

PENNSYLVANIA BULLETIN

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Resources

Department of Environmental Protection

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Insurance Department

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No. 426, May 2010

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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 2010.

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THE COURTS

Title 255—LOCAL COURT RULES

DELAWARE COUNTY

Public Access Policy of The Unified Judicial System of Pennsylvania: Official Case Records of the Magisterial District Court; No. 08-2750

And Now, this 6th day of May, 2010, in accordance with the Judicial Code, 42 Pa.C.S. § 4301(b), and pursuant to the *Public Access Policy of the Unified Judicial System of Pennsylvania: Official Case Records of the Magisterial District Courts* adopted by the Pennsylvania Supreme Court effective July 1, 2010, *It Is Hereby Ordered* that the following procedures shall be utilized to ensure a policy is in place to govern public access to the records of the Magisterial District Courts within the 32nd Judicial District. This policy supplants the existing *Public Access Policy of the Unified Judicial System of Pennsylvania: Magisterial District Courts*, found at 204 Pa. Code §§ 213.1 and 213.11.

It Is Further Ordered that seven (7) certified copies of this *Order* shall be filed with the Administrative Office of the Pennsylvania Courts; that two (2) certified copies and one (1) diskette shall be filed with the Legislative Reference Bureau for publication in the *Pennsylvania Bulletin*; that one (1) certified copy shall be filed with the Civil Procedural Rules Committee of the Supreme Court of Pennsylvania; one (1) copy to the *Delaware County Legal Journal* for publication, and that one (1) copy shall be filed with the Office of Judicial Support—Civil—of the Court of Common Pleas of Delaware County.

1. Public Request Access

(a) Verbal requests for records are to be filled within 48 hours.

(b) Information subject to a sealing order, restricted by law or court rule, and the court's notes, drafts and work product are not accessible to the public.

(c) Magisterial district courts have the discretion to require that a "complex or voluminous" request be submitted in writing on a form supplied by AOPC. Exactly what is "complex or voluminous" may vary from court to court depending on factors such as court resources and case load.

(d) All denials for record requests must be issued in writing and the requestor, within 15 business days of notification of the decision, can appeal such a denial to the Administrator of the Administrative Office for Magisterial District Judges, 100 West Front Street, Media, PA 19063-3208.

2. Fee Schedule

(a) Copying per page—\$.25.

(b) Preparing, copying and refiled requested court documents—\$8.00 per 1/4 hour with a minimum of 1/4 hour.

(c) Estimated costs to be prepaid.

(d) Fees paid for services rendered are nonrefundable.

3. **The effective date of this Order shall be July 1, 2010.**

By the Court

JOSEPH P. CRONIN, Jr.,
President Judge

[Pa.B. Doc. No. 10-933. Filed for public inspection May 21, 2010, 9:00 a.m.]

LUZERNE COUNTY

Administrative Fee for Accelerated Rehabilitative Disposition Cases; No. 97 Misc. Criminal of 2010

Administrative Order

And Now, this 29th day of April, 2010, at 9:00 o'clock, a.m., it is hereby Ordered and Decreed that effective thirty (30) days after the publication in the *Pennsylvania Bulletin*, in accordance with Pa.R.C.P. 316, every person placed into the Accelerated Rehabilitative Disposition ("ARD") Program, shall pay, in addition to the cost of prosecution, restitution, fees and other costs, an Administrative Fee of Two Hundred (\$200.00) Dollars. This Fee shall be payable to the Luzerne County Clerk of Courts after acceptance of the Defendant by a Judge sitting on the Luzerne County Court of Common Pleas into the ARD Program for the administration and implementation of an approved ARD. This Fee shall be assessed upon the Defendant after the ARD hearing where the Defendant is accepted into the program. Upon receipt of the Fee, the Luzerne County Clerk of Courts shall transmit the money to the Office of the Luzerne County District Attorney.

It is further Ordered that the District Court Administrator shall file seven (7) certified copies of this Order with the Administrative Office of Pennsylvania Courts, two (2) certified copies to the Legislative Reference Bureau for publication in the *Pennsylvania Bulletin*, one (1) certified copy to the Criminal Procedural Rules Committee, one (1) certified copy to the Judicial Council of Pennsylvania Statewide Rules Committee, and one (1) copy to the *Luzerne Legal Register* for publication in the next issue. This Order shall also be published on the web site of the Administrative Office of Pennsylvania Courts (www.aopc.org) as well as Unified Judicial System's web site at <http://ujportal.pacourts.us/localrules/ruleselection.aspx>.

By the Court

THOMAS F. BURKE, Jr.,
President Judge

[Pa.B. Doc. No. 10-934. Filed for public inspection May 21, 2010, 9:00 a.m.]

SOMERSET COUNTY

[Correction]

Mortgage Foreclosure Diversion Program; Administrative Order No. 1-2010; No. 12 Miscellaneous 2010

(Editor's Note: This Order was originally published at 40 Pa.B. 1633, 1634 (March 27, 2010). An error in Exhibit "B" is corrected as follows.)

Order

And Now, this 12th day of March, 2010, recognizing that the number of mortgage foreclosure actions filed in the County of Somerset has recently expanded greatly, the Somerset County Court of Common Pleas hereby establishes a Mortgage Foreclosure Diversion Program in conjunction with Southwestern Pennsylvania Legal Services, Inc.

(a) When a complaint in mortgage foreclosure is filed seeking foreclosure on a mortgage on an owner-occupied residence the Prothonotary of Somerset County shall provide to the plaintiff or to plaintiff's counsel a Mortgage Foreclosure Diversion Program Notice, attached hereto as Exhibit "A", which shall be served upon the defendant or defendants in the foreclosure action along with a copy of the complaint as required by the Pennsylvania Rules of Civil Procedure. No Praeceptum For Default Judgment will be accepted by the Prothonotary without the certification of plaintiff or counsel as set forth in Exhibit "B".

(b) The defendant or defendants shall have the option to attend a Foreclosure Mitigation Counseling session scheduled and conducted by Southwestern Pennsylvania Legal Services, Inc. within twenty (20) days of the date of the service of the Complaint.

(c) Any defendant who attends a Foreclosure Mitigation Counseling session may seek a sixty (60) day stay in the mortgage foreclosure proceedings for the purpose of reaching a mutually acceptable agreement with the plaintiff to resolve the case. A representative of Southwestern Pennsylvania Legal Services, Inc. or other legal representative of the defendant or defendants must present a request for such stay in writing to the Administrative Judge of the Civil Division in the Somerset County Court of Common Pleas within ten (10) days of the date of the counseling session.

(d) If a defendant fails to attend a Foreclosure Mitigation Counseling session, fails to request a sixty (60) day stay, or the parties fail to reach an agreement resolving the case within the sixty (60) day stay, the foreclosure action may proceed in accordance with the Pennsylvania Rules of Civil Procedure.

(e) This program will take effect on April 26, 2010.

By the Court

JOHN M. CASCIO,
President Judge

EXHIBIT "A"

MORTGAGE FORECLOSURE DIVERSION PROGRAM NOTICE

You have been sued in Court to foreclose upon the mortgage associated with your home.

You are notified that you may seek a sixty (60) day postponement in this mortgage foreclosure proceeding if you attend a free Foreclosure Mitigation Counseling session within twenty (20) days of being served with the

complaint in this action and this notice, and make application for this stay. The purpose of this stay is to permit you an opportunity to work with the lender/plaintiff to reach an agreement to settle this proceeding. Application for this program can be made within this twenty (20) day period by contacting Southwestern Pennsylvania Legal Services at 814-443-4615.

If you are scheduled and fail to appear for this free Foreclosure Mitigation Counseling session, you will not receive a sixty (60) day postponement of these proceedings, and if you do not respond to the complaint, a default judgment may be entered against you.

IF YOU ARE NOT IN A POSITION TO PROMPTLY REMEDY THE ALLEGED MORTGAGE DEFAULT YOU SHOULD STRONGLY CONSIDER ATTENDING A FORECLOSURE MITIGATION COUNSELING SESSION. THESE SESSIONS WILL BE CONDUCTED BY A REPRESENTATIVE OF SOUTHWESTERN PENNSYLVANIA LEGAL SERVICES. YOU ALSO MAY BE ABLE TO SEEK ASSISTANCE FROM A LEGAL PROFESSIONAL AT THE FORECLOSURE MITIGATION COUNSELING SESSION.

IF YOU HAVE QUESTIONS ABOUT THIS MATTER, YOU MAY HAVE THEM ADDRESSED AT THE FORECLOSURE MITIGATION COUNSELING SESSION, OR YOU MAY CONTACT SOUTHWESTERN PENNSYLVANIA LEGAL SERVICES AT: 218 N. Kimberly Avenue, Suite 101, Somerset, PA 15501; 814-443-4615.

EXHIBIT "B"

IN THE COURT OF COMMON PLEAS OF SOMERSET COUNTY, PENNSYLVANIA

CERTIFICATION FOR DEFAULT JUDGMENT IN MORTGAGE FORECLOSURE

Plaintiff certifies that, to the best of the knowledge and belief of Plaintiff, a copy of the Somerset County "Mortgage Foreclosure Diversion Plan Program Notice" was served upon each Defendant for whom default judgment is being requested herewith at least twenty (20) days prior to this date, and Plaintiff has not been advised by counsel for Defendant or Southwestern Pennsylvania Legal Services of the institution of the sixty (60) day stay of proceedings based on Defendant's compliance therewith.

Plaintiff/Counsel for Plaintiff

Dated:

[Pa.B. Doc. No. 10-549. Filed for public inspection March 26, 2010, 9:00 a.m.]

WESTMORELAND COUNTY Adopting New Rule W 1960; No. 3 of 2010

Order

And Now, this 5th day of May, 2010 It Is Hereby Ordered that, Westmoreland County Rule of Civil Proce-

ture W 1960 is adopted. This Rule is effective thirty (30) days after publication in the *Pennsylvania Bulletin*.

By the Court

JOHN E. BLAHOVEC,
President Judge

Rule W 1960. Voluntary Alternative Dispute Resolution. Summary Divorce Master.

A. *Consent of Parties.* A consent motion may be presented to schedule a Summary Divorce Master's hearing in a divorce proceeding together with a certification that ninety days have passed since service of the Divorce Complaint, both parties have filed Affidavits of Consent under Section 3301(c) of the Divorce Code, and both parties have filed Inventory and Appraisal of Property forms. Because the Summary Divorce Master's hearing can only be scheduled with the consent of the parties, the Court shall, upon presentation of the consent motion and certification, determine from the attorneys or unrepresented parties that the motion is consensual and the waiver of rights is knowing and voluntary. Thereafter, the Court shall appoint a Summary Divorce Master.

1. The aforementioned consent motion shall certify:

a. The parties can read, write and understand the English language;

b. The parties are not being treated for any mental or emotional illness that hinders their judgment;

c. The parties are not under the influence of any medications, drugs or intoxicants;

d. Each litigant is giving up all rights of appeal voluntarily;

e. Each represented party discussed this matter/procedure carefully with their respective attorneys.

2. The parties, if not represented, or attorneys representing the respective parties shall sign the consent motion certifying that they are satisfied that they or their respective clients fully understand the rights they are waiving by agreeing to a hearing before a Summary Divorce Master, and to be bound by the Summary Divorce Master's decision.

B. *Attendance of Parties.* Individual parties shall attend the Summary Divorce Master's hearing. The summary hearing is not on-the-record and no court reporter is required.

C. *Binding Effect.* Summary Divorce Master's hearings are for final disposition and are binding upon the parties who have consented to the process. The parties are prohibited from presenting motions for reconsideration, filing exceptions or appealing from the Order of Court entered.

D. *Specific Issues to be Addressed by the Summary Divorce Master.* Each counsel or unrepresented party shall file, serve, and submit to the Summary Divorce Master a Statement of Proposed Issues. Any equitable distribution or alimony issues that are presented to the Summary Divorce Master may be floored and capped with a high/low agreement of counsel and the parties.

E. *Narrative Statements.* Counsel shall be required to file and serve concise narrative statements consisting of a brief of one (1) to two (2) pages in length setting forth an exposition of each party's respective positions on the facts and the law.

Note: The purpose of the narrative statement is to provide the Summary Divorce Master with a short over-

view of each party's case relative to equitable distribution and alimony, a proposed distribution plan, and any high/low agreement consented to by the parties prior to presentation by counsel.

F. *Pre-Trial Motions.* The Summary Divorce Master shall rule on any pre-trial motions before the Summary Divorce Master's hearing. Any pre-trial motion shall be submitted to the Summary Divorce Master no later than ten (10) days prior to the hearing. Within five days prior to the Summary Divorce Master's hearing, the Summary Divorce Master shall inform counsel or unrepresented parties in writing of the rulings on the Pre-Trial Motions submitted. The parties are prohibited from presenting motions for reconsideration, filing exceptions, or appealing from the Summary Divorce Master's rulings on Pre-Trial Motions.

G. *Pre-hearing Conference.* The Summary Divorce Master is encouraged to facilitate a settlement by holding a pre-hearing conference. In the event a settlement is not reached at the conclusion of the conference, the Summary Divorce Master shall conduct a final colloquy and have the parties sign confirming that they fully understand that this proceeding will result in a final non-reviewable decision rendered by the Summary Divorce Master. The colloquy shall include the provisions set forth in the sample colloquy at the end of this local rule.

H. *Presentation of the Case.* Each side shall be entitled to one (1) hour to present its case unless additional time is permitted by the Summary Divorce Master for good cause. The presentation of the case may involve a combination of argument, summarization of the evidence which would be presented at a regular master's proceeding, and a statement of the applicable law. Arguing the reasonable inferences that may be drawn from the discovery is permissible. No live testimony will be presented except in cases where credibility will determine the major issues. In such cases, no more than two (2) witnesses for each side may be called for direct and cross-examination. Time spent in direct examination and cross-examination of witnesses counts against the respective one (1) hour allotted time. Counsel or unrepresented parties may quote from depositions, if applicable, and may use exhibits and videotapes. The plaintiff shall proceed first.

I. *Summary Divorce Master's Determination and Final Order of Court.* The Summary Divorce Master shall render a final disposition on all issues within five (5) business days after the presentations are completed. The Summary Divorce Master shall file the final disposition and forward copies to counsel and unrepresented parties within five (5) business days.

J. *Existing Offer and Demand.* The existing offer and demand shall remain unaltered through the Summary Divorce Master's hearing.

K. *Cost of the Proceeding.* The cost of the Summary Divorce Master's proceeding shall be a total of one thousand dollars (\$1,000.00) divided equally by the parties. The Summary Divorce Master shall have discretion to increase the cost of the proceeding if additional time is required for the presentation of the case and/or additional research is required on a complex issue.

Note: This local rule is modeled after the voluntary alternative dispute summary jury trial process that is utilized by counties throughout the Commonwealth of Pennsylvania and is not meant to amend any procedures relating to adjudicating matters before a divorce master as provided by the Pennsylvania Rules of Civil Procedure.

COLLOQUY

- 1. I have informed my attorney all of the facts and circumstances known to me about this case.
- 2. I am satisfied with the representation provided by my legal counsel.
- 3. I am not under the influence of any drugs, alcohol or medications.
- 4. I am able to read, write and understand the English language.
- 5. I understand that I have the right to have this divorce matter and the issues relating to equitable distribution (i.e. division of all marital property) heard by way of a full trial before a Master assigned by a Court of Common Pleas to convene a hearing and prepare a report at the conclusion of the hearing deciding all of the issues of equitable distribution. I understand that I have the right to have my legal counsel appeal the decision of the Master to a Court of Common Pleas Judge through the filing of exceptions. Thereafter, my legal counsel will be permitted to file a brief and argue my position to a judge and an order of court will be issued thereafter. I then

have the right to file an appeal with the appellate courts. **I acknowledge and understand that by electing to have my case heard through this Summary Divorce Master's proceeding, the decision that is rendered by the Summary Divorce Master is final and non-reviewable. I acknowledge and understand that I give up my right to appeal the decision of the Summary Divorce Master to any Court and that I have absolutely no right to appeal the decision.**

6. I certify that I have discussed my case and the applicable procedures carefully with my legal counsel and knowingly and without any undue influence or duress wish to proceed with having my case assigned and heard by a Summary Divorce Master who will render a final decision that will conclude this divorce action and that I will be divorced thereafter.

_____ (Date) _____ (Signature)
 _____ (Notarial Seal)

[Pa.B. Doc. No. 10-935. Filed for public inspection May 21, 2010, 9:00 a.m.]

PROPOSED RULEMAKING

DEPARTMENT OF LABOR AND INDUSTRY

[34 PA. CODE CH. 61]

Unemployment Compensation; Administration

The Department of Labor and Industry (Department), Office of Unemployment Compensation Benefits and Office of Unemployment Compensation Tax Services, propose to amend Chapter 61 (relating to administration) to read as set forth in Annex A.

A. Statutory Authority

This rulemaking is proposed under section 201(a) of the Unemployment Compensation Law (law) (43 P. S. § 761(a)) which authorizes the Department to promulgate and amend rules and regulations necessary to administer the law.

B. Background and Description of Proposed Rulemaking

This proposed rulemaking, which covers ten sections of Chapter 61, updates the Department's regulations to conform to current law and practice.

Section 61.1 (relating to definitions) contains definitions for Part II, Subpart A (relating to unemployment compensation). Definitions regarding the organization of the Department are proposed to be amended or added to reflect the current structure of the Department. Also, obsolete definitions are deleted.

Proposed amendments to § 61.3 (relating to wages) distinguish the tax treatment of delayed wage payments from the existing approach that will continue to be used for benefit purposes. For purposes of taxation, the proposed amendments treat wages as paid on the date the employer actually pays them. This treatment reflects the decision of the United States Supreme Court in *United States v. Cleveland Indians Baseball Company*, 532 U.S. 2001. In that case, the Court held that, for Federal employment tax purposes, back wages should be attributed to the date on which they actually are paid. The Department is required to follow this decision when allocating wages for tax purposes because section 4(x)(6) of the law (43 P. S. § 753(x)(6)) requires that payments subject to taxation under the Federal Unemployment Tax Act (26 U.S.C.A. §§ 3301—3311) also are taxed as wages under the law. For benefits purposes, however, the existing treatment of wages remains in effect. That is, when a payment of wages is delayed, the wages are considered paid on the day on which the employer generally pays amounts definitely assignable to a payroll period.

Section 61.3 is also amended regarding the valuation of remuneration made in mediums other than cash. In addition to prescribing the general rule that the value of noncash compensation is its fair market value, this section specifies minimum values to be placed on meals and lodging by reference to recognized Federal standards, subject to rebuttal by the employer.

When sick pay is paid to a worker by a third party, proposed § 61.3a (relating to third party sick pay) provides that the third party is responsible to report, and pay unemployment compensation (UC) taxes on, the sick pay. An exception provides that the third party may meet certain requirements to shift that responsibility to the employer.

Proposed amendments to § 61.11 (relating to persons eligible for compensation and expenses) provide that an agent of an employer, like the employer he represents, is ineligible for witness fees for participating in an administrative proceeding if the employer is an interested party in the proceeding.

Proposed amendments to § 61.12 (relating to reimbursable items) delete specific amounts for the mileage allowance and the per diem fee for witnesses. As amended, the section will provide that witnesses may be paid compensation and expenses in accordance with 42 Pa.C.S. (relating to Judicial Code).

Sections 61.21—61.24, regarding confidentiality of information, are proposed to be rescinded and replaced by § 61.25 (relating to confidentiality of information and fees), which implements new Federal confidentiality requirements that were recently promulgated by the United States Department of Labor.

C. Affected Persons

Because this proposed rulemaking amends the definitions for all chapters of the UC regulations, it potentially affects the 280,000 employers covered by the law and UC claimants who file approximately 617,000 new applications for benefits each year. Specifically, this proposed rulemaking would affect payors and recipients of delayed wages and noncash compensation, witnesses at UC administrative proceedings and third party payors of sick pay.

D. Fiscal Impact

Commonwealth and the Regulated Community

Some provisions of this proposed rulemaking reflect current practice and, as a result, would not involve fiscal impact. The section prescribing the date when wages are considered paid for tax purposes and the section updating the valuation of noncash compensation could affect the amount of UC tax owed by certain employers, and the latter provision could cause some claimants to qualify for an increased amount of UC benefits. While the Department is unable to estimate the amount of monetary impact from these sections, the number of employers and claimants affected is expected to be small and the overall fiscal impact is expected to be minimal.

Political Subdivisions

This proposed rulemaking does not affect political subdivisions, except to the extent that they are employers covered by the law.

General Public

This proposed rulemaking does not affect the general public.

E. Paperwork Requirement

This proposed rulemaking will not impose additional paperwork requirements on the regulated community.

F. Sunset Date

The proposed rulemaking will be monitored through practice and application. Therefore, no sunset date is designated.

G. Effective Date

The proposed rulemaking will be effective upon final-form publication in the *Pennsylvania Bulletin*, with one

exception. Amended § 61.3 will be in effect as to wages paid on or after the first January 1 following publication.

H. Public Comment

Interested parties are invited to submit written comments, objections or suggestions about the proposed rulemaking to Michael L. Ziemke, Office of Unemployment Compensation Tax Services, Room 900, Labor and Industry Building, 651 Boas Street, Harrisburg, PA 17121 within 30 days following publication of this proposed rulemaking in the *Pennsylvania Bulletin*. Written comments received by the Department may be made available to the public.

Comments may also be submitted electronically to mziemke@state.pa.us. A subject heading referencing the proposed rulemaking, name and return mailing address must be included in each transmission. In addition, electronic comments shall be contained in the text of the transmission, not in an attachment.

For further information on this proposed rulemaking, contact Michael L. Ziemke at (717) 772-1581.

I. Regulatory Review

Under section 5(a) of the Regulatory Review Act (71 P. S. § 745.5(a)), on May 10, 2010, the Department submitted a copy of this proposed rulemaking and a copy of a Regulatory Analysis Form to the Independent Regulatory Review Commission (IRRC) and to the House Labor Relations Committee and the Senate Labor and Industry Committee (Committees). A copy of this material is available to the public upon request.

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

SANDI VITO,
Secretary

Fiscal Note: 12-78. No fiscal impact; (8) recommends adoption.

Annex A

TITLE 34. LABOR AND INDUSTRY

PART II. BUREAU OF EMPLOYMENT SECURITY

Subpart A. UNEMPLOYMENT COMPENSATION

CHAPTER 61. ADMINISTRATION

GENERAL PROVISIONS

§ 61.1. Definitions.

Terms which are defined in the law and which are used in this subpart have the same meanings as provided in the law. In addition, the following words and terms, when used in the subpart, have the following meanings, unless the context clearly indicates otherwise:

Applicant—An individual applying for [**employment at an**] services with an employment office [**at the Pennsylvania State Employment Service**].

Application for benefits—The initial request for unemployment compensation filed under section 501(a) of the law (43 P. S. § 821(a)), preliminary to

filing claims for compensation. If an application for benefits is valid, as defined in section 4(w) of the law (43 P. S. § 753(w)), the application establishes a benefit year commencing on the effective date of the application.

Board—The Unemployment Compensation Board of Review of the Commonwealth.

Bureau—The [**Bureau of Employment Security of the Commonwealth**] Department.

Claim for compensation—[**Either claim for waiting period credit or a claim for compensation, sometimes referred to as a “pay order.”**] A request for waiting week credit or payment of compensation for a week when the claimant was unemployed, filed under section 501(c) of the law.

* * * * *

[**Partial unemployment**—An individual shall be considered partially unemployed with respect to a week during which he was employed by his regular employer and earned less than his weekly benefit rate plus his partial benefit credit, and was employed less than customary full-time hours due to lack of work.

Part-total unemployment—An individual shall be considered to be part-totally unemployed with respect to any week during which he was not employed by his regular employer, earned less than his weekly benefit rate plus his partial benefit credit, and was employed less than his customary full-time hours due to lack of work.]

Payments in lieu of contributions—The money payments made into the Unemployment Compensation Fund by an employer with respect to employment, under sections 1003, 1104 and [**1202**] **1202.2** of the law (43 P. S. §§ 893, 904 and [**912**] **912.2**).

Secretary—The Secretary of the Department.

[**Total unemployment**—An individual shall be considered totally unemployed with respect to a week during which he performs no services and with respect to which no remuneration is paid or payable to him.]

* * * * *

UC Office—A Department office established to accept and process applications for benefits and claims for compensation.

UC Tax Review Office—The individual or agency within the Department that administers appeals to the Secretary or the Secretary’s designee.

UCTS—The Office of Unemployment Compensation Tax Services, or its successor agency, within the Department.

Week—Except as otherwise specifically provided, a week, with respect to an individual who files a claim for [**total, part-total or partial**] unemployment, means the calendar week—Sunday through Saturday, except that those individuals who are filing claims for compensation for a period of unemployment which began prior to the effective date of this section shall continue to file claims for weeks of any 7 consecutive days for as long as that period of unemployment continues and they are otherwise eligible. For purposes of this section, if the workday of an individual includes parts of 2 calendar

days, the work performed by the individual during the workdays shall be considered to have been performed during the first of the calendar days.

