NPDES general permits

Sections I—VI contain actions related to industrial, animal or sewage wastes discharges, discharges to groundwater and discharges associated with municipal separate storm sewer systems (MS4), stormwater associated with construction activities and concentrated animal feeding operations (CAFOs). Section VII contains notices for parties who have submitted NOIs for coverage under general NPDES permits. The approval for coverage under general NPDES permits is subject to applicable effluent limitations, monitoring, reporting requirements and other conditions set forth in each general permit. The approval of coverage for land application of sewage sludge or residential septage under applicable general permit is subject to pollutant limitations, pathogen and vector attraction reduction requirements, operational standards, general requirements, management practices and other conditions set forth in the respective permit. Permits and related documents, effluent limitations, permitting requirements and other information are on file and may be inspected and arrangements made for copying at the contact office noted before the action.

Persons aggrieved by an action may appeal, under section 4 of the Environmental Hearing Board Act (35 P. S. § 7514) and 2 Pa.C.S. §§ 501—508 and 701—704 (relating to the Administrative Agency Law), to the Environmental Hearing Board, Second Floor, Rachel Carson State Office Building, 400 Market Street, P. O. Box 8457, Harrisburg, PA 17105-8457, (717) 787-3483. TDD users should contact the Environmental Hearing Board (Board) through the Pennsylvania 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 pro bono representation. Call the Secretary to the Board at (717) 787-3483 for more information.

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### I. NPDES Renewal Permit Actions

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

<i>NPDES No. (Type)</i>	<i>Facility Name &amp; Address</i>	<i>County &amp; Municipality</i>	<i>Stream Name (Watershed #)</i>	<i>EPA Waived Y/N ?</i>
PA0060755 (Minor Sewage)	Wyoming County Housing Authority Meshoppen Towne House Apartments P. O. Box 350 Nicholson, PA 18446	Wyoming County Meshoppen Township	Little Meshoppen Creek 04G	Y

*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>
PA0038326 (Sew)	Pequea Valley School District 166 South New Holland Road P. O. Box 130 Kinzers, PA 17535	Lancaster County Leacock Township	Pequea Creek 7-K	Y
PA0038318 (Sew)	Pequea Valley School District 166 South New Holland Road P. O. Box 130 Kinzers, PA 17535	Lancaster County Leacock Township	Pequea Creek 7-K	Y
PA0081515 (Sew)	Lancaster County Career and Technology Center 1730 Hans Herr Drive P. O. Box 527 Willow Street, PA 17584	Lancaster County West Earl Township	Conestoga River 7-J	Y
PA0082937 (IW)	R. R. Donnelley and Sons Company 1375 Harrisburg Pike Lancaster, PA 17601	Lancaster County Lancaster City	UNT to Little Conestoga Creek 7-J	Y

*Northcentral Region: Watershed 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>
PA0228401 CAFO	Schrack Farms Partnership 860 West Valley Road Loganton, PA 17747	Clinton County Greene Township	Fishing Creek 9C	N
PA0228770	Bishcroft Farm, LLC R. R. 1, Box 58 Roaring Branch, PA 17765	Tioga County Liberty Township	Little Elk Run #10A	N
PA0228443 CAFO	Dotterer and Sons Farm 6795 Nittany Valley Drive Mill Hall, PA 17751	Clinton County Porter and Lamar Townships	UNT to Cedar Run 9C	N
PA0208825 SP	Austin Borough P. O. Box 297 Austin, PA 16720	Potter County Portage Township	Freeman Run 8A	Y
PA0208566 IW	Bressler Truck Plaza, LLC 2994 East Valley Road Loganton, PA 17847	Northumberland County Turbot Township	Storm Sewer to Limestone Run 10D	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>
PA0205729 Sewage	John W. and Lynne M. Lindley 208 Rural Valley Road Claysville, PA 15323 and Barry J. Goff 206 Rural Valley Road Claysville, PA 15323	Washington County Blaine Township	Wolf Run	Y
PA0204587 Sewage	Timothy Braniff 108 Front Street Fallentimber, PA 16639	Cambria County White Township	Clearfield Creek	Y
PA0031402 Sewage	Brownsville Area School District 1025 Lewis Street Brownsville, PA 15417	Fayette County Luzerne Township	UNT of the Monongahela Township	Y
PA0090557 Sewage	Extendicare Health Services, Inc. 257 Georgetown Road Beaver Falls, PA 15010	Beaver County South Beaver Township	Swale of Painter Run	Y
PA0204285 Sewage	Waynesburg, LLP 3101 Homestead Duquesne Boulevard West Mifflin, PA 15122	Greene County Morgan Township	UNT of South Fork Tenmile Creek	Y
PA0216151 Sewage	Michael Apple 1183 Executive Drive P. O. Box 130 Glasgow, PA 16644	Cambria County Reade Township	UNT of Clearfield Creek	Y
PA0041301 Sewage	Uniontown Area School District 23 East Church Street Uniontown, PA 15401-3578	Fayette County Henry Clay Township	UNT of Beaver Creek	Y
PA0218014 Sewage	Gary and Connie Nicewonger R. D. 1, Box 148 Armaugh, PA 15920	Indiana County East Wheatfield Township	Swale to Mardis Run	Y
PA0032425 Sewage	Department of Conservation and Natural Resources— Bureau of State Parks Ohiopyle State Park P. O. Box 105 Ohiopyle, PA 15470-0105	Fayette County Stewart Township	UNT of Youghiogheny River	Y
PA0092932 Sewage	Berardo Maragni 152 Green Lane Greensburg, PA 15601	Westmoreland County Hempfield Township	UNT of Brush Creek	Y

## II. New or Expanded Facility Permits, Renewal of Major Permits and EPA Nonwaived Permit Actions

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

**NPDES Permit No. PA0013862**, Industrial Waste, **Corixa Corporation, d/b/a Glaxosmithkline Biologicals NA**, 325 North Bridge Street, Marietta, PA 17547. This proposed facility is located in East Donegal Township, **Lancaster County**.

Description of Proposed Action/Activity: Authorization to discharge to the Susquehanna River in Watershed 7-J.

*Northcentral Region: Water Management Program Manager, 208 West Third Street, Williamsport, PA 17701.*

**PA0233579**, CAFO SIC 212, 213, **Marvin Carpenter**, R. D. 3, Box 471, Shunk, PA 17768. This facility is located in Fox Township, **Sullivan County**.

Description of Activity: The Marvin Carpenter Farm is an existing Beef Steer Farm, totaling 50 Animal Equivalent Units (AEUs). He will be adding a finished Swine operation of 4,360 head equaling 581 AEUs. Total AEUs for the permit is 631.

The receiving stream, Hoagland Branch Elk Creek, is in the State Water Plan Watershed No. 10B and is classified for: HQ-CWF.

The proposed effluent limits for the operation/activity include: Except for the chronic or catastrophic rainfall events defined as over the 25-year/24-hour rain storms, the CAFO permit is a nondischarge NPDES permit. Where applicable, compliance with 40 CFR Federal effluent limitation guidelines is required. The permit requires no other numeric effluent

limitations and compliance with the Pennsylvania Nutrient Management Act and The Clean Stream Law constitutes compliance with the state narrative water quality standards.

In addition to the effluent limits, the permit contains the following major special conditions: The permittee shall have a PE certify the structural integrity of the manure storage facility upon completion of the construction.

*Southwest Region: Water Management Program Manager, 400 Waterfront Drive, Pittsburgh, PA 15222-4745.*

**NPDES Permit No. PA0253910**, Sewage, **Dan Ireland**, 101 East Crossbow Lane, Slippery Rock, PA 16057. This proposed facility is located in Penn Hills Township, **Allegheny County**.

Description of Proposed Action/Activity: Permit issuance for the operation of single-residence sewage treatment plant.

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

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

**WQM Permit No. 5409402**, Sewerage, **Borough of Ashland**, 401 South 18th Street, Ashland, PA 17921. This proposed facility is located in Ashland Borough, **Schuylkill County**.

Description of Proposed Action/Activity: Issuance of Water Quality Management Permit.

*Southwest Region: Water Management Program Manager, 400 Waterfront Drive, Pittsburgh, PA 15222-4745*

**WQM Permit No. 6509402**, Sewerage, **Municipal Authority of Washington Township**, 283 Pine Run Church Road, Apollo, PA 15613. This proposed facility is located in Washington Township, **Westmoreland County**.

Description of Proposed Action/Activity: Permit issuance for the construction and operation of 8, 12 and 15-inch diameter PVC sanitary sewers.

**WQM Permit No. 0497402-A1**, Sewerage, **Rochester Borough Sewer and Maintenance Authority**, P. O. Box 563, Rochester, PA 15074. This existing facility is located in Rochester Borough, **Beaver County**.

Description of Proposed Action/Activity: Permit issuance for the construction and operation of sanitary sewer replacement, new service laterals and spot repair of existing sewers.

**WQM Permit No. 0309404**, Sewerage, **East Franklin Township**, R. D. 3, Box 211A, Cherry Orchard Avenue, Kittanning, PA 16201. This proposed facility is located in East Franklin Township, **Armstrong County**.

Description of Proposed Action/Activity: Permit issuance for the construction and operation of an STP, Pump Station and Sanitary Sewers.

**WQM Permit No. 0309402**, Sewerage, **East Franklin Township**, R. D. 3, Box 211A, Cherry Orchard Avenue, Kittanning, PA 16201. This proposed facility is located in East Franklin Township, **Armstrong County**.

Description of Proposed Action/Activity: Permit issuance for the construction and operation of a wastewater treatment plant, three pump stations, 4,100 feet force mains and 21,500 feet of sanitary sewers.

The Pennsylvania Infrastructure Investment Authority, which administers Pennsylvania's State Revolving Fund, has been identified as a possible funding source. The Department's review of the sewage facilities plan revision has not identified any significant environmental impacts resulting from this proposal.

**WQM Permit No. 0309404**, Sewerage, **East Franklin Township**, R. D. 3, Box 211A, Cherry Orchard Avenue, Kittanning, PA 16201. This proposed facility is located in East Franklin Township, **Armstrong County**.

Description of Proposed Action/Activity: Permit issuance for the construction and operation of a sewage treatment plant and sanitary sewers.

The Pennsylvania Infrastructure Investment Authority, which administers Pennsylvania's State Revolving Fund, has been identified as a possible funding source. The Department's review of the sewage facilities plan revision has not identified any significant environmental impacts resulting from this proposal.

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

**WQM Permit No. 2596423**, Sewerage, Amendment No. 2, **North East Borough**, 31 West Main Street, North East, PA 16428. This proposed facility is located in North East Borough, **Erie County**.

Description of Proposed Action/Activity: Issuance of a permit to upgrade the Site I and expand the Site II Wastewater Treatment Plant.

**WQM Permit No. WQG018709**, Sewerage, **David A. Jones**, 735 Sirak Drive, Fairview, PA 16415. This proposed facility is located in Elk Creek Township, **Erie County**.

Description of Proposed Action/Activity: Issuance of a single-residence Sewage Treatment Plant.

*Southeast Region: Water Management Program Manager, 2 East Main Street, Norristown, PA, 19401.*

**WQM Permit No. 1509408**, Sewerage, **New Garden Township Sewer Authority**, 299 Starr Road, Landenberg, PA 19350. This proposed facility is located in New Garden Township, **Chester County**.

Description of Action/Activity: A pump station with associated force main and control building.

**WQM Permit No. WQG02230910**, Sewerage, **Thornbury Township**, 6 Township Drive, Cheyney, PA 19319. This proposed facility is located in Thornbury Township, **Delaware County**.

Description of Action/Activity: Construct public sewers to serve existing properties.

**WQM Permit No. 1505403**, Sewerage, **New Garden Township Sewer Authority**, 299 Starr Road, Landenberg, PA 19350. This proposed facility is located New Garden Township, **Chester County**.

Description of Action/Activity: Upgrades to the existing Hartfeld PS No. 4 to increase capacity of the pump station.

**WQM Permit No. 0909401**, Sewerage, **Bucks County Water and Sewer Authority**, 1275 Almshouse Road, Warrington, PA 18976. This proposed facility is located in Bensalem Township, **Bucks County**.

Description of Action/Activity: Installation of a 1.9 million gallon surge tank and two associated pump stations.

**IV. NPDES Stormwater Discharges from MS4 Permit Actions**

**V. NPDES Waiver Stormwater Discharges from MS4 Actions**

**VI. NPDES Discharges of Stormwater Associated with Construction Activities Individual Permit Actions**

*Southeast Region: Water Management Program Manager, 2 East Main Street, Norristown, PA 19401.*

<i>NPDES Permit No.</i>	<i>Applicant Name &amp; Address</i>	<i>County</i>	<i>Municipality</i>	<i>Receiving Water/Use</i>
PAI01 1509019	Citadel Federal Credit Union P. O. Box 147 Thorndale, PA 19372	Chester	Willistown Township	Little Valley and Crum Creeks EV-HQ-CWF
PAI01 1509025	Woodcrest at East Coventry, LP 100 Springhouse Drive Collegeville, PA 19426	Chester	East Coventry Township	Pigeon Creek HQ-TSF
PAI01 2309004	Elwyn, Inc. 111 Elwyn Road Media, PA 19063	Delaware	Middletown Township	Ridley Creek HQ-TSF

**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 Ground Water 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>
Thornbury Township Chester County	PAG200 1509026	Thornbury Township 8 Township Drive Cheyney, PA 19373-1019	Waln Run TSF-MF	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>
Westtown Township Chester County	PAG200 1509029	L. V. Associates, LP 55 Country Club Drive Suite 200 Downingtown, PA 19335	UNT Chester Creek	Southeast Regional Office 2 East Main Street Norristown, PA 19401 (484) 250-5900
New Garden Township Chester County	PAG200 1509024	CFMC Associates, LLC 8990 Gap Newport Pike Avondale, PA 19311	UNT West Branch Red Clay Creek TSF	Southeast Regional Office 2 East Main Street Norristown, PA 19401 (484) 250-5900
Skippack Township Montgomery County	PAG200 4609050	Department of General Services 18th and Herr Streets Harrisburg, PA 17125	Perkiomen Creek TSF	Southeast Regional Office 2 East Main Street Norristown, PA 19401 (484) 250-5900
Upper Hanover Township Montgomery County	PAG200 4608043	Mary Blake Stauffer 3026 Bowers Mill Road Pennsburg, PA 18073	Perkiomen Creek/Green Lane Reservoir TSF	Southeast Regional Office 2 East Main Street Norristown, PA 19401 (484) 250-5900
Limerick Township Montgomery County	PAG200 4609061	Central Perkiomen Rotary Club P. O. Box 36 209 Silverbrook Drive Schwenksville, PA 19473	UNT Perkiomen Creek TSF	Southeast Regional Office 2 East Main Street Norristown, PA 19401 (484) 250-5900
City of Philadelphia Philadelphia County	PAG201 5109008	School District of Philadelphia 440 North Broad Street Philadelphia, PA 19130	Schuylkill River CWF	Southeast Regional Office 2 East Main Street Norristown, PA 19401 (484) 250-5900
Plains Township Luzerne County	PAG2004009012	Richland Real Estate Investments, LTD 1140 Route 315 Wilkes-Barre, PA 18711	Tributary to Mill Creek CWF, MF	Luzerne County Conservation District (570) 674-7991
Orwigsburg Borough Schuylkill County	PAG2005409009	Blue Mountain School District Attn: Jeffry Ritschel P. O. Box 188 685 Red Dale Road Orwigsburg, PA 17961	Mahannon Creek CWF, MF Pine Creek CWF, MF	Schuylkill County Conservation District (570) 622-3742
McConnellsburg Borough Fulton County	PAG2002909003	Fulton County Commissioners 116 West Market Street Suite 203 McConnellsburg, PA 17233	Big Cove Creek CWF	Fulton County Conservation District 216 North Second Street McConnellsburg, PA 17233 (717) 485-3547, Ext. 122
Washington Township Franklin County	PAR10M171R-R	Geoffrey Miller 11144 Old Forge Road Waynesboro, PA 17268	Bailey's Run CWF	Franklin County Conservation District 185 Franklin Farm Lane Chambersburg, PA 17201 (717) 264-5499
Greene Township Franklin County	PAG2002809004	Poetry Estates Kirk Martin Acorn Land Development 4961 Cumberland Highway Chambersburg, PA 17202	Conococheague CWF	Franklin County Conservation District 185 Franklin Farm Lane Chambersburg, PA 17201 (717) 264-5499
Greene Township Franklin County	PAG2002809022	Cumberland Valley Animal Shelter Jamie Kasadra 2325 Country Road Chambersburg, PA 17202	Rocky Springs TSF	Franklin County Conservation District 185 Franklin Farm Lane Chambersburg, PA 17201 (717) 264-5499



## 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>
Antrim Township Franklin County	PAG2002809017	Sheetz Matt Donegan The Bowman Group 10228 Governor Lane Road Suite 3002 Williamsport, MD 21795	Conococheague Creek CWF	Franklin County Conservation District 185 Franklin Farm Lane Chambersburg, PA 17201 (717) 264-5499
South Heidelberg Township Berks County	PAR10C229R-R	Thomas Masano Galen Hall Corporation 855 Berkshire Boulevard Wyomissing, PA 19610	Cacoosing Creek NC	Berks County Conservation District 1238 County Welfare Road Suite 200 Leesport, PA 19533-9710 (610) 372-4657, Ext. 201
Cumru Township Berks County	PAG2000609018	John Broadbent, Jr. Chestnut Hill Farms Co. One Chestnut Hill Drive Mohnton, PA 19540	Angelica Creek CWF	Berks County Conservation District 1238 County Welfare Road Suite 200 Leesport, PA 19533-9710 (610) 372-4657, Ext. 201
Chambersburg Borough Franklin County	PAG002804019-R	Armstron—Heinz Warehouse Sam Armstrong 9523 Lincoln Way West St. Thomas, PA 17252	Conococheague Creek WWF	Franklin County Conservation District 185 Franklin Farm Lane Chambersburg, PA 17201 (717) 264-5499
Antrim Township Franklin County	PAG2002809006	Leo Rocca Stone Bridge Farms, LLC 8730 Fox Gap Road Middletown, MD 21769	Conococheague Creek WWF	Franklin County Conservation District 185 Franklin Farm Lane Chambersburg, PA 17201 (717) 264-5499
Southampton Township Franklin County	PAG2002807015-1	Dirk Baumgardner 26 Truck Tech Way Shippensburg, PA 17257	Rowe Run CWF	Franklin County Conservation District 185 Franklin Farm Lane Chambersburg, PA 17201 (717) 264-5499
West St. Clair Township Bedford County	PAG2000509007	Department of Transportation District 9-0 1620 North Juniata Street Hollidaysburg, PA 16648	Barefoot Run WWF	Bedford County Conservation District 702 West Pitt Street Fairlawn Court Suite 4 Bedford, PA 15522 (814) 623-7900
East Manchester Township York County	PAG2006709020	Sam Barbush J. C. Bar Properties 3100 Market Street Camp Hill, PA 17011	Codorus Creek WWF	York County Conservation District 118 Pleasant Acres Road York, PA 17402-8984 (717) 840-7430
Lower Windsor Township York County	PAG2006706118	Gerald Horst 160 North Point Boulevard Lancaster, PA 17601	Canadochly Creek— Kreutz Creek WWF	York County Conservation District 118 Pleasant Acres Road York, PA 17402-8984 (717) 840-7430
Conewago Township York County	PAG2006703142-R	Cornerstone at Hunters Creek, LP John M. Huenke 1 Market Way East Suite 401 York, PA 17404	Little Conewago Creek TSF	York County Conservation District 118 Pleasant Acres Road York, PA 17402-8984 (717) 840-7430

<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>
York Township York County	PAG2006709045	Charter Homes at Chanticleer, Inc. James Brubaker 1190 Dillerville Road Lancaster, PA 17601	UNT to Codorus Creek WWF	York County Conservation District 118 Pleasant Acres Road York, PA 17402-8984 (717) 840-7430
Lower Allen Township York County	PAG2002108029	Russ Burnell West Shore School District 507 Fishing Creek Road P. O. Box 803 New Cumberland, PA 17070-0803	UNT to Yellow Breeches Creek CWF	Cumberland County Conservation District 310 Allen Road Suite 301 Carlisle, PA 17013-9131 (717) 240-7812
Windsor Township York County	PAG2006708062-1	John Forrey Pyxos Properties, LP 175 East Walnut Street Red Lion, PA 17356	UNT to Pine Creek Run CWF	York County Conservation District 118 Pleasant Acres Road York, PA 17402-8984 (717) 840-7430
McConnellsburg Borough Fulton County	PAG2002909003	Bonnie Keefer Fulton County Commissioners Office 116 West Market Street Suite 203 McConnellsburg, PA 17233	Cove Creek CWF	Fulton County Conservation District 216 North Second Street Suite 15 McConnellsburg, PA 17233 (717) 485-3547
Codorus Township York County	PAG2006709006	St. Jacob's Luthern Church LB Mack 5152 Stone Church Road Glenville, PA 17329	South Branch Codorus Creek WWF	York County Conservation District 118 Pleasant Acres Road York, PA 17402-8984 (717) 840-7430
Stewartstown Borough York County	PAG2006709029	Tim Rutter CHR Corporation 2295 Susquehanna Trail Suite C York, PA 17404	UNT to Ebaughs Creek CWF	York County Conservation District 118 Pleasant Acres Road York, PA 17402-8984 (717) 840-7430
Juniata Township Bedford County	PAG2000509008	Turnpike Commission P. O. Box 67676 Harrisburg, PA 17106	Raystown Branch Juniata River TSF	Bedford County Conservation District 702 West Pitt Street Fairlawn Court Suite 4 Bedford, PA 15522 (814) 623-7900
York Township York County	PAG2006704091-R	Sam Juffe Cornerstone at Carriate Crossing, LP 1 Market Way East Suite 401 York, PA 17401	Mill Creek WWF	York County Conservation District 118 Pleasant Acres Road York, PA 17402-8984 (717) 840-7430
Peach Bottom Township York County	PAG2006708086	Calvary Chapel of Delta Vince Sabatino 5911 Delta Road Delta, PA 17314	Muddy Creek TSF	York County Conservation District 118 Pleasant Acres Road York, PA 17402-8984 (717) 840-7430
Hellam Township York County	PAG2006706120	Dave Lewis Marietta Gravity Water Company 1195 River Road P. O. Box 302 Marietta, PA 17547	Kreutz Creek— Dugan Run WWF	York County Conservation District 118 Pleasant Acres Road York, PA 17402-8984 (717) 840-7430

<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 Middleton Township Cumberland County	PAG2002107028	Fred A. Gettys 1950 Chestnut Court Camp Hill, PA 17011	Wertz Run— Cornman Run WWF	Cumberland County Conservation District 310 Allen Road Suite 301 Carlisle, PA 17013-9131 (717) 240-7812
Fairview Township York County	PAG2006708081	James V. Hoffman JVH Excavating, Inc. P. O. Box 1009 Mechanicsburg, PA 17055	UNT to Yellow Breeches Creek CWF	York County Conservation District 118 Pleasant Acres Road York, PA 17402-8984 (717) 840-7430
York City York County	PAG2006709028	Traci Foster Logos Academy P. O. Box 1272 York, PA 17405	Codorus Creek WWF	York County Conservation District 118 Pleasant Acres Road York, PA 17402-8984 (717) 840-7430
Hanover Borough York County	PAG2006708051	Charles Bittinger Bi—Wis Corporation 1010 Eichelberger Street Hanover, PA 17331	UNT to South Branch Conewago Creek WWF	York County Conservation District 118 Pleasant Acres Road York, PA 17402-8984 (717) 840-7430
Fairview Township York County	PAG2006707041	Jim Garling Grace Baptist Church of Lewisberry 780 Woodland Avenue Lewisberry, PA 17339	Fishing Creek TSF	York County Conservation District 118 Pleasant Acres Road York, PA 17402-8984 (717) 840-7430
York Township York County	PAG2006704070-R	James Brubaker Charter Homes at Springwood, Inc. 1190 Dillerville Road Lancaster, PA 17601	Mill Creek WWF	York County Conservation District 118 Pleasant Acres Road York, PA 17402-8984 (717) 840-7430
York Township York County	PAG2006709041	Robert Holweck Southern Heights Tract, Inc. 118 Teila Drive Dallastown, PA 17313	UNT to Inners Creek CWF	York County Conservation District 118 Pleasant Acres Road York, PA 17402-8984 (717) 840-7430
Spring Garden Township York County	PAG2006709033	Department of Transportation District 8-0 2140 Herr Street Harrisburg, PA 17103-1699	Mill Creek- Codorus Creek WWF	York County Conservation District 118 Pleasant Acres Road York, PA 17402-8984 (717) 840-7430
Springettsbury Township York County	PAG2006709037	Department of Transportation District 8-0 2140 Herr Street Harrisburg, PA 17103-1699	Mill Creek- Codorus Creek WWF	York County Conservation District 118 Pleasant Acres Road York, PA 17402-8984 (717) 840-7430
Penn Township York County	PAG2006708084	Joe A. Myers Stonewicke, LP 107 Little Bridge Road Hanover, PA 17331	Plum Creek WWF	York County Conservation District 118 Pleasant Acres Road York, PA 17402-8984 (717) 840-7430
Manor Township Lancaster County	PAG2003609025	Star Rock Dairy, LLC 175 Chestnut Grove Road Conestoga, PA 17516	Susquehanna River WWF	Lancaster County Conservation District 1383 Arcadia Road, Room 200 Lancaster, PA 17601 (717) 299-5361

<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>
Brecknock Township Lancaster County	PAG2003608076	Boulder Hill Properties, LLC 825 Reading Road P. O. Box 528 Bowmansville, PA 17507	Muddy Creek TSF	Lancaster County Conservation District 1383 Arcadia Road, Room 200 Lancaster, PA 17601 (717) 299-5361
Manheim Township York County	PAG2006708078	Arthur Binner 7294 Blue Hill Road Glenville, PA 17329	UNT to Long Run WWF	York County Conservation District 118 Pleasant Acres Road York, PA 17402-8984 (717) 840-7430
East Hempfield Township Lancaster County	PAG2003609032	Healthy Lifestyle Properties, LLC 223 Wohlsen Way Lancaster, PA 17603	Swarr Run TSF	Lancaster County Conservation District 1383 Arcadia Road Room 200 Lancaster, PA 17601 (717) 299-5361
East Lampeter Township Lancaster County	PAG2003609046	Lafayette Fire Company 1836 Lincoln Highway East Lancaster, PA 17602	Conestoga River- Mill Creek WWF	Lancaster County Conservation District 1383 Arcadia Road Room 200 Lancaster, PA 17601 (717) 299-5361
Letterkenny Township Franklin County	PAR10M181R-R	Dan VanKampen Foothills of Kensington 249 Sandoeshire Lane Chambersburg, PA 17201	Rocky Spring TSF	Franklin County Conservation District 185 Franklin Farm Lane Chambersburg, PA 17201 (717) 264-5499
Greene Township Franklin County	PAG2002809012	Tim Rutter CHR Corporation 2295 Susquehanna Trail York, PA 17404	Conococheague Creek WWF	Franklin County Conservation District 185 Franklin Farm Lane Chambersburg, PA 17201 (717) 264-5499
Greene Township Franklin County	PAR10M145R-R1	Terry Wagner Scot Greene Estates P. O. Box 400 Scotland, PA 17254	Conococheague Creek CWF	Franklin County Conservation District 185 Franklin Farm Lane Chambersburg, PA 17201 (717) 264-5499
Hamilton Township Franklin County	PAG2002807039-R	Richard Rockwell Laurich Ridge 3745 Lincoln Way West Chambersburg, PA 17202	Back Creek TSF	Franklin County Conservation District 185 Franklin Farm Lane Chambersburg, PA 17201 (717) 264-5499
Greene Township Franklin County	PAG2002809015	Donald Stonecipher Chambersburg Baptist Church 588 South Second Street Chambersburg, PA 17201	Conococheague Creek CWF-MF	Franklin County Conservation District 185 Franklin Farm Lane Chambersburg, PA 17201 (717) 264-5499
Southampton Township Franklin County	PAG2002809020	Ian Maule Raystown Crossings 229 Huber Village Boulevard Suite 100 Westerville, OH 43081	Gum Run CWF	Franklin County Conservation District 185 Franklin Farm Lane Chambersburg, PA 17201 (717) 264-5499
Antrim and Guilford Townships Franklin County	ESCGP-1-28- 09-8-02	Jeff Barger Dominion Transmission 445 West Main Street Clarksburg, WV 26301	Muddy Run— Conococheague Creek HQ-CWF	Franklin County Conservation District 185 Franklin Farm Lane Chambersburg, PA 17201 (717) 264-5499