§ 61.3. Wages.

(a) *Date of payment.*

(1) *General rule*—Wages [shall be considered to be paid on the day on which] are considered paid on the date when the employer actually pays them.

(2) *Delayed payment of wages*—For purposes of benefits, if payment of wages is delayed, the wages are considered paid on the date when the employer generally pays amounts definitely assignable to a payroll period [are generally paid by the employer, even though the wages have not actually been reduced to the possession of employes].

* * * * *

(c) [*Board and lodging.* The money value of board or lodging constituting wages shall be the reasonable cash value to the employe of the board or lodging, but may not be considered less than the following minimum amounts, unless the employer produces evidence to the satisfaction of the Bureau that the minimum amounts are in excess of the actual value to the employe of his board or lodging:

- (1) Lodging for 1 week, \$2.50.
- (2) Meals for 1 week, \$4.50.
- (3) Meals for 1 day, 75¢.
- (4) One meal, 25¢.]

Noncash wages.

(1) *General rule*—Except as provided in paragraph (2), the money value of remuneration paid in mediums other than cash is the fair market value of the remuneration at the time of payment.

(2) *Meals and lodging*—Meals and lodging are valued at amounts assigned to meals and lodging in the documents referenced in 41 CFR 301-11.6 (relating to where do I find maximum per diem and actual expense rates), for the calendar year in which they are provided and for the location where they are provided, unless the employer is able to produce sufficient, credible evidence that the fair market value of the meals and lodging is less than such values.

§ 61.3a. Third party sick pay.

(a) *Definitions.* For purposes of this section:

(1) A sick pay payment is any payment on account of sickness or accident disability that is “wages” as provided in the law.

(2) A third party payor is an entity that makes a sick pay payment, is not reimbursed for the payment on a cost plus fee basis, and is not an employer of the recipient.

(3) A funding employer is an entity that finances, directly or indirectly, in whole or in part, a sick pay payment to one or more of its employees by a third party payor.

(b) *Reporting and contribution requirements.*

(1) A funding employer shall report, and pay the contributions due with respect to, a sick pay payment, unless a third party payor is required to do so.

(2) A third party payor shall report, and pay the contributions due with respect to, a sick pay payment it makes, unless within 15 days of payment the third party payor gives written notice to the funding employer for which the recipient most recently performed services, of the name and social security account number of the recipient and the amount of the payment.

(c) *Date of payment.* A sick pay payment is considered paid as provided in subsection (a).

(d) *Enforcement.* A third party payor that is required to report, and pay contributions on, a sick pay payment, is deemed to be an employer for the purpose of application of all provisions in the law relating to its enforcement, and the collection of contributions, interest and penalties.

WITNESS FEES AND EXPENSES

§ 61.11. Persons [reimbursable] eligible for compensation and expenses.

The payment of fees and expenses to individuals who have served as witnesses in proceedings conducted by the Board [of Review] or the [Bureau] Department will be made subject to the following conditions:

(1) *Persons not parties-in-interest.*

(i) Payment may be made only to individuals who have received a summons or a subpoena issued by the [Bureau] Department or the Board [of Review] in accordance with sections 506 and 304 of the law (43 P. S. §§ 784 and 826), and who are not a party-in-interest to the proceeding.

* * * * *

(iv) [*Employees*] Agents and employees, including corporate officers, of an employer who is a party-in-interest to a proceeding, shall be considered as parties-in-interest to the proceeding.

(2) [*Employees*] *Employees of the Department.* [*Employees*] Employees of the Department may not be entitled to a payment provided by the provisions of this section, but shall be reimbursed for proper expenses in accordance with the provisions of Departmental rules and regulations governing traveling expenses of [*employees*] employees. The receipt of a summons or a subpoena by an [*employee*] employee of the Department, however, will justify the issuance of whatever authorization for travel as may be required under the travel rules and regulations.

(3) *Commonwealth* [*employees*] employees and [*employees*] employees of the Department. An [*employee*] employee of the Commonwealth who is not an [*employee*] employee of the Department will not be entitled to a payment provided by the provisions of this section, but will be reimbursed for expenses in the same manner as provided for [*employees*] employees of the Department, unless the [*employee*] employee shows to the satisfaction of the [*comptroller of the Bureau*] Department that he is not entitled to State pay for the period of time spent in attendance at a proceeding in response to a summons or a subpoena. In this event the [*employee*] employee is entitled to allowances as provided for other individuals who are not [*employees*] employees of the Commonwealth.

§ 61.12. Reimbursable items.

(a) [*Transportation.*

(1) An individual who is entitled to reimbursement under § 61.11 (relating to persons reimbursable) and who resides outside the place where his attendance is required, whether the residence is within or without this Commonwealth, may be paid mileage at the rate of 7¢ for each mile he actually travels in going to the place from his place of residence and returning, but he will not be reimbursed for a greater number of miles than would be required for traveling by the usually traveled route between those places.

(2) When a proceeding is adjourned, continued or postponed for more than 1 day or is prolonged from 1 week to the next, a witness necessarily present both before and after the interval and who returns to his place of residence during the interim may be paid one additional mileage allowance for each interval.

(b) *Fees.*

(1) An individual entitled to reimbursement under § 61.11 may be allowed a fee of \$5.00 for each day or part of a day spent in attending or traveling to and from a proceeding.

(2) When a proceeding is prolonged from 1 day to the next a witness necessarily present on both days who resides more than 50 miles by the usually traveled route from the place the proceeding is held and who remains there overnight may be paid an additional amount equal to the *per diem* witness fee for each night.]

Compensation and expenses. An individual who is entitled to reimbursement under § 61.11 (relating to persons eligible for compensation and expenses) and who resides outside the place where his attendance is required, whether the residence is within or without this Commonwealth, may be paid compensation and expenses by the Department in accordance with of 42 Pa.C.S. § 5903(b)—(g) (relating to compensation and expenses of witnesses).

[(c)] (b) *Time limit for filing claims.* An allowance or fee payable under the provisions of this section shall be paid only if a claim [therefor] therefore is filed with the Board or the [Bureau] Department within 30 days from the date of the proceeding.

DISCLOSURE OF OFFICIAL RECORDS AND INFORMATION

§ 61.21. [Authorization required] (Reserved).

[No officer or employe of the Department or the Board or other public employe, except as authorized by the provisions of this chapter, shall produce or disclose to any person or before any tribunal, directly or indirectly, any record or any information acquired from a record pertaining to any employer, applicant, claimant or trainee.]

§ 61.22. [Procedure when served with a subpoena] (Reserved).

[An officer or employe of the Department or the Board, upon being served with a subpoena or other compulsory process, shall immediately bring the matter to the attention of his superior officer who

shall forthwith supply the following information to the legal division of the Department:

(1) The caption of the case, the names of the parties and other general information.

(2) The nature of the case, if known.

(3) The name of the employe served with the subpoena.

(4) The time and place where the employe is directed to appear.

(5) What records, if any, the employe is directed to produce.]

§ 61.23. [Furnishing of information] (Reserved).

[Disclosure of records or information may be authorized by specific instruction of the Department or Board in the following cases:

(1) To individual applicants and employers to the extent necessary for the efficient performance of recruitment, placement, employment counseling and other employment service functions.

(2) To any properly identified claimant for benefits or payments under a State, territorial or Federal unemployment compensation or readjustment allowance law, or training allowance law, or to his authorized representative, including information which directly concerns the claimant and is reasonably necessary for the proper presentation of his claim.

(3) To officers and employes of the Department and the Board of Review, and to an officer or employe of an agency of the Federal government or of a State or territorial government, lawfully charged with the administration of a Federal, State or territorial unemployment compensation, readjustment allowance or training allowance law, but only for purposes reasonably necessary for the proper administration of the law.

(4) To an officer or employe of an agency of the Federal government or of a State or territorial government, lawfully charged with the administration of a law providing for old age assistance or other public assistance, work relief, pension, retirement or other benefit payments, but only for purposes reasonably necessary for the proper administration of the law.

(5) To applicants, employers and the public when the information is of a general nature concerning employment opportunities, employment levels and trends, and labor supply and demand, but only if the release or publication does not include information identifiable to individual applicants, employers or employing establishments.

(6) To governmental authorities, such as antidiscrimination and fair employment practice authorities, whose functions will aid the Pennsylvania State Employment Service in carrying out an amplified and more effective placement service, including information relating to fair employment practices.

(7) To individuals, organizations and agencies, or for purposes other than as specified in paragraphs (1)—(6), if a disclosure does not impede the operation of, and is not inconsistent with the purposes of

the employment security program, and is authorized in writing in individual cases by the Executive Director.]

§ 61.24. [Statistical publications] (Reserved).

[Nothing in this chapter may be construed to prohibit the publication of statistical data or other general information, if the publication is not identifiable to individual employers, employees, applicants or claimants.]

§ 61.25. Confidentiality of information and fees.

(a) *Confidentiality.*

(1) *Definition.* For purposes of this subsection, “unemployment compensation information” means both of the following:

(1) Information in the possession of the Department or the Board pertaining to the administration of the law which reveals the name or any other identifying particular about an employer, employee or claimant or which could foreseeably be combined with publicly available information to reveal any identifying particular.

(2) Information obtained directly or indirectly from the Department or the Board that is included in paragraph (1) while in the possession of the Department or the Board.

(2) *Rule of confidentiality.*

(i) Unemployment compensation information is confidential and may be disclosed only as permitted in this subsection.

(ii) Except as provided in paragraph (5), unemployment compensation information will not be competent evidence and may not be used in any action or proceeding in any court or other tribunal.

(3) *Permissible disclosure.* The Department or the Board may disclose or authorize disclosure of unemployment compensation information only as follows:

(i) To officers and employees of the Department and members and employees of the Board in the administration of the law.

(ii) To a claimant, the last employer of the claimant or a base year employer of a claimant, to the extent necessary for the proper determination of the claimant’s application for benefits and claims for compensation.

(iii) To an employer, to the extent necessary for the proper determination of the employer’s liability for reports and payments under the law and the proper administration of the employer’s account.

(iv) To public employees in the performance of their public duties.

(v) As determined by the Department or the Board to be necessary for the proper administration of the unemployment compensation program.

(vi) As permitted by provisions of the law or as required or permitted under Federal law.

(4) *Redisclosure prohibited.*

(i) Officers and employees of the Department and members and employees of the Board to whom unemployment compensation information is disclosed under paragraph (3)(i) may not disclose the

information to any person or before any court or other tribunal, except as authorized by the Department or the Board under paragraph (3).

(ii) Except as provided in paragraph (5), a person, other than an officer or employee of the Department or a member or employee of the Board, to whom unemployment compensation information is disclosed under paragraph (3) or otherwise may not disclose the information to any person or before any court or other tribunal without the prior, written authorization of the Department or the Board. This subparagraph applies to the initial person to whom the information is disclosed and subsequent recipients of the information.

(5) *Exceptions.* Paragraphs (2)(ii) and (4)(ii) do not apply to the following:

(1) A legal proceeding under the law or a statute administered or enforced by the Commonwealth.

(2) Information disclosed to a claimant or employer under paragraph (3)(ii) or (iii).

(3) Information filed with the unified judicial system by the Department or the Board in the administration of the law.

(6) *Safeguards.* A person to whom unemployment compensation information is disclosed under paragraph (3) shall implement and maintain all safeguards required by the Department to protect the confidentiality of the information and comply with all other terms and conditions specified by the Department in connection with disclosure of the information.

(b) *Fees.* Except as provided in section 702 of the law (43 P. S. § 862), the Department or the Board may charge a fee to a person seeking documents or information from the Department or the Board. The fee will be an amount sufficient to compensate the Department or the Board for the costs to process the request and, if the requested documents or information are available, the cost to provide the documents and information. The amount of the fee will be calculated by the Department within its discretion.

[Pa.B. Doc. No. 10-936. Filed for public inspection May 21, 2010, 9:00 a.m.]

[34 PA. CODE CH. 65]

Unemployment Compensation; Employee Provisions

The Department of Labor and Industry (Department), Office of Unemployment Compensation Benefits, proposes to amend Chapter 65 (relating to employee provisions) to read as set forth in Annex A.

A. *Statutory Authority*

This rulemaking is proposed under section 201(a) of the Unemployment Compensation Law (law) (43 P. S. § 761(a)), which authorizes the Department to promulgate and amend rules and regulations necessary to administer the law.

B. *Background and Description of Proposed Rulemaking*

The purpose of this proposed rulemaking, which covers 24 sections of the Department’s regulations, is to update the regulations to conform to current law and practice.

This proposed rulemaking rescinds 11 sections of Chapter 65 and deletes portions of additional sections. The Department is rescinding and deleting regulations that are obsolete, inconsistent with the law or superseded by a subsequent statutory enactment. In some cases, the Department is retaining the text of rescinded sections by adding it to other regulatory provisions to consolidate regulations with similar subject matter. In cases where a section repeats an existing statutory provision, the section will be rescinded or amended to refer to the statute.

References to obsolete subdivisions of the Department are being removed or replaced with references to the current agency or the Department generally. References to specific forms, some of which are outdated, are removed wherever possible.

The law provides that a claimant shall register for work to be eligible for compensation. Under existing regulations, a claimant fulfills this requirement by filing an application for benefits. However, the current regulations also provide that a work registration lapses under certain circumstances and must be renewed. This is a technical and little known provision that may prejudice a claimant's eligibility. Proposed amendments to § 65.11 (relating to work registration; effective period) provide that a work registration created by an application for benefits remains effective throughout the benefit year. Sections 65.12 and 65.13 (relating to registration renewals; and predated claims), which provide for the lapse and renewal of a work registration and retroactive registration renewals, are proposed to be rescinded.

Proposed amendments to § 65.14 (relating to additional information) state that a claimant shall provide the information required by the Department to facilitate reemployment.

Sections 65.31 and 65.41 (relating to filing; and filing methods) provide that claimants shall file paper applications for benefits and claims for compensation in person at a local Department office. In their present form, these sections reflect outdated procedures. The Department no longer requires claimants to appear in person to conduct unemployment compensation (UC)-related business. Therefore, § 65.31 is proposed to be rescinded and existing text in § 65.41 is deleted and replaced with current procedure. As amended, § 65.41 will provide that a claimant may file an application for benefits by telephone, Internet, United States mail or fax transmission and may file a claim for compensation by telephone or the Internet.

Proposed amendments to § 65.42 (relating to application for benefits—effective date) specify that an application for benefits is effective on the first day of the week in which the application is filed or deemed filed under proposed § 65.43a (relating to extended filing).

Section 65.32 (relating to week of unemployment) reflects an outdated procedure in which a claim for compensation was filed every week. That is, a claim for compensation had to be filed during the week immediately following the week of unemployment being claimed. This section is proposed to be rescinded and replaced with the proposed amendments to § 65.43 (relating claims for compensation—when to file). As amended, § 65.43 reflects the current procedure in which claims are filed biweekly and each biweekly pair of claims covers the preceding 2 weeks.

Currently, § 65.33 (relating to predating) provides that a claim for compensation may be filed late under certain circumstances and §§ 65.41 and 65.42(a) set forth the circumstances in which an application for benefits may be

filed late. This proposed rulemaking consolidates the provisions regarding late filing of claims and applications in proposed § 65.43a. This proposed section contains provisions similar to the sections it replaces. It also reflects circumstances that may prevent a claimant from filing a timely application or claim under current procedures, in which applications and claims are taken by telephone, Internet and fax transmission.

Proposed § 65.56 (relating to withdrawing an application for benefits) specifies circumstances under which the Department may approve a claimant's request to withdraw an application for benefits and cancel the corresponding benefit year.

Under section 4(u) of the law (43 P.S. § 753(u)), a claimant may be "unemployed" for purposes of eligibility for UC if he is working "less than his full-time work." Neither the law nor the regulations define "full-time work" for purposes of section 4(u) of the law. As a result, this provision has been applied inconsistently. Proposed § 65.73 (relating to full-time work) will specify how a claimant's full-time work is determined.

C. *Affected Persons*

The proposed rulemaking would affect persons claiming UC benefits. Approximately 617,000 new applications for benefits are filed each year.

D. *Fiscal Impact*

Commonwealth and the Regulated Community

The majority of this proposed rulemaking concerns procedural matters, such as the methods and time for filing UC applications and claims. Although this proposed rulemaking contains procedural requirements, these do not affect the amount or duration of benefits available to the claimant under the law. Also, some of the procedural provisions of this proposed rulemaking codify current practice. For these reasons the new and amended regulations addressing procedures would not involve fiscal impact to the UC Fund or the regulated community. Only a small portion of this proposed rulemaking involves substantive matters. Either these sections reflect the current application of the law, in which event there would be no fiscal impact, or the Department is unable to estimate the amount of fiscal impact that may occur.

Political Subdivisions

This proposed rulemaking does not affect political subdivisions, except to the extent that they are employers covered by the law.

General Public

This proposed rulemaking does not affect the general public.

E. *Paperwork Requirement*

This proposed rulemaking will not impose additional paperwork requirements on the regulated community.

F. *Sunset Date*

The regulations will be monitored through practice and application. Therefore, no sunset date is designated.

G. *Effective Date*

The proposed rulemaking will be effective upon final-form publication in the *Pennsylvania Bulletin*. The following sections, as promulgated, amended or rescinded by this proposed rulemaking, apply to weeks of unemployment ending on or after the effective date of the final-form rulemaking: §§ 65.11, 65.12, 65.13, 65.14, 65.15, 65.32, 65.33, 65.43, 65.43a(a), 65.43a(b), 65.43a(d), 65.43a(f), 65.43a(i) and 65.73. The following sections, as

amended or rescinded by this proposed rulemaking, apply to claims for compensation filed on or after the effective date of the final-form rulemaking: §§ 65.31 and 65.41. The following sections, promulgated or as amended by this proposed rulemaking, apply to applications for benefits filed on or after the regulations' effective date of the final-form rulemaking: §§ 65.41, 65.42, 65.43a(c), 65.43a(g), 65.43a(i) and 65.56. Proposed amendments to § 65.22 (relating to applicable rules) apply to an offer of work made on or after the effective date of the final-form rulemaking. Proposed amendments to § 65.102 (relating to application of the deduction) apply to weeks of unemployment ending on or after December 16, 2005. Section 65.56 applies to a request made on or after the section's effective date to withdraw an application for benefits.

H. *Public Comment*

Interested parties are invited to submit written comments, objections or suggestions about the proposed rulemaking to Craig Pontz, Assistant Director, Office of Unemployment Compensation Benefits, 6th Floor, Labor and Industry Building, 651 Boas Street, Harrisburg, PA 17121 within 30 days following publication of this proposed rulemaking in the *Pennsylvania Bulletin*. Written comments received by the Department may be made available to the public.

Comments may also be submitted electronically to cpontz@state.pa.us. A subject heading referencing the proposed rulemaking, name and return mailing address must be included in each transmission. In addition, electronic comments shall be contained in the text of the transmission, not in an attachment.

For further information on this proposed rulemaking, contact Craig Pontz at (717) 783-0605.

I. *Regulatory Review*

Under section 5(a) of the Regulatory Review Act (71 P.S. § 745.5(a)), on May 10, 2010, the Department submitted a copy of this proposed rulemaking and a copy of a Regulatory Analysis Form to the Independent Regulatory Review Commission (IRRC) and to the House Labor Relations Committee and the Senate Labor and Industry Committee (Committees). A copy of this material is available to the public upon request.

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

SANDI VITO,
Secretary

Fiscal Note: 12-74. No fiscal impact; (8) recommends adoption.

Annex A

TITLE 34. LABOR AND INDUSTRY

PART II. BUREAU OF EMPLOYMENT SECURITY

Subpart A. UNEMPLOYMENT COMPENSATION

CHAPTER 65. EMPLOYEE PROVISIONS

Subchapter A. GENERAL PROVISIONS

§ 65.1. [**Definitions**] (Reserved).

[In addition to the terms defined in § 61.1 (relating to definitions), the following words and terms,

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

Agent state—A state in which an individual files a claim for benefits from another state.

Benefits—Compensation payable to an individual with respect to the individual employment, under the unemployment insurance law of a state.

Interstate Benefit Payment Plan—The plan approved by the Interstate Conference of Employment Security Agencies, under which benefits are payable to unemployed individuals absent from the state in which benefit credits have been accumulated.

Interstate claimant—An individual who claims benefits under the unemployment insurance law of one or more liable states through the facilities of an agent state. The term does not include an individual who customarily commutes from a residence in an agent state to work in a liable state unless the Bureau finds that this exclusion would create undue hardship on the claimants in specified areas.

Liable state—A state against which an individual files, through another state, a claim for benefits.

Registered for work—When a claimant has appeared at a regularly established public employment office and has completed and signed an Application for Benefits, Form UC-42; and when, upon request, he has furnished that office with the accepted title for the occupations at which he is usually employed.

Registration for work—When an individual has appeared in person at a public employment office and has furnished that office with his name, usual occupation and correct post office address and has declared his availability for suitable work.

State—The term includes Puerto Rico, the Virgin Islands and the District of Columbia.

Week of unemployment—Any week of unemployment as defined in the law of the liable state from which benefits with respect to the week are claimed.]

**Subchapter B. PREREQUISITES FOR ELIGIBILITY
REGISTRATION FOR WORK**

§ 65.11. [**Effective period**] Work registration; effective period.

[A registration for work created by the actions stated in § 65.1 (relating to definitions) shall continue in effect as follows:

(1) For a period of 3 weeks following the date of the valid application for benefits.

(2) As long as the claimant continues to file claims for weeks of unemployment ending at intervals of not more than 3 weeks, the first of which claims was for a week ending within the 3 week period following the date of the valid application for benefits.]

(a) A claimant who files an application for benefits in accordance with § 65.41 (relating to filing

methods) and declares his availability for suitable work has registered for work for purposes of section 401(b) of the law (43 P.S. § 801(b)). The work registration is effective on the date that the application is effective in accordance with § 65.42 (relating to application for benefits—effective date) or § 65.43a (relating to extended filing) and remains in effect for the benefit year corresponding to the application and any subsequent period for which benefits are payable pursuant to the application.

(b) When a claimant files an application for benefits in accordance with § 65.41, the Department will provide information relevant to the claimant's reemployment and receipt of employment services to the employment office.

§ 65.12. [Registration renewals] (Reserved).

[(a) If, during the claim-filing period, commencing with the date of the valid application for benefits, the interval between claims exceeds 3 weeks, the claimant shall renew his registration for work by appearing at a regularly established public employment office and completing and signing a Notice of Registration Renewal and Request for Separation Information, Form UC-45A.

(b) The registration for work resulting from a registration renewal shall continue in effect in the same manner and under the same conditions as a registration for work resulting from an application for benefits.]

§ 65.13. [Predated claims] (Reserved).

[(a) Registration renewals may be predated for the same reasons and the same periods of time permitted for an application for benefits, as provided by §§ 65.41—65.43 (relating to procedure; date of filing; and places of filing).

(b) If an application for benefits, a registration renewal or a claim for a week of unemployment filed by a claimant is predated for any reason given in this subsection, the requirement that the claimant is registered for work will be waived for the number of weeks specified for the applicable reason, or for the total of the specified number of weeks for the applicable reasons where there is a combination of more than one reason and in each instance the term week means the calendar week, Sunday through Saturday, immediately preceding the week, which includes the day on which the application for benefits, registration renewal or claim was actually filed:

(1) The inaccessibility of the local public employment office, or the infrequency of the periodic itinerant service established for the area in which the claimant is filing his application or claim, shall permit a waiver of not more than 2 weeks.

(2) The closing of an office due to a Sunday or holiday shall permit a waiver of not more than 2 weeks.

(3) The inability of the office to take the claimant's application or claim on the day he reported for that purpose or the postponement of application or claims taken by the office for administrative reasons shall permit a waiver of not more than 6 weeks.

(4) The refusal of the office to accept the application or claim as a result of an error or mistake shall permit a waiver of not more than 52 weeks.

(5) Pending determination of the eligibility of similarly situated employes under section 402(d) of the law (43 P.S. § 802(d)) if the application or claim is filed within 6 weeks after the determination has become final.

(6) The claimant's failure to file an application for benefits or registration renewal due to erroneous advice by his employer that he would be recalled to work within 1 week shall permit a waiver for not more than 2 weeks.

(7) The claimant's failure to file a claim for a week of unemployment due to sickness of the claimant, a sickness or death of another member of the claimant's family, or an act of God shall permit a waiver for not more than 2 weeks.

(8) The claimant's failure to file a claim for a week of unemployment if the claimant became employed shall permit a waiver for not more than 4 weeks.

(9) If the claimant files for a week of partial unemployment a waiver for that week shall be permitted regardless of when the claim is actually filed.

(c) The period of time during which the registration for work is waived may not exceed the period of time by which the application for benefits, registration renewal or claim, was predated, nor may the effective date of the registration for work be a day previous to the date of the application for benefits, registration renewal or the first day of a week of unemployment with respect to which a claim is filed.]

§ 65.14. Additional information.

[Nothing in this subchapter shall be construed to prevent the Department from requiring of a claimant additional information with respect to his work history and occupational aptitudes in a manner and on forms which it may require.] A claimant shall provide all information required by the Department to facilitate reemployment, including the claimant's work history, education and receipt of employment services.

§ 65.15. [Claims filed in other states] (Reserved).

[A claimant, filing claims in another state under the section 312 of the law (43 P.S. § 792), will be considered to have registered for work when he has complied with the registration for work requirements of the state in which he is filing his claim. Registration for work shall continue in effect for the length of time provided by the laws, regulations and procedures of the state in which he is filing his claim.]

OFFERS OF SUITABLE WORK

§ 65.21. [Disqualification for benefits] (Reserved).

[In accordance with the provisions of section 402(a) of the law (43 P.S. § 802), an employe shall be ineligible for benefits for any week in which he is unemployed because he has refused without good cause an offer for suitable work made either by the local public employment office or by an employer

who notifies the employment office within 7 working days of his offer to the potential employe.]

§ 65.22. Applicable rules.

(a) With respect to offers of suitable work made by an employer, the following rules apply:

* * * * *

(2) The [notification shall be made] employer shall give notice of the offer to the [local public employment office] UC Office at which the [employe] employee has filed or may file an application for benefits [or a registration renewal].

(3) The offer to the [employe] employee may be in writing, in which case a carbon copy or an exact duplicate shall be furnished to the [employment office] UC Office within 7 working days after the mailing of the offer. If the employer's offer is not made in writing, as, for example, where it is made by telephone, the employer shall provide the [employment office] UC Office with a detailed written description of the offer within 7 working days after the making thereof. Regardless of the manner in which the offer is communicated to the [employe, it] the employer shall include in the offer all of the following:

* * * * *

(v) [An] Any unusual requirement or condition of work.

(b) [Where] When the employer who makes the offer has employed the [employe] employee after the beginning of the [employe's] employee's base year and, in [his] the offer of employment to the [employe] employee, states that the conditions of the job are substantially the same as those under which the [employe] employee last worked for the employer, the requirements enumerated in subsection (a) are not required to be included.

(c) If the job offered the [employe] employee is covered under a labor-management agreement and a statement to this effect is made in the offer of employment, no further description [will be] is required.

(d) [It will be the responsibility of the Department, before] Before issuing a decision on a claim for benefits, [to] the Department will determine on the basis of facts whether the work offer was suitable within the meaning of section 4(t) of the law (43 P. S. § 753(t)).

Subchapter C. APPLICATION PROCEDURE
[CLAIMS FOR COMPENSATION]

§ 65.31. [Filing] (Reserved).

[Claims for compensation shall be filed personally by the claimant on official forms available for that purpose at local public employment offices, Monday through Friday, unless closed due to a holiday or by official pronouncement.]

§ 65.32. [Week of unemployment] (Reserved).

[(a) The week of unemployment with respect to which a claim is filed shall be the calendar week preceding the week which includes the day on which the claim is actually or constructively filed;

except that those individuals who are filing claims for compensation for a period of unemployment which began prior to the effective date of this section shall continue to file claims for weeks of any 7 consecutive days for as long as that period of unemployment continues and they are otherwise eligible.

(b) Notwithstanding the provisions contained in this section, the local offices shall insure that claimants be scheduled to report for the purpose of processing the first compensable week of their application on the first local office work day possible within the applicable time limits of this section regardless of the last digit of their Social Security number. Thereafter, claimants may be re-scheduled in accordance with the digit reporting schedule.]

§ 65.33. [Predating] (Reserved).

[(a) A claim for a week of total, partial or part-total unemployment may be deemed to be constructively filed as of the first day of a calendar week previous to the week which includes the day on which it is actually filed when, in the opinion of the Bureau, the claimant was prevented, through no fault of his own, from filing his claims during the week immediately subsequent to the week for which the claim is filed because of one or more of the following reasons:

(1) The inability of the local public employment office to handle currently all claims, or the postponement of claims-taking by the local office for administrative reasons shall permit not more than 6 weeks of predating.

(2) The inaccessibility of the office in isolated areas, or the infrequency of the periodic itinerant service established for the area in which the claimant resides shall permit not more than 2 weeks of predating.

(3) The closing of an office due to a holiday or by official pronouncement shall permit not more than 2 weeks of predating.

(4) The refusal of an office to accept a claim as a result of an error or mistake shall permit not more than 52 weeks of predating.

(5) Sickness or death of another member of the claimant's immediate family or an act of God shall permit not more than 2 weeks of predating, provided the claimant was available for work during the week for which the claim is being filed.

(6) Illness or injury which incapacitates the claimant shall permit predating for the duration of the incapacitation plus 2 weeks but in no instance for more than 52 weeks, provided the claimant meets the eligibility requirements during the week for which the claim is being filed.

(7) If the claimant is employed not more than 4 weeks of predating shall be permitted. Where a claimant is filing claims for partial or part-total benefits not more than 4 weeks predating shall be permitted, commencing with the date on which the employer paid wages for the claim week in question.

(8) An appeal of a claimant from disqualification may permit not more than 4 weeks of predating while the appeal is pending.

(b) When a combination of more than one of the reasons outlined in subsection (a) has prevented the claimant from filing a claim and adherence to the most liberal limitation applicable to his case would be inequitable to the claimant, the predating provisions for applicable reasons shall be added and predating to the number of weeks which is equal to the sum of all applicable limitations shall be permitted.

(c) A claim for a week of total or part-total unemployment may be deemed to be constructively filed as of the first day of a calendar week previous to the week which includes the day on which it is actually filed, when a determination of the eligibility of similarly situated employees under section 402(d) of the law (43 P. S. § 802(d)) is pending, provided that the claim is filed within 6 weeks after the determination has become final.]

§ 65.35. [Ineligibility] (Reserved).

[An employe shall be ineligible for compensation for any week with respect to which or a part of which he has received or is seeking compensation under the provisions of an unemployment compensation law of any other state or of the United States. If it is finally determined that he is not entitled to compensation for the week this disqualification does not apply.]

APPLICATION FOR BENEFITS AND CLAIMS FOR COMPENSATION

§ 65.41. [Procedure] Filing methods.

(a) [Applications for benefits shall be filed on Form UC-42 in local public employment offices, Monday through Friday, unless closed due to a holiday or by official pronouncement.

(b) Claimants reporting to file new applications for benefits shall be served and their claims processed on the day they report, or are scheduled to report, regardless of the last digit of their Social Security numbers, unless it is factually determined that rescheduling, within applicable time limits of this section, is deemed necessary by the local office manager for administrative reasons.

(c) An application for benefits may be deemed to be constructively filed as of the first day of a calendar week previous to the week which includes the day on which it is actually filed when, in the opinion of the Bureau, the claimant was prevented or persuaded, through no fault of his own, from filing the application because of one of the following reasons; and in each instance the term week or weeks means the calendar week or weeks, Sunday through Saturday.

(1) The inaccessibility of the local public employment office in isolated areas, or the infrequency of the periodic itinerant service established for the area in which the claimant is filing an application shall permit not more than 2 weeks of predating.

(2) The closing of an office due to a holiday or by official pronouncement may permit not more than 2 weeks of predating.

(3) The inability of an office to take the claimant's application on the day on which he reported for the purpose, or the postponement of application

taken by the office for administrative reasons may permit not more than 6 weeks of predating.

(4) Erroneous advice by his employer that he would be recalled to work within 1 week may permit not more than 2 weeks of predating.

(5) The refusal of the office to accept the application as a result of an error or mistake shall permit not more than 52 weeks of predating.

(d) Notwithstanding the criteria set forth in this section establishing maximum time limitations to and reasons for backdating an application for benefits, and for the purpose of insuring prompt adjudication of each application, the local employment office shall schedule or reschedule claimants, regardless of the last digit of their Social Security numbers, to report on the first local office work day possible within the applicable time limits of this section following the day on which their failure or inability to report was due to a reason specified in this section.

(e) An application for benefits may be deemed to be filed as of the first day of a calendar week previous to the week which includes the day on which it is actually filed, when a determination of the eligibility of similarly situated employees under section 402(d) of the law (43 P. S. § 802(d)) is pending, provided that the application is filed within 6 weeks after the determination has become final.]

An application for benefits shall be filed by one of the following methods:

(1) Telephoning a UC Office and providing all information required by the Department representative.

(2) Completing the Department's Internet application and electronically transmitting it to the Department.

(3) Completing the Department's application form and sending the form to a UC Office by United States Mail or transmitting the form to a UC Office by facsimile machine.

(b) A claim for compensation shall be filed by one of the following methods:

(1) Telephoning a UC Office and providing all information required by the Department representative.

(2) Telephoning the Department's telephone claim system and providing all information required by the system.

(3) Completing the Department's Internet claim and electronically transmitting it to the Department.

(c) The filing date of an application for benefits or a claim for compensation is:

(1) For applications and claims filed by telephone, the date when the telephone call occurs if the claimant provides all information required by the Department representative or the Department's telephone claim system.

(2) For applications and claims filed by the Internet, the date indicated on the confirmation page displayed upon completion of the filing process.

(3) For applications and claims filed by United States Mail:

(i) The date of the official United States Postal Service postmark on the envelope, a United States Postal Service Form 3817 (Certificate of Mailing) or a United States Postal Service certified mail receipt.

(ii) If there is no official United States Postal Service postmark, United States Postal Service Form 3817 or United States Postal Service certified mail receipt, the date of a postage meter mark on the envelope.

(iii) If the filing date cannot be determined by any of the methods in subparagraph (i) or (ii), the date recorded by the UC Office when it receives the application or claim.

(4) For applications filed by facsimile machine:

(i) The date of receipt imprinted by the UC Office fax machine.

(ii) If the UC Office fax machine does not imprint a legible date, the date of transmission imprinted by the sender's fax machine.

(iii) If the filing date cannot be determined by any of the methods in subparagraph (i) or (ii), the date recorded by the UC Office when it receives the application.

(d) Notwithstanding subsections (a)–(c), the Department may prescribe additional methods for claimants to file applications for benefits and claims for compensation and additional places where applications and claims may be filed. If the Department prescribes an additional method to file an application or claim, it will designate the date on which an application or claim is filed by that method.

(e) The Department may suspend use of one or more of the methods of filing applications for benefits and claims for compensation prescribed by subsections (a), (b) and (d) when it determines, in its discretion, that the method is obsolete, impractical, inefficient, or infrequently used.

§ 65.42. [Date of filing] Application for benefits—effective date.

[(a) Notwithstanding the provisions of § 65.41(b) (relating to procedure) an application for benefits shall be deemed to be filed as of the first day of any week for which a claim is filed for compensation for partial unemployment within the time limits prescribed under § 65.33 (relating to predating), if the claimant has not previously established a benefit year applicable to that week.

(b) A claim for a week of total or part-total unemployment may not be filed with respect to an application for benefits which is prior to the first day of the week which includes the day on which the application for benefits is actually filed, except within the time limits prescribed in § 65.41(b) and (c).]

An application for benefits is effective on the first day of the calendar week in which the application is filed or deemed filed in accordance with § 65.43a (relating to extended filing), whichever is earlier.

§ 65.43. [Places of filing] Claims for compensation—when to file.

[Notwithstanding the provisions of this chapter that applications for benefits, claims and work registrations shall be filed at local public employment offices, the Bureau may accept applications for benefits, claims and work registration at any other places which may be advisable and expedient.]

(a) Claims for compensation shall be filed bi-weekly in accordance with this subsection.

(1) The Department will establish a schedule of consecutive 2-week periods for each claimant, and may revise a claimant's schedule as necessary.

(2) At the end of each 2-week period for a claimant, the claimant may file claims for compensations for both of the weeks or a claim for compensation for one of the weeks. The claims or claim shall be filed no later than the last day of the week immediately following the 2-week period.

(b) Notwithstanding the provisions of subsection (a), the Department may allow a claimant to file a claim for compensation for the first week of a 2-week period before the 2-week period has ended. The claim shall be filed no later than the last day of the 2-week period.

§ 65.43a. Extended filing.

(a) For a week in which a claimant was employed less than his full time work, the claimant shall file a claim for compensation not later than the last day of the second week after the employer paid wages for that week. If the earliest week for which a claim for compensation is filed in accordance with this subsection precedes the week in which the claimant's application for benefits is filed or deemed filed, as determined without regard to this subsection, the Department will deem the application to be filed during the earliest week for which a claim is filed.

(b) If a determination regarding the eligibility of claimants under section 402(d) of the law (43 P. S. § 802(d)) is issued, similarly situated claimants shall file claims for compensation for weeks during the work stoppage not later than the last day of the 6th week after the determination becomes final. If the earliest week for which a claim for compensation is filed in accordance with this subsection precedes the week in which the claimant's application for benefits is filed or deemed filed, as determined without regard to this subsection, the Department will deem the application to be filed during the earliest week for which a claim is filed.

(c) The Department will deem an application for benefits to be filed prior to the week in which it actually is filed if the claimant did not file the application earlier for a reason listed in subsection (e). The Department will deem the application to be filed during the week that precedes the week of actual filing by the number of weeks indicated in subsection (e).

(d) If a claimant fails to file a claim for compensation within the time allowed in subsection (a) or (b) or § 65.43 (relating to claims for compensation—when to file), for a reason listed in subsection (e),

the time for filing the claim is extended for the number of weeks indicated in subsection (e).

(e) For purposes of subsections (c) and (d) the number of weeks is determined as follows:

<i>Reason</i>	<i>Number of weeks</i>
The Department suspends accepting filings or is unable to handle all filings.	6
The claimant attempts to file by telephone, Internet or fax transmission in accordance with § 65.41 (relating to filing methods), the method used to attempt to file is unavailable or malfunctions, and the attempt to file occurs on the last day that the claimant could timely file by the method used.	2
A UC Office fails to accept a filing as a result of error or mistake by the Department.	52
Sickness or death of a member of the claimant's immediate family or an act of God.	2
Other, if the claimant makes all reasonable and good faith efforts to file timely but is unable to do so through no fault of the claimant.	2

(f) If a claimant fails to file a claim for compensation within the time allowed in subsection (a) or (b) or § 65.43 due to the claimant's illness or injury, the time for filing the claim is extended until the last day of the second week after the incapacity ends.

(g) The Department will deem an application for benefits to be filed no more than 2 weeks prior to the week in which it actually is filed if the claimant did not file the application earlier because an employer erroneously advised the claimant that the claimant would be recalled to work within 1 week.

(h) If two or more of the reasons enumerated in subsections (e) and (f) have prevented a claimant from filing a claim for compensation within the time allowed in subsection (a) or (b) or § 65.43, the longest extension applies. If adherence to the longest extension would be inequitable to the claimant, the sum of the applicable extensions applies.

(i) Notwithstanding any provision of this section, the Department may not extend the time for filing a claim for compensation more than 52 weeks and may not deem an application for benefits to be filed in a week included in a previous benefit year.

§ 65.44. [Information as to eligibility] (Reserved).

[A base-year employer or last employer, who, under the provisions of section 501(c) of the law (43 P.S. § 821(c)), desires to raise a question as to the eligibility of a claimant, may do so only in writing delivered to the local public employment office indicated on the form by which he has been notified that the claimant has filed an application for benefits.]

§ 65.56. **Withdrawing an application for benefits.**

(a) A claimant may request to withdraw an application for benefits and cancel the corresponding benefit year only if the following requirements are met:

(1) If benefits are paid to the claimant pursuant to the application or benefits otherwise payable to the claimant pursuant to the application are used to recoup an overpayment of benefits, the claimant's request to withdraw the application and cancel the corresponding benefit year is made no later than one of the following:

(i) Fifteen days after the Department issues the first payment of benefits or first uses benefits otherwise payable to recoup an overpayment.

(ii) Forty-five days after the Department issues the first payment of benefits or first uses benefits otherwise payable to recoup an overpayment, if the claimant is withdrawing the application and canceling the corresponding benefit year in order to file an application under the unemployment compensation law of another state or the Federal government.

(2) All benefits paid to the claimant pursuant to the application, if any, are repaid.

(3) If benefits otherwise payable to the claimant pursuant to the application are used to recoup an overpayment of benefits, the amount owed on the overpayment is restored to the amount owed prior to recoupment.

(4) The claimant has not been disqualified for benefits under sections 3, 402(a), 402(b), 402(e), 402(e.1) or 402(h) of the law or, if the claimant has been disqualified under any of those sections, the disqualification is terminated under section 401(f) of the law (43 P.S. § 801(f)) or § 65.62 (relating to duration of disqualification).

(b) A request to withdraw an application for benefits and cancel the corresponding benefit year is not effective until the Department approves it. The Department will deny a request to withdraw an application for benefits and cancel the corresponding benefit year if the requirements of this section are not met or good cause exists to disapprove the request.

(c) For purposes of this section, benefits paid to a claimant include amounts deducted from the claimant's benefits and paid on the claimant's behalf, including without limitation deductions for income tax withholding and support.

DECISIONS AND DISQUALIFICATIONS

§ 65.63. **Filing of appeals.**

Appeals filed under the provisions of section 501(e) of the law (43 P.S. § 821(e)) and further appeals filed under the provisions of section 502 of the law (43 P.S. § 822) shall be filed [through the local public employment office at which the claimant has filed his application or claim with respect to which the appeal is taken. Appeals and further appeals shall be in writing and shall state the reasons for the appeal] in accordance with Chapter 101 (relating to general requirements).

Subchapter D. PARTIAL UNEMPLOYMENT AND DECEASED OR INCOMPETENT CLAIMANTS

§ 65.73. Full-time work.

(a) A claimant's full-time work for purposes of section 4(u) of the law (43 P.S. § 753(u)) shall be determined in accordance with the following:

(1) Except as provided in paragraphs (4) and (5), a claimant's full-time work is determined by reference to the claimant's base year, as follows:

(i) The total number of hours the claimant worked in the base year for all employers is divided by the number of weeks in the base year in which the claimant worked to determine the claimant's full-time work.

(ii) If information for only a portion of the base year is available, the formula in subparagraph (i) is applied to the portion of the base year for which information is available to determine the claimant's full-time work.

(iii) If the claimant's full-time work cannot be determined in accordance with subparagraph (i) or (ii), the Department may determine the claimant's full-time work by another method that calculates the average number of hours per week that the claimant worked during weeks in the claimant's base year in which the claimant worked.

(2) For purposes of paragraph (1), the number of hours that a claimant worked during a week in the base year for an employer in excess of the customary number of hours the claimant worked per week for that employer in the base year is excluded from the determination of the claimant's full-time work.

(3) For purposes of paragraph (1), if a claimant's normal work schedule in the base year consisted of multiple week cycles, and the cycle normally included one or more weeks during which the claimant did not work, all weeks in the cycle are deemed weeks in which the claimant worked.

(4) If a claimant voluntarily leaves employment to accept new employment that provides fewer hours of work, the number of hours the claimant customarily works at the new job constitutes the claimant's full-time work.

(5) If a claimant limits the number of hours per week the claimant will work, that number of hours constitutes the claimant's full-time work.

(b) For purposes of section 4(u) of the law, if a claimant's normal work schedule during the benefit year consists of multiple week cycles, and the claimant normally works a different number of hours, which may include zero, during the weeks in the cycle, for each week in the cycle the claimant is deemed to be working the number of hours determined by dividing the total number of hours worked during the cycle by the number of weeks in the cycle.

Subchapter E. ELIGIBILITY IN CONJUNCTION WITH OTHER PAYMENTS

RETIREMENT PENSIONS AND ANNUITIES

§ 65.102. Application of the deduction.

* * * * *

(d) The Department will [deduct all Social Security retirement pensions which are based upon the

claimant's previous work or self-employment, or both, including primary Social Security, old age and retirement disability benefits] not deduct pensions paid under the Social Security Act (42 U.S.C.A. §§ 301—1397jj) or the Railroad Retirement Act of 1974 (45 U.S.C.A. §§ 231—231u), if the claimant contributed to the pension in any amount, and will not deduct Social Security payments that are not based on the claimant's previous work, such as Supplemental Security Income.

[(1) The Department will not deduct Social Security payments which are not based on the claimant's previous work, such as Supplemental Security Income.

(2) The Department will deduct pensions paid under the Social Security Act (42 U.S.C.A. §§ 301—1397e) and the Railroad Retirement Act (45 U.S.C.A. §§ 231—231s) when the claimant's base year employer contributed to the pension plan. The pensions are deductible irrespective of whether the claimant's base year employment affected the eligibility for, or increased the amount of, the pension.]

* * * * *

(j) The Department will not deduct pension payments if the services performed by the individual during the base period or the remuneration received for those services from a base period or chargeable employer did not affect the individual's eligibility for, or increase the amount of, the pension[, except for pensions paid under the Social Security Act and the Railroad Retirement Act].

* * * * *

Subchapter F. COMPUTATIONS

DETERMINATION OF WEEKLY BENEFIT RATE

§ 65.117. [Appeals] (Reserved).

[(a) For the purpose of appeals filed by employers the date of decision with respect to determination of the weekly benefit rate of a claimant shall be the date on which the Notice of Financial Determination (Form UC-44F) indicating the weekly benefit rate was mailed to the employer.

(b) For the purpose of appeals filed by claimants the date of the decision shall be the date on which the Notice of Financial Determination (Form UC-44F) indicating the weekly benefit rate was personally delivered to him.

(c) In order to avoid multiplicity of appeals, whenever, pending an appeal, an issue arises as to the weekly benefit rate the issue shall be determined by the Department and submitted to the appropriate appellate tribunal for inclusion in the pending appellate proceedings and decision thereon.]

Subchapter G. INTERSTATE CLAIMS

COMPENSATION TO INTERSTATE CLAIMANTS

§ 65.139. Definitions.

In addition to the words and terms defined in § 61.1 (relating to definitions), the following words and terms, when used in this subchapter, have the following meanings, unless the context clearly indicates otherwise:

Agent state—A state in which an individual files a claim for benefits from another state.

Benefits—Compensation payable to an individual with respect to the individual's unemployment, under the unemployment insurance law of a state.

Interstate Benefit Payment Plan—The plan approved by the National Association of State Workforce Agencies, under which benefits are payable to unemployed individuals absent from the state in which benefit credits have been accumulated.

Interstate claimant—

(i) An individual who claims benefits under the unemployment insurance law of one or more liable states through the facilities of an agent state.

(ii) The term does not include an individual who customarily commutes from a residence in an agent state to work in a liable state unless the Department finds that this exclusion would create undue hardship on the claimants in specified areas.

Liable state—A state against which an individual files, through another state, a claim for benefits.

State—The term includes Puerto Rico, the Virgin Islands and the District of Columbia.

Week of unemployment—Any week of unemployment as defined in the law of the liable state from which benefits with respect to the week are claimed.

Subchapter H. ALLOWANCES FOR DEPENDENTS

§ 65.156. Reserve accounts of employers.

(a) [Allowances for dependents are not chargeable to the reserve accounts of employers.

(b)] If a reserve account for an employer subject to this act is not authorized or not required to be maintained under criteria established in the law, allowances for dependents shall be subject to a reimbursement as follows:

* * * * *

(2) The Unemployment Compensation Fund [will] shall be reimbursed for dependent's allowance paid as a result of service in the employ of a reimbursable nonprofit organization as defined under section 1101 of the law (43 P. S. § 901). Charges will be made to the employer's account in accordance with section 1108 of the law (43 P. S. § 908). Reimbursement will be made in accordance with section 1106 of the law (43 P. S. § 906).

(3) The Unemployment Compensation Fund shall be reimbursed for dependent's allowance paid as a result of service in the employ of a reimbursable instrumentality or political subdivision of this Commonwealth as defined under section 1201 of the law (43 P. S. § 911). Charges will be made to the employer's account in accordance with section 1203 of the law (43 P. S. § 913). Reimbursement shall be made in accordance with section 1202.4 of the law (43 P. S. § 912.4).

(4) The Unemployment Compensation Fund [will] shall be reimbursed based upon the percent of charge for dependent's allowance paid on a combined wage claim. The transferring state's reimbursement shall be in accordance with arrangements entered into under section 312 of the law (43 P. S. § 792).

[Pa.B. Doc. No. 10-937. Filed for public inspection May 21, 2010, 9:00 a.m.]

STATE BOARD OF MEDICINE

[49 PA. CODE CHS. 16 AND 18]

Perfusionist

The State Board of Medicine (Board) proposes to amend §§ 16.11 and 16.13 (relating to licenses, certificates and registrations; and licensure, certification, examination and registration fees) and to add Subchapter J (relating to perfusionists) to read as set forth in Annex A.

Effective Date

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

Statutory Authority

The proposed rulemaking is authorized under sections 8 and 13.3 of the Medical Practice Act of 1985 (act) (63 P. S. §§ 422.8 and 422.13c).