<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>
Chambersburg Borough Franklin County	PAG2002809028	David Sciamanna CADC 100 Lincoln Way East Suite A Chambersburg, PA 17202	UNT to Falling Spring Creek TSF	Franklin County Conservation District 185 Franklin Farm Lane Chambersburg, PA 17201 (717) 264-5499
Penn Township Perry County	PAG2035009008	Stanley S. Snyder 701 North Laurel Street Hazleton, PA 18201	UNT to Shermans Creek WWF	Perry County Conservation District P. O. Box 36 31 West Main Street New Bloomfield, PA 17068
North Lebanon Township Lebanon County	PAG2003808029	Cliff Weaver Landmark Homes 1767 West Main Street Ephrata, PA 17522-1103	UNT to Brandywine Creek TSF	Lebanon County Conservation District 2120 Cornwall Road Suite 5 Lebanon, PA 17042-9788 (717) 272-3908, Ext. 4
Penn Township Perry County	PAG2035009008	Stanley S. Snyder 701 North Laurel Street Hazleton, PA 18201	UNT to Shermans Creek WWF	Perry County Conservation District P. O. Box 36 31 West Main Street New Bloomfield, PA 17068 (717) 582-5119
Huston Township Blair County	PAG2000709007	Howard L. and Harold L. Blattenberger 109 West Penn Street Martinsburg, PA 16662	Plum Creek WWF	Blair County Conservation District 1407 Blair Street Hollidaysburg, PA 16648 (814) 696-0877, Ext. 5
South Annville and North Annville Townships Lebanon County	PAG2003809008	William C. Kurtz MFS, Inc. P. O. Box 340 Annville, PA 17003-0340	Killinger Creek TSF	Lebanon County Conservation District 2120 Cornwall Road Suite 5 Lebanon, PA 17042-9788 (717) 272-3908, Ext. 4
South Londonderry Township Lebanon County	PAG2003808012	Donald Lechleitner Springbrook Farms 1840 Fishburn Road Hershey, PA 17033	Spring Creek WWF	Lebanon County Conservation District 2120 Cornwall Road Suite 5 Lebanon, PA 17042-9788 (717) 272-3908, Ext. 4
Myerstown Borough Lebanon County	PAG2003809004	Michael Zerbe Mike's Pharmacy 452 West Lincoln Drive Myerstown, PA 17067	Tulpehocken Creek TSF	Lebanon County Conservation District 2120 Cornwall Road Suite 5 Lebanon, PA 17042-9788 (717) 272-3908, Ext. 4
Sandy Township Clearfield County	PAG2001709008	Developac, Inc. Joe Varacallo 996 Beaver Drive DuBois, PA 15801	Beaver Run CWF	Clearfield County Conservation District 650 Leonard Street Clearfield, PA 16830 (814) 765-2629
Curwensville Borough Clearfield County	PAG2001709009	Curwensville Area School District 650 Beech Street Curwensville, PA 16833	West Branch of Susquehanna River WWF	Clearfield County Conservation District 650 Leonard Street Clearfield, PA 16830 (814) 765-2629
Ralpho Township Northumberland County	PAG2004909010	Whitetail Run 2095 State Route 54 Elysburg, PA 17824	Miller's Run CWF	Northumberland County Conservation District R. R. 3, Box 238-C Sunbury, PA 17801 (570) 286-7114, Ext. 4

*Facility Location:  
Municipality &  
County*

<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>
Charleston Township Tioga County	PAG2005909007	Craig West 90 Bodine Street Wellsboro, PA 16901	UNT to Charleston Creek WWF	Tioga County Conservation District 50 Plaza Lane Wellsboro, PA 16901 (570) 724-1801, Ext. 3
Ward Township Tioga County	PAG2005909008	Pine Hill Landfill P. O. Box 62 Bloomsburg, PA 16912	Fall Brook CWF	Tioga County Conservation District 50 Plaza Lane Wellsboro, PA 16901 (570) 724-1801, Ext. 3
Kelly Township Union County	PAG2006009007	Max Bossert 155 Bossert Boulevard West Milton, PA 17886	UNT to Susquehanna River WWF	Union County Conservation District Union County Government Center 155 North 15th Street Lewisburg, PA 17837 (570) 524-3860
Bell Township Jefferson County	PAG2003309003	SR 0119 Section 571 Department of Transportation 2550 Oakland Avenue Indiana, PA 15701	Mahoning Creek WWF	Jefferson County Conservation District (814) 849-7463
Pine Township Mercer County	PAG2004309006	George Junior Republic School	UNT Wolf Creek CWF	Mercer County Conservation District (724) 662-2242

*General Permit Type—PAG-3**Facility Location:  
Municipality &  
County*

<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>
Logan Township Blair County	PAR603561	William Kustaborder East End Auto Parts 600 East Sixth Avenue Road Altoona, PA 16602	Spring TSF	DEP—SCRO 909 Elmerton Avenue Harrisburg, PA 17110 (717) 705-4707
Snyder Township Blair County	PAR603562	Miller Parts and Service, Inc. R. D. 3 Box 140 Tyrone, PA 16686	Vanscoyoc Run CWF	DEP—SCRO 909 Elmerton Avenue Harrisburg, PA 17110 (717) 705-4707
East Huntingdon Township Westmoreland County	PAR606147	Henderson Auto, Inc. 802 Mt. Pleasant Road Scottsdale, PA 15683	UNT of Jacobs Creek	Southwest Regional Office: Water Management Program Manager 400 Waterfront Drive Pittsburgh, PA 15222-4745 (412) 442-4000
Center Township Indiana County	PAR806209	Waste Management 625 Cherrington Parkway Moon Township, PA 15108	Tearing Run	Southwest Regional Office: Water Management Program Manager 400 Waterfront Drive Pittsburgh, PA 15222-4745 (412) 442-4000

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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>
Big Beaver Borough Beaver County	PAR806267	Valley Waste Service, Inc. 121 Brickyard Road Mars, PA 16046	Wallace Run	Southwest Regional Office: Water Management Program Manager 400 Waterfront Drive Pittsburgh, PA 15222-4745 (412) 442-4000
Richland Township Cambria County	PAR126106	Pepsi Bottling Group, LLC 429 Industrial Park Road Johnstown, PA 15904	Stony Creek	Southwest Regional Office: Water Management Program Manager 400 Waterfront Drive Pittsburgh, PA 15222-4745 (412) 442-4000
Ambridge Borough Beaver County	PAR606117	Waste Management of PA, Inc. 2097 Duss Avenue Ambridge, PA 15003	UNT to Ohio River	Southwest Regional Office: Water Management Program Manager 400 Waterfront Drive Pittsburgh, PA 15222-4745 (412) 442-4000
Youngwood Borough Westmoreland County	PAR116118	DME Company 70 East Hillis Street Youngwood, PA 15697	Jacks Run	Southwest Regional Office: Water Management Program Manager 400 Waterfront Drive Pittsburgh, PA 15222-4745 (412) 442-4000
Kennedy Township Allegheny County	PAR606215	Tri-State Petroleum Recovery 12 Creek Road McKees Rocks, PA 15136	Chartiers Creek	Southwest Regional Office: Water Management Program Manager 400 Waterfront Drive Pittsburgh, PA 15222-4745 (412) 442-4000
City of Pittsburgh Allegheny County	PAR326114	Pannier Corporation 1130 Old Butler Plank Road Glenshaw, PA 15116	Pine Creek	Southwest Regional Office: Water Management Program Manager 400 Waterfront Drive Pittsburgh, PA 15222-4745 (412) 442-4000
Braddock Borough Allegheny County	PAR606213	Liberty Tire Services of Ohio, LLC 100 Talbot Avenue Braddock, PA 15104	Monongahela River	Southwest Regional Office: Water Management Program Manager 400 Waterfront Drive Pittsburgh, PA 15222-4745 (412) 442-4000

<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>
Chartiers Township Washington County	PAR236121	Cooper Industries, Inc. P. O. Box 579 Meadowlands, PA 15347	Chartiers Creek	Southwest Regional Office: Water Management Program Manager 400 Waterfront Drive Pittsburgh, PA 15222-4745 (412) 442-4000
Somerset Borough Somerset County	PAR806106	FTCA, Inc. P. O. Box 111 258 Beacon Street Somerset, PA 15501	Coxes Creek	Southwest Regional Office: Water Management Program Manager 400 Waterfront Drive Pittsburgh, PA 15222-4745 (412) 442-4000
Chartiers Township Washington County	PAR806123	UPS Freight 1000 Semmes Avenue Richmond, VA 23224	Chartiers Creek	Southwest Regional Office: Water Management Program Manager 400 Waterfront Drive Pittsburgh, PA 15222-4745 (412) 442-4000
Smithfield Borough Fayette County	PAR806268	Johnson Matthey, Inc. 605 Mountain View Drive Smithfield, PA 15478	Georges Creek	Southwest Regional Office: Water Management Program Manager 400 Waterfront Drive Pittsburgh, PA 15222-4745 (412) 442-4000
Rochester Borough Beaver County	PAR156102	Valspar Corporation, Inc. 372 Cleveland Street Rochester, PA 15074	UNT of Beaver River	Southwest Regional Office: Water Management Program Manager 400 Waterfront Drive Pittsburgh, PA 15222-4745 (412) 442-4000
Avonmore Borough Westmoreland County	PAR206122	Akers National Roll 400 Railroad Avenue Avonmore, PA 15618	Kiskiminetas River	Southwest Regional Office: Water Management Program Manager 400 Waterfront Drive Pittsburgh, PA 15222-4745 (412) 442-4000
City of Johnstown Cambria County	PAR206145	Johnstown Redevelopment Authority 4th Floor Public Safety Building 401 Washington Street Johnstown, PA 15901-1892	Conemaugh River	Southwest Regional Office: Water Management Program Manager 400 Waterfront Drive Pittsburgh, PA 15222-4745 (412) 442-4000



<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>
Ohioville Borough Beaver County	PAR806233	S. H. Bell Company 644 Alpha Drive Pittsburgh, PA 15238	Ohio River	Southwest Regional Office: Water Management Program Manager 400 Waterfront Drive Pittsburgh, PA 15222-4745 (412) 442-4000
Slippery Rock Township Lawrence County	PAR608348	Aluminum and Carbon Plus, Inc. 3 Latchgate Lane Mechanicsburg, PA 17050	UNT to Muddy Creek	DEP—NWRO Water Management 230 Chestnut Street Meadville, PA 16335-3481 (814) 332-6942

*General Permit Type—PAG-4*

<i>Facility Location: Municipality &amp; County</i>	<i>Permit No.</i>	<i>Applicant Name &amp; Address</i>	<i>Receiving Water / Use</i>	<i>Contact Office &amp; Phone No.</i>
Franconia Township Montgomery County	PAG040127	William and Donna Hodson 999 Long Mill Road Telford, PA 18969	East Branch of the Perkiomen Creek Watershed 3J	Southeast Regional Office 2 East Main Street Norristown, PA 19401
Lancaster County East Earl Township	PAG043893	Barton E. Short 5451 Division Highway Narvon, PA 17555	UNT Conestoga River 7J	DEP—SCRO 909 Elmerton Avenue Harrisburg, PA 17110 (717) 705-4707
Franklin Park Borough Allegheny County	PAG046401	Heather E. Evans 2520 A Wexford Bayne Road Sewickley, PA 15143	Tributary of Rippling Run	Southwest Regional Office: Water Management Program Manager 400 Waterfront Drive Pittsburgh, PA 15222-4745 (412) 442-4000
Elk Creek Township Erie County	PAG049532	David A. Jones 735 Sirak Drive Fairview, PA 16415	Stormwater channel to Cussawago Creek 16D	DEP—NWRO Water Management 230 Chestnut Street Meadville, PA 16335-3481 (814) 332-6942

*General Permit Type—PAG-12*

<i>Facility Location &amp; Municipality</i>	<i>Permit No.</i>	<i>Applicant Name &amp; Address</i>	<i>Receiving Water / Use</i>	<i>Contact Office &amp; Phone No.</i>
Lancaster County Rapho Township	PAG123682— Amendment #1	Joel H. Rutt Joel Rutt Farm 1178 White Oak Road Manheim, PA 17545	UNT 8005 to Chickies Creek WWF Watershed 07-G	DEP—SCRO 909 Elmerton Avenue Harrisburg, PA 17110 (717) 705-4802
Terry Township Bradford County	PAG124810	Gerald and Libby Vargason Rob Wood Mountain Farm R. R. 2, Box 77 Wyalusing, PA 18853	UNT to Sugar Run CWF	Northcentral Regional Office Watershed Management Program 208 West Third Street Suite 101 Williamsport, PA 17701 (570) 327-0529

<i>Facility Location &amp; Municipality</i>	<i>Permit No.</i>	<i>Applicant Name &amp; Address</i>	<i>Receiving Water/Use</i>	<i>Contact Office &amp; Phone No.</i>
Adams Township Snyder County	PAG124807	Drew Derstein Hamilton Farms, LLC 10049 Ferguson Valley Road Lewistown, PA 17044	North Branch Middle Creek Trout Stocking	Northcentral Regional Office Water Management Program 208 West Third Street Suite 101 Williamsport, PA 17701 (570) 327-3664

## 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 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. 2400076, Operations Permit, Public Water Supply.**

Applicant	<b>United Water Pennsylvania, Inc.</b> 4211 East Park Circle Harrisburg, PA 17111
Borough or Township	Dallas Township
County	<b>Luzerne</b>
Type of Facility	PWS
Consulting Engineer	N/A

Permit to Operate Issued September 8, 2009

**Permit No. 2400103, Operations Permit, Public Water Supply.**

Applicant	<b>United Water Pennsylvania, Inc.</b> 4211 East Park Circle Harrisburg, PA 17111
Borough or Township	Harvey's Lake Borough
County	<b>Luzerne</b>
Type of Facility	PWS
Consulting Engineer	N/A
Permit to Operate Issued	September 8, 2009

**Permit No. 2660012, Operations Permit, Public Water Supply.**

Applicant	<b>United Water Pennsylvania, Inc.</b> 4211 East Park Circle Harrisburg, PA 17111
Borough or Township	Noxen Township
County	<b>Wyoming</b>
Type of Facility	PWS
Consulting Engineer	N/A
Permit to Operate Issued	September 8, 2009

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

**Permit No. 3609503, Public Water Supply.**

Applicant	<b>Cherry Lane Motor Inn</b>
Borough or Township	East Lampeter Township
County	<b>Lancaster</b>
Type of Facility	Installation of nitrate treatment
Consulting Engineer	Brent W. Cowan, P. E. CSC Technology, Inc. 170 Netherwood Drive Coatesville, PA 19320
Permit to Construct Issued:	September 11, 2009

**Permit No. 0109502 MA, Minor Amendment, Public Water Supply.**

Applicant	<b>New Oxford Municipal Authority</b>
Borough or Township	New Oxford Borough

County **Adams**  
 Type of Facility Installation of a roof over the sedimentation basins  
 Consulting Engineer Kennetx T. Grubb, P. E.  
 CET Engineering Services  
 1240 North Mountain Road  
 Harrisburg, PA 17112  
 Permit to Construct Issued: September 9, 2009

**Operations Permit** issued to **Aqua Pennsylvania, Inc.**, 3061153, Cumru Township, **Berks County** on September 2, 2009 for the operation of facilities approved under Construction Permit No. 0609508 MA.

*Northcentral Region: Water Supply Management Program Manager, 208 West Third Street, Williamsport, PA 17701.*

**Permit No. 4109501—Construction** Public Water Supply.

Applicant **Montgomery Borough Water and Sewer Authority**  
 Borough or Township Clinton Township  
 County **Lycoming**  
 Responsible Official John Lynch, Executive Director  
 Montgomery Borough Water and Sewer Authority  
 35 South Main Street  
 Montgomery, PA 17752  
 Type of Facility Public Water Supply—Construction  
 Consulting Engineer Eric Moore, P. E.  
 Larson Design Group  
 1000 Commerce Park Drive  
 P. O. Box 487  
 Williamsport, PA 17703  
 Permit Issued Date September 4, 2009  
 Description of Action Construction of Well No. 2R, transmission line, gas chlorination facilities, cation exchange softening system and anion exchange nitrate removal system.

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

**Operations Permit** issued to **John C. and Karla R. Edwards, d/b/a Edwards Mobile Home Park**, PWSID No. 6250014, Springfield Township, **Erie County**, September 2, 2009, to utilize the installed nitrate removal facilities at Edwards Mobile Home Park, as approved by construction permit number 2507507, issued June 2, 2008.

**Operations Permit** issued to **Municipal Authority of Conneaut Lake**, PWSID No. 6200015, Conneaut Lake Borough, **Crawford County**, September 9, 2009, for the operation of the recently renovated 100,000 gallon elevated steel storage tank, located on High Street, Conneaut Lake Borough, as approved by construction permit number 2076501-MA2, issued June 8, 2009.

**Operations Permit** issued to **Redbank Valley Municipal Authority**, PWSID No. 6160010, New Bethlehem Borough, **Clarion County**, September 10, 2009, for the construction and operation of the temporary intake structure in Redbank Creek. This emergency water supply

permit is for a 90-day duration, or when the proposed permanent intake is constructed and functional, whichever comes first.

**SEWAGE FACILITIES ACT PLAN DISAPPROVAL**

**Plan Disapprovals Granted under the Pennsylvania Sewage Facilities Act (35 P. S. § 750.5)**

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

*Plan Location:*

<i>Borough or Township</i>	<i>Borough or Township Address</i>	<i>County</i>
(Bart Township)	(46 Quarry Rd Quarryville, PA 17566)	Lancaster County

*Plan Description:* The Benjamin G King proposed plan revision for a second dwelling on a farm using an onlot sewage system, was disapproved because the mass balance equation in the preliminary hydrogeologic study incorrectly used the sewage flow figures for a three bedroom home. When adjusted for the proposed five bedroom home and the existing six bedroom home, the results indicate that the lot will be too small to adequately provide the recharge necessary to dilute the nitrate/nitrogen generated from the onlot systems that will serve both dwellings. The average nitrate/nitrogen levels in the groundwater leaving this lot will exceed 10 mg/l. The proposed subdivision is located at the intersection of Hollow Road and Drywells Road at 225 Hollow Road in Bart Township, Lancaster County. The Department of Environmental Protection number is A3-36913-173-2 and the APS number is 663806.

**HAZARDOUS SITES CLEAN-UP UNDER THE ACT OF OCTOBER 18, 1988**

**PUBLIC NOTICE OF PROPOSED SETTLEMENT AGREEMENT PENNSYLVANIA DEPARTMENT OF ENVIRONMENTAL PROTECTION FORWARD TOWNSHIP FLY ASH LANDSLIDE SITE FORWARD TOWNSHIP, ALLEGHENY COUNTY**

Under section 1113 of the Pennsylvania Hazardous Sites Cleanup Act (35 P. S. §§ 6020.101—6020.1305), notice is hereby given that the Department of Environmental Protection (Department) has entered into a proposed Settlement Agreement (Agreement) with Barbara and Stewart Diess, David Gregory, and other individuals, as well as the Commonwealth of Pennsylvania, Department of Transportation; Allegheny Energy, Inc. and West Penn Power Company; the Municipal Authority of Westmoreland County (MAWC); URS Corporation; and Weavertown Transport Leasing, Inc., d/b/a Weavertown Environmental Group. The Agreement resolves civil litigation and related matters resulting from a January 2005 fly ash landslide in Forward Township, Washington County.

Under the Agreement, the Department will be doing additional cleanup of fly ash resulting from the landslide; Allegheny Energy, Inc. and West Penn Power Company and MAWC will be reimbursing the Department for a portion of its past and future cleanup costs; and claims by local residents for cleanup, response costs, personal injuries and property damages will be resolved.

The specific terms of the settlement are set forth in the Agreement. The Department will receive and consider comments relating to the Agreement for sixty days from the date of this Public Notice. The Department has reserved the right to withdraw its consent to the Agreement if comments concerning the Agreement disclose facts or considerations which indicate that the Agreement is impracticable or not in the public interest.

Copies of the Agreement are available for inspection at the Department's Southwest Regional Office. Comments may be submitted, in writing, to Barbara Gunter, Department of Environmental Protection, Hazardous Sites Cleanup, 400 Waterfront Drive, Pittsburgh, PA 15222. Further information may be obtained by contacting Barbara Gunter at (412) 442-4000. TDD users may contact the Department through the Pennsylvania AT&T Relay Services at (800) 645-5984.

## LAND RECYCLING AND ENVIRONMENTAL REMEDIATION

### UNDER ACT 2, 1995

#### PREAMBLE 2

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**The following plans and reports were submitted under the Land Recycling and Environmental Remediation Standards Act (35 P. S. §§ 6026.101—6026.908).**

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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, Regional Environmental Cleanup Program Manager, 2 Public Square, Wilkes-Barre, PA 18711-0790.*

**Former New Jersey Zinc Company-West Plant, Mauch Chunk Road, Palmerton Borough, Carbon County.** J. Mark Nielsen, ENVIRON International Corporation, 1760 Market Street, Suite 1000, Philadelphia, PA 19103 on behalf of his client, CBS Operations, Inc., 299 South Main Street, Suite 1800, Salt Lake City, UT 84111, has submitted a Remedial Investigation Report concerning the remediation of soil and groundwater found to have been impacted by VOCs, Semi-VOCs and metals as a result of historical operations at this former zinc manufacturing plant. The report was submitted in partial fulfillment of the Site-Specific Standard. A public notice regarding the submission of the Remedial Investigation Report was published in *The Morning Call* on August 6, 2009.

**Former Reinhard Elementary School, 309-315 Northampton Street, Hellertown Borough, Northampton County.** Christopher T. Kotch, Barry Isett and Associates, Inc., P. O. Box 147, 85 South Route 100 and Kressler Lane, Trexlertown, PA 18087 on behalf of his client, Hellertown Borough, 685 Main Street, Hellertown, PA 18041, has submitted a Final Report concerning the remediation of soil found to have been impacted by No. 2 fuel oil as a result of a release from a 6,000-gallon underground storage tank during the tank removal process. The report was submitted to document attainment of the Statewide Health Standard. A public notice regarding the submission of the Final Report was published in *The Morning Call* on August 28, 2009.

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

**Former Wolf's Head Property North Parcel, Sugarcreek Township, Venango County.** URS Corporation, Foster Plaza 4, 501 Holiday Drive, Suite 300, Pittsburgh, PA 15220 on behalf of Pennzoil-Quaker State Company, 910 Louisiana OSP 687, Houston, TX 77002 has submitted a Combined Remedial Investigation/Risk Assessment/Final Report concerning remediation of site soil contaminated with acenaphthene, acetone, anthracene, arsenic, barium and compounds, benzene, benzo[a]anthracene, benzo[a]pyrene, benzo[b]fluoranthene, benzo[k]fluoranthene, bis[2-ethylhexyl] phthalate, cadmium, carbazole, chromium (III), chrysene, cresol, 0- (methylphenol, 2-), cresol, p (methylphenol, 4-), dibenzo[a,h]anthracene, dibenzofuran, fluoranthene, fluorene, indeno[1,2,3-cd]pyrene, lead, mercury, methyl-naphthalene, 2-, naphthalene, pentachlorophenol, phenanthrene, selenium, silver and site groundwater contaminated with acenaphthene, acetone, anthracene, arsenic, barium and compounds, benzo[a]anthracene, benzo[a]pyrene, benzo[b]fluoranthene, benzo[ghi]perylene, benzo[k]fluoranthene, beryllium, bis[2-ethylhexyl] phthalate, boron and compounds, cadmium, chromium (III), chrysene, dibenzo[a,h]anthracene, fluoranthene, fluorene, iron, isophorone, lead, manganese, naphthalene, nickel, nitroaniline m-, phenanthrene, pyrene, selenium, silver and zinc compounds. The report is intended to document remediation of the site to meet the Site-Specific Standard.



## LAND RECYCLING AND ENVIRONMENTAL REMEDIATION

UNDER ACT 2, 1995

### PREAMBLE 3

**The Department has taken action on the following plans and reports under the Land Recycling and Environmental Remediation Standards Act (35 P. S. §§ 6026.101—6026.908).**

Provisions of 25 Pa. Code § 250.8, administration of the Land Recycling and Environmental Remediation Standards Act (act), require the Department of Environmental Protection (Department) to publish in the *Pennsylvania Bulletin* a notice of final actions on plans and reports. A final report is submitted to document cleanup of a release of a regulated substance at a site to one of the remediation standards of the act. A final report provides a description of the site investigation to characterize the nature and extent of contaminants in environmental media, the basis of selecting the environmental media of concern, documentation supporting the selection of residential or nonresidential exposure factors, a description of the remediation performed and summaries of sampling methodology and analytical results which demonstrate that the remediation has attained the cleanup standard selected. Plans and reports required by provisions of the act for compliance with selection of remediation to a Site-Specific Standard, in addition to a final report, include a remedial investigation report, risk assessment report and cleanup plan. A remedial investigation report includes conclusions from the site investigation, concentration of regulated substances in environmental media, benefits of refuse of the property and, in some circumstances, a fate and transport analysis. If required, a risk assessment report describes potential adverse effects caused by the presence of regulated substances. If required, a cleanup plan evaluates the abilities of potential remedies to achieve remedy requirements. A work plan for conducting a baseline remedial investigation is required by provisions of the act for compliance with selection of a special industrial area remediation. The baseline remedial investigation, based on the work plan, is compiled into the baseline environmental report to establish a reference point to show existing contamination, describe proposed remediation to be done and include a description of existing or potential public benefits of the use or reuse of the property. The Department may approve or disapprove plans and reports submitted. This notice provides the Department's decision and, if relevant, the basis for disapproval.