Background and Need for the Proposed Rulemaking

The act of June 11, 2008 (P. L. 154, No. 19) (Act 19) amended the act to provide for licensure of perfusionists. Section 2 of the act (63 P. S. § 422.2) now defines the term "perfusion" as "the functions necessary for the support, treatment, measurement or supplementation of the cardiovascular system or other organs, or a combination of those functions, and for ensuring the safe management of physiologic functions by monitoring and analyzing the parameters of the systems under the supervision of a physician. . . ." This proposed rulemaking is intended to implement licensure of perfusionists under the act as amended by Act 19. Practice of perfusion in this Commonwealth without a license from the Board will be prohibited after August 10, 2010. This proposed rulemaking is also designed to provide to prospective licensees adequate notice of the requirements for licensure as a perfusionist.

Description of the Proposed Rulemaking

The Board's current regulation in § 16.11(b) identifies licenses that the Board issues. The proposed rulemaking adds licensure as a perfusionist. Similarly, § 16.11(c) identifies registrations that the Board issues and the proposed rulemaking adds biennial registration of perfusionist licenses. The proposed rulemaking also adds § 16.13(k) setting forth the fees associated with perfusionist licensure to be charged by the Board, as authorized under section 13.3(l) of the act. To recover the costs of providing those services, the fee for applications for perfusionist license, reactivation of perfusionist license and temporary graduate perfusionist license would each be \$50 and the fee for application for temporary provisional perfusionist license would be \$40. Because the Board believes that the cost to provide the service would be minimal and does not want to delay application, the Board has not set any fee for notification of emergency

practice as a perfusionist. To provide for an appropriate share of the general costs of operating the Board, the biennial renewal fee for a perfusionist would be \$50.

The proposed rulemaking amends Chapter 18 by adding Subchapter J. Proposed § 18.531 (relating to purpose) identifies the purpose of the subchapter as providing for licensure of perfusionists. Proposed § 18.532 (relating to definitions) provides necessary definitions. These include the statutory definitions of “extracorporeal circulation,” “perfusion,” “perfusionist” and “ventricular assist device” as are used in the subchapter. Additionally, the Board defines “ABCP” as the American Board of Cardiovascular Perfusion (ABCP), the National body that both accredits perfusion education programs and certifies perfusionists. The Board proposes to define “accredited perfusion program approved by the Board” as a perfusion program accredited by a Nationally-recognized accrediting agency approved by the Board. The Board would further define “Nationally-recognized accrediting agency approved by the Board” as the ABCP or another organization for which the Board publishes notice that the organization is approved by the Board as an accrediting agency for perfusionist programs. The Board also defines “Nationally-recognized certifying agency approved by the Board” as the ABCP or another organization for which the Board publishes notice that the organization is approved by the Board as a certifying agency for perfusionists. Finally, the Board proposes to define an “hour of continuing education” to consist of at least 50 minutes of instruction (including question and answer sessions) in an approved course of continuing education or an equivalent time that an on-line or correspondence course would be presented live. This time is consistent with the standards for continuing education that is required by the ABCP for recertification.

Under proposed § 18.533(a) (relating to application for perfusionist license), an applicant shall submit a completed application form, including necessary supporting documents, and pay the required application fee. Section 13.3(f) of the act sets five criteria for licensure as a perfusionist: The applicant must be at least 18 years of age, be of good moral character, have graduated from an accredited perfusion program approved by the Board and be certified by a certifying agency approved by a Nationally-recognized accrediting agency approved by the Board. Accordingly, proposed § 18.533(b)(1) provides that the Board will license as a perfusionist an applicant who demonstrates that the applicant satisfies the requirements of section 13.3(f) of the act for licensure as a perfusionist. Because section 13.3(k) of the act requires a perfusionist to carry a minimum level of professional liability insurance, proposed § 18.533(b)(2) requires that an applicant provide proof of liability insurance. Because, as discussed as follows, the Board is also setting forth in this proposed rulemaking grounds for disciplinary action, proposed § 18.533(c) would provide that the Board may, in its discretion, deny an application for perfusionist licensure upon those grounds for disciplinary action in § 18.539 (relating to disciplinary action for licensed perfusionists).

The Board has not proposed a rulemaking to incorporate the grandfather provision of section 13.3(g) of the act, which, during the first 2 years after the effective date of Act 20, permits a person who was not a graduate of an accredited program prior to 1981, but who met the then-current eligibility requirements for certification as a certified clinical perfusionist and subsequently was certified, to become licensed if the person otherwise complies with the requirements for licensure. Not only is this

statutory provision self-executing, but the opportunity to take advantage of it will expire August 10, 2010, not long after final promulgation of the rulemaking.

Proposed § 18.534 (relating to application for temporary graduate perfusionist license) addresses the application for temporary graduate perfusionist license, as provided in section 13.3(h) of the act. Under proposed § 18.534(a), an applicant shall submit a completed application form, including necessary supporting documents, and pay the required application fee. Section 13.3(h)(1)(i) of the act provides that an individual who has graduated from an educational program in compliance with the education requirements and is eligible for and has applied for the examination may receive a temporary graduate license. These criteria, along with good moral character and being at least 18 years of age, would be in proposed § 18.534(b)(1) as the basic requirements for a temporary graduate license. Because section 13.3(k) of the act requires a perfusionist to carry a minimum level of professional liability insurance, proposed § 18.534(b)(2) requires that an applicant provide proof of liability insurance. Because, as discussed as follows, the Board is also setting forth in this proposed rulemaking grounds for disciplinary action, proposed § 18.534(c) provides that the Board may, in its discretion, deny an application for temporary graduate perfusionist license upon those grounds for disciplinary action in § 18.539. Because section 13.3(h)(1)(iii) of the act provides that a temporary graduate license is to be issued for 2 years but not be renewable, proposed § 18.534(d) provides that a temporary graduate perfusionist license will expire 2 years after the date of issuance and may not be renewed. Because section 13.3(h)(1)(iv) of the act provides that a temporary graduate license is to expire upon notice of failing the required examination, proposed § 18.534(e) provides that a temporary graduate perfusionist license will expire upon notice to the Board that the holder failed the Nationally-recognized certifying agency’s certification examination.

Proposed § 18.535 (relating to application for temporary provisional perfusionist license) would address the application for temporary provisional perfusionist license, as provided under section 13.3(i) of the act. Under proposed § 18.535(a), an applicant must submit a completed application form, including necessary supporting documents, and pay the required application fee. Section 13.3(i)(1) of the act provides that an individual who holds a current license in good standing under the laws of another state, which includes certification by a certifying agency approved by a Nationally-recognized accrediting agency, may receive a temporary provisional license if the applicant meets the requirements of section 13.3(f) of the act that the applicant is at least 18 years of age and of good moral character and has graduated from an accredited perfusion program approved by the Board. These criteria are in proposed § 18.535(b)(1) as the basic requirements for a temporary provisional license. Because section 13.3(k) of the act requires a perfusionist to carry a minimum level of professional liability insurance, proposed § 18.535(b)(2) would require that an applicant provide proof of liability insurance. Because, as discussed as follows, the Board is also setting forth in this proposed rulemaking grounds for disciplinary action, proposed § 18.535(c) provides that the Board may, in its discretion, deny an application for perfusionist temporary provisional license upon those grounds for disciplinary action in § 18.539. Because section 13.3(i)(2) of the act provides that a temporary provisional license is to be issued for 1 year but not be renewable, proposed § 18.535(d) provides

that a temporary provisional perfusionist license will expire 1 year after the date of issuance and may not be renewed thereafter.

Section 13.3(j) of the act provides an exemption to the general prohibition against unlicensed practice for one-time temporary emergency services by an out-of-State licensed perfusionist when the licensed perfusionist that would normally have provided the services is unavailable or incapable of providing services and no other licensed perfusionist is available or capable of providing services. Section 13.3(j) of the act requires the out-of-State perfusionist to provide to the Board electronic notice of the emergency and acknowledgment that the out-of-State perfusionist is subject to jurisdiction of the Board as if licensed by the Board and requires the healthcare facility to provide to the Board electronic notice that services were provided and the grounds for the exemption. Proposed § 18.536(a) (relating to registration of temporary emergency perfusionist service) requires the out-of-State perfusionist to register with the Board in accordance with section 13.3(j) of the act prior to providing emergency services. Under proposed § 18.536(b), the out-of-State perfusionist or other person acting on behalf of the out-of-State perfusionist (such as healthcare facility staff) shall submit a completed registration on forms provided by the Board. It is anticipated that this registration will be done almost exclusively from the Board's web site. Because "one-time emergency perfusionist service" is not defined in section 13.3(j) of the act, proposed § 18.536(c) provides that although the services are not limited to a single procedure or patient or group of related patients, the out-of-State perfusionist may not provide emergency services for a period longer than 72 hours. However, section 13.3(j)(3) of the act prohibits the out-of-State perfusionist from providing services other than emergency services. Consistent with section 13.3(j)(2) of the act, proposed § 18.536(d) provides that the out-of-State perfusionist may not provide further perfusionist service in this Commonwealth without being licensed as a perfusionist or holding a temporary graduate license or temporary provisional license.

Because licenses issued by the Board must be registered biennially as a condition of continued practice in accordance with § 16.15 (relating to biennial registration; inactive status and unregistered status), proposed § 18.537 (relating to biennial registration of perfusionist license) addresses biennial registration of perfusionist licenses. Proposed § 18.537(a) provides that licensed perfusionists shall register biennially by December 31 of each even-numbered year. Under proposed § 18.537(b), a licensed perfusionist is required to complete and submit an application for biennial registration, including the required fee, disclose a license to practice as a perfusionist in another jurisdiction, disclose a disciplinary action pending before or taken by the appropriate healthcare licensing authority in another state, disclose pending criminal charges and convictions, verify that the licensee has complied with the continuing education requirements, and verify that, if practicing as a perfusionist in this Commonwealth, the licensed perfusionist maintains professional liability insurance coverage as required under section 13.3(k) of the act. Because the ABCP requires a perfusionist to complete a minimum number of procedures each year to maintain certification, the Board has chosen not to require continued National certification as a condition of renewal.

Proposed § 18.538 (relating to inactive status of perfusionist license; reactivation of inactive license) addresses inactive status of perfusionist licenses. Proposed

§ 18.538(a) provides that the license may become inactive either by the licensee's request or by expiration at the end of the biennial registration period. To minimize the opportunity or consequence of a license being incorrectly placed on inactive status at what appears to be the request of the licensee, proposed § 18.538(a)(1) provides that the Board will forward written confirmation of inactive status to the licensee. Proposed § 18.538(b) provides that a perfusionist whose license is inactive may not practice as a perfusionist in this Commonwealth until the license has been reactivated. Proposed § 18.538(c) provides the general requirement for reactivation of an inactive perfusionist license that the licensee shall apply on forms supplied by the Board, answer questions fully, provide documentation of completion of the required amount of continuing education for the preceding biennium, as required under section 13.3(n)(5) of the act, pay the current biennial registration fee and the reactivation fee specified in § 16.13(k) and verify that the licensee did not practice as a perfusionist in this Commonwealth while the license was inactive. If the licensee cannot verify that the licensee did not practice during the period of lapse, the license may be reactivated under proposed § 18.538(d). Under that proposed section, in addition to the requirements of subsection (c), the licensee shall pay the biennial registration fee for past registration periods and a late fee of \$5 per month. This late fee is the standard late fee of section 225 of the Bureau of Professional and Occupational Affairs Fee Act (63 P. S. § 1401-225). However, as provided in proposed § 18.538(d), payment of late fees will not preclude the Board from taking disciplinary action for practicing while the license was inactive.

Proposed § 18.539 next addresses disciplinary action. Although section 13.3 of the act does not specifically authorize the Board to take disciplinary action against a licensed perfusionist, section 13.3(m) of the act provides that disciplinary action taken by the Board against a perfusionist shall be enforceable by the State Board of Osteopathic Medicine if the perfusionist seeks licensure by that board. Section 41 of the act (63 P. S. § 422.41) authorizes the Board "to impose disciplinary or corrective measures on a board-regulated practitioner" for a variety of grounds. Accordingly, proposed § 18.539(a) provides that a licensed perfusionist, including one holding a temporary graduate license or temporary provisional license, is subject to disciplinary action under the grounds of section 41 of the act and that the Board may impose a corrective action in section 42 of the act (63 P. S. § 422.42). Because section 41(8) of the act authorizes the Board to take disciplinary action for immoral or unprofessional conduct, proposed § 18.539(b) defines unprofessional conduct and proposed § 18.539(c) defines immoral conduct. Modeled upon §§ 16.61 and 18.181 (relating to unprofessional and immoral conduct; and disciplinary and corrective measures), unprofessional conduct includes the following: performing acts in a healthcare profession in a fraudulent or incompetent or negligent manner; performing acts in the practice of a healthcare profession in violation of statute or regulation in this Commonwealth or another state; violating a provision of the act or regulation of the Board setting a standard of professional conduct; engaging in healthcare practice beyond the licensee's authority to practice; representing oneself to be a licensed physician or other healthcare provider; practicing while the licensee's ability to do so is impaired by alcohol or drugs or disability; and revealing personally identifiable facts obtained as the result of the practitioner-patient relationship. Immoral conduct includes the following: misrepresenting or concealing a

material fact in obtaining a license or reactivating or renewing the biennial registration of the license; being convicted of a crime involving moral turpitude; or committing an act involving moral turpitude or dishonesty or corruption. Additionally, unprofessional conduct includes engaging in conduct prohibited under § 16.110 (relating to sexual misconduct). Section 13.3(e)(2) of the act exempts from the general prohibition against practicing perfusion without a license a perfusion student who, among other requirements, is performing under the direct supervision of a perfusionist who is assigned to supervise the student. Section 13.3(e)(3) of the act exempts a perfusion graduate who, among other requirements, is performing under the supervision and responsibility of a perfusionist. Accordingly, proposed § 18.539(b)(9) includes as unprofessional conduct failing to provide supervision as required under section 13.3(e)(2) of the act of a perfusion student or failing to provide supervision as required under section 13.3(e)(3) of the act of a perfusion graduate who is not otherwise licensed by the Board to practice perfusion.

Section 13.3(n) of the act provides for required continuing education and proposed § 18.540 (relating to continuing education for licensed perfusionists) addresses that topic. Proposed § 18.540(a) sets forth the general credit hour requirements. As required under section 13.3(n)(2) of the act, proposed § 18.540(a)(1) requires each licensed perfusionist to complete at least 30 hours of continuing education—including at least 10 hours in category I continuing education—applicable to the practice of perfusion during each biennial registration period. Consistent with section 13.3(n)(3) of the act, a licensee would not be required to complete continuing education during the biennial registration period in which the licensee was first licensed. Although a licensee would not be permitted to carry over continuing education credit into a subsequent renewal period, proposed § 18.540(a)(2) recognizes that a licensee may need to make up deficient continuing education credit to reactivate an inactive license or if otherwise ordered by the Board. However, a particular hour of continuing education taken in a given biennial registration period may not be used to satisfy the requirement both for that period and to make up a deficiency for a prior period. Proposed § 18.540(a)(3) identifies that a licensee who failed to complete the required continuing education is subject to disciplinary action. Section 13.3(n)(4) of the act permits a licensee to submit a written request for waiver of the continuing education requirement due to serious illness, military service or other demonstrated hardship. Proposed § 18.540(a)(4) requires that the request be submitted at least 90 days before the end of the biennial registration period so that the Board could address the request and, if it is denied, give the licensee adequate opportunity to complete the required continuing education before the end of the period. Additionally, this proposed section explicitly notes that waiver may include extending the deadline, rather than simply relieving the licensee of the obligation to take continuing education. Proposed § 18.540(b) sets forth the standards for documentation of continuing education. Under proposed § 18.540(b)(1), a licensee shall receive a record of completion from the continuing education provider, setting forth the participant's name, the provider's name, the date of the course, the name of the course and the number of hours of continuing education. Proposed § 18.540(b)(2) requires the licensee to retain the record for at least 5 years after completion of the continuing education course or biennial registration period for which the continuing education was required, whichever is later. Because records of continuing education will not be sent

to the Board and the Board will not track licensees' completion of required continuing education, the Board will conduct postrenewal audits of licensees to verify compliance. Proposed § 18.540(c) sets forth the types of activities for which continuing education credit may be earned. To better facilitate compliance with the requirements, these standards are modeled upon those of the ABCP. Under proposed § 18.540(c)(1), category I continuing education (which must provide at least 10 of the required 30 hours) could be earned by attendance at perfusion meetings, publication of a perfusion-related book, chapter or paper in a professional journal, presentation at a perfusion meeting, participation in a site visitor workshop or as a site visitor for perfusion program accreditation or completion of an ABCP-approved self-directed continuing education course for which the licensee scores at least 80% on an examination. Under proposed § 18.540(c)(2), other continuing education to reach the required total could be earned by reading journals or other educational materials, participating in electronic forums or journal clubs, participation in degree-oriented professional-related course work, presentation of perfusion topics at a nonperfusion meeting or working as a clinical or didactic instructor in an accredited school of perfusion. However, as noted in section 13.3(n)(6) of the act, proposed § 18.540(c)(3) prohibits continuing education credit for a course in office management.

Section 13.3(k) of the act provides for required professional liability insurance for perfusionists and proposed § 18.541(a) (relating to professional liability insurance coverage for licensed perfusionist) requires a licensed perfusionist to maintain a level of professional liability insurance as required under section 13.3(k) of the act. Conversely, proposed § 18.541(d) prohibits a perfusionist who does not have the required amount of liability insurance from practicing as a perfusionist in this Commonwealth. Section 13.3(k)(2) of the act requires an applicant to provide proof that the applicant has obtained the liability insurance. Proposed § 18.541(b) sets forth the general requirement that proof of liability insurance consists of a certificate of insurance or a copy of the declarations page from the insurance policy setting forth the effective and expiration dates and the dollar amounts of coverage. However, section 13.3(k)(2) of the act permits an applicant to file with the application a letter from an insurance carrier stating that the applicant will be covered in the required amounts effective upon issuance of the license, but the applicant must then submit the certificate of insurance or copy of the declaration page within 30 days after issuance of the license. To effectuate this provision, proposed § 18.541(c) provides that a license issued in reliance upon the insurance carrier's letter will become inactive as a matter of law 30 days after the license is issued if the licensee has not submitted proof of insurance. The license will be inactivated and not suspended, because it is not a disciplinary action, as insurance is required only if practicing as a perfusionist in this Commonwealth.

Fiscal Impact and Paperwork Requirements

The proposed rulemaking will not have adverse fiscal impact on the Commonwealth or its political subdivisions. Perfusionists who wish to become licensed to practice in this Commonwealth will bear the fiscal impact of the proposed rulemaking in the form of required fees and costs associated with obtaining the required continuing education. The Board will be required to develop forms required to implement the proposed rulemaking. The

proposed rulemaking 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 May 11, 2010, 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 must specify the regulatory review criteria which have not been met. The Regulatory Review Act specifies detailed procedures for review, prior to final publication of the rulemaking, by the Board, the General Assembly and the Governor of comments, recommendations or objections raised.

Public Comment

Interested persons are invited to submit written comments, suggestions or objections regarding this proposed rulemaking to the Regulatory Unit Counsel, Department of State, P. O. Box 2649, Harrisburg, PA 17105-2649, st-medicine@state.pa.us within 30 days following publication of this proposed rulemaking in the Pennsylvania Bulletin. Reference No. 16A-4931 (perfusionist) when submitting comments.

CAROL E. ROSE, M.D.,
Chairperson

Fiscal Note: 16A-4931. 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 16. STATE BOARD OF MEDICINE—GENERAL PROVISIONS

Subchapter B. GENERAL LICENSE, CERTIFICATION AND REGISTRATION PROVISIONS

§ 16.11. Licenses, certificates and registrations.

* * * * *

(b) The following nonmedical doctor licenses and certificates are issued by the Board:

* * * * *

(6) Perfusionist license.

(c) The following registrations are issued by the Board:

* * * * *

(10) Biennial registration of a perfusionist license.

§ 16.13. Licensure, certification, examination and registration fees.

* * * * *

(k) Perfusionist license.

Application for perfusionist license \$50

Biennial renewal of perfusionist license \$50

Application for reactivation of perfusionist license \$50

Application for temporary graduate perfusionist license \$50

Application for temporary provisional perfusionist license \$40

CHAPTER 18. STATE BOARD OF MEDICINE—PRACTITIONERS OTHER THAN MEDICAL DOCTORS

(Editor's Note: The following subchapter is new and printed in regular type to enhance readability.)

Subchapter J. PERFUSIONISTS

Table with 2 columns: Sec. and Purpose. Rows include 18.531 Purpose, 18.532 Definitions, 18.533 Application for perfusionist license, 18.534 Application for temporary graduate perfusionist license, 18.535 Application for temporary provisional perfusionist license, 18.536 Registration of temporary emergency perfusionist service, 18.537 Biennial registration of perfusionist license, 18.538 Inactive status of perfusionist license; reactivation of inactive license, 18.539 Disciplinary action for licensed perfusionists, 18.540 Continuing education for licensed perfusionists, 18.541 Professional liability insurance coverage for licensed perfusionist.

§ 18.531. Purpose.

This subchapter implements section 13.3 of the act (63 P. S. § 422.13c) pertaining to perfusionists, which was added by the act of June 11, 2008 (P. L. 154, No. 19), effective August 10, 2008.

§ 18.532. Definitions.

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

ABCP—American Board of Cardiovascular Perfusion.

Board—The State Board of Medicine.

Accredited perfusion program approved by the Board—A perfusion program accredited by a Nationally-recognized accrediting agency approved by the Board.

Extracorporeal circulation—As defined in section 2 of the act (63 P. S. § 422.2), the diversion of a patient's blood through a heart-lung machine or similar device that assumes the functions of the patient's heart, lungs, kidneys, liver or other organs.

Hour of continuing education—At least 50 minutes of instruction (including relevant question and answer sessions) in an approved course of continuing education or an equivalent time that an on-line or correspondence course would be presented live.

Nationally-recognized accrediting agency approved by the Board—ABCP, or any other organization for which the Board publishes notice that the organization is approved by the Board as an accrediting agency for perfusionist programs.

Nationally-recognized certifying agency approved by the Board—ABCP, or any other organization for which the

Board publishes notice that the organization is approved by the Board as a certifying agency for perfusionists.

Perfusion—As defined in section 2 of the act, the functions necessary for the support, treatment, measurement or supplementation of the cardiovascular system or other organs, or a combination of those functions, and for ensuring the safe management of physiologic functions by monitoring and analyzing the parameters of the systems under the supervision of a physician licensed under the act or the Osteopathic Medical Practice Act (63 P. S. §§ 271.1—271.18).

Perfusionist—As defined in section 2 of the act, an individual who is licensed to practice perfusion by the Board or the State Board of Osteopathic Medicine.

Ventricular assist device—

(i) As defined in section 2 of the act, a mechanical device used to partially or completely replace the function of a failing heart through connections to the heart and great vessels that may be located intracorporeally or extracorporeally.

(ii) The term includes a device that is placed intravascularly or extravascularly and provides support through direct means or via counterpulsation.

§ 18.533. Application for perfusionist license.

(a) An applicant for a license to practice as a perfusionist shall submit, on forms supplied by the Board, a completed application, including all necessary supporting documents, for license to practice as a perfusionist and pay the fee set forth in § 16.13(k) (relating to licensure, certification, examination and registration fees) for application for a perfusionist license.

(b) Except as otherwise provided in subsection (c), the Board will license to practice as a perfusionist an applicant who:

(1) Demonstrates that the applicant satisfies the requirements of section 13.3(f) of the act (63 P. S. § 422.13c(f)) for licensure to practice as a perfusionist, including the following:

(i) The applicant holds a current certification by a certifying agency approved by a Nationally-recognized accrediting agency approved by the Board.

(ii) The applicant has graduated from an accredited perfusion program approved by the Board.

(iii) The applicant is at least 18 years of age and of good moral character.

(2) Provides proof as set forth in § 18.541 (relating to professional liability insurance coverage for licensed perfusionist) that the applicant has obtained professional liability insurance as required under section 13.3(k) of the act.

(3) Otherwise complies with this subchapter.

(c) The Board may deny an application for licensure as a perfusionist upon the grounds for disciplinary action set forth in § 18.539 (relating to disciplinary action for licensed perfusionists).

§ 18.534. Application for temporary graduate perfusionist license.

(a) An applicant for a temporary graduate perfusionist license shall submit, on forms supplied by the Board, a completed application, including all necessary supporting documents, and pay the fee in § 16.13(k) (relating to

licensure, certification, examination and registration fees) for application for a temporary graduate perfusionist license.

(b) Except as otherwise provided in subsection (c), the Board will grant a temporary graduate perfusionist license to an applicant who:

(1) Demonstrates that the applicant satisfies the requirements of section 13.3(h)(1)(i) of the act (63 P. S. § 422.13c(h)(1)(i)) for temporary graduate licensure to practice as a perfusionist, including all of the following:

(i) The applicant is qualified and has applied to sit for the examination of a certifying agency approved by a Nationally-recognized accrediting agency approved by the Board.