For further information concerning the plans and reports, contact the Environmental Cleanup Program manager in the Department regional office before which the notice of the plan or report appears. If information concerning a final report is required in an alternative form, contact the Community Relations Coordinator at the appropriate regional office. TDD users may telephone the Department through the Pennsylvania AT&T Relay Service at (800) 654-5984.

The Department has received the following plans and reports:

*Northcentral Region: Environmental Cleanup Program Manager, 208 West Third Street, Williamsport, PA 17701.*

**Eastern Industries, Inc.**, Wyalusing Township, **Bradford County**. Pennsylvania Tectonics, 826 Main Street, Peckville, PA 18452 on behalf of Eastern Indus-

tries, Inc., Route 347, Clifford, PA 18421 has submitted a Final Report within 90 days of the release concerning remediation of site soil contaminated with diesel fuel and used motor oil. The Final Report demonstrated attainment of the Statewide Health Standard and was approved by the Department on September 10, 2009.

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

**Burning Well Crude Oil Gathering Facility**, Sergeant Township, **McKean County**. ATC Associates, Inc., 103 North Meadows Drive, Suite 215, Wexford, PA 15090 on behalf of SOPUS, Inc., 203 Steepleview Drive, Clarion, PA 16214 has submitted a Final Report concerning the remediation of site soil contaminated with 1,3,5-trimethylenbenzene. The Final Report demonstrated attainment of the Statewide Health Standard and was approved by the Department on September 14, 2009.

### 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 WMGR076. Jerart, Inc.**, P. O. Box 153, Baden, PA 15005-0153. The permit authorizes processing and beneficial use of slag fines (approximately less than 1/4 inch), classifier sludge and filter cake from the production of steel using the basic oxygen process (BOP) in a demonstration project as subbase material for construction of an historic park at the Legionville/Logstown site in Harmony Township, **Beaver County**. The approved processing is limited to blending the BOP wastes in a 4:1:1 by weight ratio of slag fines:classifier sludge:filter cake. The permit was revoked at the request of Jerart, Inc. by Central Office on September 14, 2009.

Jerart, Inc. has never operated under General Permit Number WMGR076. The Department intends on releasing Jerart's bond for the site.

Persons interested in reviewing the general permit revocation may contact Ronald C. Hassinger, Chief, General Permits/Beneficial Use Section, Division of Municipal and Residual Waste, Bureau of Land Recycling and Waste Management, P. O. Box 8472, Harrisburg, PA 17105-8472, (717) 787-7381. TDD users may contact the Department through the Pennsylvania AT&T Relay Service, (800) 654-5984.

### OPERATE WASTE PROCESSING OR DISPOSAL AREA OR SITE

**Permit Terminated 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. 301321. Atlas Environmental Services and Equipment Company**, 6801 SR Building A, Philadelphia, PA 19135, City of Philadelphia, **Philadelphia County**. The facility was permitted as a waste oil transfer facility on September 13, 1999. Operations at the facility ceased at the end of 2000 and the facility was clean closed. Permit revocation was never requested nor has the operator applied for permit renewal. Operations were never restarted under the existing permit, the facility has remained clean closed, and the permit term has now expired. As a result, the permit is considered terminated and the bond will be released. The permit was terminated by the Southeast Regional Office on September 13, 2009.

**Applications 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 Regulations to Operate Solid Waste Processing or Disposal Area or Site.**

*Southcentral Region: Regional Solid Waste Manager, 909 Elmerton Avenue, Harrisburg, PA 17110.*

**Permit Application No. 101389. The Lancaster County Solid Waste Management Authority**, located in Manor Township, **Lancaster County**. The Department of Environmental Protection (Department) has reviewed the above referenced application for permit modification in order to determine whether it contains the information, maps, fees and other documents necessary to be considered administratively complete. Be advised that the application has been determined to be administratively complete.

Comments concerning the application should be directed to Anthony Rathfon, Program Manager, Southcentral Regional Office. Persons interested in obtaining more information about the general permit application may contact the Southcentral Regional Office, (717) 705-4706. 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.

## 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.*

*Northeast Region: Air Quality Program, 2 Public Square, Wilkes-Barre, PA 18711-0790, Ray Kempa, New Source Review Chief, (570) 826-2507.*

**58-323-001GP5: Exco-North Coast Energy, Inc.** (280 Executive Drive, Cranberry Township, PA 16066) on September 10, 2009, to construct and operate a Natural Gas Compressor Engine No. 1 at their site in Clifford Township, **Susquehanna County**.

**58-323-002GP5: Exco-North Coast Energy, Inc.** (280 Executive Drive, Cranberry Township, PA 16066) on September 10, 2009, to construct and operate a Natural

Gas Compressor Engine No. 2 at their site in Clifford Township, **Susquehanna County**.

*Southcentral Region: Air Quality Program, 909 Elmerton Avenue, Harrisburg, PA 17110, William R. Weaver, New Source Review Chief, (717) 705-4702.*

**GP9-1-07-03014: New Enterprise Stone and Lime Co., Inc.** (P. O. Box 77, New Enterprise, PA 16664) on September 8, 2009, for a Diesel or No. 2 fuel-fired Internal Combustion Engine under GP9 in Taylor Township, **Blair 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.**

*Northeast Region: Air Quality Program, 2 Public Square, Wilkes-Barre, PA 18711-0790, Ray Kempa, New Source Review Chief, (570) 826-2531.*

**54-303-020: Pottsville Materials, LLC—Wadesville-Quarry Asphalt Plant** (P. O. Box 1467, Skippack, PA 19474) on September 1, 2009, to construct an asphalt plant with RAP and WDLF at their facility in New Castle Township, **Schuylkill County**.

*Southcentral Region: Air Quality Program, 909 Elmerton Avenue, Harrisburg, PA 17110, William R. Weaver, New Source Review Chief, (717) 705-4702.*

**36-03115A: Pennsy Supply, Inc.** (P. O. Box 3331, Harrisburg, PA 17105) on September 3, 2009, to install one vibrating pan feeder, one tertiary crusher and one 36-inch wide conveyor belt to the wet portion of the processing plant for their facility in West Hempfield Township, **Lancaster County**.

*Northwest Region: Air Quality Program, 230 Chestnut Street, Meadville, PA 16335-3481, George Monasky, New Source Review Chief, (814) 332-6940.*

**16-132H: Clarion Boards, Inc.** (P. O. Box 340, 143 Fiberboard Road, Shippensburg, PA 16254-0340) on September 9, 2009, for the NSR application for VOC emissions as a result of testing performed that showed the facility is major for VOC in Paint Township, **Clarion 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.*

**46-0031C: SmithKline Beecham d/b/a GlaxoSmith-Kline** (1250 South Collegeville Road, Collegeville, PA 19426) on September 4, 2009, to operate two scrubbers in Upper Providence Township, **Montgomery County**.

**09-0186A: Kinder Morgan Bulk Terminals, Inc.** (1 Sinter Road, Fairless Hills, PA 19030) on September 10, 2009, to operate a fertilizer transfer and storage operation in Falls Township, **Bucks County**.



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**Title V Operating Permits Issued under the Air Pollution Control Act (35 P. S. §§ 4001—4015) and 25 Pa. Code Chapter 127, Subchapter G.**

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*Southcentral Region: Air Quality Program, 909 Elmerton Avenue, Harrisburg, PA 17110, Yasmin Neidlinger, Facilities Permitting Chief, (717) 705-4702.*

**01-05029: RRI Energy Wholesale Generation, LLC** (121 Champion Way, Suite 200, Canonsburg, PA 15317-5817) on August 26, 2009, to operate a natural gas fired electric generating facility at their Hunterstown Station in Straban Township, **Adams County**. This Title V operating permit was administratively amended due to a name change. This is Revision No. 1.

**06-05022: PA State System of Higher Education** (Main Street, Kutztown, PA 19530) on September 4, 2009, to operate the Kutztown University of Pennsylvania in Maxatawny Township, **Berks County**. This action is a renewal of the Title V operating permit.

*Southwest Region: Air Quality Program, 400 Waterfront Drive, Pittsburgh, PA 15222-4745, Barbara Hatch, Facilities Permitting Chief, (412) 442-4174.*

**TV-56-00232: Shade Landfill, Inc.** (625 Cherrington Parkway, Moon Township, PA 15108-4321) on August 31, 2009, for continued operation of their municipal solid waste landfill in Shade Township, **Somerset County**. The company operates landfill, gas collection and control system, and soil processing system at this site. The facility wide potential emissions of air contaminants are 40.38 tpy of NO<sub>x</sub>, 2.52 tpy of SO<sub>x</sub>, 31.35 tpy of VOCs, 85.80 tpy of PM<sub>10</sub> and 96.94 tpy of CO. The Title V Operating Permit contains applicable emission limits, as well as testing, monitoring, recordkeeping and reporting requirements.

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**Operating Permits for Non-Title V Facilities Issued under the Air Pollution Control Act (35 P. S. §§ 4001-4015) and 25 Pa. Code Chapter 127, Subchapter F.**

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*Southcentral Region: Air Quality Program, 909 Elmerton Avenue, Harrisburg, PA 17110, William R. Weaver, New Source Review Chief, (717) 705-4702.*

**67-03143: The ESAB Group, Inc.** (801 Wilson Avenue, Hanover, PA 17331-7948) on September 10, 2009, for operation of their welding equipment and consumables manufacturing facility in Hanover Borough, **York County**.

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**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.**

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*Southeast Region: Air Quality Program, 2 East Main Street, Norristown, PA 19401, Janine Tulloch-Reid, Facilities Permitting Chief, (484) 250-5920.*

**15-00078: Centocor, Inc.** (200 Great Valley Parkway, Malvern, Pennsylvania 19355) on September 9, 2009, to issue a revised State-only Operating Permit to operate four emergency generators, three boilers, water heaters and space heaters in East Whitelead Township, **Chester County**. The facility is synthetic minor for NO<sub>x</sub>. The following Plan Approvals and Operating Permits, PA-15-0078, PA-15-0078B, PA-15-0078C, OP-15-0078 are being incorporated into the facility permit, SMOP-15-00078. This Operating Permit shall include monitoring, and

recordkeeping designed to ensure this facility complies with all applicable air quality regulations.

*Southcentral Region: Air Quality Program, 909 Elmerton Avenue, Harrisburg, PA 17110, William R. Weaver, New Source Review Chief, (717) 705-4702.*

**38-05020: Keystone Protein Co.** (P. O. Box 37, Fredericksburg, PA 17026-0037) on September 3, 2009, for modification to rendering operations with a new cooker controlled by existing scrubber and a 600 hp boiler in **Lebanon County**. This State-only operating permit was administratively amended to incorporate Plan Approval 38-05020B. This is Revision No. 1.

**67-03110: Protech Powder Coating, Inc.** (939 Monocacy Road, York, PA 17404-1615) on September 10, 2009, for powder coating operations in the City of York, **York County**. This State-only operating permit was administratively amended due to a change of ownership. This is Revision No. 1.

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**ACTIONS ON COAL AND NONCOAL MINING ACTIVITY APPLICATIONS**

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**Actions on applications under the Surface Mining Conservation and Reclamation Act (52 P. S. §§ 1396.1—1396.19a); the Noncoal Surface Mining Conservation and Reclamation Act (52 P. S. §§ 3301—3326); The Clean Streams Law (35 P. S. §§ 691.1—691.1001); the Coal Refuse Disposal Control Act (52 P. S. §§ 30.51—30.66); and The Bituminous Mine Subsidence and Land Conservation Act (52 P. S. §§ 1406.1—1406.21). The final action on each application also constitutes action on the request for 401 Water Quality Certification and the NPDES permit application. Mining activity permits issued in response to the applications will also address the application permitting requirements of the following statutes: the Air Quality Control Act (35 P. S. §§ 4001—4015); the Dam Safety and Encroachments Act (32 P. S. §§ 693.1—693.27); and the Solid Waste Management Act (35 P. S. §§ 6018.101—6018.1003).**

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*Coal Permits Actions*

*California District Office: 25 Technology Drive, Coal Center, PA 15423, (724) 769-1100.*

**32011302 and GP12-32011302-R10. AMFIRE Mining Company, LLC**, One Energy Place, Latrobe, PA 15650, to revise the permit for the Gillhouser Run Deep Mine in Brush Valley Township, **Indiana County** to establish an emission inventory based on a revised maximum total annual raw coal throughput for the mine of 340,000 tons/calendar year and the addition of a 46 HP diesel engine and a portable screen for reject material based on 275 tons/hour operating 5,900 hours/year. Approval is authorized under General Permit BAQ-GPA/GP12 and is required to meet all applicable limitations, terms, and conditions of Authorization GP12-32011302-R10. No additional discharges. Application received March 2, 2009. Permit issued September 9, 2009.

*Knox District Mining Office: P. O. Box 669, 310 Best Avenue, Knox, PA 16232-0669, (814) 797-1191.*

**16070101 and NPDES Permit No. PA0258270. Amerikohl Mining, Inc.**, 202 Sunset Drive, Butler, PA 16001, revision to an existing bituminous surface strip operation to add 2 acres for support and delete 2 of unaffected acres in Monroe Township, **Clarion County**. Receiving streams: UNTs to Brush Run and Brush Run,

UNT to Piney Creek. Application received January 22, 2009. Permit Issued September 10, 2009.

*Moshannon District Mining Office: 186 Enterprise Drive, Philipsburg, PA 16866, (814) 342-8200.*

**17010101. Waroquier Coal Company**, P. O. Box 128, Clearfield, PA 16830, permit renewal for reclamation only of a bituminous surface mine in Pike and Lawrence Townships, **Clearfield County**, affecting 70.2 acres. Permit issued August 31, 2009.

*Pottsville District Mining Office: 5 West Laurel Boulevard, Pottsville, PA 17901, (570) 621-3118.*

**54880203R4 and NPDES Permit No. PA0594393. Rausch Creek Land, LP**, 978 Gap Street, Valley View, PA 17983, renewal of an existing anthracite coal refuse reprocessing operation for reclamation activities only in Tremont Township, **Schuylkill County**, affecting 15.8 acres, receiving stream: Rowe Tunnel to Lorberrry Creek. Application received February 3, 2009. Renewal issued September 10, 2009.

**54870101R4 and NPDES Permit No. PA0593842. Kuperavage Enterprises, Inc.**, P. O. Box 99, Middleport, PA 17953-0099, renewal of an existing anthracite surface mine and refuse disposal operation in Blythe Township, **Schuylkill County**, affecting 638 acres, receiving stream: UNT to Schuylkill River. Application received February 4, 2009. Renewal issued September 10, 2009.

**54813009R5. Joe Kuperavage Coal Company**, 916 Park Avenue, Port Carbon, PA 17965, renewal of an existing anthracite surface mine and coal refuse reprocessing operation in East Norwegian Township, **Schuylkill County** affecting 57.7 acres, receiving stream: none. Application received January 2, 2009. Renewal issued September 11, 2009.

**54030103R and NPDES Permit No. PA0224367. Jett Contracting Company**, P. O. Box 243, Brockton, PA 17925, renewal of an existing anthracite surface mine operation in Blythe Township, **Schuylkill County**, affecting 116 acres, receiving stream: Morgan's Run. Application received October 23, 2008. Renewal issued September 14, 2009.

#### *Noncoal Permits Actions*

*Cambria District Mining Office: 286 Industrial Park Road, Ebensburg, PA 15931, (814) 472-1900.*

**6875SM3 and NPDES No. PA0612383. Eastern Industries Inc.**, 4401 Camp Meeting Road, Suite 200, Center Valley, PA 18034-9454, renewal of NPDES permit in Armagh Township, **Mifflin County**, affecting 103.6 acres. Receiving streams: UNTs to, and, Honey Creek, classified for the following use: HQ-CWF. There are no potable water supply intakes within 10 miles downstream. Application received May 20, 2009. Permit issued September 9, 2009.

*Knox District Mining Office: P. O. Box 669, 310 Best Avenue, Knox, PA 16232-0669, (814) 797-1191.*

**20070302. W. L. Dunn Construction Company**, 180 North Franklin Street, Cochranon, PA 16314. Application for a stream encroachment for mining activities to be conducted no closer than 50 feet to UNT 2 to Little Sugar Creek for the purposes of support facility construction and maintenance. Receiving streams: Little Sugar Creek. Application Received July 2, 2009. Permit Issued September 10, 2009.

*Pottsville District Mining Office: 5 West Laurel Boulevard, Pottsville, PA 17901, (570) 621-3118.*

**22880301C10 and PA0223948. Rocky Licensing Corp.**, P. O. Box 3331, Harrisburg, PA 17105, correction to an existing quarry to update the average discharge rate of treated mine drainage from the NPDES Permit from 0.1444 mgd to 1.5 mgd in Lower Swatara Township, **Dauphin County**, receiving stream: Swatara Creek. Application received May 8, 2009. Correction issued September 11, 2009.

**15830602C8 and NPDES Permit No. PA0614203. Allan A. Myers, LP d/b/a Independence Construction Materials**, 638 Lancaster Avenue, Malvern, PA 19355, renewal of NPDES Permit for discharge of treated mine drainage from a quarry operation in Charlestown Township, **Chester County**, receiving stream: intermittent UNT to Pickering Creek. Application received July 16, 2009. Renewal issued September 11, 2009.

**8074SM1C3 and NPDES Permit No. PA0013722. Glasgow, Inc.**, P. O. Box 1089, Glenside, PA 19038, renewal of NPDES Permit for discharge of treated mine drainage from a quarry operation in Montgomery Township, **Montgomery County**, receiving stream: Park Creek. Application received July 23, 2009. Renewal issued September 11, 2009.

#### **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.*

**07094004. Douglas Explosives, Inc.**, P. O. Box 77, Philipsburg, PA 16866, blasting activity permit issued for site development project at Spring Cove School in Taylor Township, **Blair County**. Blasting activity permit end date is December 30, 2009. Permit issued September 9, 2009.

**21094136. Newville Construction Service, Inc.**, 408 Mohawk Road, Newville, PA 17241-9424, blasting activity permit issued for Murphy Pool development in West Pennsboro Township, **Cumberland County**. Blasting activity permit end date is September 1, 2010. Permit issued September 3, 2009.

*Greensburg District Mining Office: Armbrust Professional Center, 8205 Route 819, Greensburg, PA 15601, (724) 925-5500.*

**26094007. Demtech, Inc.**, 65 Bald Mountain Road, Dubois, WY 82513. Blasting activity permit for the demolition of a coal silo, located in Luzerne Township, **Fayette County**. The duration of blasting is expected to last 30 days. Blasting permit issued September 10, 2009.

*Pottsville District Mining Office: 5 West Laurel Boulevard, Pottsville, PA 17901, (570) 621-3118.*

**22094109. Warren's Excavating and Drilling, Inc.**, P. O. Box 214, Myerstown, PA 17067, construction blasting for Northwoods Crossing in Lower Paxton Township, **Dauphin County** with an expiration date of September 8, 2010. Permit issued September 10, 2009.



**36094161. M and J Explosives, Inc.**, P. O. Box 608, Carlisle, PA 17013, construction blasting for Pioneer Crossing in West Lampeter Township, **Lancaster County** with an expiration date of September 30, 2010. Permit issued September 10, 2009.

**36094162. Warren's Excavating and Drilling, Inc.**, P. O. Box 214, Myerstown, PA 17067, construction blasting for Summerlyn Green in Ephrata Borough and Ephrata Township, **Lancaster County** with an expiration date of September 8, 2010. Permit issued September 10, 2009.

**45094130. Explosive Services, Inc.**, 7 Pine Street, Bethany, PA 18431, construction blasting for Castle Rock Acres in Middle Smithfield Township, **Monroe County** with an expiration date of September 30, 2010. Permit issued September 10, 2009.

**48094110. Schlouch, Inc.**, P. O. Box 69, Blandon, PA 19510, construction blasting for St. Luke's Hospital in Bethlehem Township, **Northampton County** with an expiration date September 2, 2010. Permit issued September 10, 2009.

**46094115. J. Roy's, Inc.**, P. O. Box 125, Bowmansville, PA 17507, construction blasting for Ambler YMCA in Douglass Township, **Montgomery County** with an expiration date of September 3, 2010. Permit issued September 13, 2009.

**46094116. Schlouch, Inc.**, P. O. Box 69, Blandon, PA 19510, construction blasting for Douglass Township Giant in Lower Gwynedd Township, **Montgomery County** with an expiration date of September 5, 2010. Permit issued September 13, 2009.

## 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 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 Floodplain Management Act (32 P. S. § 679.302) and The Clean Streams Law (35 P. S. §§ 691.1—691.702) and Notice of Final Action for Certification under section 401 of the FWPCA (33 U.S.C.A. § 1341).**

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*Permits, Environmental Assessments and 401 Water Quality Certifications Issued:*

### WATER OBSTRUCTIONS AND ENCROACHMENTS

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

**E06-641: Berks County Industrial Development Authority**, Berks County Services Center, 14th Floor, 633 Court Street, Reading, PA 19610, Bethel Township, **Berks County**, United States Army Corps of Engineers Philadelphia District.

To (1) remove two 18-inch CMP culvert pipes and one 18-inch RCP culvert pipe and restore 30-linear feet of a UNT to Swatara Creek (CWF) (Bethel, PA Quadrangle N: 17.86 inches; W: 8.14 inches, Latitude: 40° 28' 24"; Longitude: 75° 41' 0.60"); (2) construct and maintain a 79-foot long, 1-foot depressed 6-foot by 6-foot concrete box culvert and an 8-inch diameter cement lined ductile iron pipe water line crossing in and across a UNT to Swatara Creek (CWF) (Bethel, PA Quadrangle N: 18.01 inches; W: 8.12 inches, Latitude: 40° 28' 27"; Longitude: 75° 41' 0.24"); (3) construct and maintain an 8-inch diameter cement lined ductile iron water line across a UNT to Swatara Creek (CWF) (Bethel, PA Quadrangle N: 17.36 inches; W: 8.13 inches, Latitude: 40° 28' 24"; Longitude: 75° 41' 0.50"); (4) construct and maintain an 8-inch diameter SDR sewer line utility across a UNT to Swatara Creek (CWF) (Bethel, PA Quadrangle N: 17.86 inches; W: 8.14 inches, Latitude: 40° 28' 24"; Longitude: 75° 41' 0.59"); (5) construct and maintain an 88-foot long, 1-foot depressed 12-foot by 6-foot concrete box culvert in a UNT to Swatara Creek (CWF) impacting 3,144 square feet (0.072 acre) of Palustrine Emergent wetlands and 325 cubic yards of fill for the roadway impacting 2,610 square feet (0.06 acres) of Palustrine Emergent wetlands (Bethel, PA Quadrangle N: 18.71 inches; W: 9.19 inches, Latitude: 40° 28' 41"; Longitude: 75° 41' 28"); (6) construct and maintain a 105-foot long, 1-foot depressed 12-foot by 6-foot concrete box culvert, an 8-inch diameter cement lined ductile iron pipe water line and a 10-inch diameter SDR sewer line in and across a UNT to Swatara Creek (CWF) and impacting 1,506 square feet (0.034 acre) of Palustrine, emergent scrub/shrub wetlands (Bethel, PA Quadrangle N: 18.71 inches; W: 9.46 inches, Latitude: 40° 28' 41"; Longitude: 75° 41' 35"); (7) construct and maintain an 8-inch diameter SDR sewer line utility line crossing over an existing 8-foot by 6-foot concrete box culvert in a UNT to Swatara Creek (CWF) (Bethel, PA Quadrangle N: 18.11 inches; W: 9.46 inches, Latitude: 40° 28' 29"; Longitude: 75° 41' 35"); (8) drain an

existing 2,650-square foot pond and restore 181-linear feet of a UNT to Swatara Creek (CWF) (Bethel, PA Quadrangle N: 0.35 inches; W: 8.09 inches, Latitude: 40° 45' 7"; Longitude: 75° 41' 0.24"); and (9) drain an existing 505-square foot pond and restore 246 linear feet of a UNT to the Swatara Creek (CWF) (Bethel, PA Quadrangle N: 17.81 inches; W: 8.14 inches, Latitude: 40° 28' 23"; Longitude: 75° 41' 0.6"), and to drain an existing 11,550-square foot pond and place 3,100 cubic yards of fill to establish the area as 0.40 acre of Palustrine, Emergent wetlands (Bethel, PA Quadrangle N: 18.56 inches; W: 9.27 inches, Latitude: 40° 28' 38"; Longitude: 75° 41' 30"). All for the purpose of creating an industrial park in Bethel Township, Berks County. Wetland mitigation in the amount of 5.7 acres will occur onsite.

*Northcentral Region: Watershed Management Program Manager, 208 West Third Street, Williamsport, PA 17701, (570) 327-3636.*

**E14-523. Robyn Graboski, Randall Romesberg, Wendell and Ella Williams, and Kerry E. and Debra M. Becker,** Engineering District 2-0, 1924-30 Daisy Street, Clearfield, PA 16830. Kirstyn Lane drainage improvements, in Worth Township, **Centre County**, United States Army Corps of Engineers Baltimore District (Port Matilda, PA Quadrangle N: 40° 49' 14"; W: 78° 1' 7").

To construct and maintain: (1) a 944-foot long rock-lined interceptor ditch; (2) a 29-inch by 45-inch elliptical reinforced concrete pipe with a Type D-E modified headwall, a Type D-W endwall and 26-foot long by 38-foot wide R-6 rock outlet apron to replace an existing 18-inch diameter corrugated plastic road crossing culvert and outlet; (3) removal of three small existing cross pipes under Kirstyn Lane that will not be needed with the new interceptor ditch, located 350 feet west of the intersection of Kirstyn Lane and SR 322. This permit also includes 401 Water Quality Certification.

*Southwest Region: Watershed Management Program Manager, 400 Waterfront Drive, Pittsburgh, PA 15222-4745.*

**E02-1589. Pennsylvania Department of Conservation and Natural Resources,** 195 Park Road, P. O. Box 387, Prospect, PA 16058. To construct a sheet pile wall in the City of Pittsburgh, **Allegheny County**, Pittsburgh United States Army Corps of Engineers District. (Pittsburgh West, PA Quadrangle N: 11.65 inches; W: 1.28 inches, Latitude: 40° 26' 21"; Longitude: 80° 00' 33"). To construct and maintain a sheet pile wall of various heights and approximately 1,000 feet in length, to place and maintain fill in the channel of and along the right bank of the Monongahela River (WWF) and to extend and operate and maintain the existing outfall structures along the right bank of said stream for the purpose of constructing a pedestrian walkway known as the Mon Wharf Connector. The project location begins just upstream from the Fort Pitt Bridge and extends underneath this bridge. The applicant will install thirty-seven porcupine jr. crib structures in the river, within the project area, to compensate for the habitat to be lost by the fill in the river.

**E04-324. Norfolk Southern Railway Company,** 1200 Peachtree Street, Box 184, Atlanta, GA 30309. To construct two additional mooring cells in Conway Borough, **Beaver County**, Pittsburgh United States Army Corps of Engineers District. (Beaver, PA Quadrangle N: 8.5 inches; W: 0.6 inches, Latitude: 40° 40' 19"; Longitude: 80° 15' 16"). To construct and maintain two additional 17-foot diameter mooring cells (Cells 3 and 4) in the channel and along the right bank of the Ohio River

(WWF) for the purpose of expanding the existing barge mooring facility, to operate and maintain the two existing 17-foot diameter mooring cells (Cells 1 and 2) in the channel and along the right bank of said stream and to perform maintenance dredging (345 feet in length by 70 feet in width) in the channel and along the right bank of said stream around the mooring cells for the purpose of allowing safer access for barges and a more efficient way to unload barges. The entire barge mooring facility is approximately 345 feet in length by 90 feet in width and is located at the Conway Yard near River Mile 22.5 in Conway Borough, Beaver County and will impact approximately 350 linear feet of stream channel.

**E30-228. Pennsylvania Department of Transportation, District 12-0,** P. O. Box 459, Uniontown, PA 15401. To remove and construct a bridge in Center Township, **Greene County**, Pittsburgh United States Army Corps of Engineers District. (Rogersville, PA Quadrangle: N: 1.75 inches; W: 8 inches, Latitude: 39° 52' 59"; Longitude: 80° 18' 24.3"). To remove the existing two span SR 21 bridge and to construct and maintain a new 35.5-inch wide bridge having a span of 53.5 inches (single span) and underclearance of 9.1 feet over the South Fork of Tenmile Creek (HQ-WWF); to construct and maintain associated stormwater outfalls; and construct temporary stream diversion and causeways. The work is associated with the proposed roadway improvements to SR 21. The new bridge is located approximately 65 feet upstream of the existing bridge. To compensate for the stream impacts the applicant will construct and maintain a fish habitat structure at the site of the existing bridge.

**E65-926. Loyalhanna Watershed Association, Inc.,** 110 Andi Lane, Ligonier, PA 15668. To construct a culvert, outfall and temporary wetland fill in Derry Township, **Westmoreland County**, Pittsburgh United States Army Corps of Engineers District. (Latrobe, PA Quadrangle N: 13.47 inches; W: 0.35 inches, Latitude: 40° 19' 27"; Longitude: 79° 22' 39"). To

1. install and maintain a 5-foot by 5-foot Powerhouse;
2. install, maintain and remove a temporary road crossing;
3. install and maintain an outfall structure;
4. install and maintain three 24-inch HDPE waterline crossings across Saxman Run (WWF) and two crossings of UNTs to Saxman Run (WWF);
5. install and maintain a 24-inch HDPE waterline in approximately 0.54 acres of wetlands.

All for the purpose of installing a micro turbine electric generation facility and acid mine drainage treatment facility.

*Northwest Region: Watershed Management Program Manager, 230 Chestnut Street, Meadville, 16335.*

**E10-451, Mars Holdings, Inc.,** P. O. Box 928, 500 Wittenberg Way, Mars, PA 16046-2607, Alzheimers Assisted Living Center Culvert in Adams Township and Mars Borough, **Butler County**, United States Army Corps of Engineers Pittsburgh District (Mars, PA Quadrangle N: 40° 41' 24.9"; W: 80° 0' 48.9").

To construct and maintain a 47-foot long, 20-foot wide by 6-foot high Con Span arch culvert road crossing in a UNT Breakneck Creek serving as an entrance to a proposed specialty medical care and residential center.

**E61-286, Oil Creek Township,** 16835 Shreve Run Road, Pleasantville, PA 16341. Wastewater Collection and Conveyance Extension, in Oil Creek Township, **Venango**

**County**, United States Army Corps of Engineers Pittsburgh District (Pleasantville, PA Quadrangle N: 41° 35' 41"; W: 79° 34' 51").

To construct and maintain 60,000 linear feet sewerline extension and seven pump stations conveying sewage to the Borough of Pleasantville wastewater treatment plant involving the following:

1. To construct and maintain 11 sewer line stream crossings by directional drilling in UNTs to Pine Creek (HQ-CWF, 7 crossings), UNTs to Pine Creek (CWF, 2 crossings), and UNTs to Pithole Creek (CWF, 2 crossings)

2. To construct and maintain 5 sewer line crossings of PFO exceptional value wetlands and 6 sewer line crossings of other PFO wetlands by directional drilling To construct and maintain a 20-foot by 30-foot pump station and associated access road within the floodway of an UNT to Pine Creek.

#### ENVIRONMENTAL ASSESSMENTS

*Northcentral Region: Program Manager, Watershed Management Program, 208 West Third Street, Williamsport, PA 17701.*

**EA41-004. U.S. Fish and Wildlife Service**, 315 South Allen Street, Suite 322, State College, PA 16801. Lycoming Creek Stream Restoration Project at Trout Run Park, Lewis Township, **Lycoming County**, Baltimore United States Army Corps of Engineers District.

(Trout Run, PA Quadrangle N: 41° 22' 35"; W: 77° 04' 00").

To stabilize and improve aquatic habitat along a 4,800-foot section of Lycoming Creek. The project will involve relocation of the stream to a relic channel. A total of nine rock vanes and six log vanes will be constructed throughout the length of the reconstructed channel. The stream restoration work will result in impacts to 3,300 linear feet of Lycoming Creek, and 1.35 acres of PEM/PEM-SS wetlands. The wetland area that will be created in the abandoned stream channel will exceed the wetland acre-

age affected by the channel relocation. This activity has been authorized under Section 105.12(a) (16) as a restoration waiver. This environmental assessment grants Water Quality Certification under Section 401 of the Federal Water Pollution Control Act [33 U.S.C.A. 1341(a)].

#### EROSION AND SEDIMENT CONTROL

The following Erosion and Sediment Control Permits have been issued.

Any person aggrieved by these actions may appeal, under section 4 of the Environmental Hearing Board Act (35 P.S. § 7514) and 2 Pa.C.S. Chapter 5, Subchapter A (relating to practice and procedure of Commonwealth agencies), 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 may 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 to 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 decisional law.

If individuals want to challenge this action, their appeal must reach the Board within 30 days. Individuals do not need a lawyer 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. If individuals cannot afford a lawyer, individuals may qualify for pro bono representation. Call the Secretary to the Board (717) 787-3483 for more information.

*Southwest Region: Oil and Gas Program Manager, 400 Waterfront Drive, Pittsburgh, PA 15222-4745.*

08/18/2009

ESCGP-1 No.: ESX09-111-0005

Applicant Name: Chief Oil and Gas, LLC

Contact Person: Michael D. Hritz

Address: 6051 Wallace Road Extension, Suite 210

City: Wexford State: PA Zip Code: 15090

County: Somerset Township(s): Middlecreek

Receiving Stream(s) and Classifications: UNT to Middle Creek and Unnamed and UNT to Lost Creek, HQ, Other

08/18/2009

ESCGP-1 No.: ESX09-125-0027

Applicant Name: Range Resources—Appalachia, LLC

Contact Person: Carla Suszkowski

Address: 380 Southpointe Boulevard, Suite 300

City: Canonsburg State: PA Zip Code: 15317

County: Washington Township(s): South Franklin

Receiving Stream(s) and Classifications: Bane Creek, Other

08/19/09

ESCGP-1 No.: ESX09-129-0018

Applicant Name: Rex Energy Corporation

Contact Person: William Ottaviani

Address: 476 Rolling Ridge Drive, Suite 300

City: State College State: PA Zip Code: 16801

County: Westmoreland Township(s): Derry

Receiving Stream(s) and Classifications: McCune Run, Union Run, and Stony Run, Other, TSF, WWF and CWF, respectively



08/19/09

ESCGP-1 No.: ESX09-125-0028

Applicant Name: MarkWest Liberty Midstream and Resources

Contact Person: Brian Rayburn

Address: 100 Plaza Drive, Suite 102

City: Atlasburg State: PA Zip Code: 15004

County: Washington Township(s): Mt. Pleasant

Receiving Stream(s) and Classifications: Cross Creek and UNT to Cross Creek, HQ

08/19/09

ESCGP-1 No.: ESX09-059-0032

Applicant Name: EQT Production Company

Contact Person: Hanna E. McCoy

Address: 225 North Shore Drive, 3rd Floor

City: Pittsburgh State: PA Zip Code: 15212

County: Greene Township(s): Morris

Receiving Stream(s) and Classifications: Browns Creek/Patterson Creek, HQ

09/01/09

ESCGP-1 No.: ESX09-051-0028

Applicant Name: Atlas Resources, LLC

Contact Person: Jeremy Hirtz

Address: 800 Mountain View Drive

City: Smithfield State: PA Zip Code: 15478

County: Fayette Township(s): Brownsville

Receiving Stream(s) and Classifications: UNT to Dunlap Creek, Other

09/01/09

ESCGP-1 No.: ESX09-051-0029

Applicant Name: Atlas Resources, LLC

Contact Person: Jeremy Hirtz

Address: 800 Mountain View Drive

City: Smithfield State: PA Zip Code: 15478

County: Fayette Township(s): Georges

Receiving Stream(s) and Classifications: UNT to Mountain Creek, Other

09/01/09

ESCGP-1 No.: ESX09-059-0038

Applicant Name: Atlas Resources, LLC

Contact Person: Jeremy Hirtz

Address: 800 Mountain View Drive

City: Smithfield State: Pa Zip Code: 15478

County: Greene Township(s): Greene

Receiving Stream(s) and Classifications: Whiteley Creek, Other

09/02/09

ESCGP-1 No.: ESX09-125-0030

Applicant Name: Range Resources—Appalachia, LLC

Contact Person: Carla Suszkowski

Address: 380 Southpointe Boulevard, Suite 300

City: Canonsburg State: PA Zip Code: 15317

County: Washington Township(s): Amwell

Receiving Stream(s) and Classifications: UNT to Little Tenmile Creek, Other

09/02/09

ESCGP-1 No.: ESX09-125-0033

Applicant Name: Range Resources—Appalachia, LLC

Contact Person: Carla Suszkowski

Address: 380 Southpointe Boulevard, Suite 300

City: Canonsburg State: PA Zip Code: 15317

County: Washington Township(s): Hopewell

Receiving Stream(s) and Classifications: UNT to Dunkle Run, HQ

09/02/09

ESCGP-1 No.: ESX09-059-0039

Applicant Name: Atlas Resources, LLC

Contact Person: Jeremy Hirtz

Address: 800 Mountain View Drive

City: Smithfield State: PA Zip Code: 15478

County: Greene Township(s): Cumberland

Receiving Stream(s) and Classifications: Muddy Creek, Other



09/09/09  
 ESCGP-1 No.: ESX09-125-0037  
 Applicant Name: Antero Resources Appalachian Corporation  
 Contact Person: Gerard Alberts  
 Address: 1625 17th Street, Suite 300  
 City: Denver State: CO Zip Code: 80202  
 County: Washington Township(s): West Pike Run  
 Receiving Stream(s) and Classifications: Little Pike Run, Other

09/10/09  
 ESCGP-1 No.: ESX09-125-0034  
 Applicant Name: MarkWest Liberty Midstream and Resources  
 Contact Person: Robert McHale  
 Address: 100 Plaza Drive, Suite 102  
 City: Atlasburg State: PA Zip Code: 15004  
 County: Washington Township(s): Amwell  
 Receiving Stream(s) and Classifications: UNT and Little Tenmile Creek/Little Tenmile Creek, Other

09/10/09  
 ESCGP-1 No.: ESX09-125-0035  
 Applicant Name: MarkWest Liberty Midstream and Resources  
 Contact Person: Robert McHale  
 Address: 100 Plaza Drive, Suite 102  
 City: Atlasburg State: PA Zip Code: 15004  
 County: Washington Township(s): Blaine/Hopewell  
 Receiving Stream(s) and Classifications: 3 UNTs to Brush Run, Brush Run, and 1 UNT to Buffalo Creek, HQ

09/10/09  
 ESCGP-1 No.: ESX09-125-0036  
 Applicant Name: MarkWest Liberty Midstream and Resources  
 Contact Person: Robert McHale  
 Address: 100 Plaza Drive, Suite 102  
 City: Atlasburg State: PA Zip Code: 15004  
 County: Washington Township(s): Blaine  
 Receiving Stream(s) and Classifications: Buffalo Creek, HQ

**SPECIAL NOTICES**

**DRINKING WATER STATE REVOLVING FUND**

**Special Notice Under the Federal Safe Drinking Water Act (SDWA); 42 U.S.C. 300f, et. seq.**

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

*Project Location:*

<i>Applicant</i>	<i>Applicant Address</i>	<i>County</i>
Aqua Pennsylvania, White Haven, PA 18661 Inc.	50 Woodhaven Drive	South Whitehall Township Lehigh County

*Project Description:* The Pennsylvania Infrastructure Investment Authority, which administers the Commonwealth's State Revolving Fund, is intended to be the funding source for this project. Aqua Pennsylvania, Inc. proposes to upgrade the community water system serving Springhouse Farms. The Department's review of the project and the information received in the Environmental Report for the project has not identified any significant, adverse environmental impact resulting from this proposal. The Department hereby approves the project for Categorical Exclusion.

*Project Location:*

<i>Applicant</i>	<i>Applicant Address</i>	<i>County</i>
Aqua Pennsylvania, White Haven, PA 18661 Inc.	50 Woodhaven Drive	Lower Macungie Township Lehigh County

*Project Description:* The Pennsylvania Infrastructure Investment Authority, which administers the Common-

wealth's State Revolving Fund, is intended to be the funding source for this project. Aqua Pennsylvania, Inc. proposes to upgrade the community water system serving Maple Hills development. The Department's review of the project and the information received in the Environmental Report for the project has not identified any significant, adverse environmental impact resulting from this proposal. The Department hereby approves the project for Categorical Exclusion.

*Project Location:*

<i>Applicant</i>	<i>Applicant Address</i>	<i>County</i>
South Wayne County Water and Sewer Authority/ Roamingwood Sewer and Water Association	P. O. Box 6 Lake Ariel, PA 18436	Lake and Salem Townships Wayne

*Project Description:* The Pennsylvania Infrastructure Investment Authority, which administers the Commonwealth's State Revolving Fund, is intended to be the funding source for this project. The South Wayne County Water and Sewer Authority proposes relocation of water and sewer conveyance lines along portions of Highpoint Drive and Wildwood Court. The Department's review of the project and the information received in the Environmental Report for the project has not identified any significant, adverse environmental impact resulting from this proposal. The Department hereby approves the project for Categorical Exclusion.

The Little Schuylkill River TMDL, originally approved by USEPA in March 2007, has been revised to reflect the inclusion of wasteload allocations for additional NPDES permits not included in the originally approved TMDL.

The data and all supporting documentation used to develop the proposed TMDLs are available from the Department. To request a copy of the proposed TMDL, contact Jennifer Orr, TMDL Development Section, Watershed Protection Division, Pennsylvania Department of Environmental Protection, P. O. Box 8555, Harrisburg, PA 17105-8555, (717) 772-5670, e-mail jeorr@state.pa.us.

The TMDLs can be accessed through the DEP Website (<http://www.dep.state.pa.us>) by clicking on the Water Topics Link, then the TMDL link. 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.

Written and Email comments will be accepted at the above addresses and must be received by October 30, 2009. 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.

#### **Availability of Final Total Maximum Daily Loads (TMDLs)**

The Department of Environmental Protection has developed Total Maximum Daily Loads (TMDLs) for the watersheds listed below. The TMDL sets the pollutant loading amounts for impaired waters that are allocated among the sources in the watershed. These TMDLs have been approved by EPA and satisfy the Department's obligations under section 303(d) of the Federal Clean Water Act.

#### *Stream Name and County*

##### *2007 AMD TMDLs*

Alder Run (Clearfield)  
 Babcock Creek (Cambria, Somerset)  
 Bear Run (Clearfield, Indiana, Jefferson)  
 Beaverdam Branch (Blair)  
 Black Creek (Luzerne)  
 Boone Run (Somerset)  
 Brewer Run (Indiana)  
 Caylor Run (Armstrong, Jefferson)  
 Clearfield Creek (Clearfield, Cambria)  
 Coal Bank Run (Armstrong)  
 Dooley Run (Greene)  
 Dunkard Creek (Greene)  
 East Branch Mahoning Creek (Cambria, Jefferson)  
 Ferrier Run (Indiana)  
 Foundry Run (Armstrong, Jefferson)  
 Freeman Run (Westmoreland)  
 Harmon Creek (Washington)  
 Laborde Branch (Clearfield)  
 Lamberts Run (Somerset)  
 Laurel Run (Clearfield)  
 Little Deer Creek (Allegheny)  
 Little Mill Creek (Clarion, Jefferson)  
 Little Nescopeck Creek (Luzerne)  
 Little Schuylkill River (Schuylkill)  
 Little Scrubgrass (Butler, Venango)  
 Luthersburg Branch (Clearfield)  
 Mahanoy Creek (Schuylkill, Northumberland)  
 North Branch Elk Creek (Cambria)  
 Nye Branch (Armstrong, Jefferson)  
 Otto Run (Cambria)  
 Paint Creek/UNT Paint Creek (Cambria, Somerset)  
 Penn Run (Indiana)  
 Pine Run (Armstrong, Jefferson)  
 Plum Creek (Allegheny)  
 Reeds Run (Indiana)  
 Richards Run (Indiana)

Sandy Creek (Clearfield)  
 Sawmill Run (Allegheny)  
 Shafer Run (Somerset)  
 Shenandoah Creek (Schuylkill, Northumberland)  
 Sixmile Run (Bedford)  
 Solomon Creek (Luzerne)  
 South Branch Bear Creek (Butler)  
 South Branch Beech Creek (Centre)  
 South Branch Elk Creek (Cambria)  
 Spring Run (Cambria)  
 Stump Creek (Jefferson, Clearfield)  
 Sulphur Creek (Cambria)  
 Tearing Run (Indiana)  
 UNT Buffalo Creek (Armstrong)  
 UNT Little Nescopeck Creek (Luzerne)  
 UNT Stoneycreek River (Somerset)  
 UNTs Trout and Pine Runs (Clearfield)  
 Upper Schuylkill River (Schuylkill)  
 Walley Run (Clarion)  
 West Creek (Elk)  
 Zerbe Run (Northumberland)

##### *2007 Non-AMD TMDLs*

Beaver Dam Branch (Blair)  
 Bernhart Creek (Berks)  
 Coon Run (Crawford)  
 Crosskill Creek (Berks, Lebanon)  
 Glades Run (Somerset)  
 Laurel Run (Berks)  
 Oil Creek (Crawford)  
 Red Clay Creek (Chester)  
 Wells Creek (Somerset)  
 White Clay Creek (Chester)

##### *2007 Delistings*

Black Creek (Luzerne)  
 Codus Creek (York)  
 Connoquenessing Creek (Butler)  
 Fox Hollow Run (Lycoming)  
 Frankstown Branch Juniata (Blair)  
 Hermesprot Creek (Delaware)  
 Mill Run (Blair)  
 UNT Schuylkill 2177 (Berks)  
 UNT Schuylkill 2179 (Berks)

##### *2009 AMD TMDLs*

Beech Creek (Centre, Clinton)  
 Beech Creek (Centre, Clinton)  
 Bennett Branch Sinnemahoning Creek (Cameron, Clearfield, Elk)  
 Black Creek (Carbon, Schuylkill, Luzerne)  
 Brush Run (Clarion)  
 Brush Run, Beaver County  
 Buck Mountain Creek (Carbon, Luzerne)  
 Buffalo Creek (Somerset)  
 Buffalo Run (Westmoreland)  
 Casselman River (Somerset, Fayette)  
 Clarion River (Clarion)  
 Coxes Creek (Somerset)  
 Crooked Creek (Armstrong, Indiana)  
 Deer Creek (Clarion)  
 Duck Run (Lawrence)  
 Fallen Timbers Run (Allegheny)  
 Ferguson Run (Fayette)  
 Gathers Run (Clarion)  
 Jacks Run (Westmoreland)  
 Laurel Run (Somerset)  
 Leatherwood Creek (Clarion)  
 Leatherwood Creek (Clarion)  
 Lehigh River (Monroe, Wayne, Lackawanna, Luzerne,

Carbon, Schuylkill, Bucks, Lehigh, Northampton)  
 Licking Creek (Clarion)  
 Little Connoquenessing Creek (Butler)  
 Little Connoquenessing Creek (Butler)  
 Little Toby Creek (Elk, Jefferson)  
 Mill Creek (Clarion, Jefferson)  
 Moshannon Creek (Clearfield, Centre)  
 Narrows Creek (Clearfield)  
 Nesquehoning Creek (Carbon)  
 Newport Creek (Luzerne)  
 Nicely Run (Jefferson)  
 Peters Creek (Allegheny, Washington)  
 Pond Creek (Luzerne)  
 Redbank Creek (Armstrong, Clarion, Clearfield, Jefferson)  
 Redstone Creek (Fayette)  
 Reids Run (Clarion)  
 Saltlick Run (Fayette)  
 Sandy Run (Luzerne)  
 Scrubgrass Creek (Venango, Butler)  
 Sewickley Creek (Westmoreland)  
 Stauffer Run (Westmoreland)  
 Streets Run (Allegheny)  
 Susquehanna River (Luzerne)  
 Town Run (Clarion)  
 Turtle Creek (Allegheny, Westmoreland)  
 UNT 04226 Sandy Run (Luzerne)  
 UNT 49508 Brush Run (Clarion)  
 UNT Connoquenessing Creek (Butler)  
 UNT Georges Creek (Fayette)  
 UNT Monongahela River (Allegheny)  
 Wallace Run (Fayette)  
 Welch Run (Jefferson)  
 Welty Run (Westmoreland)  
 West Br. Susquehanna (Multiple)  
 Whites Creek (Somerset)  
 Wilson Creek (Somerset)  
 York Run (Fayette)

#### 2009 Delisting

Kimber Run (Bedford)

To request a copy of the TMDL, contact the Division of Watershed Protection P. O. Box 8555, Harrisburg, PA 17105-8555, (717) 772-5807, or access the TMDL through the Department's web site: [www.dep.state.pa.us/water\\_management\\_apps/tmdl/](http://www.dep.state.pa.us/water_management_apps/tmdl/) (choose "Stream You Are Interested In" under "Select By TMDL Name").

[Pa.B. Doc. No. 09-1790. Filed for public inspection September 25, 2009, 9:00 a.m.]

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.

#### *Draft Technical Guidance*

DEP ID: 394-5600-001. Title: Riparian Forest Buffer Guidance. Background: The Riparian Forest Buffer Guidance outlines recommendations for installation and protection of riparian forest buffers that are useful in mitigating or controlling point and nonpoint source pollution to waters of the Commonwealth. Riparian forest buffers serve as a barrier to prevent most pollutants from getting into aquatic environments. They also provide enhanced instream contaminant sequestration and degradation. The primary purpose of this guidance is to assist the Department staff in providing and further developing general buffer recommendations for regulatory, voluntary, and grant programs. It will also serve to assist any interested entities in understanding the functions and values of riparian forest buffers, the importance of sustaining and enhancing riparian forest buffers, and in developing appropriate science-based guidelines or policies. Written Comments: Interested persons may submit written comments on this guidance by November 24, 2009. Comments submitted by facsimile will not be accepted. The Department will accept comments submitted by e-mail. A return name and address must be included in each e-mail transmission. Written comments should be submitted to Diane Wilson, Department of Environmental Protection, Rachel Carson State Office Building, P. O. Box 8555, Harrisburg, PA 17105-8555 or [diawilson@state.pa.us](mailto:diawilson@state.pa.us). Contact: Questions regarding the draft technical guidance document should be directed to Diane Wilson at (717) 787-3730 or [diawilson@state.pa.us](mailto:diawilson@state.pa.us). Effective Date: Upon publication as final in the *Pennsylvania Bulletin*.

JOHN HANGER,  
*Secretary*

[Pa.B. Doc. No. 09-1791. Filed for public inspection September 25, 2009, 9:00 a.m.]

### Availability of Technical Guidance

Technical guidance documents are available on the Department of Environmental Protection's (Department) web site at <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 2009.

#### *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

### Pennsylvania Sunshine Program; Guidelines

The Department of Environmental Protection (Department) announces a stakeholder meeting to discuss improvements to the Pennsylvania Sunshine Program (Program). On November 4, 2009, the Department will host a public discussion on the Program guidelines. This meeting will be held from 10 a.m. to 12 p.m. in Room 105 of the Rachel Carson State Office Building, 400 Market Street, Harrisburg, PA 17105. RSVP for this meeting by emailing [arothrock@state.pa.us](mailto:arothrock@state.pa.us) or calling Angela Rothrock at (717) 772-8911.

This incentive program is for homeowners and small businesses undertaking solar energy projects. In May



2009, the Program began to provide \$100 million in rebates, to Commonwealth homeowners and small businesses to purchase and install solar photovoltaic and solar hot water systems. The Department is seeking suggestions for ways to improve upon the existing Program. The existing Program guidelines are available on the Department's web site at [www.depweb.state.pa.us/pasunshine](http://www.depweb.state.pa.us/pasunshine).

Persons in need of accommodations as provided for in the Americans With Disabilities Act of 1990 should contact Angela Rothrock at (717) 772-8911, or through the Pennsylvania AT&T Relay Service at (800) 654-5984 (TDD) to discuss how the Department may accommodate their needs.

JOHN HANGER,  
*Secretary*

[Pa.B. Doc. No. 09-1792. Filed for public inspection September 25, 2009, 9:00 a.m.]

## DEPARTMENT OF HEALTH

### Application of Albert Einstein Medical Center for Exception

Under 28 Pa. Code § 51.33 (relating to requests for exceptions), the Department of Health (Department) gives notice that Albert Einstein Medical Center has requested an exception to the requirements of 28 Pa. Code § 127.32 (relating to written orders).

This request is on file with the Department. Persons may receive a copy of a request for exception by requesting a copy from the Department of Health, Division of Acute and Ambulatory Care, Room 532, Health and Welfare Building, Harrisburg, PA 17120, (717) 783-8980, fax (717) 772-2163, [paexcept@health.state.pa.us](mailto:paexcept@health.state.pa.us).

This 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.

EVERETTE JAMES,  
*Secretary*

[Pa.B. Doc. No. 09-1793. Filed for public inspection September 25, 2009, 9:00 a.m.]

### Application of Allegheny General Hospital for Exception

Under 28 Pa. Code § 51.33 (relating to requests for exceptions), the Department of Health (Department) gives notice that Allegheny General Hospital has requested an exception to the requirements of 28 Pa. Code §§ 103.31—103.35 (relating to management and administration of operations).

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](mailto: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 they decide 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).

EVERETTE JAMES,  
*Secretary*

[Pa.B. Doc. No. 09-1794. Filed for public inspection September 25, 2009, 9:00 a.m.]

### Application of Butler Memorial Hospital for Exception

Under 28 Pa. Code § 51.33 (relating to requests for exceptions), the Department of Health (Department) gives notice that Butler Memorial Hospital has requested an exception to the requirements of 28 Pa. Code § 153.1, which requires compliance with minimum standards contained in the following publication: *Guidelines for Design and Construction of Hospitals and Healthcare Facilities*. The facility specifically requests exemption from the following standards contained in this publication: 3.1.5.2.1 (relating to corridor width), 3.1.5.2.1.2 (relating to ceiling height) and 3.1.5.2.1.3 (relating to exits).

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, [ra-paexcept@state.pa.us](mailto: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 they decide whether to approve or disapprove the request for exception.