(ii) The applicant has graduated from an accredited perfusion program approved by the Board.

(iii) The applicant is at least 18 years of age and of good moral character.

(2) Provides proof as set forth in § 18.541 (relating to professional liability insurance coverage for licensed perfusionist) that the applicant has obtained professional liability insurance as required under section 13.3(k) of the act.

(3) Otherwise complies with this subchapter.

(c) The Board may deny an application for a temporary graduate perfusionist license upon the grounds for disciplinary action set forth in § 18.539 (relating to disciplinary action for licensed perfusionists).

(d) A temporary graduate perfusionist license will expire 2 years after the date of issuance and may not be renewed.

(e) A temporary graduate perfusionist license will expire upon notice to the Board that the holder has failed the Nationally-recognized certifying agency's certification examination.

§ 18.535. Application for temporary provisional perfusionist license.

(a) An applicant for a temporary provisional perfusionist license shall submit, on forms supplied by the Board, a completed application, including all necessary supporting documents, and pay the fee in § 16.13(k) (relating to licensure, certification, examination and registration fees) for application for a temporary graduate perfusionist license.

(b) Except as otherwise provided in subsection (c), the Board will grant a temporary provisional perfusionist license to an applicant who:

(1) Demonstrates that the applicant satisfies the requirements of section 13.3(i) of the act (63 P. S. § 422.13c(i)) for temporary provisional licensure to practice as a perfusionist, including the following:

(i) The applicant holds a current license in good standing under the laws of another state, the District of Columbia or a territory of the United States that includes certification by a certifying agency approved by a Nationally-recognized accrediting agency.

(ii) The applicant has graduated from an accredited perfusion program approved by the Board.

(iii) The applicant is at least 18 years of age and of good moral character.

(2) Provides proof as set forth in § 18.541 (relating to professional liability insurance coverage for licensed

perfusionist) that the applicant has obtained professional liability insurance as required under section 13.3(k) of the act.

(3) Otherwise complies with this subchapter.

(c) The Board may deny an application for certification as a perfusionist upon the grounds for disciplinary action set forth in § 18.539 (relating to disciplinary action for licensed perfusionists).

(d) A temporary provisional perfusionist license will expire 1 year after the date of issuance and may not be renewed.

§ 18.536. Registration of temporary emergency perfusionist service.

(a) An out-of-State perfusionist shall register with the Board in accordance with this section prior to providing temporary emergency perfusionist service in this Commonwealth in accordance with section 13.3(j) of the act (63 P. S. § 422.13c(j)).

(b) The out-of-State perfusionist or another person acting on behalf of the out-of-State perfusionist shall submit, on forms supplied by the Board, a completed registration form, fully answering all questions.

(c) Although not limited to a single procedure or single patient or group of related patients, an out-of-State perfusionist may provide temporary emergency perfusionist services in this Commonwealth for not longer than a period of 72 hours.

(d) An out-of-State perfusionist may not provide temporary emergency perfusionist service in this Commonwealth more than once without being licensed in accordance with § 18.533, § 18.534 or § 18.535 (relating to application for perfusionist license; application for temporary graduate perfusionist license; and application for temporary provisional perfusionist license).

§ 18.537. Biennial registration of perfusionist license.

(a) A licensed perfusionist shall register biennially by December 31 of each even-numbered year, in accordance with § 16.15 (relating to biennial registration; inactive status and unregistered status).

(b) A licensee applying for biennial registration of a perfusionist license shall submit a completed application, including payment of the biennial registration fee set forth in § 16.13(k) (relating to licensure, certification, examination and registration fees) for application for biennial registration of perfusionist license. On the biennial registration application, the licensed perfusionist shall:

(1) Disclose any license to practice as a perfusionist in another state, territory, possession, or country.

(2) Disclose any disciplinary action pending before or taken by the appropriate healthcare licensing authority in any other jurisdiction since the most recent application for biennial registration, whether or not licensed to practice in that other jurisdiction.

(3) Disclose any pending criminal charges and any finding or verdict of guilt, admission of guilt, plea of *nolo contendere*, probation without verdict, disposition in lieu of trial or accelerated rehabilitative disposition in any criminal matter since the most recent application for biennial registration.

(4) Verify that the licensed perfusionist has complied with the continuing education requirements mandated under section 13.3(n) of the act (63 P. S. § 422.13c(n))

during the biennial period immediately preceding the period for which registration is sought in accordance with § 18.540 (relating to continuing education for licensed perfusionists).

(5) Verify that, if practicing as a perfusionist in this Commonwealth, the licensee maintains professional liability insurance coverage in accordance with section 13.3(k) of the act.

§ 18.538. Inactive status of perfusionist license; re-activation of inactive license.

(a) A perfusionist license will become inactive upon either of the following:

(1) The licensee requests in writing the Board to place the license on inactive status. Written confirmation of inactive status will be forwarded to the licensee.

(2) The licensee fails to register the license by the expiration of the biennial registration period, that is, by December 31 of each even-numbered year.

(b) A perfusionist whose license has expired or been placed on inactive status may not practice as a perfusionist in this Commonwealth until the license has been reactivated.

(c) To reactivate an inactive license, the licensee shall apply on forms supplied by the Board, answering all questions fully. The licensee shall:

(1) Include the documentation required under § 18.540(b) (relating to continuing education for licensed perfusionists) for the immediately preceding biennium, which may be completed during the current biennium. Unless waived by the Board under section 13.3(n)(4) of the act (63 P. S. § 422.13c(n)(4)), the Board will not reactivate any license until the required continuing education for the preceding biennium has been successfully completed.

(2) Pay the current biennial registration fee and the reactivation application fee specified in § 16.13(k) (relating to licensure, certification, examination and registration fees).

(3) Except as provided in subsection (d), verify that the licensee did not practice as a perfusionist in this Commonwealth while the license was inactive.

(d) A licensee who has practiced with an inactive license, and who cannot make the verification required by subsection (c)(3) shall also pay the fees required by this subsection. Payment of a late fee does not preclude the Board from taking disciplinary action for practicing as a perfusionist without a currently registered license.

(1) A licensee whose license was active at the end of the immediately preceding biennial registration period and who practiced after the license became inactive shall pay a late fee of \$5 for each month or part of a month from the beginning of the current biennium until the date the reactivation application is filed.

(2) A licensee whose license has been inactive since before the beginning of the current biennium shall pay the biennial registration fee for each biennial registration period during which the licensee practiced and shall pay a late fee of \$5 for each month or part of a month from the first date the licensee practiced as a perfusionist in this Commonwealth after the license became inactive until the date the reactivation application is filed.

§ 18.539. Disciplinary action for licensed perfusionists.

(a) A licensed perfusionist, including a perfusionist holding a temporary graduate license or a temporary

provisional license, is subject to disciplinary action under the grounds of section 41 of the act (63 P. S. § 422.41). Following a final determination subject to the right of notice, hearing and adjudication and the right of appeal therefrom in accordance with 2 Pa.C.S. (relating to administrative law and procedure), the Board may impose any of the corrective actions of section 42 of the act (63 P. S. § 422.42).

(b) Unprofessional conduct includes:

(1) Engaging in any conduct prohibited under § 16.110 (relating to sexual misconduct).

(2) Performing acts in a healthcare profession in a fraudulent, incompetent or negligent manner.

(3) Performing acts in the practice of a healthcare profession in violation of a statute or regulation of the Commonwealth, another state of the United States, or another country.

(4) Violating a provision of the act or this chapter setting a standard of professional conduct.

(5) Engaging in healthcare practice beyond the licensee's authority to practice.

(6) Representing oneself to be a physician, physician assistant, certified registered nurse practitioner or other healthcare practitioner whose profession the perfusionist is not licensed to practice.

(7) Practicing while the licensee's ability to do so is impaired by alcohol, drugs, physical disability or mental instability.

(8) Revealing personally identifiable facts obtained as the result of a practitioner-patient relationship without the prior consent of the patient, except as authorized or required by statute or regulation.

(9) Failing to provide supervision as required under section 13.3(e)(2) of the act (63 P. S. § 422.13c(e)(2)) of a perfusion student or failing to provide supervision as required under section 13.3(e)(3) of the act of a perfusion graduate who is not otherwise licensed by the Board to perform perfusion in this Commonwealth.

(c) Immoral conduct includes:

(1) Misrepresenting or concealing a material fact in obtaining a license issued by the Board or renewal, reactivation or reinstatement thereof.

(2) Being convicted of a crime involving moral turpitude, dishonesty or corruption in the courts of the Commonwealth, the United States, or another state, territory or county.

(3) Committing an act involving moral turpitude, dishonesty or corruption.

§ 18.540. Continuing education for licensed perfusionists.

(a) *Credit hour requirements.* A licensed perfusionist shall satisfy the following continuing education credit hour requirements.

(1) During each biennial registration period, a licensee shall complete 30 hours of continuing education applicable to the practice of perfusion, including at least 10 hours of category I continuing education. A licensee is not required to complete continuing education during the biennium in which the licensee was first licensed.

(2) Except as permitted in § 18.538(c)(1) (relating to inactive status of perfusionist license; reactivation of inactive license), paragraph (4), or as directed by the

Board, continuing education may satisfy the requirement of paragraph (1) only for the biennium during which it was completed. No hour of continuing education may be used to satisfy the requirement of paragraph (1) for more than one biennium.

(3) Unless otherwise excused by the act or this subchapter, failure to complete the minimum required amount of continuing education during the applicable biennial registration period as required under section 13.3(n) of the act (63 P. S. § 422.13c(n)) and this section will subject the licensee to discipline under section 41(6) of the act (63 P. S. § 422.41(6)).

(4) A licensee seeking waiver of the continuing education requirements under section 13.3(n)(4) of the act shall submit the request with all supporting documentation to the Board at least 90 days prior to the end of the biennial registration period for which waiver is sought. Waiver may include extending the deadline by which the required continuing education must be completed.

(b) *Documentation of continuing education.* Continuing education shall be documented in the following manner.

(1) Proof of completion of continuing education must consist of a certified record issued by the provider, including:

(i) The name of the participant.

(ii) The name of the provider.

(iii) The date or dates of the course.

(iv) The name of the course.

(v) The number of hours of continuing education credit.

(2) A licensee shall retain proof of completion of continuing education for 5 years after completion of the continuing education or after the completion of the biennial registration period for which the continuing education was required, whichever is later.

(3) The Board will audit licensees to verify compliance with continuing education requirements.

(c) *Continuing education activities.* Credit for continuing education may be earned in the following activities.

(1) Category I continuing education may be earned by:

(i) Attendance at an international, National, regional or state perfusion meeting.

(ii) Publication of a perfusion-related book, chapter or paper in a professional journal.

(iii) Presentation at an international, National, regional, state or local perfusion meeting.

(iv) Participation in a site visitors workshop or as a site visitor for perfusion program accreditation.

(v) Completion of ABCP-approved self-directed continuing education for which the licensee scored at least 80% on an examination.

(2) In addition to category I, continuing education may also be earning by:

(i) Reading or viewing medical journals, audio-visual, or other educational materials.

(ii) Participation in electronic forums.

(iii) Participation in a journal club.

(iv) Participation in degree-oriented, professionally-related course work.

(v) Presentation of perfusion topic at a nonperfusion meeting.

(vi) Working as a clinical or didactic instructor in an accredited school of perfusion.

(3) Continuing education credit may not be earned in any course in office management.

§ 18.541. Professional liability insurance coverage for licensed perfusionist.

(a) A licensed perfusionist shall maintain a level of professional liability insurance coverage as required under section 13.3(k) of the act (63 P. S. § 422.13c(k)).

(b) Proof of professional liability insurance coverage shall consist of a certificate of insurance or copy of the declaration page from the insurance policy setting forth the effective date, expiration date, and dollar amounts of coverage.

(c) A license that was issued in reliance upon a letter from the applicant's insurance carrier indicating that the applicant will be covered against professional liability effective upon the issuance of the applicant's license as permitted under section 13.3(k)(2) of the act will become inactive as a matter of law 30 days after the date of issuance on the license if the licensee has not provided proof of professional liability insurance coverage and will remain inactive until the licensee provides proof of insurance coverage.

(d) A licensee who does not have professional liability insurance coverage as required under section 13.3(k) of the act may not practice as a perfusionist in this Commonwealth.

[Pa.B. Doc. No. 10-938. Filed for public inspection May 21, 2010, 9:00 a.m.]

STATE BOARD OF OSTEOPATHIC MEDICINE

[49 PA. CODE CH. 25]

Perfusionist

The State Board of Osteopathic Medicine (Board) proposes to amend § 25.231 (relating to schedule of fees) and to add Subchapter N (relating to perfusionists) to read as set forth in Annex A.

Effective Date

The proposed rulemaking will be effective upon final publication in the *Pennsylvania Bulletin*.

Statutory Authority

The proposed rulemaking is authorized under sections 13.3 and 16 of the Osteopathic Medical Practice Act (act) (63 P. S. §§ 271.13c and 271.16).

Background and Need for the Proposed Rulemaking

The act of June 11, 2008 (P. L. 161, No. 20) (Act 20) amended the act to provide for licensure of perfusionists. Section 2 of the act (63 P. S. § 271.2) now defines the term "perfusion" as "the functions necessary for the support, treatment, measurement or supplementation of the cardiovascular systems or other organs, or a combination of those functions . . . by monitoring and analyzing the parameters of the systems under the supervision of a physician. . . ." This proposed rulemaking amends the Board's regulations to implement licensure of perfusionists under the act as amended by Act 20. Practice of

perfusion in this Commonwealth without a license from the Board will be prohibited after August 10, 2010. This proposed rulemaking is also designed to provide to prospective licensees adequate notice of the requirements for licensure as a perfusionist.

Description of the Proposed Rulemaking

The proposed rulemaking adds licensure as a perfusionist. The proposed rulemaking amends § 25.231 to set the fees associated with perfusionist licensure to be charged by the Board, as authorized by section 13.3(1) of the act. To recover the costs of providing those services, the fee for applications for perfusionist license, reactivation of perfusionist license and temporary graduate perfusionist license would each be \$50 and the fee for application for temporary provisional perfusionist license would be \$40. Because the Board believes that the cost to provide the service would be minimal and does not want to delay application, the Board has not set fees for notification of emergency practice as a perfusionist. To provide for an appropriate share of the general costs of operating the Board, the biennial renewal fee for a perfusionist would be \$50.

The proposed rulemaking adds Subchapter N. Proposed § 25.811 (relating to purpose) identifies the purpose of the subchapter as providing for licensure of perfusionists. Proposed § 25.812 (relating to definitions) provides necessary definitions. These include the statutory definitions of "extracorporeal circulation," "perfusion," "perfusionist" and "ventricular assist device" as are used in the subchapter. Additionally, the Board defines "ABCP" as the American Board of Cardiovascular Perfusion (ABCP), the National body that both accredits perfusion education programs and certifies perfusionists. The Board defines "accredited perfusion program approved by the Board" as a perfusion program accredited by a Nationally-recognized accrediting agency approved by the Board. The Board further defines "Nationally-recognized accrediting agency approved by the Board" as the ABCP or another organization for which the Board publishes notice that the organization is approved by the Board as an accrediting agency for perfusionist programs. Finally, the Board defines an "hour of continuing education" as "at least 50 minutes of instruction (including question and answer sessions) in an approved course of continuing education or an equivalent time that an on-line or correspondence course would be presented live." This time is consistent with the standards for continuing education that is required by the ABCP for recertification.

Under § 25.813(a) (relating to application for perfusionist license), an applicant shall submit a completed application form, including necessary supporting documents, and pay the required application fee. Section 13.3(f) of the act sets five criteria for licensure as a perfusionist as follows: at least 18 years of age; good moral character; graduation from an accredited perfusion program approved by the Board; and certification by a certifying agency approved by a Nationally-recognized accrediting agency approved by the Board. Accordingly, proposed § 25.813(b)(1) provides that the Board will license as a perfusionist an applicant who demonstrates that the applicant satisfies the requirements of section 13.3(f) of the act for licensure as a perfusionist. Because, as discussed regarding proposed § 25.821 (relating to professional liability insurance coverage for licensed perfusionist), section 13.3(k) of the act requires a perfusionist to carry a minimum level of professional liability insurance, proposed § 25.813(b)(2) requires that an applicant provide proof of liability insurance. Because, as discussed as

follows, the Board is also setting forth in this proposed rulemaking grounds for disciplinary action in proposed § 25.819 (relating to disciplinary action for licensed perfusionist), proposed § 25.813(c) provides that the Board may, in its discretion, deny an application for perfusionist licensure upon those grounds for disciplinary action.

The Board has not proposed a rulemaking to incorporate the grandfather provision of section 13.3(g) of the act, which, during the first 2 years after the effective date of Act 20, permits a person who was not a graduate of an accredited program prior to 1981, but who met the then-current eligibility requirements for certification as a certified clinical perfusionist and subsequently was certified, to become licensed if the person otherwise complies with the requirements for licensure. Not only is this statutory provision self-executing, but the opportunity to take advantage of it will expire August 10, 2010, not long after adoption of the final-form rulemaking.

Proposed § 25.814 (relating to application for temporary graduate perfusionist license) addresses the application for temporary graduate perfusionist license as provided in section 13.3(h) of the act. Under proposed § 25.814(a), an applicant shall submit a completed application form, including necessary supporting documents, and pay the required application fee. Section 13.3(h)(1)(i) of the act provides that an individual who has graduated from an educational program in compliance with the education requirements and is eligible for and has applied for the examination may receive a temporary graduate license. These criteria, along with good moral character and being at least 18 years of age, are set forth in proposed § 25.814(b)(1) as the basic requirements for a temporary graduate license. Because, as discussed regarding proposed § 25.821, section 13.3(k) of the act requires a perfusionist to carry a minimum level of professional liability insurance, proposed § 25.814(b)(2) requires that an applicant provide proof of liability insurance. Because, as discussed as follows, the Board is also setting forth in this proposed rulemaking grounds for disciplinary action in proposed § 25.819, proposed § 25.814(c) provides that the Board may, in its discretion, deny an application for perfusionist temporary graduate license upon those grounds for disciplinary action. Because section 13.3(h)(1)(iii) of the act provides that a temporary graduate license is to be issued for 2 years but not be renewable, proposed § 25.814(d) provides that a temporary graduate perfusionist license will expire 2 years after the date of issuance and may not be renewed. Because section 13.3(h)(1)(iv) of the act provides that a temporary graduate license is to expire upon notice of failing the required examination, proposed § 25.814(e) would provide that a temporary graduate perfusionist license will expire upon notice to the Board that the holder failed the Nationally-recognized accrediting agency's certification examination.

Proposed § 25.815 (relating to application for temporary provisional perfusionist license) addresses the application for temporary provisional perfusionist license, as provided in section 13.3(i) of the act. Under proposed § 25.815(a), an applicant shall submit a completed application form, including necessary supporting documents, and pay the required application fee. Section 13.3(i)(1) of the act provides that an individual who holds a current license in good standing under the laws of another state, which includes certification by a certifying agency approved by a Nationally-recognized accrediting agency, may receive a temporary provisional license if the applicant meets the requirements of section 13.3(f) of the act

that the applicant is at least 18 years of age, of good moral character and has graduated from an accredited perfusion program approved by the Board. These criteria, along with good moral character and being at least 18 years of age, are set forth in proposed § 25.815(b)(1) as the basic requirements for a temporary provisional license. Because, as discussed regarding proposed § 25.821, section 13.3(k) of the act requires a perfusionist to carry a minimum level of professional liability insurance, proposed § 25.815(b)(2) requires that an applicant provide proof of liability insurance. Because, as discussed as follows, the Board is also setting forth in this proposed rulemaking grounds for disciplinary action in proposed § 25.819, proposed § 25.815(c) provides that the Board may, in its discretion, deny an application for perfusionist temporary provisional license upon those grounds for disciplinary action. Because section 13.3(i)(2) of the act provides that a temporary provisional license is to be issued for 1 year but not be renewable, proposed § 25.815(d) provides that a temporary provisional perfusionist license will expire 1 year after the date of issuance and may not be renewed thereafter.

Section 13.3(j) of the act provides an exemption to the general prohibition against unlicensed practice for one-time temporary emergency services by an out-of-State licensed perfusionist when the licensed perfusionist that would normally have provided the services is unavailable or incapable of providing services and another licensed perfusionist is available or capable of providing services. Section 13.3(j) of the act requires the out-of-State perfusionist to provide to the Board electronic notice of the emergency and acknowledgment that the out-of-State perfusionist is subject to jurisdiction of the Board as if licensed by the Board and requires the healthcare facility to provide to the Board electronic notice that services were provided and the grounds for the exemption. Proposed § 25.816(a) (relating to registration of temporary emergency perfusionist service) requires the out-of-State perfusionist to register with the Board in accordance with section 13.3(j) of the act prior to providing emergency services. Under proposed § 25.816(b), the out-of-State perfusionist or other person acting on behalf of the out-of-State perfusionist (such as healthcare facility staff) shall submit a completed registration on forms provided by the Board. It is anticipated that this registration will be done almost exclusively from the Board's web site. Because "one-time emergency perfusionist service" is not defined in section 13.3(j) of the act, proposed § 25.816(c) provides that the services are not limited to a single procedure or patient or group of related patients, the out-of-State perfusionist may not provide emergency services for a period longer than 72 hours. However, section 13.3(j)(3) of the act prohibits the out-of-State perfusionist from providing services other than the emergency services. Consistent with section 13.3(j)(2) of the act, which states that the out-of-State perfusionist shall obtain a license if providing any future perfusionist service, proposed § 25.816(d) provides that the out-of-State perfusionist may not provide temporary emergency perfusionist service in this Commonwealth without being licensed as a perfusionist or holding a temporary graduate license or temporary provisional license.

Because licenses and certifications issued by the Board within the Bureau of Professional and Occupational Affairs expire after 2 years and must be renewed biennially, proposed § 25.817 (relating to renewal of perfusionist license) addresses renewal of perfusionist license. Proposed § 25.817(a) requires the licensed perfusionist to register by October 31 of each even-numbered year, the

expiration date for other licenses and certifications issued by the Board. Additionally, this subsection requires a licensed perfusionist to notify the Board within 10 business days of a change in name or address. Substantially identical to existing § 25.272 (relating to name and address changes) for licensed doctors of osteopathy, this subsection permits the Board to properly send notices, including notices of renewal, to the licensees. Under proposed § 25.817(b), a licensed perfusionist is required to complete and submit the renewal application, including the required renewal fee, and disclose a license to practice as a perfusionist in another state, disclose a disciplinary action pending before or taken by the appropriate healthcare licensing authority in another state, disclose pending criminal charges and convictions, verify that the licensee has complied with the continuing education requirements of section 13.3(n) of the act and verify that if practicing as a perfusionist in this Commonwealth the licensee maintains professional liability insurance coverage as required under section 13.3(k) of the act. Because the ABCP requires a perfusionist to complete a minimum number of procedures each year to maintain certification, the Board has chosen not to require continued National certification as a condition of renewal.

Proposed § 25.818(a) (relating to inactive status of perfusionist license; reactivation of inactive license) provides that the license may become inactive either by the licensee's request or by expiration at the end of the biennial renewal period. To minimize the opportunity or consequence of a license being incorrectly placed on inactive status at what appears to be the request of the licensee, proposed § 25.818(a)(1) provides that the Board will provide written notice to the licensee. Proposed § 25.818(b) provides that a perfusionist whose license is inactive may not practice as a perfusionist in this Commonwealth until the license has been reactivated. Proposed § 25.818(c) provides the general requirement for reactivation of an inactive perfusionist license that the licensee shall apply on forms supplied by the Board, answer questions fully, provide documentation of completion of the required amount of continuing education for the preceding biennium, as required under section 13.3(n)(5) of the act, pay the current renewal fee and the reactivation fee specified in § 25.231, and verify that the licensee did not practice as a perfusionist in this Commonwealth while the license was inactive. If the licensee does not verify that the licensee did not practice during the period of lapse, the license may be reactivated under proposed § 25.818(d) by paying additional fees. Under that proposed section, in addition to the requirements of subsection (c), the licensee shall pay the renewal fee for past renewal periods and a late fee of \$5 per month. This late fee is the standard late renewal fee of section 225 of the Bureau of Professional and Occupational Affairs Fee Act (63 P. S. § 1401-225). However, as provided in proposed § 25.818(d), payment of late fees will not preclude the Board from taking disciplinary action for practicing while the license was inactive.