Persons with a disability who wish to obtain a copy of the request and require an auxiliary aid, service or other accommodation to do so should contact the Director, Division of Acute and Ambulatory Care at (717) 783-8980, V/TT (717) 783-6154 for speech and/or hearing impaired persons or the Pennsylvania AT&T Relay Service at (800) 654-5984 (TT).

EVERETTE JAMES,  
*Secretary*

[Pa.B. Doc. No. 09-1795. Filed for public inspection September 25, 2009, 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 § 127.32 (relating to written orders).

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.

This 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.

EVERETTE JAMES,  
*Secretary*

[Pa.B. Doc. No. 09-1796. Filed for public inspection September 25, 2009, 9:00 a.m.]

### Application of Drexel Centers for Digestive Health for Exception

Under 28 Pa. Code § 51.33 (relating to requests for exceptions), the Department of Health (Department) gives notice that Drexel Centers for Digestive Health has requested an exception to the requirements of 28 Pa. Code §§ 551.3 and 555.31 (relating to definitions; and principle).

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 they decide 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).

EVERETTE JAMES,  
*Secretary*

[Pa.B. Doc. No. 09-1797. Filed for public inspection September 25, 2009, 9:00 a.m.]

### Application for Exception to 28 Pa. Code § 107.61

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 § 107.61 (relating to written orders):

Children's Hospital of Pittsburgh of UPMC  
UPMC Braddock  
UPMC Passavant

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.

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 they decide whether to approve or disapprove the request for exception.

Persons with a disability who wish to obtain a copy of a request and/or provide comments to the Department and require an auxiliary aid, service or other accommodation to do so should contact the Division at the previously listed address or phone numbers, or for speech and/or hearing impaired persons V/TT (717) 783-6154 or the Pennsylvania AT&T Relay Service at (800) 654-5984.

EVERETTE JAMES,  
*Secretary*

[Pa.B. Doc. No. 09-1798. Filed for public inspection September 25, 2009, 9:00 a.m.]

### Application for Exception to 28 Pa. Code § 551.21(d)(2)

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 § 551.21(d)(2) (relating to criteria for ambulatory surgery):

Crossroads Surgery Center  
Physicians Surgical Center  
The Physicians' Surgery Center Lancaster General, LLC  
Turks Head Surgery Center

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.

EVERETTE JAMES,  
Secretary

[Pa.B. Doc. No. 09-1799. Filed for public inspection September 25, 2009, 9:00 a.m.]

### Application of Hamot Medical Center for Exception

Under 28 Pa. Code § 51.33 (relating to requests for exceptions), the Department of Health (Department) gives notice that Hamot Medical Center has requested an exception to the requirements of 28 Pa. Code §§ 107.64 and 117.30 (relating to administration of drugs; and emergency paramedic services).

This request is on file with the Department. Persons may receive a copy of a request for exception by requesting a copy from the Department of Health, Division of Acute and Ambulatory Care, Room 532, Health and Welfare Building, Harrisburg, PA 17120, (717) 783-8980, fax (717) 772-2163, ra-paexcept@state.pa.us.

Those persons who wish to comment on an exception request may do so by sending a letter by mail, e-mail or facsimile to the Division and address listed previously.

Comments received by the Department within 10 days after the date of publication of this notice will be reviewed by the Department before they decide 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).

EVERETTE JAMES,  
Secretary

[Pa.B. Doc. No. 09-1800. Filed for public inspection September 25, 2009, 9:00 a.m.]

### Application of Kane Community Hospital for Exception

Under 28 Pa. Code § 51.33 (relating to requests for exceptions), the Department of Health (Department) gives notice that Kane Community Hospital has requested an exception to the requirements of 28 Pa. Code § 153.1, which requires compliance with minimum standards contained in the following publication: *Guidelines for Design and Construction of Hospitals and Healthcare Facilities*. The facility specifically requests exemption from the following standard contained in this publication: Table 2.1-5 (relating to medical air outlets).

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 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 they decide whether to approve or disapprove the request for exception.

Persons with a disability who wish to obtain a copy of the request and require an auxiliary aid, service or other accommodation to do so should contact the Director, Division of Acute and Ambulatory Care at (717) 783-8980, V/TT (717) 783-6154 for speech and/or hearing impaired persons or the Pennsylvania AT&T Relay Service at (800) 654-5984 (TT).

EVERETTE JAMES,  
Secretary

[Pa.B. Doc. No. 09-1801. Filed for public inspection September 25, 2009, 9:00 a.m.]

### Application of Lancaster Regional Medical Center for Exception

Under 28 Pa. Code § 51.33 (relating to requests for exceptions), the Department of Health (Department) gives notice that Lancaster Regional Medical Center has requested an exception to the requirements of 28 Pa. Code § 101.31(7) and (9)(iii) (relating to hospital requirements).

This facility has also requested an exception to the requirements of 28 Pa. Code § 153.1, which requires compliance with minimum standards contained in the following publication: *Guidelines for Design and Construction of Hospitals and Healthcare Facilities*. The facility specifically requests exemption from the following standard contained in this publication: 9.9.2(b)(1) (relating to general purpose exam room).

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, 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).

EVERETTE JAMES,  
Secretary

[Pa.B. Doc. No. 09-1802. Filed for public inspection September 25, 2009, 9:00 a.m.]

### Application of 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 Lee Ambulatory Surgery Facility has requested an exception to the requirements of 28 Pa. Code §§ 551.3 and 555.32 (relating to definitions; and administration of anesthesia).

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, 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 they decide 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).

EVERETTE JAMES,  
Secretary

[Pa.B. Doc. No. 09-1803. Filed for public inspection September 25, 2009, 9:00 a.m.]

### Application of Norwin Medical Commons for Exception

Under 28 Pa. Code § 51.33 (relating to requests for exceptions), the Department of Health (Department) gives notice that Norwin Medical Commons 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.

EVERETTE JAMES,  
Secretary

[Pa.B. Doc. No. 09-1804. Filed for public inspection September 25, 2009, 9:00 a.m.]

### Application of Physicians Surgical Center for Exception

Under 28 Pa. Code § 51.33 (relating to requests for exceptions), the Department of Health (Department) gives notice that Physicians Surgical Center has requested an exception to the requirements of 28 Pa. Code § 153.1, which requires compliance with minimum standards contained in the following publication: *Guidelines for Design and Construction of Hospitals and Healthcare Facilities*. The facility specifically requests exemption from the following standard contained in this publication: 3.7—2.3.1.2 (relating class B operation room size).

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, 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 the request and require an auxiliary aid, service or other accommodation to do so should contact the Director, Division of Acute and Ambulatory Care at (717) 783-8980, V/TT (717) 783-6154 for speech and/or hearing impaired persons or the Pennsylvania AT&T Relay Service at (800) 654-5984 (TT).

EVERETTE JAMES,  
Secretary

[Pa.B. Doc. No. 09-1805. Filed for public inspection September 25, 2009, 9:00 a.m.]

### Application of Pottstown Memorial Medical Center for Exception

Under 28 Pa. Code § 51.33 (relating to requests for exceptions), the Department of Health (Department) gives notice that Pottstown Memorial Medical Center has requested an exception to the requirements of 28 Pa. Code § 153.1, which requires compliance with minimum standards contained in the following publication: *Guidelines for Design and Construction of Hospitals and Healthcare Facilities*. The facility specifically requests exemption from the following standards contained in this publication: 2.1—5.5.6.2 (relating to patient toilets) and 2.1—5.5.8.5 (relating to patient holding area).

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, 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 the request and require an auxiliary aid, service or other accommodation to do so should contact the Director, Division of Acute and Ambulatory Care at (717) 783-8980 V/TT (717) 783-6154 for speech and/or hearing impaired persons or the Pennsylvania AT&T Relay Service at (800) 654-5984 (TT).

EVERETTE JAMES,  
*Secretary*

[Pa.B. Doc. No. 09-1806. Filed for public inspection September 25, 2009, 9:00 a.m.]

### Application of The Western Pennsylvania Hospital for Exception

Under 28 Pa. Code § 51.33 (relating to requests for exceptions), the Department of Health (Department) gives notice that The Western Pennsylvania Hospital has requested an exception to the requirements of 28 Pa. Code §§ 103.31—103.35 (relating to management and administration of operations).

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 they decide 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).

EVERETTE JAMES,  
*Secretary*

[Pa.B. Doc. No. 09-1807. Filed for public inspection September 25, 2009, 9:00 a.m.]

### Approval of Drugs Which May Be Used by Certain Optometrists

Under the Optometric Practice and Licensure Act (act) (63 P. S. §§ 244.1—244.12), and specifically as the act was amended by the act of December 16, 2002 (P. L. 1950, No. 225) (Act 225), the Secretary of Health (Secretary) has the authority to approve drugs for use in the practice of optometry as the “practice of optometry” is defined in Act 225. The State Board of Optometry, through the Secretary of State, sent the Secretary a letter on August 7, 2009, requesting that the Secretary approve the use of the following drug. Act 225 requires that the Secretary,

within 90 days of the receipt of the list of drugs, and in consultation with the Physician General, approve or disapprove for good cause each drug. The Secretary has found good cause to approve the use of the following drug in the practice of optometry:

Besifloxacin ophthalmic suspension (Besivance®), topical solution only.

The approval of the use of this drug is effective upon publication of this notice in the *Pennsylvania Bulletin*.

Persons with a disability who require an alternative format of this notice (for example, large print, audiotape or Braille) should contact Janice Staloski, Director, Bureau of Community Program Licensure and Certification, 132 Kline Plaza, Suite A, Harrisburg, PA 17104, (717) 783-8665. For speech and/or hearing impaired persons V/TT (717) 783-6514 or the Pennsylvania AT&T Relay Services at (800) 654-5984 (TT).

EVERETTE JAMES,  
*Secretary*

[Pa.B. Doc. No. 09-1808. Filed for public inspection September 25, 2009, 9:00 a.m.]

### Infant Hearing Screening Advisory Committee Meeting

The Infant Hearing Screening Advisory Committee, established under the Infant Hearing Education Assessment, Reporting and Referral Act (11 P. S. §§ 876-1—876-9) will hold a public meeting from 10 a.m. to 3 p.m. on Wednesday, November 4, 2009, at the Dixon University Center, Administration Building, Conference Rooms A/B, 2986 North 2nd Street, Harrisburg, PA 17110. Driving directions can be found on the Dixon University web site at: [www.dixonuniversitycenter.org](http://www.dixonuniversitycenter.org).

For additional information or persons with a disability and who wish to attend the meeting and require auxiliary aid, service or other accommodation to do so should contact Arthur A. Florio, Public Health Program Administrator, Newborn Hearing Screening Program, Division of Newborn Screening and Genetics at (717) 783-8143. Speech and/or hearing impaired persons use V/TT (717) 783-6514 or the Pennsylvania AT&T Relay Service at (800) 654-5984 (TT).

This meeting is subject to cancellation without notice.

EVERETTE JAMES,  
*Secretary*

[Pa.B. Doc. No. 09-1809. Filed for public inspection September 25, 2009, 9:00 a.m.]

### Long-Term Care Nursing Facilities; Requests for Exception

The following long-term care nursing facility is seeking an exception to 28 Pa. Code § 205.67(j)—(k) (relating to electrical requirements for existing and new construction).



Countryside Christian Community  
200 Bellann Court  
Annville, PA 17003  
FAC ID 470802

The following long-term care nursing facility is seeking an exception to 28 Pa. Code § 211.3 (relating to oral and telephone orders).

Charles Cole Memorial Hospital ECF  
1001 East Second Street  
Coudersport, PA 16915  
FAC ID 031802

These requests are on file with the 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 wish to obtain a copy of the request and/or provide comments to the Department and require an auxiliary aid, service or other accommodation to do so should contact V/TT (717) 783-6514 for speech and/or hearing impaired persons or the Pennsylvania AT&T Relay Service at (800) 654-5984 (TT).

EVERETTE JAMES,  
*Secretary*

[Pa.B. Doc. No. 09-1810. Filed for public inspection September 25, 2009, 9:00 a.m.]

### Organ Donation Advisory Committee Meeting

The Organ Donation Advisory Committee, established under 20 Pa.C.S. § 8622 (relating to The Governor Robert P. Casey Memorial Organ and Tissue Donation Awareness Trust Fund), will hold a public meeting on Tuesday, October 22, 2009, from 10 a.m. to 3 p.m. The meeting will be held at the Giant Community Center, 2nd Floor, Giant Food Store, 3301 Trindle Road, Camp Hill, PA 17011.

For additional information or persons with a disability and who wish to attend the meeting and require an auxiliary aid, service or other accommodation to do so should contact Cyndi Malinen, Public Health Program Administrator, Division of Nutrition and Physical Activity, Bureau of Health Promotion and Risk Reduction, Room 1000, Health and Welfare Building, Harrisburg, PA at (717) 787-5876 or for speech and/or hearing impaired persons V/TT (717) 783-6514 or the Pennsylvania AT&T Relay Service at (800) 654-5984.

This meeting is subject to cancellation without notice.

EVERETTE JAMES,  
*Secretary*

[Pa.B. Doc. No. 09-1811. Filed for public inspection September 25, 2009, 9:00 a.m.]

## DEPARTMENT OF PUBLIC WELFARE

### Disproportionate Share and Supplemental Hospital Payments

#### *Purpose of Notice*

The Department of Public Welfare (Department) is announcing its intent to reduce funding for inpatient disproportionate share hospital (DSH), outpatient DSH, and direct medical education payments distributed during Fiscal Year (FY) 2009-2010, as a result of anticipated reductions in funding allocations proposed during the ongoing 2009-2010 Commonwealth budget negotiations. The Department believes this action is necessary to ensure that the Medical Assistance (MA) Program is able to operate within the funding allocated for the Program under the 2009-2010 Commonwealth budget. Upon enactment of the final FY 2009-2010 Commonwealth budget, the Department will issue notice detailing the actual funds to be distributed for the payments with reduced funding allocations.

The Department proposes to reduce DSH funding distributed in FY 2009-2010 for inpatient DSH payments. The Department also proposes to reduce funding for outpatient DSH and direct medical education which are classes of payments separate from and in addition to the payments made to hospitals for inpatient hospital services provided to MA recipients and are not otherwise required to be made under State or Federal law.

#### *Fiscal Impact*

The FY 2009-2010 fiscal impact, as a result of the changes to these payments is up to \$158.219 million (\$55.608 million in State Funds).

#### *Public Comment*

Interested persons are invited to submit written comments regarding this notice to the Department of Public Welfare, Office of Medical Assistance Programs, c/o Regulations Coordinator, Room 515, Health and Welfare Building, Harrisburg, PA 17120. Comments received within 30 days will be reviewed and considered for any subsequent revision 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-624. No fiscal impact; (8) recommendations adoption.

[Pa.B. Doc. No. 09-1812. Filed for public inspection September 25, 2009, 9:00 a.m.]

### Medical Assistance Program Fee Schedule Revisions

#### Purpose of Notice

The Department of Public Welfare (Department) announces that it will revise the fees, or a component of the fee, on the Medical Assistance (MA) Program Fee Schedule for select medical, surgical, laboratory, durable medical equipment and radiological services effective October 5, 2009.

#### Fee Schedule Revisions

The Pennsylvania Medicaid State Plan (State Plan) specifies that maximum fees for services covered under the MA Program are to be determined on the basis of the following: fees may not exceed the Medicare upper limit when applicable; fees must be consistent with efficiency, economy and quality of care; and fees must be sufficient to assure the availability of services to recipients. The regulations at 55 Pa. Code § 1150.62(a) (relating to payment levels and notice of rate setting changes) also specify that the MA fees may not exceed the Medicare upper limit.

The Department has determined that MA fees for approximately 320 medical, surgical, laboratory, durable medical equipment and radiological procedure codes or combinations of procedure codes and modifiers, are above the Medicare upper limit for the same procedure codes. The Department is adjusting the fees on the MA Program Fee Schedule for these combinations of procedure codes and modifiers to equal the Medicare upper limit. Revision of these fees is necessary to comply with the regulation and State Plan, and to avoid a Federal disallowance. When adjusting the assistant surgeon fee (modifier 80), the Department followed the Medicare guidelines of paying 16% of the maximum allowable payment to a primary surgeon, as MA fees may not exceed the Medicare upper limit.

The Department has revised the total fee (billed with no modifier) and, as applicable, the professional component fee (billed with modifier 26), the technical component fee (billed with modifier TC), the assistant surgeon fee (billed with modifier 80), and the fee when billing for the purchase (NU) or rental (RR) of Durable Medical Equipment; "N/A" indicates that the modifier is not on the MA Program Fee Schedule for the procedure code, and "N/C" indicates that there is no change in the fee associated with the modifier:

<i>Procedure Code / Modifier NU or RR where indicated</i>	<i>Procedure Code Description</i>	<i>Assistant Surgeon fee Revision (Billing with Modifier 80)</i>	<i>Professional Component Fee Revision (Billing with Modifier 26)</i>	<i>Technical Component Fee Revision (Billing with Modifier TC)</i>	<i>Billing with No Modifier or with Pricing Modifiers NU or RR</i>
15600	Delay of flap or sectioning of flap (division and inset); at trunk	N/A	N/A	N/A	\$174.94
15610	Delay of flap or sectioning of flap (division and inset); at scalp, arms, or legs	N/A	N/A	N/A	\$207.79
17003	Destruction (e.g., laser surgery, electrosurgery, cryosurgery, chemosurgery, surgical curettement), premalignant lesions (e.g., actinic keratoses); second through 14 lesions, each (List separately in addition to code for first lesion)	N/A	N/A	N/A	\$4.25
20900	Bone graft, any donor area; minor or small (e.g., dowel or button)	\$39.40	N/A	N/A	\$246.27
23921	Disarticulation of shoulder; secondary closure or scar revision	N/A	N/A	N/A	\$354.51
26432	Closed treatment of distal extensor tendon insertion, with or without percutaneous pinning (e.g., mallet finger)	N/A	N/A	N/A	\$426.63
26434	Repair of extensor tendon, distal insertion, primary or secondary; with free graft (includes obtaining graft)	N/A	N/A	N/A	\$553.32
26510	Cross intrinsic transfer, each tendon	\$82.41	N/A	N/A	\$515.05
26591	Repair, intrinsic muscles of hand, each muscle	N/A	N/A	N/A	\$372.93
26593	Release, intrinsic muscles of hand, each muscle	N/A	N/A	N/A	\$513.36
27250	Closed treatment of hip dislocation, traumatic; without anesthesia	N/A	N/A	N/A	\$219.33

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27740	Arrest, epiphyseal (epiphysiodesis), any method, combined, proximal and distal tibia and fibula;	\$97.27	N/A	N/A	\$607.94
28456	Percutaneous skeletal fixation of tarsal bone fracture (except talus and calcaneus), with manipulation, each	N/A	N/A	N/A	\$239.78
28530	Closed treatment of sesamoid fracture	N/A	N/A	N/A	\$89.45
29520	Strapping; hip	N/A	N/A	N/A	\$32.99
30150	Rhinectomy; partial	N/A	N/A	N/A	\$694.00
36598	Contrast injection(s) for radiologic evaluation of existing central venous access device, including fluoroscopy, image documentation and report	N/A	N/A	N/A	\$58.00
41510	Suture of tongue to lip for micrognathia (Douglas type procedure)	N/A	N/A	N/A	\$351.41
41825	Excision of lesion or tumor (except listed above), dentoalveolar structures; without repair	N/A	N/A	N/A	\$110.59
42220	Palatoplasty for cleft palate; secondary lengthening procedure	\$78.13	N/A	N/A	\$488.29
42509	Parotid duct diversion, bilateral (Wilke type procedure); with excision of both submandibular glands	N/A	N/A	N/A	\$750.02
46614	Anoscopy; with control of bleeding (e.g., injection, bipolar cautery, unipolar cautery, laser, heater probe, stapler, plasma coagulator)	N/A	N/A	N/A	\$64.21
47525	Change of percutaneous biliary drainage catheter	N/A	N/A	N/A	\$124.12
51102	Aspiration of bladder; with insertion of suprapubic catheter	N/A	N/A	N/A	\$154.34
52400	Cystourethroscopy with incision, fulguration, or resection of congenital posterior urethral valves, or congenital obstructive hypertrophic mucosal folds	\$79.25	N/A	N/A	\$495.31
52640	Transurethral resection; of postoperative bladder neck contracture	N/A	N/A	N/A	\$306.02
62350	Implantation, revision or repositioning of tunneled intrathecal or epidural catheter, for long-term medication administration via an external pump or implantable reservoir/infusion pump; without laminectomy	\$57.48	N/A	N/A	\$359.25
62355	Removal of previously implanted intrathecal or epidural catheter	\$42.91	N/A	N/A	\$268.17
62362	Implantation or replacement of device for intrathecal or epidural drug infusion; programmable pump, including preparation of pump, with or without programming	\$60.58	N/A	N/A	\$378.64
62365	Removal of subcutaneous reservoir or pump, previously implanted for intrathecal or epidural infusion	\$47.60	N/A	N/A	\$297.52

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63650	Percutaneous implantation of neurostimulator electrode array, epidural	N/A	N/A	N/A	\$372.95
64416	Injection, anesthetic agent; brachial plexus, continuous infusion by catheter (including catheter placement)	N/A	N/A	N/A	\$89.38
64446	Injection, anesthetic agent; sciatic nerve, continuous infusion by catheter (including catheter placement)	N/A	N/A	N/A	\$87.42
64448	Injection, anesthetic agent; femoral nerve, continuous infusion by catheter (including catheter placement)	N/A	N/A	N/A	\$77.48
64449	Injection, anesthetic agent; lumbar plexus, posterior approach, continuous infusion by catheter (including catheter placement)	N/A	N/A	N/A	\$85.81
64585	Revision or removal of peripheral neurostimulator electrodes	N/A	N/A	N/A	\$145.54
64590	Insertion or replacement of peripheral or gastric neurostimulator pulse generator or receiver, direct or inductive coupling	\$25.99	N/A	N/A	\$162.41
64595	Revision or removal of peripheral or gastric neurostimulator pulse generator or receiver	N/A	N/A	N/A	\$128.57
65150	Reinsertion of ocular implant; with or without conjunctival graft	N/A	N/A	N/A	\$469.22
66820	Discission of secondary membranous cataract (opacified posterior lens capsule and/or anterior hyaloid); stab incision technique (Ziegler or Wheeler knife)	N/A	N/A	N/A	\$315.96
69120	Excision external ear; complete amputation	N/A	N/A	N/A	\$348.46
70140	Radiologic examination, facial bones; less than 3 views	N/A	\$9.24	\$18.91	\$28.15
70350	Cephalogram, orthodontic	N/A	\$8.52	\$10.79	\$19.31
70355	Orthopantogram	N/A	\$9.94	\$11.90	\$21.84
70371	Complex dynamic pharyngeal and speech evaluation by cine or video recording	N/A	\$40.86	\$52.05	\$92.91
72020	Radiologic examination, spine, single view, specify level	N/A	N/C	\$14.46	\$21.40
72070	Radiologic examination, spine; thoracic, 2 views	N/A	N/C	\$20.91	\$30.94
73020	Radiologic examination, shoulder; 1 view	N/A	\$7.47	\$14.46	\$21.93
73542	Radiological examination, sacroiliac joint arthrography, radiological supervision and interpretation	N/A	\$27.79	\$47.38	\$75.17
74485	Dilation of nephrostomy, ureters, or urethra, radiological supervision and interpretation	N/A	\$27.65	\$84.36	\$112.01



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75962	Transluminal balloon angioplasty, peripheral artery, radiological supervision and interpretation	N/A	\$27.32	\$243.87	\$271.19
75964	Transluminal balloon angioplasty, each additional peripheral artery, radiological supervision and interpretation (List separately in addition to code for primary procedure)	N/A	\$18.49	\$140.87	\$159.36
75966	Transluminal balloon angioplasty, renal or other visceral artery, radiological supervision and interpretation	N/A	\$67.94	\$250.21	\$318.15
75968	Transluminal balloon angioplasty, each additional visceral artery, radiological supervision and interpretation (List separately in addition to code for primary procedure)	N/A	\$18.77	\$140.87	\$159.64
75978	Transluminal balloon angioplasty, venous (e.g., subclavian stenosis), radiological supervision and interpretation	N/A	\$26.59	\$240.20	\$266.79
75994	Transluminal atherectomy, renal, radiological supervision and interpretation	N/A	\$61.99	N/C	\$585.68
76098	Radiological examination, surgical specimen	N/A	\$8.16	\$10.79	\$18.95
76377	3D rendering with interpretation and reporting of computed tomography, magnetic resonance imaging, ultrasound, or other tomographic modality; requiring image postprocessing on an independent workstation	N/A	\$41.28	\$68.47	\$109.75
76511	Ophthalmic ultrasound, diagnostic; quantitative A-scan only	N/A	N/C	\$44.76	\$75.76
76512	Ophthalmic ultrasound, diagnostic; B-scan (with or without superimposed non-quantitative A-scan)	N/A	N/C	\$39.60	\$77.10
76516	Ophthalmic biometry by ultrasound echography, A-scan;	N/A	\$26.87	\$36.76	\$63.63
76519	Ophthalmic biometry by ultrasound echography, A-scan; with intraocular lens power calculation	N/A	\$27.21	\$40.76	\$67.97
76529	Ophthalmic ultrasonic foreign body localization	N/A	\$28.67	\$36.15	\$64.82
76811	Ultrasound, pregnant uterus, real time with image documentation, fetal and maternal evaluation plus detailed fetal anatomic examination, transabdominal approach; single or first gestation	N/A	\$92.38	\$107.51	\$199.89
76820	Doppler velocimetry, fetal; umbilical artery	N/A	\$24.54	\$28.37	\$52.91
76827	Doppler echocardiography, fetal, pulsed wave and/or continuous wave with spectral display; complete	N/A	\$28.04	\$41.04	\$69.08

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76828	Doppler echocardiography, fetal, pulsed wave and/or continuous wave with spectral display; follow-up or repeat study	N/A	\$27.37	\$24.14	\$51.51
76936	Ultrasound guided compression repair of arterial pseudoaneurysm or arteriovenous fistulae (includes diagnostic ultrasound evaluation, compression of lesion and imaging)	N/A	\$101.19	\$88.25	\$189.44
76946	Ultrasonic guidance for amniocentesis, imaging supervision and interpretation	N/A	\$18.49	\$24.92	\$43.41
76977	Ultrasound bone density measurement and interpretation, peripheral site(s), any method	N/A	\$2.86	\$10.96	\$13.82
77003	Fluoroscopic guidance and localization of needle or catheter tip for spine or paraspinal diagnostic or therapeutic injection procedures (epidural, transforaminal epidural, subarachnoid, paravertebral facet joint, paravertebral facet joint nerve, or sacroiliac joint), including neurolytic agent destruction	N/A	N/C	\$29.08	\$50.29
77012	Computed tomography guidance for needle placement (e.g., biopsy, aspiration, injection, localization device), radiological supervision and interpretation	N/A	\$58.46	\$132.81	\$191.27
77031	Stereotactic localization guidance for breast biopsy or needle placement (e.g., for wire localization or for injection), each lesion, radiological supervision and interpretation	N/A	\$79.87	\$107.17	\$187.04
77032	Mammographic guidance for needle placement, breast (e.g., for wire localization or for injection), each lesion, radiological supervision and interpretation	N/A	N/C	\$29.42	\$50.00
77051	Computer-aided detection (computer algorithm analysis of digital image data for lesion detection) with further physician review for interpretation, with or without digitization of film radiographic images; diagnostic mammography (List separately in addition to code for primary procedure)	N/A	\$3.22	\$8.40	\$11.62
77052	Computer-aided detection (computer algorithm analysis of digital image data for lesion detection) with further physician review for interpretation, with or without digitization of film radiographic images; screening mammography (List separately in addition to code for primary procedure)	N/A	\$3.22	\$8.40	\$11.62
77053	Mammary ductogram or galactogram, single duct, radiological supervision and interpretation	N/A	\$18.10	\$54.83	\$72.93
77077	Joint survey, single view, 2 or more joints (specify)	N/A	N/C	\$25.03	\$36.74

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77079	Computed tomography, bone mineral density study, 1 or more sites; appendicular skeleton (peripheral) (e.g., radius, wrist, heel)	N/A	\$10.33	\$43.65	\$53.98
77081	Dual-energy X-ray absorptiometry (DXA), bone density study, 1 or more sites; appendicular skeleton (peripheral) (e.g., radius, wrist, heel)	N/A	\$10.66	\$18.30	\$28.96
77083	Radiographic absorptiometry (e.g., photodensitometry, radiogrammetry), 1 or more sites	N/A	\$9.60	\$15.96	\$25.56
77295	Therapeutic radiology simulation-aided field setting; 3-dimensional	N/A	\$225.14	\$436.36	\$661.50
77331	Special dosimetry (e.g., TLD, microdosimetry) (specify), only when prescribed by the treating physician	N/A	N/C	\$17.46	\$57.81
77333	Treatment devices, design and construction; intermediate (multiple blocks, stents, bite blocks, special bolus)	N/A	\$41.53	\$25.97	\$67.50
77417	Therapeutic radiology port film(s)	N/A	N/A	N/A	\$15.24
77418	Intensity modulated treatment delivery, single or multiple fields/arcs, by means of narrow spatially and temporally modulated beams, binary, dynamic MLC, per treatment session	N/A	N/A	N/A	\$478.80
78320	Bone and/or joint imaging; tomographic (SPECT)	N/A	\$52.08	\$185.90	\$237.98
78461	Myocardial perfusion imaging; multiple studies (planar), at rest and/or stress (exercise and/or pharmacologic), and redistribution and/or rest injection, with or without quantification	N/A	\$62.32	\$137.52	\$199.84
78464	Myocardial perfusion imaging; tomographic (SPECT), single study (including attenuation correction when performed), at rest or stress (exercise and/or pharmacologic), with or without quantification	N/A	\$57.22	\$201.92	\$259.14
78478	Myocardial perfusion study with wall motion, qualitative or quantitative study (List separately in addition to code for primary procedure)	N/A	\$26.82	\$30.25	\$57.07
78480	Myocardial perfusion study with ejection fraction (List separately in addition to code for primary procedure)	N/A	\$17.27	\$30.25	\$47.52
78710	Kidney imaging morphology; tomographic (SPECT)	N/A	\$33.31	\$186.57	\$219.88
79005	Radiopharmaceutical therapy, by oral administration	N/A	N/C	\$58.84	\$132.03
79101	Radiopharmaceutical therapy, by intravenous administration	N/A	N/C	\$63.84	\$143.82
79200	Radiopharmaceutical therapy, by intracavitary administration	N/A	N/C	\$68.51	\$133.51

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79403	Radiopharmaceutical therapy, radiolabeled monoclonal antibody by intravenous infusion	N/A	\$114.07	\$95.87	\$209.94
80047	Basic metabolic panel (Calcium, ionized)	N/A	N/A	N/A	\$12.36
88182	Flow cytometry, cell cycle or DNA analysis	N/A	\$34.95	N/C	\$41.31
89230	Sweat collection by iontophoresis	N/A	N/A	N/A	\$3.78
91022	Duodenal motility (manometric) study	N/A	N/C	\$98.75	\$158.07
91034	Esophagus, gastroesophageal reflux test; with nasal catheter pH electrode(s) placement, recording, analysis and interpretation	N/A	N/C	\$131.78	\$172.10
91040	Esophageal balloon distension provocation study	N/A	N/C	\$291.58	\$331.90
92270	Electro-oculography with interpretation and report	N/A	\$39.39	\$38.48	\$77.87
92284	Dark adaptation examination with interpretation and report	N/A	\$11.38	\$40.76	\$52.14
92565	Stenger test, pure tone	N/A	N/A	N/A	\$11.90
92577	Stenger test, speech	N/A	N/A	N/A	\$16.41
92586	Auditory evoked potentials for evoked response audiometry and/or testing of the central nervous system; limited	N/A	\$23.14	\$34.70	\$57.84
92587	Evoked otoacoustic emissions; limited (single stimulus level, either transient or distortion products)	N/A	\$6.74	\$29.98	\$36.72
92588	Evoked otoacoustic emissions; comprehensive or diagnostic evaluation (comparison of transient and/or distortion product otoacoustic emissions at multiple levels and frequencies)	N/A	\$17.71	\$42.10	\$59.81
92977	Thrombolysis, coronary; by intravenous infusion	N/A	N/A	N/A	\$126.69
93000	Electrocardiogram, routine ECG with at least 12 leads; with interpretation and report	N/A	N/A	N/A	\$19.98
93005	Electrocardiogram, routine ECG with at least 12 leads; tracing only, without interpretation and report	N/A	N/A	N/A	\$11.12
93015	Cardiovascular stress test using maximal or submaximal treadmill or bicycle exercise, continuous electrocardiographic monitoring, and/or pharmacological stress; with physician supervision, with interpretation and report	N/A	N/A	N/A	\$95.56
93041	Rhythm ECG, 1-3 leads; tracing only without interpretation and report	N/A	N/A	N/A	\$5.06



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93224	Wearable electrocardiographic rhythm derived monitoring for 24 hours by continuous original waveform recording and storage, with visual superimposition scanning; includes recording, scanning analysis with report, physician review and interpretation	N/A	N/A	N/A	\$113.18
93226	Wearable electrocardiographic rhythm derived monitoring for 24 hours by continuous original waveform recording and storage, with visual superimposition scanning; scanning analysis with report	N/A	N/A	N/A	\$51.83
93270	Wearable patient activated electrocardiographic rhythm derived event recording with presymptom memory loop, 24-hour attended monitoring, per 30 day period of time; recording (includes connection, recording, and disconnection)	N/A	N/A	N/A	\$20.47
93278	Signal-averaged electrocardiography (SAECG), with or without ECG	N/A	\$12.74	\$26.31	\$39.05
93321	Doppler echocardiography, pulsed wave and/or continuous wave with spectral display (List separately in addition to codes for echocardiographic imaging); follow-up or limited study (List separately in addition to codes for echocardiographic imaging)	N/A	\$8.13	\$25.14	\$33.27
93555	Imaging supervision, interpretation and report for injection procedure(s) during cardiac catheterization; ventricular and/or atrial angiography	N/A	\$43.73	\$69.64	\$113.37
93556	Imaging supervision, interpretation and report for injection procedure(s) during cardiac catheterization; pulmonary angiography, aortography, and/or selective coronary angiography including venous bypass grafts and arterial conduits (whether native or used in bypass)	N/A	\$44.78	\$112.96	\$157.74
93724	Electronic analysis of antitachycardia pacemaker system (includes electrocardiographic recording, programming of device, induction and termination of tachycardia via implanted pacemaker, and interpretation of recordings)	N/A	\$261.25	\$63.74	\$324.99
95027	Intracutaneous (intra-dermal) tests, sequential and incremental, with allergenic extracts for airborne allergens, immediate type reaction, including test interpretation and report by a physician, specify number of tests	N/A	N/A	N/A	\$4.42
95834	Muscle testing, manual (separate procedure) with report; total evaluation of body, including hands	N/A	N/A	N/A	\$29.15

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97597	Removal of devitalized tissue from wound(s), selective debridement, without anesthesia (e.g., high pressure waterjet with/without suction, sharp selective debridement with scissors, scalpel and forceps), with or without topical application(s), wound assessment, and instruction(s) for ongoing care, may include use of a whirlpool, per session; total wound(s) surface area less than or equal to 20 square centimeters	N/A	N/A	N/A	\$31.54
97598	Removal of devitalized tissue from wound(s), selective debridement, without anesthesia (e.g., high pressure waterjet with/without suction, sharp selective debridement with scissors, scalpel and forceps), with or without topical application(s), wound assessment, and instruction(s) for ongoing care, may include use of a whirlpool, per session; total wound(s) surface area greater than 20 square centimeters	N/A	N/A	N/A	\$41.81
A4615	Cannula, nasal	N/A	N/A	N/A	\$0.75
A4620	Variable concentration mask	N/A	N/A	N/A	\$0.62
E0143-RR	Walker, folding, wheeled, adjustable or fixed height	N/A	N/A	N/A	\$19.54
E0158-NU	Leg extensions for walker, per set of 4	N/A	N/A	N/A	\$29.12
E0250-RR	Hospital bed, fixed height, with any type side rails, with mattress	N/A	N/A	N/A	\$88.47
E0251-RR	Hospital bed, fixed height, with any type side rails, without mattress	N/A	N/A	N/A	\$67.04
E0255-RR	Hospital bed, variable height, hi-lo, with any type side rails, with mattress	N/A	N/A	N/A	\$103.50
E0256-RR	Hospital bed, variable height, hi-lo, with any type side rails, without mattress	N/A	N/A	N/A	\$70.67
E0260-RR	Hospital bed, semi-electric (head and foot adjustment), with any type side rails, with mattress	N/A	N/A	N/A	\$127.12
E0261-RR	Hospital bed, semi-electric (head and foot adjustment), with any type side rails, without mattress	N/A	N/A	N/A	\$116.43
E0271-RR	Mattress, innerspring	N/A	N/A	N/A	\$20.87
E0272-RR	Mattress, foam rubber	N/A	N/A	N/A	\$19.12
E0280-NU	Bed cradle, any type	N/A	N/A	N/A	\$33.49
E0290-RR	Hospital bed, fixed height, without side rails, with mattress	N/A	N/A	N/A	\$67.64
E0291-RR	Hospital bed, fixed height, without side rails, without mattress	N/A	N/A	N/A	\$49.14
E0292-RR	Hospital bed, variable height, hi-lo, without side rails, with mattress	N/A	N/A	N/A	\$73.37
E0293-RR	Hospital bed, variable height, hi-lo, without side rails, without mattress	N/A	N/A	N/A	\$64.72

<i>Procedure Code / Modifier NU or RR where indicated</i>	<i>Procedure Code Description</i>	<i>Assistant Surgeon fee Revision (Billing with Modifier 80)</i>	<i>Professional Component Fee Revision (Billing with Modifier 26)</i>	<i>Technical Component Fee Revision (Billing with Modifier TC)</i>	<i>Billing with No Modifier or with Pricing Modifiers NU or RR</i>
E0296-RR	Hospital bed, total electric (head, foot, and height adjustments), without side rails, with mattress	N/A	N/A	N/A	\$148.60
E0297-RR	Hospital bed, total electric (head, foot, and height adjustments), without side rails, without mattress	N/A	N/A	N/A	\$127.31
E0424-RR	Stationary compressed gaseous oxygen system, rental; includes container, contents, regulator, flowmeter, humidifier, nebulizer, cannula or mask, and tubing	N/A	N/A	N/A	\$175.79
E0431-RR	Portable gaseous oxygen system, rental; includes portable container, regulator, flowmeter, humidifier, cannula or mask, and tubing	N/A	N/A	N/A	\$28.77
E0434-RR	Portable liquid oxygen system, rental; includes portable container, supply reservoir, humidifier, flowmeter, refill adaptor, contents gauge, cannula or mask, and tubing	N/A	N/A	N/A	\$28.77
E0439-RR	Stationary liquid oxygen system, rental; includes container, contents, regulator, flowmeter, humidifier, nebulizer, cannula or mask and tubing	N/A	N/A	N/A	\$175.79
E0560-RR	Humidifier, durable for supplemental humidification during IPPB treatment or oxygen delivery	N/A	N/A	N/A	\$18.19
E0776-NU	IV pole	N/A	N/A	N/A	\$98.86
E0910-RR	Trapeze bars, also known as Patient Helper, attached to bed, with grab bar	N/A	N/A	N/A	\$18.10
E1390-RR	Oxygen concentrator, single delivery port, capable of delivering 85% or greater oxygen concentration at the prescribed flow rate	N/A	N/A	N/A	\$175.79
E1391-RR	Oxygen concentrator, dual delivery port, capable of delivering 85% or greater oxygen concentration at the prescribed flow rate, each	N/A	N/A	N/A	\$175.79
E1405-RR	Oxygen and water vapor enriching system with heated delivery	N/A	N/A	N/A	\$212.61
E1406-RR	Oxygen and water vapor enriching system without heated delivery	N/A	N/A	N/A	\$192.70
E2209-NU	Accessory, arm trough, with or without hand support, each	N/A	N/A	N/A	\$96.98
E2209-RR	Accessory, arm trough, with or without hand support, each	N/A	N/A	N/A	\$9.72
E2210-NU	Wheelchair accessory, bearings, any type, replacement only, each	N/A	N/A	N/A	\$5.93
E2601-NU	General use wheelchair seat cushion, width less than 22 inch, any depth	N/A	N/A	N/A	\$55.35
E2601-RR	General use wheelchair seat cushion, width less than 22 inch, any depth	N/A	N/A	N/A	\$5.55
E2602-NU	General use wheelchair seat cushion, width 22 inch or greater, any depth	N/A	N/A	N/A	\$108.06

<i>Procedure Code / Modifier NU or RR where indicated</i>	<i>Procedure Code Description</i>	<i>Assistant Surgeon fee Revision (Billing with Modifier 80)</i>	<i>Professional Component Fee Revision (Billing with Modifier 26)</i>	<i>Technical Component Fee Revision (Billing with Modifier TC)</i>	<i>Billing with No Modifier or with Pricing Modifiers NU or RR</i>
E2602-RR	General use wheelchair seat cushion, width 22 inch or greater, any depth	N/A	N/A	N/A	\$10.81
E2603-NU	Skin protection wheelchair seat cushion, width less than 22 inch, any depth	N/A	N/A	N/A	\$137.19
E2603-RR	Skin protection wheelchair seat cushion, width less than 22 inch, any depth	N/A	N/A	N/A	\$13.73
E2604-NU	Skin protection wheelchair seat cushion, width 22 inch or greater, any depth	N/A	N/A	N/A	\$170.51
E2604-RR	Skin protection wheelchair seat cushion, width 22 inch or greater, any depth	N/A	N/A	N/A	\$17.04
E2605-NU	Positioning wheelchair seat cushion, width less than 22 inch, any depth	N/A	N/A	N/A	\$243.60
E2605-RR	Positioning wheelchair seat cushion, width less than 22 inch, any depth	N/A	N/A	N/A	\$24.37
E2611-NU	General use wheelchair back cushion, width less than 22 inch, any height, including any type mounting hardware	N/A	N/A	N/A	\$282.68
E2611-RR	General use wheelchair back cushion, width less than 22 inch, any height, including any type mounting hardware	N/A	N/A	N/A	\$28.26
E2612-NU	General use wheelchair back cushion, width 22 inch or greater, any height, including any type mounting hardware	N/A	N/A	N/A	\$382.40
E2612-RR	General use wheelchair back cushion, width 22 inch or greater, any height, including any type mounting hardware	N/A	N/A	N/A	\$38.24
G0108	Diabetes outpatient self-management training services, individual, per 30 minutes	N/A	N/A	N/A	\$21.41
G0109	Diabetes outpatient self-management training services, group session (2 or more), per 30 minutes	N/A	N/A	N/A	\$12.07
Q0035	Cardiokymography	N/A	\$8.19	\$10.12	\$18.31

*Fiscal Impact*

It is anticipated that these revisions will result in savings of \$0.979 million (\$0.351 million in State funds) in the MA Outpatient Program in Fiscal Year (FY) 2009-2010 and annualized savings of \$1.679 million (\$0.694 million in State funds) in FY 2010-2011. These State fund estimates are based on the increased Federal Medical Assistance Percentages as determined under the American Recovery and Reinvestment Act (ARRA) of 2009.

*Public Comment*

Interested persons are invited to submit written comments regarding this notice to the Department of Public Welfare, Office of Medical Assistance Programs, c/o Regulations Coordinator, Room 515, Health and Welfare Building, Harrisburg, PA 17120. Comments received within 30 days will be reviewed and considered for any subsequent revisions of the MA Program Fee Schedule.

Persons with a disability who require 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-622. No fiscal impact; (8) recommends adoption.

[Pa.B. Doc. No. 09-1813. Filed for public inspection September 25, 2009, 9:00 a.m.]



## FISH AND BOAT COMMISSION

### Proposed Removal from List of Class A Wild Trout Waters Section of Cross Fork, Potter County

The Fish and Boat Commission (Commission) is considering a change to its list of Class A Wild Trout Streams. Under 58 Pa. Code § 57.8a (relating to Class A wild trout streams), it is the Commission's policy to manage self-sustaining Class A wild trout populations as a renewable natural resource to conserve that resource and the angling it provides. Class A wild trout populations represent the best of Pennsylvania's naturally reproducing trout fisheries. The Commission manages these stream sections solely for the perpetuation of the wild trout population and fishery with no stocking.

In 2005, 2006 and 2007, Commission staff surveyed a section of Cross Fork, Potter County, and the results of those surveys indicated the presence of excellent wild brook and brown trout populations that exceeded the minimum criteria for designation as a Class A wild trout water ( $\geq 40$  kg/ha). Staff subsequently recommended that the 1.83-mile section of Cross Fork (Section 03) from the confluence with Rhulo Hollow/Bear Trap Lodge downstream to the confluence with Windfall Run be added to the Class A Wild Trout Streams List. The Commission approved the addition of Cross Fork, Section 03, to the list in January 2009. See 39 Pa.B. 914 (February 14, 2009).

During a follow-up stream survey on August 18 and 19, 2009, Commission staff documented a Class D (9 kg/ha) wild trout population (brook and brown combined), in the most downstream 0.55-mile reach of the designated Class A section. This section of Cross Fork is located on private property and extends from the Susquehannock State Forest Boundary downstream to the confluence with Windfall Run. The Commission intends to consider removing this 0.55-mile stream section from its list of Class A Wild Trout Streams at a future meeting. If removed, this 0.55-mile reach of stream could be considered for future trout stocking.

Persons with comments, objections or suggestions concerning the removal are invited to submit comments in writing to 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 also may be submitted electronically by completing the form at [www.fishandboat.com/regcomments](http://www.fishandboat.com/regcomments). 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.

The Commission will also consider comments from riparian landowners within Section 03 that were submitted by means of the postal mail survey conducted by the Commission in August-September 2009. These landowners do not have to resubmit their comments unless they are inclined to do so or have additional information to share.

DOUGLAS J. AUSTEN, Ph.D.,  
*Executive Director*

[Pa.B. Doc. No. 09-1814. Filed for public inspection September 25, 2009, 9:00 a.m.]

### Removal from List of Class A Wild Trout Waters Baldwin Run, Tioga County

The Fish and Boat Commission (Commission) has approved the removal of a section of Baldwin Run, Tioga County, from its list of Class A Wild Trout Streams as set forth at 39 Pa.B. 4499 (August 1, 2009). Specifically, the Commission removed the section of Baldwin Run from "The Muck" to the mouth of the stream. The revised limits now read "From the headwaters downstream to the confluence with the unnamed tributary at RM 1.16 (outflow of wetlands)."

DOUGLAS J. AUSTEN, Ph.D.,  
*Executive Director*

[Pa.B. Doc. No. 09-1815. Filed for public inspection September 25, 2009, 9:00 a.m.]

### Temporary Changes to Fishing Regulations North Park Lake, Allegheny County

The Executive Director of the Fish and Boat Commission (Commission), acting under the authority of 58 Pa. Code § 65.25 (relating to temporary changes to fishing regulations), has taken immediate action to temporarily modify fishing regulations at North Park Lake, Allegheny County, in anticipation of a complete drawdown of the lake. The Executive Director is lifting all seasons, sizes and creel limits for all species, effective September 14, 2009. The Executive Director has found that this action is necessary and appropriate for the management of fish, and to conserve and preserve fishing opportunities. This action does not apply to Pine Creek upstream and downstream of the impoundment.

The Executive Director has caused these temporary modifications to fishing regulations to be posted in the vicinity of the lake, and the modified regulations are fully effective and enforceable. These temporary modifications will be in effect until further notice but in no event will they remain in place after March 13, 2010.

DOUGLAS J. AUSTEN, Ph.D.,  
*Executive Director*

[Pa.B. Doc. No. 09-1816. Filed for public inspection September 25, 2009, 9:00 a.m.]

## HISTORICAL AND MUSEUM COMMISSION

### National Register Nominations to be Reviewed by the Historic Preservation Board

The Historic Preservation Board (Board) will hold a meeting on October 6, 2009, at 9:45 a.m. in Hearing Room 2, Commonwealth Keystone Building, 400 North Street, Harrisburg, PA. Persons with a disability who wish to attend this meeting and require an auxiliary aid, service or other accommodation to participate should contact Cheri Garrett at (717) 783-9933 or through the Pennsylvania AT&T Relay Service at (800) 654-5984 (TDD) to discuss how the agency can accommodate their needs. Persons with any with any questions or comments should contact the Bureau for Historic Preservation at (717) 783-8946.

1. Hamnett Historic District, roughly bonded by Rebecca Avenue, Center Street, Lytle Way, and the Norfolk Southern RR right-of-way, Wilkinsburg, Allegheny County, No. 094906.

2. Newville Historic District, roughly bounded by Cove Avenue, Big Spring Creek, Cumberland Valley Railroad and Washington Street, Newville, Cumberland County, No. 112116.

3. Hamburg Historic District, roughly bounded by Windsor and South Second Streets, Quince and Primrose Alleys, and Mill Creek, Hamburg, Berks County, No. 101959.

4. Pennsylvania State Office Building, Philadelphia County, No. 144396.

5. Experimental and Safety Research Coal Mines, South Park Township, Allegheny County, No. 143924.

6. Cheyney Farm, Thornbury Township, Chester County, No. 065271.

7. Hopewell Farm, Valley Township, Chester County, No. 078885.

8. Chandler Mill Road Bridge, Kennett Township, Chester County, No. 132096.

9. Philadelphia Quartermaster Depot, Philadelphia County, No. 105013.

BARBARA FRANCO,  
*Executive Director*

[Pa.B. Doc. No. 09-1817. Filed for public inspection September 25, 2009, 9:00 a.m.]

## INSURANCE DEPARTMENT

### Application for Approval of a Proposed Merger Between Washington Fire and Storm Insurance Company and Tuscarora Wayne Insurance Company

Tuscarora Wayne Insurance Company, a domestic stock casualty insurance company, has filed an application for approval to merge with Washington Fire and Storm Insurance Company, also a domestic stock casualty insurance company, with Tuscarora Wayne Insurance Company surviving the merger. The filing was made under the requirements set forth under the Insurance Holding Companies Act of 1921 (40 P. S. §§ 991.1401—991.1413); 15 Pa.C.S. §§ 1921—1932; and the GAA Amendments Act of 1990 (15 P. S. §§ 21101—21404). Persons wishing to comment on the merger are invited to submit a written statement to the Insurance Department (Department) within 7 days from the date of this issue of the *Pennsylvania Bulletin*. Each written statement must include name, address and telephone number of the interested party; identification of the application to which the statement is addressed; and a concise statement with sufficient detail and relevant facts to inform the Department of the exact basis of the statement. Written statements should be directed to Robert Brackbill, Company Licensing Division, Insurance Department, 1345 Strawberry Square, Harrisburg, PA 17120, fax (717) 787-8557, rbrackbill@state.pa.us.

JOEL SCOTT ARIO,  
*Insurance Commissioner*

[Pa.B. Doc. No. 09-1818. Filed for public inspection September 25, 2009, 9:00 a.m.]

### Application and Request for a Certificate of Authority to Provide a Continuing Care Retirement Community by St. Mary's Villa Nursing Home, Inc.

St. Mary's Villa Nursing Home, Inc. has applied for a Certificate of Authority to operate a Continuing Care Retirement Community at St. Mary's Villa Nursing Home, Inc. in Moscow, PA. The initial filing was received on September 9, 2009, 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 Pennsylvania 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, by fax (717) 787-8557 or by e-mail to syerger@state.pa.us.

JOEL SCOTT ARIO,  
*Insurance Commissioner*

[Pa.B. Doc. No. 09-1819. Filed for public inspection September 25, 2009, 9:00 a.m.]

### UPMC Health Plan; Group Base Rate Filing

The Insurance Department (Department) received a filing from UPMC Health Plan requesting approval to increase the base rates by 48%. This filing will impact approximately 12,000 members and produce additional income of about \$14 million annually. The requested effective date is January 1, 2010.

Unless formal administrative action is taken prior to December 10, 2009, the subject filing may be deemed approved by operation of law.

A copy of the filing is available on the Department's website at [www.ins.state.pa.us](http://www.ins.state.pa.us). Under the Quick Links section, click on the link "Rate Filings Published in the PA Bulletin".

Copies of the filing are also available for public inspection, by appointment, during normal working hours at the Department's Harrisburg Office.

Interested parties are invited to submit written comments, suggestions or objections to Cherri Sanders-Jones, Insurance Department, Insurance Product Regulation and Administration, Room 1311, Strawberry Square, Harrisburg, PA 17120, csandersjo@state.pa.us within 30 days after publication of this notice in the *Pennsylvania Bulletin*.

[Pa.B. Doc. No. 09-1820. Filed for public inspection September 25, 2009, 9:00 a.m.]

## PENNSYLVANIA PUBLIC UTILITY COMMISSION

### Service of Notice of Motor Carrier Applications

The following temporary authority and/or permanent authority applications for the right to render service as a common carrier or contract carrier in this Commonwealth have been filed with the Pennsylvania Public Utility Commission. Formal protests and petitions to intervene must be filed in accordance with 52 Pa. Code (relating to public utilities). A protest shall indicate whether it applies to the temporary authority application, the permanent authority application, or both. Filings must be made with the Secretary, Pennsylvania Public Utility Commission, P. O. Box 3265, Harrisburg, PA 17105-3265, with a copy served on the applicant by October 13, 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-2009-2129165. Clair Zimmerman and Debra Sensenig, Copts., t/a C & D Medical Transport** (P. O. Box 15, Terre Hill, Lancaster County, PA 17581), for the right to begin to transport nonambulatory persons, in paratransit service, in van type vehicles with wheelchair lifts and/or stretcher mounted, from points in the Counties of Berks, Bucks, Chester, Cumberland, Dauphin, Lancaster, Lebanon, Lehigh, Montgomery, Schuylkill and York, to points in Pennsylvania, and return.

### Application of the following for *amendment to the certificate of public convenience approving the operation of motor vehicles as common carriers for transportation of persons as described under the application.*

**A-2009-2129525. Metro Transportation of Pennsylvania, LLC, t/a Metro Taxi** (P. O. Box 122, Meadville, Crawford County, PA 16335)—persons, upon call or demand, in the County of Erie.