Proposed § 25.819 addresses disciplinary action. Although section 13.3 of the act does not specifically authorize the Board to take disciplinary action against a licensed perfusionist, section 13.3(m) of the act provides that disciplinary action taken by the Board against a perfusionist shall be enforceable by the Board if the perfusionist seeks licensure by the Board. Section 15(b) of the act (63 P. S. § 271.15(b)) authorizes the board "to

refuse, revoke or suspend the license of a physician assistant or respiratory therapist, or the certification of a certified athletic trainer," that is, other nonphysicians licensed by the Board, for a variety of grounds. Accordingly, proposed § 25.819(a) provides that a licensed perfusionist, including one holding a temporary graduate license or temporary provisional license, is subject to disciplinary action under the grounds of section 15(b) of the act and that the Board may impose corrective actions in section 15(c) of the act. Because section 15(b)(9) of the act authorizes the Board to take disciplinary action for immoral or unprofessional conduct, proposed § 25.819(b) defines unprofessional conduct and proposed § 25.819(c) defines immoral conduct. Modeled upon § 25.201 (relating to grounds for complaint), unprofessional conduct would include: performing acts in a healthcare profession in a fraudulent or incompetent or negligent manner; performing acts in the practice of a healthcare profession in violation of statute or regulation in this Commonwealth or another state; violating a provision of the act or regulation of the Board setting a standard of professional conduct; engaging in healthcare practice beyond the licensee's authority to practice; representing oneself to be a licensed physician or other healthcare provider; practicing while the licensee's ability to do so is impaired by alcohol or drugs or disability; and revealing personally identifiable facts obtained as the result of the practitioner-patient relationship. Also modeled upon § 25.201, immoral conduct would include: misrepresenting or concealing a material fact in obtaining a license or reactivating or renewing the license; being convicted of a crime involving moral turpitude; or committing an act involving moral turpitude or dishonesty or corruption. Additionally, unprofessional conduct would include engaging in conduct prohibited by § 25.216 (relating to sexual misconduct). Section 13.3(e)(2) of the act exempts from the general prohibition against practicing perfusion without a license a perfusion student who, among other requirements, is performing under the direct supervision of a perfusionist who is assigned to supervise the student. Section 13.3(e)(3) of the act exempts a perfusion graduate who, among other requirements, is performing under the supervision and responsibility of a perfusionist. Accordingly, proposed § 25.819(b)(9) includes in unprofessional conduct failing to provide supervision as required under section 13.3(e)(2) of the act of a perfusion student or failing to provide supervision as required under section 13.3(e)(3) of the act of a perfusion graduate who is not otherwise licensed by the Board to practice perfusion.

Section 13.3(n) of the act provides for required continuing education and proposed § 25.820 (relating to continuing education for licensed perfusionist) addresses that topic. Proposed § 25.820(a) sets forth the general credit hour requirements. As required under section 13.3(n)(2) of the act, proposed § 25.820(a)(1) requires each licensed perfusionist to complete at least 30 hours of continuing education—including at least 10 hours in category I continuing education—applicable to the practice of perfusion during each biennial renewal period. Consistent with section 13.3(n)(3) of the act, a licensee would not be required to complete continuing education during the biennial renewal period in which the licensee was first licensed. Although a licensee would not be permitted to carry over continuing education credit into a subsequent renewal period, proposed § 25.820(a)(2) recognizes that a licensee may need to make up deficient continuing education credit to reactivate an inactive license or if otherwise

ordered by the Board. However, a particular hour of continuing education taken in a given biennial renewal period may not be used to satisfy the requirement both for that period and to make up a deficiency for a prior period. Proposed § 25.820(a)(3) identifies that a licensee who failed to complete the required continuing education is subject to disciplinary action. Section 13.3(n)(4) of the act permits a licensee to submit a written request for waiver of the continuing education requirement due to serious illness, military service or other demonstrated hardship. Proposed § 25.820(a)(4) requires that the request be submitted at least 90 days before the end of the renewal period so that the Board could address the request and, if it is denied, give the licensee adequate opportunity to complete the required continuing education before the license would expire. Additionally, this proposed section explicitly notes that waiver may include extending the deadline, rather than simply relieving the licensee of the obligation to take continuing education. Proposed § 25.820(b) sets forth the standards for documentation of continuing education. Under proposed § 25.820(b)(1), a licensee shall receive a record of completion from the continuing education provider, setting forth the participant's name, the provider's name, the date of the course, the name of the course and the number of hours of continuing education. Proposed § 25.820(b)(2) requires the licensee to retain the record for at least 5 years after completion of the continuing education course or renewal period for the continuing education was required, whichever is later. Because records of continuing education will not be sent to the Board and the Board will not track licensees' completion of required continuing education, the Board will conduct postrenewal audits of licensees to verify compliance. Proposed § 25.820(c) sets forth the types of activities for which continuing education credit may be earned. To better facilitate compliance with the requirements, these standards are modeled upon those of the ABCP. Under proposed § 25.820(c)(1), category I continuing education (which must provide at least 10 of the required 30 hours) could be earned by attendance at perfusion meetings, publication of a perfusion-related book chapter or paper in a professional journal, presentation at a perfusion meeting, participation in site visitor workshop or as a site visitor for perfusion program accreditation or completion of an ABCP-approved self-directed continuing education course for which the licensee scores at least 80% on an examination. Under proposed § 25.820(c)(2), other continuing education to reach the required total could be earned by reading journals or other educational materials, participating in electronic forums or journal clubs, participation in degree-oriented professional-related course work, presentation of perfusion topics at a nonperfusion meeting or work as a clinical or didactic instructor in an accredited school of perfusion. However, as noted in section 13.3(n)(6) of the act, proposed § 25.820(c)(3) prohibits continuing education credit for a course in office management.

Section 13.3(k) of the act provides for required professional liability insurance for perfusionists and proposed § 25.821(a) requires a licensed perfusionist to maintain a level of professional liability insurance as required under section 13.3(k) of the act. Conversely, proposed § 25.821(d) prohibits a perfusionist who does not have the required amount of liability insurance from practicing as a perfusionist in this Commonwealth. Section 13.3(k)(2) of the act requires an applicant to provide proof that the applicant has obtained the liability insurance. Proposed § 25.821(b) sets forth the general requirement

that proof of liability insurance consists of a certificate of insurance or a copy of the declarations page from the insurance policy setting forth the effective and expiration dates and the dollar amounts of coverage. However, section 13.3(k)(2) of the act permits an applicant to file with the application a letter from an insurance carrier stating that the applicant will be covered in the required amounts effective upon issuance of the license, but the applicant must then submit the certificate of insurance or copy of the declaration page within 30 days after issuance of the license. To effectuate this provision, proposed § 25.821(c) provides that a license issued in reliance upon the insurance carrier's letter will become inactive as a matter of law 30 days after the license is issued if the licensee has not submitted proof of insurance. The license will be inactive and not suspended, because it is not a disciplinary action, as insurance is required only if practicing as a perfusionist in this Commonwealth.

Fiscal Impact and Paperwork Requirements

The proposed rulemaking will have no adverse fiscal impact on the Commonwealth or its political subdivisions. The proposed rulemaking will not impose 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 May 11, 2010, 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 must specify the regulatory review criteria which have not been met. The Regulatory Review Act specifies detailed procedures for review, prior to final publication of the rulemaking, by the Board, the General Assembly and the Governor of comments, recommendations or objections raised.

Public Comment

Interested persons are invited to submit written comments, suggestions or objections regarding this proposed rulemaking to the Regulatory Unit Counsel, Department of State, P. O. Box 2649, Harrisburg, PA 17105-2649, st-osteopathic@state.pa.us within 30 days following publication of this proposed rulemaking in the *Pennsylvania Bulletin*. Reference No. 16A-5320 (perfusionist) when submitting comments.

JOSEPH C. GALLAGHER, Jr., DO,
Chairperson

Fiscal Note: 16A-5320. 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 25. STATE BOARD OF OSTEOPATHIC MEDICINE

Subchapter F. FEES

§ 25.231. Schedule of fees.

An applicant for a license, certificate, registration or service shall pay the following fees at the time of application:

* * * * *

- Application for perfusionist license \$ 50
- Biennial renewal of perfusionist license \$ 50
- Application for reactivation of perfusionist license \$ 50
- Application for temporary graduate perfusionist license \$ 50
- Application for temporary provisional perfusionist license \$ 40

(Editor's Note: The following subchapter is new and printed in regular type to enhance readability.)

Subchapter N. PERFUSIONISTS

- Sec. 25.811. Purpose.
- 25.812. Definitions.
- 25.813. Application for perfusionist license.
- 25.814. Application for temporary graduate perfusionist license.
- 25.815. Application for temporary provisional perfusionist license.
- 25.816. Registration of temporary emergency perfusionist service.
- 25.817. Renewal of perfusionist license.
- 25.818. Inactive status of perfusionist license; reactivation of inactive license.
- 25.819. Disciplinary action for licensed perfusionist.
- 25.820. Continuing education for licensed perfusionist.
- 25.821. Professional liability insurance coverage for licensed perfusionist.

§ 25.811. Purpose.

This subchapter implements section 13.3 of the act (63 P. S. § 271.13c) pertaining to perfusionists, which was added by the act of June 11, 2008 (P. L. 161, No. 20), effective August 10, 2008.

§ 25.812. Definitions.

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

ABCP—American Board of Cardiovascular Perfusion.

Accredited perfusion program approved by the Board—A perfusion program accredited by a Nationally-recognized accrediting agency approved by the Board.

Board—The State Board of Osteopathic Medicine.

Extracorporeal circulation—As defined in section 2 of the act (63 P. S. § 271.2), the diversion of a patient's blood through a heart-lung machine or similar device that assumes the functions of the patient's heart, lung, kidney, liver or other organs.

Hour of continuing education—At least 50 minutes of instruction (including relevant question and answer sessions) in an approved course of continuing education or

an equivalent time that an on-line or correspondence course would be presented live.

Nationally-recognized accrediting agency approved by the Board—ABCP, or any other organization for which the Board publishes notice that the organization is approved by the Board as a certifying agency for perfusionists.

Perfusion—As defined in section 2 of the act, the functions necessary for the support, treatment, measurement or supplementation of the cardiovascular systems or other organs, or a combination of those functions, and for ensuring the safe management of physiologic functions by monitoring and analyzing the parameters of the systems under the supervision of a physician licensed under the act or the Medical Practice Act of 1985 (63 P. S. §§ 422.1—422.45).

Perfusionist—As defined in section 2 of the act, an individual who is licensed to practice perfusion by the Board or the State Board of Medicine.

Ventricular assist device—

(i) As defined in section 2 of the act, a mechanical device used to partially or completely replace the function of a failing heart through connections to the heart and great vessels that may be located intracorporeally or extracorporeally.

(ii) The term includes a device that is placed intravascularly or extravascularly and provides support through direct means or via counterpulsation.

§ 25.813. Application for perfusionist license.

(a) An applicant for a license to practice as a perfusionist shall submit, on forms supplied by the Board, a completed application, including all necessary supporting documents, for licensure to practice as a perfusionist and pay the fee of § 25.231 (relating to schedule of fees) for application for a perfusionist license.

(b) Except as otherwise provided in subsection (c), the Board will license to practice as a perfusionist an applicant who:

(1) Demonstrates that the applicant satisfies the requirements of section 13.3(f) of the act (63 P. S. § 271.13c(f)) for licensure to practice as a perfusionist, including the following:

(i) The applicant holds a current certification by a certifying agency approved by a Nationally-recognized accrediting agency approved by the Board.

(ii) The applicant has graduated from an accredited perfusion program approved by the Board.

(iii) The applicant is at least 18 years of age and of good moral character.

(2) Provides proof as set forth in § 25.821 (relating to professional liability insurance coverage for licensed perfusionist) that the applicant has obtained professional liability insurance as required under section 13.3(k) of the act (63 P. S. § 271.13c(k)).

(3) Otherwise complies with this subchapter.

(c) In its discretion, the Board may deny an application for licensure as a perfusionist upon the grounds for disciplinary action set forth in § 25.819 (relating to disciplinary action for licensed perfusionist).

§ 25.814. Application for temporary graduate perfusionist license.

(a) An applicant for a temporary graduate perfusionist license shall submit, on forms supplied by the Board, a

completed application, including all necessary supporting documents, and pay the fee set forth in § 25.231 (relating to schedule of fees) for application for a temporary graduate perfusionist license.

(b) Except as otherwise provided in subsection (c), the Board will grant a temporary graduate perfusionist license to an applicant who:

(1) Demonstrates that the applicant satisfies the requirements of section 13.3(h)(1)(i) of the act (63 P. S. § 271.13c(h)(1)(i)) for temporary graduate licensure to practice as a perfusionist, including all of the following:

(i) The applicant is qualified and has applied to sit for the examination of a certifying agency approved by a Nationally-recognized accrediting agency approved by the Board.

(ii) The applicant has graduated from an accredited perfusion program approved by the Board.

(iii) The applicant is at least 18 years of age and of good moral character.

(2) Provides proof as set forth in § 25.821 (relating to professional liability insurance coverage for licensed perfusionist) that the applicant has obtained professional liability insurance as required under section 13.3(k) of the act (63 P. S. § 271.13c(k)).

(3) Otherwise complies with this subchapter.

(c) The Board may deny an application for a temporary graduate perfusionist license upon the grounds for disciplinary action set forth in § 25.819 (relating to disciplinary action for licensed perfusionist).

(d) A temporary graduate perfusionist license will expire 2 years after the date of issuance and may not be renewed.

(e) A temporary graduate perfusionist license will expire upon notice to the Board that the holder has failed the Nationally-recognized certifying agency's certification examination.

§ 25.815. Application for temporary provisional perfusionist license.

(a) An applicant for a temporary provisional perfusionist license shall submit, on forms supplied by the Board, a completed application, including all necessary supporting documents, and pay the fee set forth in § 25.231 (relating to schedule of fees) for application for a temporary graduate perfusionist license.

(b) Except as otherwise provided in subsection (c), the Board will grant a temporary provisional perfusionist license to an applicant who:

(1) Demonstrates that the applicant satisfies the requirements of section 13.3(i) of the act (63 P. S. § 271.13c(i)) for temporary provisional licensure to practice as a perfusionist, including the following:

(i) The applicant holds a current license in good standing under the laws of another state, the District of Columbia or a territory of the United States that includes certification by a certifying agency approved by a Nationally-recognized accrediting agency.

(ii) The applicant has graduated from an accredited perfusion program approved by the Board.

(iii) The applicant is at least 18 years of age and of good moral character.

(2) Provides proof as set forth in § 25.821 (relating to professional liability insurance coverage for licensed

perfusionist) that the applicant has obtained professional liability insurance as required under section 13.3(k) of the act (63 P. S. § 271.13c(k)).

(3) Otherwise complies with this subchapter.

(c) The Board may deny an application for certification as a perfusionist upon the grounds for disciplinary action set forth in § 25.819 (relating to disciplinary action for licensed perfusionist).

(d) A temporary provisional perfusionist license will expire 1 year after the date of issuance and may not be renewed.

§ 25.816. Registration of temporary emergency perfusionist service.

(a) An out-of-State perfusionist shall register with the Board in accordance with this section prior to providing temporary emergency perfusionist service in this Commonwealth in accordance with section 13.3(j) of the act (63 P. S. § 271.13c(j)).

(b) The out-of-State perfusionist or another person acting on behalf of the out-of-State perfusionist shall submit, on forms supplied by the Board, a completed registration form, fully answering all questions.

(c) Although not limited to a single procedure or single patient or group of related patients, an out-of-State perfusionist may provide temporary emergency perfusionist services in this Commonwealth for not longer than a period of 72 hours.

(d) An out-of-State perfusionist may not provide temporary emergency perfusionist service in this Commonwealth more than once without being licensed in accordance with § 25.813, § 25.814 or § 25.815 (relating to application for perfusionist license; application for temporary graduate perfusionist license; and application for temporary provisional perfusionist license).

§ 25.817. Renewal of perfusionist license.

(a) A licensed perfusionist shall register biennially by October 31 of each even-numbered year to retain the right to engage in practice. It is the responsibility of the licensee to notify the Board of any change in name or mailing address within 10 business days of the change.

(b) A licensee applying for biennial license renewal shall submit a completed application, including payment of the biennial renewal fee as set forth in § 25.231 (relating to schedule of fees) for application for biennial renewal of a perfusionist license. On the biennial registration application, the licensed perfusionist shall:

(1) Disclose any license to practice as a perfusionist in another state, territory, possession, or country.

(2) Disclose any disciplinary action pending before or taken by the appropriate healthcare licensing authority in any other jurisdiction or taken since the most recent application for renewal, whether or not licensed to practice in that other jurisdiction.

(3) Disclose any pending criminal charges and any finding or verdict of guilt, admission of guilt, plea of *nolo contendere*, or other criminal conviction since the most recent application for renewal.

(4) Verify that the licensed perfusionist has complied with the continuing education requirements mandated under section 13.3(n) of the act (63 P. S. § 271.13c(n)) during the biennial period immediately preceding the period for which renewal is sought in accordance with § 25.820 (relating to continuing education for licensed perfusionist).

(5) Verify that, if practicing as a perfusionist in this Commonwealth, the licensee maintains professional liability insurance coverage in accordance with section 13.3(k) of the act.

§ 25.818. Inactive status of perfusionist license; re-activation of inactive license.

(a) A perfusionist license will become inactive upon either of the following:

(1) The licensee requests in writing the Board place the license on inactive status. Written confirmation of inactive status will be forwarded to the licensee.

(2) The licensee fails to renew the certificate by the expiration of the renewal period, that is by December 31 of each even-numbered year.

(b) A perfusionist whose license has expired or been placed on inactive status may not practice as a perfusionist in this Commonwealth until the license has been reactivated.

(c) To reactivate an inactive license, the licensee shall apply on forms supplied by the Board, answering all questions fully. The licensee shall:

(1) Include the documentation required under § 25.820(b) (relating to continuing education for licensed perfusionist) for the immediately preceding biennium, which may be completed during the current biennium. Unless waived by the Board under section 13.3(n)(4) of the act (63 P.S. § 271.13c(n)(4)), the Board will not reactivate any license until the required continuing education for the preceding biennium has been successfully completed.

(2) Pay the current renewal fee and the reactivation application fee specified in § 25.231 (relating to schedule of fees).

(3) Except as provided in subsection (d), verify that the licensee did not practice as a perfusionist in this Commonwealth while the license was inactive.

(d) A licensee who has practiced with an inactive license and who cannot make the verification required under subsection (c)(3) shall also pay the fees required by this subsection. Payment of a late fee does not preclude the Board from taking disciplinary action for practicing as a perfusionist without a current license to do so.

(1) A licensee whose license was active at the end of the immediately preceding biennial renewal period and who practiced after the license became inactive shall pay a late fee of \$5 for each month or part of month from the beginning of the current biennium until the date the reactivation application is filed.

(2) A licensee whose license has been inactive since before the beginning of the current biennium shall pay the renewal fee for each biennial renewal period during which the licensee practiced and shall pay a late fee of \$5 for each month or part of month from the first date the licensee practiced as a perfusionist in this Commonwealth after the license became inactive until the date the reactivation application is filed.

§ 25.819. Disciplinary action for licensed perfusionist.

(a) A licensed perfusionist, including a perfusionist holding a temporary graduate license or a temporary provisional license, is subject to disciplinary action under the grounds of section 15(b) of the act (63 P.S. § 271.15(b)). Following a final determination subject to the right of notice, hearing and adjudication and the right

of appeal therefrom in accordance with 2 Pa.C.S. (relating to administrative law and procedure), the Board may impose any of the corrective actions of section 15(c) of the act.

(b) Unprofessional conduct includes:

(1) Engaging in any conduct prohibited by § 25.216 (relating to sexual misconduct).

(2) Performing acts in a healthcare profession in a fraudulent, incompetent or negligent manner.

(3) Performing acts in the practice of a healthcare profession in violation of statute or regulation of the Commonwealth, another state of the United States, or another country.

(4) Violating a provision of the act or this chapter setting a standard of professional conduct.

(5) Engaging in healthcare practice beyond the licensee's authority to practice.

(6) Representing oneself to be a physician, physician assistant, certified registered nurse practitioner, or other healthcare practitioner whose profession the perfusionist is not licensed to practice.

(7) Practicing while the licensee's ability to do so is impaired by alcohol, drugs, physical disability or mental instability.

(8) Revealing personally identifiable facts obtained as the result of a practitioner-patient relationship without the prior consent of the patient, except as authorized or required by statute or regulation.

(9) Failing to provide supervision as required under section 13.3(e)(2) of the act (63 P.S. § 271.13c(e)(2)) of a perfusion student or failing to provide supervision as required under section 13.3(e)(3) of the act of a perfusion graduate who is not otherwise licensed by the Board to perform perfusion in this Commonwealth.

(c) Immoral conduct includes:

(1) Misrepresenting or concealing a material fact in obtaining a license issued by the Board or renewal, reactivation or reinstatement thereof.

(2) Being convicted of a crime involving moral turpitude, dishonesty or corruption in the courts of the Commonwealth, the United States, or another state, territory or county.

(3) Committing an act involving moral turpitude, dishonesty or corruption.

§ 25.820. Continuing education for licensed perfusionist.

(a) *Credit hour requirements.* A licensed perfusionist shall satisfy the following continuing education credit hour requirements.

(1) During each biennial renewal period, a licensee shall complete 30 hours of continuing education applicable to the practice of perfusion, including at least 10 hours of category I continuing education. A licensee is not required to complete continuing education during the biennium in which the licensee was first licensed.

(2) Except as permitted in § 25.818(c)(1) (relating to inactive status of perfusionist license; reactivation of inactive license), paragraph (4) or as directed by the Board, continuing education may satisfy the requirement of paragraph (1) only for the biennium during which it

was completed. No hour of continuing education may be used to satisfy the requirement of paragraph (1) for more than 1 biennium.

(3) Unless otherwise excused by the act or this subchapter, failure to complete the minimum required amount of continuing education during the applicable renewal period as required under section 13.3(n) of the act (63 P. S. § 271.13.3(n)) and this section will subject the licensee to discipline under section 15(b)(7) of the act (63 P. S. § 271.15(b)(7)).

(4) A licensee seeking waiver of the continuing education requirements under section 13.3(n)(4) of the act shall submit the request with all supporting documentation to the Board at least 90 days prior to the end of the renewal period for which waiver is sought. Waiver may include extending the deadline by which the required continuing education must be completed.

(b) *Documentation of continuing education.* Continuing education shall be documented in the following manner.

(1) Proof of completion of continuing education must consist of a certified record issued by the provider, including:

- (i) The name of the participant.
- (ii) The name of the provider.
- (iii) The date or dates of the course.
- (iv) The name of the course.
- (v) The number of hours of continuing education credit.

(2) A licensee shall retain proof of completion of continuing education for 5 years after completion of the continuing education or after the completion of the biennial renewal period during which the continuing education was required, whichever is later.

(3) The Board will audit licensees to verify compliance with continuing education requirements.

(c) *Continuing education activities.* Credit for continuing education may be earned in the following activities.

- (1) Category I continuing education may be earned by:
 - (i) Attendance at an international, National, regional or state perfusion meeting.
 - (ii) Publication of a perfusion-related book chapter or paper in a professional journal.
 - (iii) Presentation at an international, National, regional, state or local perfusion meeting.
 - (iv) Participation in a site visitors workshop or as a site visitor for perfusion program accreditation.

(v) Completion of ABCP-approved self-directed continuing education for which the licensee scored at least 80% on an examination.

(2) In addition to category I, continuing education may also be earning by:

- (i) Reading or viewing medical journals, audio-visual, or other educational materials.
- (ii) Participation in electronic forums.
- (iii) Participation in a journal club.
- (iv) Participation in degree-oriented, professionally-related course work.
- (v) Presentation of perfusion topic at a nonperfusion meeting.
- (vi) Working as a clinical or didactic instructor in an accredited school of perfusion.

(3) Continuing education credit may not be earned in any course in office management.

§ 25.821. Professional liability insurance coverage for licensed perfusionist.

(a) A licensed perfusionist shall maintain a level of professional liability insurance coverage as required under section 13.3(k) of the act (63 P. S. § 271.13c(k)).

(b) Proof of professional liability insurance coverage must include a certificate of insurance or copy of the declaration page from the insurance policy setting forth the effective date, expiration date, and dollar amounts of coverage.

(c) A license that was issued in reliance upon a letter from the applicant's insurance carrier indicating that the applicant will be covered against professional liability effective upon the issuance of the applicant's license as permitted under section 13.3(k)(2) of the act will become inactive as a matter of law 30 days after the date of issuance on the license if the licensee has not provided proof of professional liability insurance coverage and will remain inactive until the licensee provides proof of insurance coverage.

(d) A licensee who does not have professional liability insurance coverage as required under section 13.3(k) of the act may not practice as a perfusionist in this Commonwealth.

[Pa.B. Doc. No. 10-939. Filed for public inspection May 21, 2010, 9:00 a.m.]

STATEMENTS OF POLICY

Title 52—PUBLIC UTILITIES

PENNSYLVANIA PUBLIC UTILITY COMMISSION

[52 PA. CODE CH. 69]

[P-2009-2136508]

Application of Philadelphia Gas Works' Cash Flow Ratemaking Method

The Pennsylvania Public Utility Commission (Commission), on April 15, 2010, adopted a final policy statement which explains how the Commission intends to apply Philadelphia Gas Works' Cash Flow Ratemaking Method on a going forward basis.