JAMES J. MCNULTY,  
*Secretary*

[Pa.B. Doc. No. 09-1821. Filed for public inspection September 25, 2009, 9:00 a.m.]

## PENNSYLVANIA STIMULUS OVERSIGHT COMMISSION

### Public Meeting

The public meeting scheduled for the Pennsylvania Stimulus Oversight Commission for Thursday, October 8, 2009, at 11 a.m. will be held in Conference Room 1, Forum Place Building, 555 Walnut Street, Harrisburg, PA.

RONALD NAPLES,  
*Chairperson*

[Pa.B. Doc. No. 09-1822. Filed for public inspection September 25, 2009, 9:00 a.m.]

## STATE BOARD OF COSMETOLOGY

### Professional and Occupational Affairs v. Tony Pham t/d/b/a Gorgeous Nails Salon; Doc. No. 0434-45-2008

On August 7, 2009, Tony Pham, t/d/b/a Gorgeous Nails Salon, license no. CY194821, of Philadelphia, Philadelphia County, was ordered to pay a civil penalty of \$500, because he violated the Cosmetology Law.

Individuals may obtain a copy of the adjudication by writing to David Markowitz, Board Counsel, State Board of Cosmetology, P. O. Box 2649, Harrisburg, PA 17105-2649.

This adjudication and order represents the State Board of Cosmetology (Board) final decision in this matter. It may be appealed to the Commonwealth Court of Pennsylvania by the filing of a petition for review with that court in accordance with the Pennsylvania Rules of Appellate Procedure. Individuals who take an appeal to the Commonwealth Court must serve the Board with a copy of their petition for review. The Board contact for receiving service of the appeals is the previously-named Board counsel.

JANET G. M. SANKO,  
*Chairperson*

[Pa.B. Doc. No. 09-1823. Filed for public inspection September 25, 2009, 9:00 a.m.]

## STATE EMPLOYEES' RETIREMENT BOARD

### Hearings Scheduled

The following hearings have been scheduled, as authorized by 71 Pa.C.S. Part XXV (relating to the State Employees' Retirement Code), in connection with the State Employees' Retirement System's denial of Claimants requests concerning the indicated accounts.

The hearings will be held before a hearing examiner at the State Employees' Retirement System, 30 North Third Street, Fifth Floor, Harrisburg, PA 17101:

October 7, 2009	Elizabeth G. Warner Transfer from TIAA-CREF to SERS Membership	1 p.m.
October 27, 2009	Dean F. Martinson (Dec'd) Contested Death Benefit	1 p.m.

Parties in each respective case may appear with or without counsel and offer relevant testimony or evidence to support their respective positions. The hearings will be held in accordance with the requirements of 2 Pa.C.S. §§ 501—508 and 701—704 (relating to the Administrative Agency Law). Under 4 Pa. Code § 250.1 (relating to applicability of general rules), procedural matters will be in conformance with 1 Pa. Code Part II (relating to the General Rules of Administrative Practice and Procedure), unless specific exemption is granted.

LEONARD KNEPP,  
*Secretary*

[Pa.B. Doc. No. 09-1824. Filed for public inspection September 25, 2009, 9:00 a.m.]





# NOTICES

## DEPARTMENT OF CONSERVATION AND NATURAL RESOURCES

### Bureau of Forestry and the Division of Forest Fire Protection

The Prescribed Burn Standards developed by the Department of Conservation and Natural Resources, under the requirements of P. L. 76, Act 17, 2009, *The Prescribed Burning Practices Act*, effective July 14, 2009.

A 60-day period for public inquiry or comment will be in effect commencing September 26, 2009, and ending November 25, 2009. Written comments or questions concerning the Prescribed Burn Standards may be addressed to John G. Miller, Office of Parks and Forestry, Forest Fire Protection, 400 Market Street, P. O. Box 8552, Harrisburg, PA 17105.

#### *Pennsylvania Prescribed Fire Standards*

##### *Introduction*

The purpose of this guide is to provide standards, establish common terminology and definitions, and identify planning and implementation procedures for the use of prescribed fire in Pennsylvania.

These standards specify what is minimally acceptable for prescribed fire planning and implementation. Organizations may choose to establish additional standards and policy direction, but they must adhere to, and cannot modify, these minimums.

##### *Prescribed Fire Program Goals*

Pennsylvania's prescribed fire program goals are to:

1. Provide for firefighter and public safety as the first priority.
2. Ensure that risk management is incorporated into all prescribed fire activities.
3. Use prescribed fire in a safe, carefully planned manner.
4. Utilize prescribed fire to achieve specific fire and natural resource management objectives.

##### *Authorities*

Prescribed fire in Pennsylvania is authorized by the Pennsylvania Prescribed Burning Practices Act (Act 17 of 2009). All prescribed fires conducted in this Commonwealth must be performed in accordance with this act and these standards.

This guide was developed by the Pennsylvania Bureau of Forestry and the Pennsylvania Prescribed Fire Council, Training and Standards Committee.

##### *Notifications*

Two separate notifications are required by Pennsylvania Prescribed Burning Practices Act:

##### *1) Notification of the Pennsylvania Department of Environmental Protection*

Written notification of the intent to conduct a prescribed fire, including two copies of the burn plan must be sent to the Pennsylvania Department of Environmental Protection. One copy to DEP, Bureau of Air Quality,

Division of Compliance & Enforcement, 400 Market Street, Harrisburg, PA 17101 and one copy to the appropriate regional office (Appendix I) at least 25 working days prior to the earliest possible date that a burn could occur.

##### *2) Notification of the Pennsylvania Department of Conservation and Natural Resources*

Written notification of the intent to conduct a prescribed fire, including three copies of the burn plan must be sent to the Department of Conservation and Natural Resources, Division of Forest Fire Protection, Attn: Chief Forest Fire Warden, P. O. Box 8552, Harrisburg, PA 17105-8552 at least 25 working days prior to the earliest possible date that a burn could occur.

Written notification must again be made to the Chief Forest Fire Warden no more than 5 working days after the prescribed fire has been completed. This notification must include the dates that the fire occurred, ownership of the land burned, county, township and final acreage.

##### *Prescribed Fire Qualifications and Organization*

##### *Pennsylvania Qualifications*

All personnel who participate in prescribed burning in Pennsylvania must be qualified for their assigned position. The minimum qualification standards are listed in the Pennsylvania Prescribed Fire Qualification Standards (Appendix B). These standards will apply only to prescribed fires conducted within the state. Organizations will be responsible for qualifying and tracking the training and experience of their own personnel. Thorough documentation will be necessary in order to provide individuals with the protection provided by legislation.

Qualifications are obtained through a combination of training and experience. Experience is measured by completing a position-specific task book that is evaluated by a fully qualified evaluator and also by meeting the minimum prerequisite operational period experience required for each position. Completed task books then need to be certified by the organization. Currency of qualifications will be maintained by acting in the subject capacity at least once every 5 years. In this manner, currency will also be maintained in each lower position. Trainees may participate on the scene only under the direct supervision of a qualified evaluator and the trainee must be fully qualified at the next lower level.

Organizations who are members of the Pennsylvania Prescribed Fire Council Steering Committee may grandfather their personnel in accordance with the Grandfathering Standards (Appendix D).

Individuals who fail to meet the responsibilities of their qualified position may have their qualifications revoked by their organization.

##### *National Qualifications*

Individuals who are qualified at a position(s) according to the National Wildfire Coordinating Group (NWCG) Wildland and Prescribed Fire Qualifications System Guide (PMS-310-1) standards will also be considered as qualified at the corresponding position(s) in Pennsylvania.

##### *Organization*

All member organizations of the Pennsylvania Prescribed Fire Council Steering Committee agree to accept each other's qualifications; provided that they meet the Pennsylvania Prescribed Fire Qualification Standards or

the NWCG 310-1 Standards. The organizational structure that is outlined in the approved Prescribed Fire Plan must be used and staffed with qualified individuals for the implementation of the prescribed fire.

The complexity of each prescribed fire will dictate the organizational structure that is needed to safely achieve the objectives that are specified in the prescribed fire plan. All prescribed fire plans must, at a minimum, identify the following positions, how they will be staffed, and how they will fit into the organization:

- Agency Administrator (AA)
- Burn Boss (RXB1, RXB2 or RXB3 as appropriate)
- Holding Specialist
- Firing Boss (FIRB)

On low-complexity burns, the Burn Boss may assume the duties of the Holding Specialist and/or the Firing Boss. If this is the case, it must be outlined in the Prescribed Fire Plan.

Minimum Burn Boss qualifications required to implement the plan will be determined by analyzing the complexity of each prescribed fire. Complexity is determined by using the Pennsylvania Prescribed Fire Complexity Rating Worksheet (Appendix H). The NWCG Prescribed Fire Complexity Rating System Guide is also acceptable. Resources will be assigned based on the following chart:

Position	Complexity Rating		
	High	Moderate	Low
RXB1	Required	Optional	Optional
RXB2	Not Allowed	Required	Optional
RXB3	Not Allowed	Not Allowed	Required
FIRB	Required	Required	Optional
Holding Specialist	Holding functions should be managed by someone who is qualified at the appropriate ICS wildland fire operations position. On low complexity projects, the holding duties may be assigned to the Burn Boss.		

*Responsibilities*

Thorough planning and review processes are required prior to implementation. All prescribed fire activities should be based on natural resource and fire management objectives.

*Agency Administrator*

The Agency Administrator is the individual who is the managing officer of an agency, division thereof, or jurisdiction having responsibility for incident mitigation and management. Examples: Park Superintendent, District Forest Fire Warden, USFS Forest Supervisor, FWS Refuge Manager, Fire Chief. On private lands, the Agency Administrator will be the landowner. Individual organizations will need to designate who their accepted Agency Administrators will be.

The Agency Administrator has final approval authority for all Prescribed Fire Plans. The Prescribed Fire Plan is a contract between the Burn Boss and the Agency Administrator. Once the Prescribed Fire Plan is approved, the Agency Administrator is authorizing the Burn Boss to implement the burn. It then becomes the responsibility of the Burn Boss to ensure that all prescription, staffing, equipment and other plan specifications are met before, during and after the burn.

The Agency Administrator is responsible to:

1. *Approve Prescribed Fire Plans.* When approving the plan, understand the risks that are associated with it. Ensure that the objectives within the plan are consistent with natural resource or fire management objectives.
2. Ensure that fully qualified personnel are available to implement the burn plan, assign a fully qualified burn boss, and ensure that only trained and qualified personnel participate in the implementation of the prescribed fire. Ensure that projects are monitored, evaluated and documented.
3. Ensure that the proper notifications are made to cooperators, partners and/or local emergency management agencies.
4. Allow the Prescribed Fire Burn Boss to have tactical control of the Prescribed Burn.
5. Ensure that all prescribed fires are conducted in accordance with the approved prescribed fire plan and established standards and guidelines.
6. Report all wildfires resulting from prescribed fires to the Pennsylvania Bureau of Forestry.
7. Ensure that written notifications are completed in a timely manner as outlined in the "Notifications" section of these standards.

*Prescribed Fire Burn Boss*

The Prescribed Fire Burn Boss is responsible to the Agency Administrator. They are responsible to insure that the prescribed fire is implemented as outlined in the prescribed fire plan.

The Prescribed Fire Burn Boss is responsible to:

1. Review the Prescribed Fire Plan prior to implementation to ensure that all necessary elements and objectives are addressed.
2. Inspect the prescribed fire area to ensure that the plan addresses all areas of special concern and that the expected fire behavior will be within the capabilities of the holding and contingency plan.
3. Evaluate the proposed ignition plan to ensure that it will meet the objectives.
4. Obtain current weather and smoke forecasts, updates and advisories from accepted fire weather forecasters.
5. Maintain communication with the Agency Administrator.
6. Complete and sign the Prescribed Fire GO/NO-GO Checklist (See Appendix B).
7. Confirm the availability of the contingency resources specified in the Prescribed Fire Plan.
8. Ensure that all operations are conducted in a safe manner and in accordance with the approved plan and established standards and guidelines.
9. Verify the qualifications of assigned personnel.
10. Conduct a personnel/safety briefing to ensure a safe operation.
11. Conduct the test fire and document results.
12. Exercise tactical control by supervising assigned personnel and directing the ignition, holding and monitoring operations, including mop-up and patrol.
13. Ensure that weather conditions and fire behavior are being monitored and documented.

14. Declare the prescribed fire out per organization specific standards.

15. Determine when the prescribed fire is not within prescription parameters or is not meeting the plan objectives, and initiate the necessary contingency action.

16. Declare an escaped prescribed fire a wildfire, as defined by these standards.

17. Manage the suppression of the wildfire or oversee the transition to another Incident Commander if an escape occurs.

18. Ensure that reports are completed.

19. Coordinate with adjacent landowners and cooperators as designated in the Prescribed Fire Plan.

### **Holding Specialist**

The supervisory position in charge of the holding forces reports to the Prescribed Fire Burn Boss. There is no specific position in the Pennsylvania Prescribed Fire Qualification Standards for this function, but the position should be staffed with someone who is qualified at the appropriate Incident Command System position. The complexity of the holding organization, contained in the Prescribed Fire Plan, will determine the appropriate position designation. The level of staffing should take into consideration assigned resources and span of control.

The Holding Specialist is responsible to:

1. Review the Prescribed Fire Plan and the prescribed fire area prior to implementation, preferably with both the Burn Boss and the Firing Boss.

2. Brief holding personnel on project objectives and holding operations.

3. Conduct holding operations in a safe manner according to the holding plan.

4. Provide for the safety and welfare of assigned resources.

5. Coordinate holding operations with the Firing Boss.

6. Confine the fire to a predetermined area as outlined in the Prescribed Fire Plan, including mop-up and patrol.

7. Maintain communication with the Burn Boss on holding progress and/or problems.

### *Firing Boss*

The Firing Boss reports to the Prescribed Fire Burn Boss and is responsible for supervising and directing ignition operations according to established standards in the Prescribed Fire Plan.

The Firing Boss is responsible to:

1. Review the Prescribed Fire Plan and the burn unit prior to implementation.

2. Brief personnel on project objectives and ignition operations.

3. Complete the test fire according to the ignition plan at the directions of the Prescribed Fire Burn Boss.

4. Conduct ignition operations in a safe manner according to the ignition plan.

5. Identify the impacts of ignition on the holding operation and the desired fire effects.

6. Coordinate ignition operations with the holding specialist.

7. Ensure that only those personnel designated as members of the firing team actually perform the ignition.

### *Safety*

Within all wildfire operations, firefighter and public safety are the first priority. Prescribed Fire Plans must also reflect this commitment. Every person involved in a prescribed fire is responsible for identifying safety issues and concerns. It is the responsibility of each individual participating in prescribed fire activities to notify their supervisor of any possible misunderstanding of assigned tasks or concerns related to an assignment.

All personnel assigned to the prescribed fire must be equipped with personal protective equipment meeting established agency standards.

Ignition operations must be halted when weather conditions are not within the parameters outlined in the prescribed fire plan, unless the ignition operations are deemed essential by the Burn Boss for immediate safety or control measures. Ignition operations may only be performed by those individuals designated by the burn boss and the burn boss must authorize all changes to the planned firing operation.

Exposure to smoke during prescribed fire operations can be a significant safety concern. Experience has shown that exposure to smoke on prescribed fires, especially for holding forces, often exceeds that on wildfires. Public safety impacts from smoke should be addressed in the Smoke Management Element of the Prescribed Fire Plan.

The risk management process identified in the NWCG Incident Response Pocket Guide (IRPG, PMS 410-1) helps ensure that critical factors and risks associated with prescribed fire operations are considered during decision making. This process is the standard that should be applied to all prescribed fire planning and operations. Consider using a Safety Officer on highly complex or highly hazardous burns.

### *Escaped Prescribed Fires*

A prescribed fire must be declared a wildfire when it has spread outside the prescribed fire boundary, as identified in the prescribed fire plan, or is likely to do so, and cannot be contained by the resources on hand and the specified contingency resources. Due to the nature of prescribed fire activities, some fire outside of control lines may be expected. Quick and decisive action on the part of the Burn Boss and/or the Holding Specialist will usually mitigate any potential problems. Specific management action points will be specified in the Prescribed Fire Plan.

In the event that the fire escapes the prescribed fire area and it overwhelms both the resources on hand and the contingency resources, the Burn Boss must declare the prescribed fire a wildfire. The Burn Boss may then become the Incident Commander of the suppression organization, or transfer command to another qualified Incident Commander. These details must be specified in the Prescribed Fire Plan.

The District Forest Fire Warden having jurisdiction must be notified of all wildfires that resulted from prescribed fires.

### *After Action Review (AAR)*

Each operational shift on a prescribed burn should have an informal After Action Review (AAR). The questions to answer in conducting an AAR are:

1. What did we set out to do?
2. What actually happened?
3. Why did it happen that way?
4. What should be sustained?



### 5. What can be improved?

Prescribed fires that were converted to a wildfire should receive a formal AAR. Organizations should determine what constitutes a “formal” AAR. The goal of any AAR should be to guide future prescribed fires and policies to minimize future resource damage or threats to life and property. Other objectives are to determine if overall policy, guidance and procedures relating to prescribed fire operations are adequate.

#### *Documentation*

All prescribed fires must have a project file that will be maintained in the agency office. This documentation should be retained for a minimum of two years after the fire has been completed. The file will contain the following information:

1. Prescribed Fire Plan—original, signed copy.
2. Monitoring data including, weather, fire behavior, fire effects and smoke effects.
3. Appropriate weather forecasts.
4. Spot weather forecast requests and responses.
5. Completed GO/NO-GO checklist.
6. Any completed Unit Logs (ICS-214 or equivalent).

Optional information that may be included, but is not limited to:

1. After Action Review notes.
2. Incident Action Plan.
3. Press Releases, media inquiries.
4. Post Burn reports, documentation, etc.

#### *Prescribed Fire Plan*

The Prescribed Fire Plan is the site-specific implementation document. It serves as a contract between the Agency Administrator and the Burn Boss. By signing the cover page, the Agency Administrator approves of the plan and agrees to allow the Burn Boss to implement the plan. The Burn Boss’ signature guarantees that the prescribed fire will only be conducted within the scope of the plan. The plan includes all of the information needed to implement the prescribed fire. The size and complexity of each prescribed fire will determine the level of detail that is required in the fire plan. Prescribed fires must be implemented in compliance with the written plan. A thorough and well-written plan is essential to the success of any prescribed fire.

#### *Amendments to the Prescribed Fire Plan*

There may be a need to make amendments to the Prescribed Fire Plan. These are changes to the Prescribed Fire Plan that require Agency Administrator signature. When changes are necessary, plans must be amended to identify the affected sections; the reason for the changes; and have the changes clearly identified. For amendments, the same standards for Prescribed Fire Plan preparation, review, and approval apply. Common reasons for amending the Prescribed Fire Plan may include, but are not limited to:

- Changes to objectives.
- Changes to complexity.
- Changes to fire behavior prescription parameters.
- Changes to prescribed fire area boundaries resulting in either an increase or decrease in area.

- Reduction in resource capabilities identified as required in the plan.
- Major changes to ignition methods.

To avoid having to amend the Prescribed Fire Plan, flexibility should be built into the plan that will allow for a range of adjustments during the prescribed fire. Examples of flexibility that can be built into a prescribed fire plan:

- The Prescribed Fire Plan may state that on burn day and subsequent days of the prescribed fire, a mix of the number and kinds of hand crews and engines may be modified as long as stated production capabilities are not compromised.
- Minor changes in the prescribed fire area boundaries to facilitate holding and/or ignition requires no change in holding or ignition resources and is within the project boundaries.
- Additional resources may be assigned to the project without amending the burn plan if the addition of these resources does not change the complexity of the burn or require additional supervisory positions. These changes must be discussed at the briefing.

#### *Required Elements of All Prescribed Fire Plans*

The template in this document lists the minimum amount of information that must be included in a plan for all prescribed fires conducted in Commonwealth. Other formats may be used as long as they contain the 24 required elements listed here. If a specific element of the plan does not apply to a specific fire, simply write not applicable (N/A) in the blank. Any additional information such as maps, diagrams, and the like, should be added as appendices to the plan.

#### *Cover Page*

At least three dated signatures must appear on the front cover: a plan preparer, the Burn Boss, and the Agency Administrator. If the plan needs to be amended, the signed and dated amendments must be attached to the Prescribed Fire Plan.

#### *Element 1—Location*

Include information on the location of the burn including ownership, forest district, township, county, and the like.

#### *Element 2—Prescribed Fire Area Description*

A. *Prescribed Fire Area Narrative Description*—Include a written description of the prescribed fire area, topography, fuels in the area, and the fuels surrounding the burn area. A definitive description of the prescribed fire boundaries must be included. This is the area where the fire will be ignited and allowed to burn. A short history of the project and related treatments should also be included. The prescribed fire area may be divided into smaller units, per organizational standards.

B. *Prescribed Fire Area Description Table*—For each vegetation type in the prescribed fire area, an entry should be made on the table.

C. *Maps*—At a minimum, a location map and a burn unit map must be included. Other maps may be included if deemed appropriate. These maps should be attached to the end of the plan. Maps should show prominent features in the area, topography, water sources etc. The prescribed fire boundaries must be shown on the map.



### *Element 3—Prescribed Fire Justification*

A. *General Goals*—Check all that apply, if the appropriate choice is not listed, please indicate the other goals.

B. *Prescribed Fire Management Goals*—Include a written description on the management goals of the project. Also, describe how they will fit in with natural resource or fire management goals for the area.

C. *Specific, Measurable Prescribed Fire Objectives*—Describe in clear, concise statements the specific, measurable resource and fire objectives for this prescribed fire. Objectives must be measurable and quantifiable so that prescription elements can be developed and so that the success of the project can be determined.

D. *Other Alternatives Considered*—Describe the other alternatives to achieve the management goals you considered and the rationale for your decision.

### *Element 4—Fuel and Weather Prescription*

Give an acceptable and an optimum range for each parameter. At a minimum, the parameters indicated must include Air Temperature, Relative Humidity, 20-Foot Wind Speed, Wind Direction and 1-Hour Fuel Moisture.

The selection of the parameter ranges should be based on the conditions necessary to achieve the desired results in a safe and effective manner.

### *Element 5—Fire Behavior Prescription*

Give an acceptable and an optimum range for each parameter. At a minimum, include parameters for Rate of Spread, Flame Length and Probability of Ignition for each fuel type in the prescribed fire area.

This information should be used to determine which combinations of elements in the Fuel and Weather Prescription will result in unacceptable fire behavior. In many cases, burning under the extremes of all the Fuel and Weather Prescription parameters will not meet, and will most likely exceed, the Fire Behavior Prescription. Conditions must be in the “Acceptable” range indicated for both the Fuel and Weather Prescription and the Fire Behavior Prescription in order for the Prescribed Fire to be considered to be in prescription.

Holding and contingency plans must be developed with the consideration of the predicted fire outside of the prescribed fire area. Fire behavior characteristics for fuel models will be derived from the worst-case prescription parameters and the most extreme environmental conditions that exist onsite.

### *Element 6—Fire Behavior Narrative*

A narrative that summarizes fire behavior and the parameters effecting it must be included. Fire behavior modeling and or empirical evidence that supports the expected parameters should be added as an Attachment to the Prescribed Fire Plan. Also, describe the desired fire behavior and how fire behavior will be manipulated to meet resource objectives. This narrative should be correlated with Element 13, Firing Plan.

### *Element 7—Scheduling*

Describe the timing of when the prescribed fire needs to be completed. Consider time of year, time of day, season, etc. Also, discuss how the burn may effect the availability of wildfire suppression resources in the area.

### *Element 8—ICS Organization Chart*

Insert an ICS Organization Chart here that illustrates the Prescribed Fire Organization or include it as an Attachment to the Plan.

The complexity of each prescribed fire determines the organization capabilities needed to safely achieve the objectives that are specified in the plan. A Prescribed Fire Burn Boss must be assigned to every prescribed fire. Standard ICS fire management principles will be followed.

### *Element 9—Assigned Resources & Equipment*

List all of the required resources that will be assigned to the burn and any specialized equipment that will be needed to accomplish the Prescribed Fire goals and objectives.

### *Element 10—Pre-Burn Considerations*

Describe the on and off-site actions that need to be conducted prior to implementation. Examples include, but are not limited to: line to be constructed, preparation of critical holding points, snags to be felled, weather monitoring, timeframes and other responsibilities.

Methods and procedures for obtaining weather and smoke management forecasts should be detailed here. Spot weather forecasts are strongly recommended.

### *Element 11—Test Fire*

Provisions for a test fire are required and all results must be recorded. The purpose of a test fire is to verify that the prescribed fire behavior characteristics will meet management objectives and to verify smoke dispersal. In many situations, an analysis of the initial ignitions may provide adequate test fire results.

A. *Planned Location*—Describe the part of the unit in which the test fire will occur. Include information on the procedures for igniting the test fire and how the results of the test fire will be evaluated. Test fires should be ignited in an area that is representative of the condition of the prescribed fire area.

B. *Test Fire Documentation*—Results of the test fire should be observed and then documented in the Prescribed Fire Plan. This is important to establish a starting point for fire behavior observations and to document that the exhibited fire behavior was within the parameters established in the Fire Behavior Prescription. Also, make note of the weather conditions and compare them to the Fuel and Weather Prescription parameters to ensure that they are being met.

### *Element 12—Firing Plan*

Describe planned ignition operations including firing methods, devices, techniques, sequences, patterns and staffing. Maps showing proposed ignition patterns may be included as an Attachment to the Prescribed Fire Plan. The appropriate firing plan will ensure that the plan objectives are met.

### *Element 13—Holding Plan*

Describe the procedures that will be used to contain the fire within the prescribed fire area boundaries that were established in Element 2. This element should also detail mop-up and patrol procedures. Describe any critical holding points and indicate them on the map. Include minimum staffing levels and capabilities for the holding organization.

### *Element 14—Monitoring*

Monitoring is required to ensure that the prescribed fire is meeting the objectives specified in the plan. Describe the monitoring that will be required and who will collect this information. At a minimum, weather, fire

behavior, fuel conditions and smoke dispersal must be monitored once every 60 minutes during ignition operations.

*Element 15—Communication Plan*

Develop a Communication Plan that is specific to the project. Identify and assign command, tactical, air operations frequencies, and any repeaters that may be needed. This may be covered in an Incident Action Plan on the form ICS-205.

*Element 16—Contingency Plan*

The contingency plan is the portion of the Prescribed Fire Plan that considers possible but unlikely events and the contingency resources and actions needed to mitigate those events. At a minimum, a contingency plan must be developed to cover escaped fires and danger to the public from fire and smoke.

A. *Management action points*—Management action points need to be established and followed for each scenario that may result in an escaped prescribed fire or danger to the public from fire and smoke. Management action points units will indicate when certain actions or additional suppression resources are needed. They should be based things like weather and/or fuel conditions, fire behavior, or resistance to control.

B. *Actions Needed*—Describe the actions needed for each management action point. The Agency Administrator must determine when they need to be notified depending on what actions are being taken.

C. *Contingency Resources and Reporting Times*—List the contingency resources that will be needed for the actions listed above. Verify and document the availability and response times of the contingency resources on the day of the prescribed fire. Resources that have an indeterminate availability are not valid contingency resources.

D. *Wildfire Conversion*—Any prescribed fire that escapes the prescribed fire area boundaries that are established in Element #2, and cannot be controlled by the resources on hand and the specified contingency resources, must be declared a wildfire. Once this conversion has been made, immediate actions must be taken to suppress the wildfire. These actions will be listed in Element 16, Part B., previously. This section should also define the ICS structure that will be used for suppression.

*Element 17—Sources of Emergency Assistance*

List all pertinent sources of emergency assistance and their contact numbers such as the Volunteer Fire Department covering the area, the District Forest Fire Warden, local Forest Fire Wardens and Crews.

*Element 18—Safety and Medical Plan*

Develop a Medical Plan that is specific to the project. Identify resources such as ambulances, hospitals etc. that will be used in the event of a medical emergency. Also list procedures for reporting and responding to medical emer-

gencies and make them known to personnel assigned to the project. This may be part of an Incident Action Plan and included on ICS form 206.

*Element 19—Smoke Management Plan*

List and describe any smoke sensitive areas that may be affected by the project, taking into account not only the day of the project, but also on the following days. Also, describe desirable smoke behavior and smoke management actions.

No burning will be conducted in an area covered by an Air Quality Index (AQI) forecast when the forecast is 101 or above. Below 101 corresponds to an air quality action day code of green and yellow. The Air Quality Index Forecast is only available in certain counties and usually available May through September (Appendix I). The forecast can be found by contacting the regional Department of Environmental Protection office or at <http://www.airnow.gov/index.cfm?action=airnow.fcsummary&stateid=45>.

*Element 20—Notifications*

List all of the names and contact information for the notifications that must be made. Examples include, but are not limited to: adjoining landowners, county EMA offices, and local fire departments. The District Forest Fire Warden (or designee) must be notified on the day of the burn prior to ignition and also after the burn has been completed. Keep careful records of all notifications.

*Element 21—Evaluation*

Complete an evaluation immediately after the burn and also list any future monitoring that is planned.

*Element 22—Go/No-Go Checklist (Appendix B)*

The NWCG Go/No-Go Checklist must be completed and signed by the Burn Boss on the day of the burn.

*Element 23—Pennsylvania Prescribed Fire Complexity Rating Worksheet (Appendix H)*

*Element 24—List of Attachments to the Prescribed Fire Plan*

**List of Appendices to the Standards**

- Appendix A—Prescribed Fire Plan Template
- Appendix B—NWCG Go/No Go Checklist
- Appendix C—Pennsylvania Prescribed Fire Qualifications Standards
- Appendix D—Grand Fathering Standards
- Appendix E—Pennsylvania Wildfir & Prescribed Fire Experience Log
- Appendix F—Pennsylvania Bureau of Forestry Districts Map
- Appendix G—Pennsylvania Bureau of Forestry-District Forest Fire Wardens
- Appendix H—Pennsylvania Prescribed Fire Complexity Rating Worksheet

Appendix A

**PENNSYLVANIA**  
**PRESCRIBED FIRE PLAN**

**Prescribed Fire Name:** \_\_\_\_\_

**Agency:** \_\_\_\_\_

**Prepared by:**

*Name:*

*Title:*

\_\_\_\_\_  
*Signature*

\_\_\_\_\_  
*Date*

**Burn Boss:**

*Name:*

*Title:*

\_\_\_\_\_  
*Signature*

\_\_\_\_\_  
*Date*

**Agency Administrator:**

*Name:*

*Title:*

\_\_\_\_\_  
*Signature*

\_\_\_\_\_  
*Date*

**1. LOCATION:**

Agency /Organization		Ownership	
County		Township	
Acres		Landscape	
Lat/Long		Forest District	

**2. PRESCRIBED FIRE AREA DESCRIPTION:**

**A). Prescribed Fire Area Narrative Description (include description of fire unit boundaries):**

**B). Prescribed Fire Area Description Table :**

<b>Vegetation Types</b>	<b>Fire Behavior Fuel Model</b>	<b>% of Unit Area</b>	<b>% Slope</b>	<b>Aspect</b>

**C). MAPS (include as attachments):**

- Location map (public use or state highway):
- Burn unit map (topo and/or photo map):
- Timber type map: (optional)
- Aerial photograph:
- Soils Map: (optional)
- Smoke Screening Map:
- Other:



**3. PRESCRIBED FIRE JUSTIFICATION:****General Goals:**

	Fuel Reduction		Site Preparation		Wildlife Habitat
	Competing Vegetation Control		Invasive Species Control		Other
	Insect & Disease				

**Prescribed Fire Management Goal(s):****Specific Measurable Prescribed Fire Management Objectives:****Other Alternatives Considered:**

**4. FUEL AND WEATHER PRESCRIPTION (give ranges):**

Parameters:	Acceptable (Required)		Optimum (Optional)	
	Min.	Max.	Min.	Max.
*Air Temperature (°F)				
*Relative Humidity (%)				
Days Since Last Rain				
20 ft wind speed (mph)				
*Wind Direction(s)				
*Eye-level Windspeed (mph)				
*1-Hour Fuel Moisture (%)				
10-Hour Fuel Moisture (%)				
100-Hour Fuel Moisture (%)				
1000-Hour Fuel Moisture (%)				
Atmospheric Mixing Height (ft)				
Other (e.g. KBDI, Live/dead ratio):				
Live Fuel Moisture (%)				

\* Required

**5. FIRE BEHAVIOR PRESCRIPTION (give ranges, add parameters for each fuel model as required):**

Fuel Model	Parameters:	Acceptable (Required)		Optimum (Optional)	
		Min.	Max.	Min.	Max.
	*Rate of Spread				
	*Flame Length				
	*Probability of Ignition				
	*Rate of Spread				
	*Flame Length				
	*Probability of Ignition				
	*Rate of Spread				
	*Flame Length				
	*Probability of Ignition				

\*Required

**6. FIRE BEHAVIOR NARRATIVE (Describe *desired* fire behavior. How will you manipulate fire behavior to meet management and control objectives?):**

**7. SCHEDULING (Describe timing, time constraints)**

**8. ICS ORGANIZATIONAL CHART :****9. ASSIGNED RESOURCES:****10. PRE-BURN CONSIDERATIONS:****11. TEST FIRE:****A). Planned Location:****B). Test Fire Documentation:****1). Weather Conditions:****2). Test Fire Results:****12. FIRING PLAN:****13. HOLDING PLAN:****14. MONITORING:****15. COMMUNICATION PLAN:**

**16. CONTINGENCY PLAN:**

- A). Management action points:**
- B). Actions Needed:**
- C). Resources and Reporting Times:**
- D). Wildfire Conversion:**

**10. SOURCES OF EMERGENCY ASSISTANCE (location & phone #):**

Fire:		
Law Enforcement:		
Medical:		
District Forest Fire Warden:		

**18. SAFETY & MEDICAL PLAN:****19. SMOKE MANAGEMENT PLAN****20. NOTIFICATIONS (including, but not limited to):**

- Airports:
- District Forest Fire Warden:
- Neighboring Landowners: (If within a certain distance)
- County Communications Center:
- Volunteer Fire Dept. having jurisdiction:

**21. EVALUATION:****22. GO/NO-GO CHECKLIST:****23. COMPLETED COMPLEXITY ANALYSIS AND JUSTIFICATION:****24. LIST OF ATTACHMENTS:**



**Summary and Evaluation Immediately After Burn:**

Date burned		Time frame	
Rain		Days since	Inches of rain
Acres burned		Est. Cost	
Burn Boss			
Containment Problems			
Smoke Problems			
Est. Understory Consumed (%)			
Excessive Scorch			
Remarks			

## Appendix B

## NWCG PRESCRIBED FIRE GO/NO-GO CHECKLIST

Yes	No	Questions
		Are ALL fire prescription elements met?
		Are ALL smoke management specifications met?
		Has ALL required current and projected fire weather forecast been obtained and are they favorable?
		Are ALL planned operations personnel and equipment on-site, available, and operational?
		Has the availability of ALL contingency resources been checked, and are they available?
		Have ALL personnel been briefed on the project objectives, their assignment, safety hazards, escape routes, and safety zones?
		Have all the pre-burn considerations identified in the prescribed fire plan been completed or addressed?
		Have ALL the required notifications been made?
		Are ALL permits and clearances obtained?
		In your opinion, can the burn be carried out according to the prescribed fire plan and will it meet the planed objective?

If all the questions were answered "YES" proceed with the test fire. Document the current conditions, locations, and results.

Burn Boss: \_\_\_\_\_

Date: \_\_\_\_\_

## Appendix C

**Pennsylvania Prescribed Fire Qualifications Standards**

<b>Position</b>	<b>Required Training*</b>	<b>Required Taskbook</b>	<b>Minimum Prerequisite Operational Period Experience</b>
<b>Pennsylvania Prescribed Fire Burn Boss 1 – PA-RXB1</b>	S-490 Advanced Fire Behavior Calculations RX-410 Smoke Management Techniques	Prescribed Fire Burn Boss 1 – PA-RXB1	10 as RXB1(T) 10 as RXB2
<b>Pennsylvania Prescribed Fire Burn Boss 2 – PA-RXB2</b>	S-390 Intro to Fire Behavior Calculations RX-301 Prescribed Fire Implementation RX-341 Prescribed Fire Plan Preparation RX-310 Introduction to Fire Effects	Prescribed Fire Burn Boss 2 – PA-RXB2	5 as RXB2(T) 5 as ICT4
<b>Pennsylvania Incident Commander Type 4 – PA-ICT4</b>	S-200 Initial Attack Incident Commander	Incident Commander Type 4 – PA-ICT4	5 as ICT4(T) 5 as FIRB
<b>Pennsylvania Prescribed Fire Burn Boss 3 – PA-RXB3**</b>	N/A	PA-RXB3	5 as RXB3(T) 5 as FIRB
<b>Pennsylvania Firing Boss – PA-FIRB</b>	S-234 Ignition Operations S-230 Crew Boss S-290 Intermediate Fire Behavior I-200 Basic ICS	Firing Boss – PA-FIRB	5 as FIRB(T) 3 as FFT1
<b>Pennsylvania Squad Boss – PA-FFT1</b>	S-131 Squad Boss S-133 Look Up, Look Down, Look Around	Squad Boss – PA-FFT1	5 as FFT1(T) 3 as FFT2
<b>Pennsylvania Firefighter – PA-FFT2</b>	PA-130 Basic Firefighter (or S-130) IS-700 National Incident Management System (NIMS) I-100 Introduction to ICS S-190 Basic Fire Behavior	N/A	N/A

\*All courses must meet NWCG standards except for PA-130.

\*\* RXB3 is optional and not required to move into higher positions.

## Appendix D

### Grandfathering Standards

Organizations who are members of the Pennsylvania Prescribed Fire Council Steering Committee may grandfather their personnel into any position on the Pennsylvania Prescribed Fire Qualifications Standards, provided that they meet the these Grandfathering Standards. Organizations who are not members of the Pennsylvania Prescribed Fire Council may not grandfather their personnel.

In order to be grandfathered, an individual must meet all of the following criteria:

- Acted in the position being grandfathered for a minimum of 5 operational periods within the past 10 years. At least 1 of these operational periods must have been within the past 5 years. Experience must be documented on the Pennsylvania Wildfire & Prescribed Fire Experience Log or an equivalent document.
- Acted at least once in all of the lower positions that are listed on the Pennsylvania Prescribed Fire Qualifications Standards. Experience must be documented on the Pennsylvania Wildfire & Prescribed Fire Experience Log or an equivalent document.
- Completed all of the training that is listed as required for the position being grandfathered and below on the Pennsylvania Prescribed Fire Qualifications Standards. Previously equivalent courses per NWCG policy will be accepted. Individuals who have not yet completed all of the required training will have three (3) years to complete it or they will lose their grandfather status.

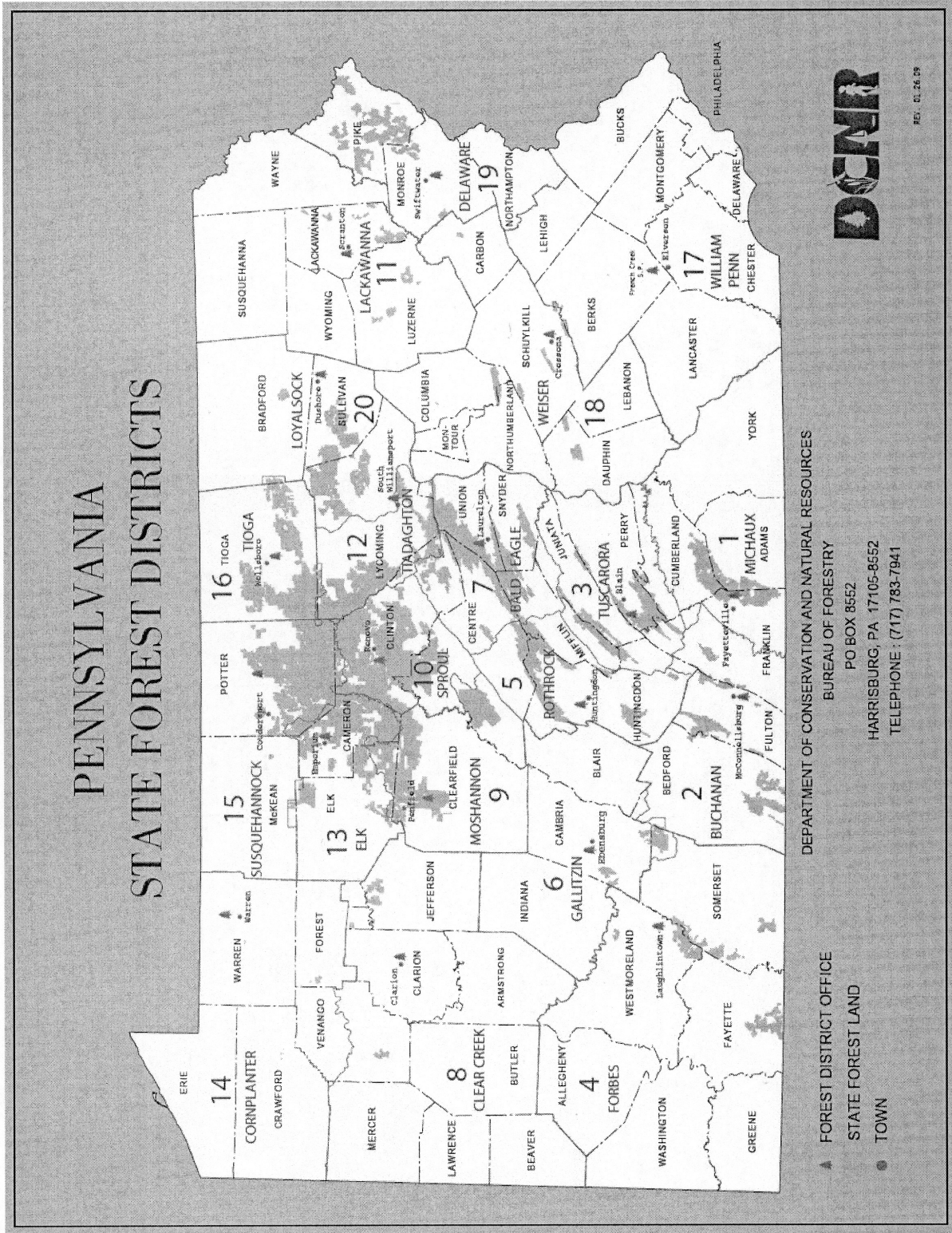
Organizations will have 6 months from the publication of the Pennsylvania Prescribed Fire Standards in the *Pennsylvania Bulletin* to grandfather their personnel. After that time period has expired, organizations will no longer be able to grandfather any of their personnel.

It is the responsibility of each member organization to track, document, and retain records of their own personnel to ensure that they meet all of the standards. Individuals who are granted grandfather status in any position will also be grandfathered into all lower positions. The grandfather status will not expire as long as an individual maintains their currency (performance at that level or above at least once every five years).





Appendix F – Map of Forest Districts





### Appendix G - Pennsylvania Bureau of Forestry – District Forest Fire Wardens

- #1 MICHAUX Michael Kusko Jr., 10099 Lincoln Way East, Fayetteville, PA 17222-9609, 717-352-2211, FAX: 717-352-3007
- #2 BUCHANAN James S. Smith, 440 Buchanan Trail, McConnellsburg, PA 17233-8204, 717-485-3148, FAX: 717-485-9283
- #3 TUSCARORA Gene Odato, 4455 Big Spring Road, Blain, PA 17006-9434, 717-536-3191, FAX: 717-536-3335
- #4 FORBES Edward A. Callahan, PO Box 519, Laughlintown, PA 15655-0519, 724-238-1200, FAX: 724-238-5000, Del: 1291 Route 30
- #5 ROTHROCK Jason Albright, 181 Rothrock Lane, Huntingdon, PA 16652, 814-643-2340, FAX: 814-643-6304
- #6 GALLITZIN Terence G. Stemmler, P.O. Box 506, Ebensburg, PA 15931-0506, 814-472-1862, FAX: 814-472-1876, Del: 155 Hillcrest Drive
- #7 BALD EAGLE Amy G. Griffith, 18865 Old Turnpike Road, Millmont, PA 17845, 570-922-3344, FAX: 570-922-4696
- #8 CLEAR CREEK Gary L. Frank, 158 South Second Avenue, Clarion, PA 16214, 814-226-1901, FAX: 814-226-1704
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- #14 CORNPLANTER Cecil Stelter, 323 N. State Street, North Warren, PA 16365-4867, 814-723-0262, FAX: 814-723-0270
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- #17 WILLIAM PENN Joseph Frassetta, 845 Park Road, Elverson, PA 19520-9523, 610-582-9660, FAX: 610-582-9692
- #18 WEISER Mark W. Deibler, PO Box 99, Cressona, PA 17929, 570-385-7800, FAX: 570-385-7804, Del: 141 Gordon Nagle Tr, Pottsville, PA 17901
- #19 DELAWARE Brad Ellison, Acting, HC 1 Box 95A, Swiftwater, PA 18370-9723, 570-895-4000 or 4001, FAX: 570-895-4041
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Appendix H

**PENNSYLVANIA PRESCRIBED FIRE  
COMPLEXITY RATING WORKSHEET**

<b>Site:</b>	<b>Unit:</b>	<b>Agency:</b>	<b>Date:</b>
<b>Complexity Score (circle)</b>			
<b>Low (44-80 pts)</b>	<b>Moderate (81-150 pts)</b>	<b>High (151-220 pts)</b>	

Weighting Factor x Complexity Value = Total points. Sum of Total points = Complexity Score. Assign each complexity value as a 1, 2, 3, 4, or 5.

<b>Complexity Element</b>	<b>Weighting Factor</b>	<b>Complexity Value (1-5)</b>	<b>Total Points</b>	<b>Rationale and/or Mitigation Procedures (Use for clarification of rationale and/or Complexity Value.)</b>
1. Safety	5			
2. Difficulty of Containment	5			
3. Fuels and Fire Behavior	5			
4. Wildland / Urban Interface	5			
5. Objectives	4			
<b>Sub Total (Page 1)</b>				



<b>Complexity Element</b>		<b>Weighting Factor</b>	<b>Complexity Value (1-5)</b>	<b>Total Points</b>	<b>Additional Comments:</b>	<b>Rated by:</b>
<i>Rationale and/or Mitigation Procedures</i>						
<b>6. Management Organization</b>		<b>4</b>				
<b>7. Contingency Planning and Resources</b>		<b>4</b>				
<b>8. Natural, Cultural, Social Values</b>		<b>3</b>				
<b>9. Air Quality Values</b>		<b>3</b>				
<b>10. Logistics</b>		<b>3</b>				
<b>11. Tactical Operations</b>		<b>2</b>				
<b>12. Coordinator Coordination</b>		<b>1</b>				
<b>Sub Total</b>			Page 2 Page 1			
<b>Complexity Score</b>						

Complexity Value Evaluation Examples (Not all items necessarily need to be present)			
Complexity Element	5		
	3		
	1		
<b>1. Safety</b>	<ul style="list-style-type: none"> <li>All safety issues have been identified and mitigated.</li> </ul>	<ul style="list-style-type: none"> <li>A number of significant issues have been identified and some of them are difficult to address through mitigation.</li> </ul>	<ul style="list-style-type: none"> <li>Complex safety issues exist.</li> </ul>
Weighting Factor - 5			
<b>2. Difficulty of Containment</b>	<ul style="list-style-type: none"> <li>Low threat of escape past unit boundaries.</li> <li>Probability of Ignition&lt;50%. Boundaries naturally defensible or firebreaks easily installed and defended.</li> <li>Secondary control lines strong and easily accessed by vehicles and/or crew.</li> </ul>	<ul style="list-style-type: none"> <li>Moderate threat of escape from unit boundaries.</li> <li>50&lt;Probability of Ignition&lt;70%</li> <li>Fuel type produces numerous firebrands.</li> <li>Secondary control lines difficult to access or not secure.</li> </ul>	<ul style="list-style-type: none"> <li>High threat of escape from unit boundaries.</li> <li>Probability of Ignition&gt;70%.</li> <li>High risk of slopover or spot fires.</li> <li>Secondary control lines non-existent or inadequate without significant resource commitment.</li> </ul>
Weighting Factor - 5			
<b>3. Fuels and Fire Behavior</b>	<ul style="list-style-type: none"> <li>Low variability in slope &amp; aspect.</li> <li>Weather uniform and predictable.</li> <li>Surface fuels (grass and/or needles) only.</li> <li>No drought present or predicted within burn period.</li> <li>Duff or organic soils will not ignite.</li> </ul>	<ul style="list-style-type: none"> <li>Moderate variability in slope &amp; aspect.</li> <li>Weather variable but predictable.</li> <li>Ladder fuels present and torching expected.</li> <li>Fuel types/loads variable.</li> <li>Dense, tall shrub or mid-seral forest communities.</li> <li>Drought index indicates normal to moderate drought conditions; present expected within burn period.</li> <li>Upper level of duff or organic soil will burn.</li> </ul>	<ul style="list-style-type: none"> <li>High variability in slope &amp; aspect.</li> <li>Weather variable and difficult to predict.</li> <li>Extreme fire behavior and/or stand replacement fire.</li> <li>Fuel types/loads highly variable.</li> <li>Altered fire regime, hazardous fuel /stand density conditions.</li> <li>Drought index indicates severe drought conditions; present or expected within burn period.</li> <li>Significant portions duff or organic soils will burn.</li> </ul>
Weighting Factor - 5			
<b>4. Wildland / Urban Interface</b>	<ul style="list-style-type: none"> <li>No risk to people or property within or adjacent to fire, or values to be protected are easily mitigated.</li> <li>Potential damage from escape low.</li> </ul>	<ul style="list-style-type: none"> <li>Several values to be protected.</li> <li>Mitigation through planning and/or preparations is complex.</li> <li>May require some commitment of specialized resources.</li> <li>Potential damage from escape moderate.</li> </ul>	<ul style="list-style-type: none"> <li>Numerous values and/or high values to be protected.</li> <li>Severe damage likely without significant commitment of specialized resources with appropriate skill levels.</li> <li>Potential damage from escape high.</li> </ul>
Weighting Factor - 5			



Complexity Element	Complexity Value Evaluation Examples (Not all items necessarily need to be present)		
	1	3	5
<b>5. Objectives</b>	<ul style="list-style-type: none"> <li>• Prescriptions broad.</li> <li>• Easily achieved objectives.</li> </ul>	<ul style="list-style-type: none"> <li>• Reduction of both live and dead fuels.</li> <li>• Moderate to substantial changes in two or more strata of vegetation.</li> <li>• Objectives judged to be moderately hard to achieve.</li> <li>• Objectives may require moderately intense fire behavior.</li> </ul>	<ul style="list-style-type: none"> <li>• Precise treatment of fuels and multiple ecological objectives.</li> <li>• Major change in the structure of 2 or more vegetative strata.</li> <li>• Conflicts between objectives and constraints.</li> <li>• Requires a high intensity fire or a combination of fire intensities that are difficult to achieve.</li> </ul>
<b>Weighting Factor - 4</b> <b>6. Management Organization</b>	<ul style="list-style-type: none"> <li>• Span of control held to 2 - 3.</li> <li>• 6 - 12 person crew and 1 - 2 engines.</li> </ul>	<ul style="list-style-type: none"> <li>• Span of control held to 4 - 5.</li> <li>• Multiple resources required (engines, dozers, terra torch, etc.).</li> <li>• 8 - 20 person crew and 1 - 3 engines.</li> </ul>	<ul style="list-style-type: none"> <li>• Span of control greater than 5 - 7.</li> <li>• Multiple branch, divisions or groups.</li> <li>• Specialized resources needed to accomplish objectives.</li> <li>• Organized management team required (Fire Use or Incident Management).</li> </ul>
<b>Weighting Factor - 4</b> <b>7. Contingency Planning and Resources</b>	<ul style="list-style-type: none"> <li>• Adequate contingency resources on site.</li> </ul>	<ul style="list-style-type: none"> <li>• Contingency resources limited or have more than a 15 - 30 minutes response time.</li> </ul>	<ul style="list-style-type: none"> <li>• Contingency resources limited or have more than a 30+ minutes response time.</li> </ul>
<b>Weighting Factor - 4</b> <b>8. Natural, Cultural, and Social Values</b>	<ul style="list-style-type: none"> <li>• No risk to natural, cultural, and/or social resources within or adjacent to fire, or mitigation through planning and preparations is adequate.</li> </ul>	<ul style="list-style-type: none"> <li>• Several values to be protected.</li> <li>• Mitigation through planning and/or preparations is complex.</li> <li>• May require some commitment of specialized resources.</li> </ul>	<ul style="list-style-type: none"> <li>• Numerous values and/or high values to be protected.</li> <li>• Severe damage likely without significant commitment of specialized resources with appropriate skill levels.</li> </ul>
<b>Weighting Factor - 3</b> <b>9. Air Quality Values</b>	<ul style="list-style-type: none"> <li>• Few smoke sensitive areas near fire.</li> <li>• Smoke produced for 1 or fewer burning periods.</li> <li>• Air quality agencies generally require only initial notification and/or permitting.</li> <li>• No potential for scheduling conflicts with cooperators.</li> </ul>	<ul style="list-style-type: none"> <li>• Multiple smoke sensitive areas, but smoke impact mitigated in plan.</li> <li>• Smoke produced for 2-3 burning periods.</li> <li>• Infrequent consultation with air quality agencies is needed.</li> <li>• Low potential for scheduling conflicts with cooperators.</li> </ul>	<ul style="list-style-type: none"> <li>• Multiple smoke sensitive areas with complex mitigation actions required.</li> <li>• Health or visibility complaints likely.</li> <li>• Smoke produced for greater than 3 burning periods.</li> <li>• Smoke sensitive Class I air-sheds.</li> <li>• Frequent consultation with air quality agencies is needed.</li> <li>• High potential for scheduling conflicts with cooperators.</li> </ul>
<b>Weighting Factor - 3</b>			