Public Meeting held
April 15, 2010

Commissioners Present: James H. Cawley, Chairperson; Tyrone J. Christy, Vice Chairperson, Dissenting; Wayne E. Gardner; Robert F. Powelson

Petition of Philadelphia Gas Works for a Statement of Policy on the Application of Philadelphia Gas Works' Cash Flow Ratemaking Method; Doc. No. P-2009-2136508

Order and Final Policy Statement

By the Commission:

A. Introduction

Before the Commission for consideration is the Petition of Philadelphia Gas Works ("PGW" or the "Company") seeking the promulgation of a "Statement of Policy" explaining how the Commission intends to apply PGW's Cash Flow Ratemaking Method on a going forward basis, and the Comments and Reply Comments to the Commission's December 30, 2009, Order wherein we solicited comments to the Commission's proposed "Statement of Policy."

Upon consideration of the Comments and Reply Comments submitted in this matter, the Commission finds that, while we have applied the Cash Flow Method in accordance with the requirements of Section 2212(e) of the Gas Choice Act, as well as Chapter 13 of the Public Utility Code and applicable Pennsylvania law in prior PGW rate cases, issuance of a final policy statement, as modified herein, will provide guidance to PGW and all interested parties on the statutorily-mandated ratemaking criteria for PGW and the information that should be considered in determining just and reasonable rates for PGW. In addition, the guidance provided by issuance of a final policy statement can reduce the likelihood of future litigation on the specific elements of the Cash Flow Method used to determine PGW's rates.

B. Procedural History

On October 16, 2009, PGW filed a Petition requesting that the Commission issue a "Statement of Policy" explaining how it intends to apply PGW's Cash Flow Ratemaking Method on a going forward basis.¹ In support of its Petition, PGW contends that "inconsistencies" exist among decisions rendered by the Commission and the Commonwealth Court regarding the application of the Cash Flow Method to PGW. According to PGW, unless such guidance is provided prior to PGW's next rate filing, "PGW will only be able to guess about the nature and

types of evidence it must submit in order to justify its requested rate increase." Petition at 7.

On October 21, 2009, the Secretary issued a letter which gave notice of the Petition and invited the filing of answers and replies following publication of a notice in the *Pennsylvania Bulletin*. The notice was published in the *Pennsylvania Bulletin* on October 31, 2009. (39 Pa.B. 6341) Answers to the Petition were filed by the Office of Consumer Advocate ("OCA"), the Office of Trial Staff ("OTS"), the Office of Small Business Advocate ("OSBA"), the Philadelphia Industrial and Commercial Gas Users Group ("PICGUG") and two Philadelphia based consumer advocacy and membership organizations, namely the Tenant Union Representative Network ("TURN") and Action Alliance of Senior Citizens of Greater Philadelphia ("Action Alliance") (collectively "TURN *et al.*"). PGW filed a Reply to the Answers filed by the OCA, OTS, OSBA and TURN *et al.*

On December 30, 2009, the Commission entered an Order ("December Order") granting in part and denying in part PGW's Petition consistent with the discussion therein. The Commission's December Order ultimately adopted a proposed "Statement of Policy." Because the Commission's proposed "Statement of Policy" included revisions and additions to the policy statement that PGW had originally submitted, the December Order provided a 30-day period for parties to file Comments to the proposed "Statement of Policy." Parties, namely PGW, the OCA, OTS and Turn *et al.*, filed Comments to the Commission's proposed "Statement of Policy" and, by leave of the Commission, the same parties filed Reply Comments.²

C. Comments to the Commission's December Order

PGW Comments

On January 28, 2010, PGW filed Comments to the Commission's December Order. In its Comments, PGW proposed several modifications to the Commission's proposed "Statement of Policy." First, with regard to the financial considerations referenced in the Commission's proposed "Statement of Policy," PGW suggests that Item 4 (concerning expense comparisons with other utility enterprises) on the list of factors set forth in § 69.2703(a) be deleted and replaced with a different factor, namely, the financial performance necessary to permit PGW's continued access to the capital markets. According to PGW, the need to access the capital markets was "apparently inadvertently deleted from the PUC's draft of the Policy Statement." PGW Comments at 2.

Second, PGW suggests that the "non-financial" considerations (Items 4, 6, 7 and 8) proposed by the Commission be deleted. According to PGW, these non-financial considerations are not within the stated scope of the Policy Statement because they do not explain the "Cash Flow methodology" as it is applied to PGW under Section 2212(e) of the Public Utility Code and the PGW Management Agreement Ordinance ("MAO"). Additionally, PGW states that the continued inclusion of these considerations could generate additional controversies in future rate proceedings. PGW Comments at 2.

Third, in an effort to reduce confusion over the application of the Commission's final "Statement of Policy," PGW

¹ A copy of the proposed Statement of Policy was attached to the Petition as Appendix "A."

² By way of a Secretarial Letter issued March 5, 2010, the Commission granted PGW's Motion for Leave to File Reply Comments. The Secretarial Letter also allowed other parties to file Reply Comments on or before March 15, 2010.

suggests that the Commission's Order adopting the Policy Statement clearly explain that: (a) the considerations listed in § 69.2703(a) do not constitute filing requirements for PGW; and (b) PGW is not required to affirmatively present evidence in its pending rate case on the non-financial considerations added by the Commission. PGW Comments at 3.

Finally, PGW suggests that there should be a Commission acknowledgment that the final "Statement of Policy" would continue to apply to successor municipal entities to a city natural gas operation, which may be formed by the City of Philadelphia. PGW Comments at 3.

OCA Comments

On January 29, 2010, the OCA filed Comments to the Commission's December Order. In its Comments, the OCA reiterates its position that there is no need for the Commission to issue a policy statement as to how the Cash Flow method of ratemaking applies to PGW. According to OCA, no real confusion exists as to how this ratemaking methodology is applied to PGW. Rather, OCA submits that "it is PGW's continued disagreement with how the Commission has interpreted and applied the Cash Flow method to PGW that is at the heart of this matter." OCA Comments at 2.

As to the specifics of the Commission's proposed "Statement of Policy," the OCA claims that the Commission's proposed "Statement of Policy" is contrary to recent decisions by the Commission and the Commonwealth Court and does not follow the MAO. To this end, the OCA asserts that the Commission's proposed "Statement of Policy" does not accurately reflect the holdings of recent decisions in several important areas, specifically, the references to certain phrases like "non-borrowed year-end cash" and "internally generated fund." The OCA states that these phrases, which according to OCA will not "reduce the likelihood of future litigation" but rather will likely force continued litigation on these same issues that were already finally decided by the Commonwealth Court, should be removed from the Commission's final "Statement of Policy." OCA Comments at 3.

Finally, the OCA submits that the language in the Commission's proposed "Statement of Policy" relating to PGW's future financial forecasts and assumptions and the language relating to benchmarking activities should be removed from the Commission's final "Statement of Policy." On these two points, the OCA states that using beyond the test year financial projections, even "as a check" is improper and at odds with the holding in *Phila. Gas Works v. Pa. PUC*, Docket No. 1914 C.D. 2007, Memorandum Opinion (filed February 4, 2009) (*Commonwealth Court Order*), Petition for Allocatur denied, Docket No. 259 EAL 2009, (December 2, 2009). Similarly, the OCA states that there is no support in the Public Utility Code or in PGW's prior ratemaking methodologies that suggest that the benchmarking information should, by policy, be a factor in setting rates for PGW. OCA Comments at 7 and 8.

In conclusion, the position of OCA is succinctly summarized as follows:

The Proposed Policy Statement, if issued, will create a persuasive interpretation of how the Commission intends to apply the Cash Flow method of ratemaking to PGW in the future. Such a presumption will almost certainly shift the burden of proof on those issues away from the Company and force the other parties to swim upstream on issues that have *already been decided by the Commonwealth Court*. To have

those decisions swept away by a policy statement raises significant issues of due process and simple, basic fairness.

OCA Comments at 10 (emphasis supplied).

OTS Comments

On January 29, 2010, the OTS filed Comments to the Commission's December Order. In its Comments, OTS maintains its prior position that the Commission and Commonwealth Court have provided clear and consistent guidance as to the ratemaking methodology to be applied to PGW. In addition, OTS states that the issuance of the Commission's proposed "Statement of Policy" would not override the Commonwealth Court Orders affirming the Commission's current interpretation and application of the appropriate ratemaking methodology to be applied to PGW. OTS Comments at 2.

As to the specifics of the Commission's proposed "Statement of Policy," OTS submits the Commission should modify § 69.2703(a)(1) to eliminate consideration of PGW's projected future levels of non-borrowed cash. According to OTS, the stated purpose of the Commission's proposed "Statement of Policy" is to provide guidance to the parties and reduce the likelihood of future litigation on the specific elements of the Cash Flow Method. However, contrary to the enunciated goal, OTS asserts that consideration of PGW's projected future levels of non-borrowed year-end cash introduces less reliable information into the ratemaking process and will lead to protracted litigation.³ OTS Comments at 3.

In conclusion, the OTS asserts that while it opposed PGW's proposed "Statement of Policy" and continues to assert that no Policy Statement is necessary to adequately and efficiently apply the Cash Flow Method of ratemaking, the Commission's proposed "Statement of Policy" conforms to established Commission precedent except for the significant departure within § 69.2703(a)(1). According to OTS, rather than settle existing law, this section, notwithstanding the stated limitation of the Commission proposed "Statement of Policy," will spur extensive litigation on an issue that was recently rejected by the Commission and the Commonwealth Court. OTS Comments at 8.

TURN et al. Comments

On January 28, 2010, TURN *et al.* filed comments to the Commission's December Order. In its Comments, TURN *et al.* note its approval of the Commission revisions to PGW's proposed "Statement of Policy." According to TURN *et al.*, the Commission revisions go in the direction of providing more specific guidance on considerations which are necessary in order to implement the Cash Flow Method. However, it is suggested that if the Commission's final "Statement of Policy" is to be more than a partial statement of PGW's ratemaking method, the Commission's final "Statement of Policy" must also incorporate specific reference to the constitutionally based "just and reasonable" standard under the 5th and 14th Amendments to the U.S. Constitution which, by extensive case law, requires a balancing of the interests of customers and of the utility. TURN *et al.* Comments at 2.

D. Reply Comments from the Parties

PGW, OCA, OTS and TURN *et al.* filed Reply Comments. In PGW's Reply Comments, PGW contends that: (1) OCA's demands that references to "non-borrowed cash"

³ OTS suggests that the calculation of the "projected future levels of non-borrowed year-end cash" would more than likely encompass substantially the same data as the "five-year forecast" proposed in PGW's 2007 base rate case.

and “internally generated funds” should be eliminated are contrary to law and would be bad policy; (2) the use of financial projections “as a check” is reasonable; (3) the use of “benchmark” standards is reasonable; (4) there is no need to add a reference to the Constitutional “just and reasonable” standard in the Commission’s final “Statement of Policy” and (5) there is a continuing need for the Policy Statement. PGW Reply Comments at 1—9.

In OCA’s Reply Comments, OCA continues to hold the position that no policy statement should be issued and that the Commission’s proposed “Statement of Policy” does not reflect the holdings of recent decisions by the Commission and by the Commonwealth. Moreover, according to OCA, the Commission’s proposed “Statement of Policy” does not follow the MAO.

As to the specifics of the Commission’s proposed “Statement of Policy,” OCA submits that it was correct for the Commission to delete PGW’s “access to the capital markets” language and that the Commission-added “non-financial” language at § 69.2703(a)(6)—(8) should, contrary to PGW’s suggestion, remain because these non-financial considerations are part and parcel of PGW ratemaking considerations as they relate to the just and reasonable standard. OCA Reply Comments at 3—6.

Finally, the OCA agrees that the Commission’s proposed “Statement of Policy” does not create filing requirements, as suggested and opposed by PGW in its Reply Comments, but disagrees that there is a need for the Commission to acknowledge in the Commission’s final “Statement of Policy” the possible creation by the City of Philadelphia of a different business entity to provide natural gas service. OCA Reply Comments at 7.

In OTS’s Reply Comments, OTS similarly states that Commission-added “non-financial” language at § 69.2703(a)(6)—(8) should, contrary to PGW’s suggestion, remain because these non-financial considerations are part and parcel of PGW ratemaking considerations as they relate to the just and reasonable standard. The OTS also states that PGW’s request in its Reply Comments to add a specific reference to “access to the capital markets” should be rejected; however, as an alternative, OTS proposes to add it to the end of § 69.2703(a)(5) so that it would now read “(5) Level of financial performance needed to maintain or improve PGW’s bond rating thereby permitting PGW to access the capital markets at the lowest reasonable cost to customers.”

Finally, the OTS asserts that the Commission’s proposed “Statement of Policy” does not create filing requirements and that PGW’s request to acknowledge the possible creation by the City of Philadelphia of a different business entity to provide natural gas service is clearly premature and outside of the scope of the proposed “Statement of Policy.” This acknowledgment language, according to OTS, was not included in PGW’s original “Statement of Policy” and the request to acknowledge entities that do not exist is clearly premature. OTS Reply Comments at 7.

In TURN *et al.* Reply Comments, TURN *et al.* reiterates that its first preference is that the Commission deny PGW’s Petition and not issue a “Statement of Policy” at all in this proceeding. However, if the Commission determines that a “Statement of Policy” is necessary, TURN *et al.* submits that it should include the TURN *et al.* proposed amendments concerning the constitutionally based “just and reasonable” standard which requires a balancing of the interests of customers and of the utility. TURN *et al.* Comments at 2—6.

E. Discussion

As explained in our December Order, a policy statement is intended to provide guidance regarding the policy the agency intends to implement in future adjudications. And, unlike a regulation, it is not enforceable and has no binding effect on the agency, or on anyone else. The Pennsylvania Supreme Court in *Pa. Human Relations Comm’n v. Norristown Area School District*, 473 Pa. 334, 374 A.2d 671 (1977) (“Norristown”), distinguished the effect of a policy statement from a rule or regulation by adopting the “binding norm” test from Federal law:

An agency may establish binding policy through rulemaking procedures by which it promulgates substantive rules, or through adjudications which constitute binding precedents. A general statement of policy is the outcome of neither a rulemaking nor an adjudication; it is neither a rule nor a precedent but is merely an announcement to the public of the policy which the agency hopes to implement in future rulemakings or adjudications. A general statement of policy, like a press release, presages an upcoming rulemaking or announces the course which the agency intends to follow in future adjudications. . . .

The critical distinction between a substantive rule and a general statement of policy is the different practical effect that these two types of pronouncements have in subsequent administrative proceedings. . . . A properly adopted substantive rule establishes a standard of conduct which has the force of law. . . . The underlying policy embodied in the rule is not generally subject to challenge before the agency.

A general statement of policy, on the other hand, does not establish a ‘binding norm’. . . . A policy statement announces the agency’s tentative intentions for the future. *When the agency applies the policy in a particular situation, it must be prepared to support the policy just as if the policy statement had never been issued.*

Norristown, 374 A.2d at 679 (quoting *Pacific Gas & Electric Co. v. FPC*, 506 F.2d 33, 38 (1974) (emphasis added; footnotes and citations omitted).

Consistent with the previous discussion, the Commission is not establishing a binding norm when it issues a policy statement. Instead, and as previously stated herein, while the Commission has applied the Cash Flow Method in accordance with the requirements of Section 2212(e) of the Gas Choice Act, as well as Chapter 13 of the Public Utility Code and applicable Pennsylvania law in prior PGW rate cases, we continue to believe that the issuance of a final policy statement will provide guidance to PGW and all interested parties on the statutorily-mandated ratemaking criteria for PGW and the information that should be considered in determining just and reasonable rates.

In addition, we continue to believe that the issuance of a final policy statement will reduce the likelihood of future litigation on the specific elements of the Cash Flow Method. Despite the suggestions to the contrary, it is our opinion that the elements in the Commission’s proposed “Statement of Policy” are in fact drawn from Pennsylvania case law so that application of the policy statement in future proceedings will yield the same result as the application of established legal precedent. As such, and consistent with *Norristown*, the policy statement provides guidance as to “the course which the agency intends to follow in future adjudications.” *Id.*, 473 Pa. at 350, 374 A.2d at 679. Accordingly, a properly crafted policy state-

ment will provide improved transparency as to the elements of the Cash Flow Method and the information that the Commission will consider in evaluating and making determinations on those elements.

Specific Comments and Reply Comments

In response to the Comments and Reply Comments that summarily conclude that the Commission should not issue a final “Statement of Policy,” we first note our agreement that the Cash Flow Method of ratemaking has been applied to PGW consistently and in accordance with applicable case law. We also note our agreement that the Commonwealth Court has recently affirmed that the Commission’s application of the Cash Flow Method to PGW strikes that appropriate balance between Section 2212 of the Gas Choice Act and Section 1301 of the Public Utility Code.⁴ Notwithstanding, the Commission would be remiss if we did not acknowledge that some of the earlier PGW rate relief orders failed to articulate a comprehensive explanation of the elements and supporting information that should be examined in applying the Cash Flow Method to PGW and determining PGW’s revenue requirement. Upon consideration of the Comments and Reply Comments, we continue to believe that the issuance of a final “Statement of Policy” will be in the public interest in that it will provide appropriate guidelines to assist PGW and all stakeholders regarding the Cash Flow Method of ratemaking.

As to PGW’s assertion that the Commission “apparently inadvertently” deleted from the PUC’s proposed “Statement of Policy” the language in PGW’s proposed “Statement of Policy” concerning PGW’s need to access the capital markets at reasonable costs, we agree that this language was inadvertently deleted. Indeed, because access to capital markets at reasonable costs is essential to finance the infrastructure projects needed to maintain reliable service, to retire higher priced debt and to maintain PGW’s overall liquidity, this factor is a legitimate consideration under the Cash Flow Methodology. As an appropriate resolution, we will, as proposed by OTS, add the language to the end of § 69.2703(a)(5) so that the Commission’s final “Statement of Policy” will now read “(5) *Level of financial performance needed to maintain or improve PGW’s bond rating thereby permitting PGW to access the capital markets at the lowest reasonable costs to customers over time.*”

As to PGW’s suggestion that the “non-financial” considerations (Items 4, 6, 7 and 8) proposed by the Commission should be deleted, we disagree. Simply stated, these non-financial considerations are clearly part and parcel of PGW ratemaking considerations as they relate to the just and reasonable standard. As noted by both the OCA and TURN *et al.*, the just and reasonable standard, grounded in the United States Constitution, requires the Commission to balance the interests of the utility and its customers. While not, strictly speaking, financial inputs, these are factors that the Commission may consider, in its discretion, in balancing the interests of the utility and its customers, particularly with respect to margins above and beyond those required to meet PGW’s bond coverage obligations.

Finally, as to PGW’s concern that the Commission’s proposed “Statement of Policy” will create filing requirements for PGW, we agree with both the OCA and OTS that PGW has overemphasized the effect of a policy statement. As previously stated, a policy statement is not

a regulation. It is not enforceable and has no binding effect on the agency, or on anyone else.⁵ Accordingly, the Commission’s proposed “Statement of Policy” does not create filing requirements, nor does it require PGW to affirmatively present evidence in the pending rate case on the non-financial considerations added by the Commission.

Both the OCA and OTS assert that the references in the Commission’s proposed “Statement of Policy” to “non-borrowed year-end cash” and “internally generated funds” should be removed from the Commission’s final “Statement of Policy.” Similarly, the OCA asserts that the language in the Commission’s proposed “Statement of Policy” relating to PGW’s future financial forecasts and assumptions and the language relating to benchmarking activities should be removed from the Commission’s final “Statement of Policy.”

In response, it is the Commission’s position that in order to determine a reasonable level of working capital for PGW, the Commission must consider PGW’s non-borrowed year-end cash and other liquid investments as well as PGW’s other short term borrowing capability. To this end, we agree with PGW that:

The exact levels of cash, cash equivalents and borrowing capability are determined by the PUC in each rate proceeding on the basis of substantial evidence submitted in the record. Therefore, it is not only appropriate but legally necessary to retain references to “non-borrowed cash” in the Policy Statement. . . . It will be left to the Commission to determine the “reasonable” level of this item as well as other items that make up PGW’s cash working capital.

PGW Reply Comments at 2. Accordingly, the Commission will review the level of non-borrowed cash as well as PGW’s available short term borrowing capability.⁶

We also agree with PGW that the references in the Commission’s proposed “Statement of Policy” to “internally generated funds” (§ 69.2702(b), and § 69.2703(a)(2)) should remain in the Commission’s final “Statement of Policy.” The MAO specifically states that PGW’s rates must reflect an amount permitting the Company to finance its construction expenditures and to pre-pay previously issued long-term debt.⁷ Moreover, the Commission’s 2008 Extraordinary Rate Order observed that PGW will have to improve its cash flow position as well as its internally generated funds so that PGW’s financial position would improve.⁸ In conclusion, it is important to remember that the parties can always challenge the levels of “non-borrowed cash” and “internally generated funds” in future proceedings.

As to the specific references in the Commission’s proposed “Statement of Policy” to the use of projections “as a check” and the use of “benchmark” standards, we agree with PGW that future projections would not be the primary basis for a determination of PGW’s revenue requirements, but would only be used as a check on the future test year data used to set rates in the first instance. The future test year determinations, as adjusted

⁵ As to PGW’s request for an acknowledgment by the Commission that the final “Statement of Policy” would continue to apply to successor municipal entities to a city natural gas operation, which may be formed by the City of Philadelphia, suffice it to say that this request was not included in PGW’s proposed “Statement of Policy” and, at this point, is clearly premature.

⁶ The OCA’s argument that the “law of the case” doctrine prohibits the Commission’s consideration of non-borrowed cash in future rate proceedings is misplaced. As previously stated, the Commission’s final “Statement of Policy” will be applied prospectively.

⁷ MAO, Section VII.1 (b) (ii) (debt reduction and capital additions).

⁸ See *PUC v. PGW*, Docket No. R-2008-2073938, 2008 Pa. PUC LEXIS 32 (Order entered December 19, 2008).

⁴ *Philadelphia Gas Works, et al. v. Pennsylvania Public Utility Commission*, Docket No. 1914 C.D. 2007, Memorandum Opinion (filed February 4, 2009), *appeal denied*, 259 EAL 2009 (filed December 2, 2009).

by the utility and parties, can be checked by reference to future projections of non-borrowed year-end cost. PGW Reply Comments at 6 and 7.

Similarly, the examination of relevant comparable statistics for other utility enterprises at § 69.2703(a)(3) (financial performance of similarly situated utility enterprises) and § 69.2703(a)(4) (comparison to similarly situated enterprises) is an appropriate consideration for the Commission in setting PGW's rates and will therefore remain in the Commission's final "Statement of Policy." We agree with PGW that the Commission will still have authority and discretion to determine whether the benchmark data should be given weight and, if so, the degree to which that evidence should be considered relevant. PGW Reply Comments at 8 and 9.

Finally, in response to the TURN *et al.* request to add a reference to the "just and reasonable" standard under the 5th and 14th Amendments to the U.S. Constitution, we conclude that there are already sufficient references to this clearly relevant standard in the Commission's proposed "Statement of Policy" and in case law, particularly the Pennsylvania Supreme Court decision in *Public Advocate v. Philadelphia Gas Commission*, 674 A.2d 1056 (Pa. 1996) ("*Public Advocate*"). Moreover, as pointed out by PGW in its Reply Comments, the Commission has previously determined that the "just and reasonable" standard in Section 1301 is applicable to PGW and coextensive with the Federal constitutional standard for determining utility rates.⁹ As such, no further reference to the constitutional standard is required for the purposes of the policy statement.

Conclusion

The purpose of this final "Statement of Policy" is to provide guidance to PGW and all interested parties as to the Commission's view on the statutorily-mandated ratemaking criteria for PGW and the information that should be considered in determining just and reasonable rates. In addition, the final "Statement of Policy" will reduce the likelihood of future litigation on the specific elements of the Cash Flow Method. The "Statement of Policy," as modified herein in Annex A, is grounded upon Pennsylvania case law and is intended to provide clear guidelines as to the specific elements and considerations that should be examined in applying the Cash Flow Method to PGW in future rate proceedings; *Therefore,*

It Is Ordered That:

1. The regulations of the Commission at 52 Pa. Code Chapter 69 are amended by adding a statement of policy in §§ 69.2701—69.2703 to read as set forth in Annex A.

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

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

4. A copy of this order and Annex A shall be posted on the Commission's web site and served upon the Office of Consumer Advocate, the Office of Small Business Advocate, the Office of Trial Staff and all parties filing comments at this docket.

⁹ PUC v. PGW, Docket, R-00006042, *et seq.*, 2001 Pa. PUC LEXIS 109 (Order entered October 4, 2001).

5. This Policy Statement shall become effective upon publication in the *Pennsylvania Bulletin*.

6. Alternative formats of this document are available to persons with disabilities and may be obtained by contacting Sherri DelBiondo, Regulatory Coordinator at (717) 772-4597.

ROSEMARY CHIAVETTA,
Secretary

Fiscal Note: 57-275. No fiscal impact; (8) recommends adoption.

Annex A

TITLE 52. PUBLIC UTILITIES

PART I. PUBLIC UTILITY COMMISSION

Subpart C. FIXED SERVICE UTILITIES

CHAPTER 69. GENERAL ORDERS, POLICY STATEMENTS AND GUIDELINES ON FIXED UTILITIES

APPLICATION OF PGW CASH FLOW RATEMAKING METHOD—FINAL STATEMENT OF POLICY

§ 69.2701. Definitions.

The following words and terms, when used in this section and §§ 69.2702 and 69.2703, have the following meanings, unless the context clearly indicates otherwise:

Act—The Natural Gas Choice and Competition Act (66 Pa.C.S. §§ 2201—2212).

PGW—Philadelphia Gas Works.

§ 69.2702. Background and ratemaking elements.

(a) The act brought city owned natural gas operations, including PGW, under the Commission's jurisdiction. See 66 Pa.C.S. § 2212(b) (relating to Commission jurisdiction).

(b) The Commission is obligated under law to use the cash flow methodology to determine PGW's just and reasonable rates. Included in that requirement is the subsidiary obligation to provide revenue allowances from rates adequate to cover its reasonable and prudent operating expenses, depreciation allowances and debt service, as well as sufficient margins to meet bond coverage requirements and other internally generated funds over and above its bond coverage requirements, as the Commission deems appropriate and in the public interest for purposes such as capital improvements, retirement of debt and working capital.

§ 69.2703. Ratemaking procedures and considerations.

(a) In determining just and reasonable rate levels for PGW, the Commission will consider, among other relevant factors:

(1) PGW's test year-end and (as a check) projected future levels of non-borrowed year-end cash.

(2) Available short term borrowing capacity and internal generation of funds to fund construction.

(3) Debt to equity ratios and financial performance of similarly situated utility enterprises.

(4) Level of operating and other expenses in comparison to similarly situated utility enterprises.

(5) Level of financial performance needed to maintain or improve PGW's bond rating thereby permitting PGW to access the capital markets at the lowest reasonable costs to customers over time.

(6) PGW's management quality, efficiency and effectiveness.

(7) Service quality and reliability.

(8) Effect on universal service.

(b) The Commission is obligated to establish rate levels adequate to permit PGW to satisfy its bond ordinance covenants, consistent with 66 Pa.C.S. § 2212(e) (relating to securities of city natural gas distribution operations).

(c) These financial measures will be considered by the Commission in determining just and reasonable rates for PGW under 66 Pa.C.S. (relating to the Public Utility Code) and are consistent with the PGW Management Agreement Ordinance.

[Pa.B. Doc. No. 10-940. Filed for public inspection May 21, 2010, 9:00 a.m.]

NOTICES

DEPARTMENT OF CONSERVATION AND NATURAL RESOURCES

Execution of Oil and Gas Lease for State Forest Lands

Effective January 20, 2010, an Oil and Gas Lease for State Forest Lands, Contract No. M-110419-13, was executed by and between the Commonwealth, acting through the Department of Conservation and Natural Resources (lessor) and Chesapeake Appalachia, LLC (lessee), with its principal place of business located at 6100 North Western Avenue, Oklahoma City, OK 73118.

The lease is for Tract 419, located in Lumber and Grove Townships, Cameron County, within the Elk State Forest. The lease was issued to the highest winning and qualified bidder for the tract at the lessor's competitive lease sale held on January 12, 2010. The lease was recorded at the Cameron County courthouse on April 9, 2010, instrument no. 201000218, Book 205, page 254. Contract No. M-110419-13 may be viewed online at <http://contracts.patreasury.org/View.aspx?ContractID=78369>.

Questions regarding this lease should be directed to Bureau of Forestry, Minerals Section at (717) 787-2703.

JOHN QUIGLEY,
Secretary

[Pa.B. Doc. No. 10-941. Filed for public inspection May 21, 2010, 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

Northeast Region: Water Management Program Manager, 2 Public Square, Wilkes-Barre, PA 18711-0790.

PA0011801, Industrial Waste, SIC Code 2819, **Air Products & Chemicals, Inc.**, 7201 Hamilton Boulevard, Allentown, PA 18195-1526. Facility Name: Air Products & Chemicals. This existing facility is located in Glendon Borough, **Northampton County**.

Description of Existing Activity: The application is for a renewal of an NPDES permit for an existing discharge of treated Industrial Waste.

The receiving stream(s), Unnamed Tributary to Lehigh River, is located in State Water Plan watershed 2-C and is classified for aquatic life, water supply and recreation. The discharge is not expected to affect public water supplies.

The proposed effluent limits for Outfall 001 are based on a design flow of 0.135 MGD.

Parameters	Mass (lb/day)		Concentration (mg/l)			Instantaneous Maximum
	Average Monthly	Daily Maximum	Average Monthly	Daily Maximum	Daily Maximum	
Flow (MGD)	report	report				
pH (S.U.)			6.0 Minimum			9.0
Color (Pt-Co Units)						100
Temperature (° F)						110
Chemical Oxygen Demand			Report			
Total Suspended Solids	33.7	67.4	30	60		75
Total Dissolved Solids			1,300	2,600		3,250
Oil and Grease			15			30
Ammonia-Nitrogen	22.5	45	20	40		50
Fluoride			Report			
Total Organic Carbon			50			

In addition, the permit contains the following major special conditions:

- Chemical additives.

You may make an appointment to review the Department of Environmental Protection's files on this case by calling the File Review Coordinator at 570-826-5472.

The EPA waiver is in effect.

NPDES No. (Type)	Facility Name & Address	County & Municipality	Stream Name (Watershed #)	EPA Waived Y/N?
PA0064220 (Sewage)	Twin County Joint Municipal Authority WWTP 309 Mahanoy Street Nuremburg, PA 18241	Schuylkill County North Union Township	Tomhicken Creek 5-E	Y

Chesapeake Bay nutrient monitoring requirements for Ammonia Nitrogen, Kjeldahl Nitrogen, Nitrite-Nitrate as N, Total Nitrogen and Total Phosphorus are being added to this permit.

Southcentral Region: Water Management Program Manager, 909 Elmerton Avenue, Harrisburg, PA 17110. Phone: 717-705-4707.

NPDES No. (Type)	Facility Name & Address	County & Municipality	Stream Name (Watershed #)	EPA Waived Y/N?
PA0085723 (Sew)	Exit II WWTP, Inc. P. O. Box 1387 York, PA 17405-1387	York County Springfield Township	Seaks Run 7-H	Y
PA0053091 (IW)	Giorgio Foods, Inc. P. O. Box 96 1161 Park Road Temple, PA 19560	Berks County Maiden Creek Township	Willow Creek 3-B	Y

<i>NPDES No. (Type)</i>	<i>Facility Name & Address</i>	<i>County & Municipality</i>	<i>Stream Name (Watershed #)</i>	<i>EPA Waived Y/N ?</i>
PA0247782 (IW)	Value Auto Salvage 13058 Greenwood Road Huntingdon, PA 16652	Huntingdon County Jackson Township	Standing Stone Creek 11-B	Y
PA0033995 (Sew)	County of Berks 633 Court Street 16th Floor Reading, PA 19601-4322	Berks County Bern Township	Plum Creek 3-C	Y

Northcentral Regional Office: Water Management Program Manager, 208 West Third Street, Suite 101, Williamsport, PA 17701-6448. Phone: 570-327-0532.

<i>NPDES No. (Type)</i>	<i>Facility Name & Address</i>	<i>County & Municipality</i>	<i>Stream Name (Watershed #)</i>	<i>EPA Waived Y/N?</i>
PA0228931 (Sewage)	Kathy Weaver and Robert Martin SFTF 2495 Valley View Road Bellefonte, PA 16823	Centre County Benner Township	Unnamed Tributary of Buffalo Run 9-C	Y

II. Applications for New or Expanded Facility Permits, Renewal of Major Permits and EPA Nonwaived Permit Applications

Southeast Region: Water Management Program Manager, 2 East Main Street, Norristown, PA 19401.

PA0056081, Sewage, SIC Code 5812, **Kevin P. Dougherty**, 937 Worthington Mill Road, Wrightstown, PA 18940. Facility Name: Wycombe Pub & Grill. This existing facility is located in Wrightstown Township, **Bucks County**.

Description of Existing Activity: The application is for a renewal of an NPDES permit for an existing discharge of treated Sewage.

The receiving stream(s), Unnamed Tributary to Mill Creek, is located in State Water Plan watershed 2-F and is classified for Warm Water Fishes and Migratory Fishes, aquatic life, water supply and recreation. The discharge is not expected to affect public water supplies.

The proposed effluent limits for Outfall 001 are based on a design flow of 0.00175 MGD.

<i>Parameters</i>	<i>Mass (lb/day)</i>			<i>Concentration (mg/l)</i>		<i>Instantaneous Maximum</i>
	<i>Average Monthly</i>	<i>Daily Maximum</i>	<i>Minimum</i>	<i>Average Monthly</i>	<i>Daily Maximum</i>	
Flow (MGD)	Report					
pH (S.U.)			6.0			9.0
Dissolved Oxygen			3.0			
Total Residual Chlorine				0.5		1.2
CBOD ₅						
May 1 - Oct 31				10		20
Nov 1 - Apr 30				20		40
Total Suspended Solids				10		20
Oil and Grease				15		30
Fecal Coliform (CFU/100 ml)				200		
Nitrate-Nitrite as N				Geometric Mean Report		
Ammonia-Nitrogen						
May 1 - Oct 31				3.0		6.0
Nov 1 - Apr 30				9.0		18.0
Total Kjeldahl Nitrogen				Report		
Total Phosphorus				Report		

In addition, the permit contains the following major special conditions:

1. Abandon STP.
2. Remedial Measures.
3. No Stormwater.
4. Dry Stream Discharge.
5. Chlorine Minimization.
6. Property Rights.
7. Change of Ownership.

8. Proper Sludge Disposal.
9. IMAX limits to DMR.
10. Laboratory Certification.

You may make an appointment to review the Department of Environmental Protection's files on this case by calling the File Review Coordinator at 484-250-5910.

The EPA waiver is in effect.

PA0056430, Industrial Waste, SIC Code 4226, 4613, **Sunoco Partners Marketing & Terminals, LP**, 4041 Market Street, Aston, PA 19014. Facility Name: Fort Mifflin Terminal. This existing facility is located in Tinticum Township, **Delaware County**.

Description of Existing Activity: The application is for a renewal of an NPDES permit for an existing discharge of stormwater.

The receiving stream(s), Unnamed Tributary to Delaware River, is located in State Water Plan watershed 3-F and is classified for Warm Water Fishes, aquatic life, water supply and recreation. The discharge is not expected to affect public water supplies.

The proposed effluent limits for Outfall 001 are based on an average stormwater runoff.

Parameters	Concentration (mg/l)	
	Average Monthly	Instantaneous Maximum
Oil and Grease	15	30
TRPH	15	30

In addition, the permit contains the following major special conditions:

1. Remedial Measures.
2. Change in Ownership.
3. PPC Plan.
4. Other Wastewater Discharges.
5. Definitions.
6. Laboratory Certification.
7. Hydrostatic Test Water Discharge.

You may make an appointment to review the Department of Environment Protection's files on this case by calling the File Review Coordinator at 484-250-5910.

The EPA waiver is in effect.

Southcentral Region: Water Management Program Manager, 909 Elmerton Avenue, Harrisburg, PA 17110. Phone: 717-705-4707.

PA0044741, Industrial Waste, SIC Code 2033, **Hanover Foods, Corp.**, P. O. Box 334, Hanover, PA 17331-334. Facility Name: Hanover Foods. This existing facility is located in Penn Township, **York County**.

Description of Existing Activity: The application is for a renewal of an NPDES permit for an existing discharge of treated Industrial Waste.

The receiving stream(s), Oil Creek and Unnamed Tributary to Oil Creek, is located in State Water Plan watershed 7-H and is classified for Warm Water Fishes, aquatic life, water supply and recreation. The discharge is not expected to affect public water supplies.

The proposed effluent limits for Outfall 001 are based on a design flow of 0.643 MGD.

Parameters	Mass (lb/day)			Concentration (mg/l)		
	Average Monthly	Daily Maximum	Minimum	Average Monthly	Daily Maximum	Instantaneous Maximum
Flow (MGD)	Report	Report	XXX	XXX	XXX	XXX
pH (S.U.)	XXX	XXX	6.0	XXX	XXX	9.0
Dissolved Oxygen	XXX	XXX	5.0	XXX	XXX	XXX
Total Residual Chlorine	XXX	XXX	XXX	0.1	XXX	0.3
CBOD ₅						
May 1 - Oct 31	53	105	XXX	10	20	XXX
Nov 1 - Apr 30	160	320	XXX	30	60	XXX
Total Suspended Solids	53	105	XXX	10	20	XXX

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<i>Parameters</i>	<i>Mass (lb/day)</i>			<i>Concentration (mg/l)</i>		
	<i>Average Monthly</i>	<i>Daily Maximum</i>	<i>Minimum</i>	<i>Average Monthly</i>	<i>Daily Maximum</i>	<i>Instantaneous Maximum</i>
Fecal Coliform (CFU/100 ml) May 1 - Sep 30	XXX	XXX	XXX	200 Geometric Mean 2,000	XXX	XXX
Oct 1 - Apr 30	XXX	XXX	XXX	Geometric Mean	XXX	XXX
Ammonia-Nitrogen May 1 - Oct 31	8	16	XXX	1.5	3.0	XXX
Nov 1 - Apr 30	24	48	XXX	4.5	9.0	XXX
Total Phosphorus (Interim)	Report	Report	XXX	Report	Report	XXX
Total Phosphorus (Final)	2.5	5.0	XXX	0.5	1.0	XXX

The proposed monitoring requirements and, where appropriate, effluent limits for implementation of the Chesapeake Bay Tributary Strategy are as follows for Outfall 001.

<i>Parameters</i>	<i>Mass (lb/day)</i>			<i>Concentration (mg/l)</i>	
	<i>Monthly</i>	<i>Annual</i>	<i>Minimum</i>	<i>Monthly Average</i>	<i>Maximum</i>
Ammonia-N	Report	Report	XXX	Report	XXX
Kjeldahl-N	Report	XXX	XXX	Report	XXX
Nitrate-Nitrite as N	Report	XXX	XXX	Report	XXX
Total Nitrogen	Report	Report	XXX	Report	XXX
Total Phosphorus	Report	Report	XXX	Report	XXX
Net Total Nitrogen	Report	Report	XXX	XXX	XXX
Net Total Phosphorus	Report	Report	XXX	XXX	XXX

You 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.

PA0261459, Sewage, SIC Code 6514, **Anthony M. and Lori Todaro**, 605 Roxbury Road, Newville, PA 17241. Facility Name: Todaro SFTF. This proposed facility is located in Upper Mifflin Township, **Cumberland County**.

Description of Proposed Activity: The application is for a new NPDES permit for a new discharge of treated Sewage.

The receiving stream(s), Unnamed Tributary to Whisky Run, is located in State Water Plan watershed 7-B and is classified for Trout Stocking, aquatic life, water supply and recreation. The discharge is not expected to affect public water supplies.

The proposed effluent limits for Outfall 001 are based on a design flow of 0.0006 MGD.

<i>Parameters</i>	<i>Mass (lb/day)</i>			<i>Concentration (mg/l)</i>		
	<i>Average Monthly</i>	<i>Daily Maximum</i>	<i>Minimum</i>	<i>Average Monthly</i>	<i>Daily Maximum</i>	<i>Instantaneous Maximum</i>
Flow (MGD)	Report	Report				
pH (S.U.)			6.0			9.0
Total Residual Chlorine				Report		
CBOD ₅				25		50
Total Suspended Solids				30		60
Fecal Coliform (CFU/100 ml) May 1 - Sep 30				200 Geometric Mean 2,000		
Oct 1 - Apr 30				Geometric Mean		

You 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 0042269, Sewage, **Lancaster Area Sewer Authority**, 130 Centerville Road, Lancaster, PA 17603. This facility is located in Manor Township, **Lancaster County**.

Description of activity: The application is for an amendment of an NPDES permit for an existing discharge of treated sewage.

The receiving stream, Dry Run, is in Watershed 7-J, and classified for warm water fishery, water supply, recreation and fish consumption. The nearest downstream public water supply intake for Safe Harbor Power Plant is located on the Susquehanna River, approximately 7 miles downstream. The discharge is not expected to affect the water supply.

The proposed amendment would add a Part C condition allowing offsets for accepting septage:

You may make an appointment to review the Department of Environmental Protection's files on this case by calling the File Review Coordinator at 717-705-4732.

The EPA waiver is not in effect.

Northcentral Region: Water Management Program Manager, 208 West Third Street, Williamsport, PA 17701.

PA 0233889, Troester Dairy, 175 Cannon Road, Mifflinburg, PA 17844. This proposed facility is located in Buffalo Township, **Union County**.

Description of Proposed Activity: Dairy Farm.

The receiving stream, UNTs of Buffalo Creek, is in the State Water Plan Buffalo Creek Watershed 10C and is classified for: Cold Water Fishery (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 individual permit is a nondischarge NPDES permit. Where applicable, compliance with 40 CFR Federal effluent limitation guidelines is required.

In addition to the effluent limits, the permit contains the following major special conditions.

1. Compliance with the Farm's Nutrient Management Plan.
2. Compliance with the Farm's Preparedness, Prevention and Contingency Plan.
3. Compliance with the Farm's Erosion and Sedimentation Control Plan for plowing and tilling.
4. Erosion and Sedimentation Control Plan requirements for stormwater during construction activities.
5. Animal mortality handling and disposing requirements.
6. Certification requirements for manure storage facilities.
7. Requirements for storage of feed and other raw materials.
8. Best Management Practices requirements.

The EPA waiver will not be in effect.

Southwest Regional Office: Regional Manager, Water Management, 400 Waterfront Drive, Pittsburgh, PA 15222-4745, 412-442-4000.

PA0025941, Sewage, **Canonsburg-Houston Joint Authority**, 68 East Pike Street, Canonsburg, PA 15317. This application is for renewal of an NPDES permit to discharge treated sewage from Canonsburg-Houston Joint Authority Wastewater Treatment Plant in Cecil Township, **Washington County**.

The following effluent limitations are proposed for discharge to the receiving waters, known as Chartiers Creek, which are classified as a warm water fishery with existing and/or potential uses for aquatic life, water supply and recreation. The first downstream potable water supply intake from this facility is the West View Municipal Authority located on the Ohio River.

Outfall 001: existing discharge, design flow of 5 mgd.

Parameter	Concentration (mg/l)			
	Average Monthly	Average Weekly	Maximum Daily	Instantaneous Maximum
CBOD ₅				
May 1 to Oct 31	20	30		40
Nov 1 to Apr 30	25	37.5		50
Suspended Solids	30	45		60
Ammonia Nitrogen				
May 1 to Oct 31	4.0	6.0		8.0
Nov 1 to Apr 30	7.0	10.5		14.0
Fecal Coliform				
May 1 to Sep 30	200/100 ml as a Geometric Mean			
Oct 1 to Apr 30	2,000/100 ml as a Geometric Mean			
Total Residual Chlorine	0.6			2.0
Dissolved Oxygen	not less than 5.0 mg/l			
pH	not less than 6.0 nor greater than 9.0			
CYANIDE, FREE	17 ug/l		27ug/l	

The EPA waiver is not in effect.

PA0027111, Sewage, **Municipal Sanitary Authority of the City of New Kensington**, 120 Logans Ferry Road, New Kensington, PA 15068-2046. This application is for renewal of an NPDES permit to discharge treated sewage from Municipal Sanitary Authority of the City of New Kensington Wastewater Pollution Control Plant in City of New Kensington, **Westmoreland County**.

The following effluent limitations are proposed for discharge to the receiving waters, known as Pucketa Creek, which are classified as a trout stock fishery 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 Oakmont Borough Municipal Authority.

Outfall 001: existing discharge, design flow of 6 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 ₅	25	37.5		50
Suspended Solids	30	45		60
Fecal Coliform				
May 1 to Sep 30	200/100 ml as a Geometric Mean			
Oct 1 to Apr 30	2,000/100 ml as a Geometric Mean			
Total Residual Chlorine	1.0			3.3
pH	not less than 6.0 nor greater than 9.0			

The EPA waiver is not in effect.

PA0096229, Sewage, **Marianna-West Bethlehem Joint Sewerage Authority**, P. O. Box 428, Marianna, PA 15345-0428. This application is for renewal of an NPDES permit to discharge treated sewage from Marianna-West Bethlehem Sewage Treatment Plant in West Bethlehem Township, **Washington County**.

The following effluent limitations are proposed for discharge to the receiving waters, known as Ten Mile Creek, which are classified as a trout stock fishery 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 located on the Monongahela River.

Outfall 001: existing discharge, design flow of 0.307 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 ₅				
May 1 to Oct 31	20	30		40
Nov 1 to Apr 30	25	37.5		50
Suspended Solids	30	45		60
Ammonia Nitrogen				
May 1 to Oct 31	5.0	7.5		10.0
Nov 1 to Apr 30	15.0	22.5		30.0
Fecal Coliform				
May 1 to Sep 30	200/100 ml as a Geometric Mean			
Oct 1 to Apr 30	2,000/100 ml as a Geometric Mean			
Total Residual Chlorine	0.6			2.0
Dissolved Oxygen	not less than 4.0 mg/l			
pH	not less than 6.0 nor greater than 9.0			

The EPA waiver is in effect.

PA0204498, Sewage, **Marion Center Area School District**, Box 156, Route 403, Marion Center, PA 15759. This application is for renewal of an NPDES permit to discharge treated sewage from Rayne Township Elementary School Sewage Treatment Plant in Rayne Township, **Indiana County**.

The following effluent limitations are proposed for discharge to the receiving waters, known as Swale to Unnamed Tributary of Crooked Creek, which are classified as a cold water fishery 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 Crooked Creek Intake.

Outfall 001: existing discharge, design flow of 0.00676 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 ₅	25			50
Suspended Solids	30			60

Parameter	Concentration (mg/l)			
	Average Monthly	Average Weekly	Maximum Daily	Instantaneous Maximum
Ammonia Nitrogen				
May 1 to Oct 31	2.0			4.0
Nov 1 to Apr 30	3.5			7.0
Fecal Coliform				
May 1 to Sep 30	200/100 ml as a Geometric Mean			
Oct 1 to Apr 30	2,000/100 ml as a Geometric Mean			
Total Residual Chlorine	1.4			3.3
Dissolved Oxygen	not less than 6.0 mg/l			
pH	not less than 6.0 nor greater than 9.0			

The EPA waiver is in effect.

PA0254215, Sewage, **Rox Coal, Inc.**, P. O. Box 260, Friedens, PA 15541. This application is for issuance of an NPDES permit to discharge treated sewage from Horning Deep Mine STP in Stonycreek Township, **Somerset County**.

The following effluent limitations are proposed for discharge to the receiving waters, known as Glades Creek, which are classified as a cold water fishery 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 Hooversville Municipal Authority.

Outfall 001: new discharge, design flow of 0.0035 mgd.

Parameter	Concentration (mg/l)			
	Average Monthly	Average Weekly	Maximum Daily	Instantaneous Maximum
CBOD ₅	25			50
Suspended Solids	30			60
Fecal Coliform				
May 1 to Sep 30	200/100 ml as a Geometric Mean			
Oct 1 to Apr 30	2,000/100 ml as a Geometric Mean			
Total Residual Chlorine	1.4			3.3
pH	not less than 6.0 nor greater than 9.0			

The EPA waiver is in effect.

Northwest Region: Water Management Program Manager, 230 Chestnut Street, Meadville, PA 16335-3481.

PA0026832, Sewage, **Borough of Ellwood City**, 525 Lawrence Avenue, Ellwood City, PA 16117. This existing facility is located in Wayne Township, **Lawrence County**.

Description of Proposed Activity: renewal of an existing NPDES permit to discharge treated sewage.

The receiving stream, the Connoquenessing Creek, is in watershed 20-C and classified for: Warm Water Fishes, aquatic life, water supply and recreation.

The proposed effluent limits for Outfall 001 are based on a design flow of 3.3 MGD.

Parameters	Loadings		Concentrations		
	Average Monthly (lb/day)	Average Weekly (lb/day)	Average Monthly (mg/l)	Average Weekly (mg/l)	Instantaneous Maximum (mg/l)
Flow (MGD)	XX	XX			
CBOD ₅	688	1,100	25	40	50
Total Suspended Solids	825	1,238	30	45	60
NH ₃ -N					
(05/01 - 10/31)	440		16		32
(11/01 - 04/30)	668		25		50
Fecal Coliform					
(05/01 - 09/30)	200/100 ml as a Geometric Mean				
(10/01 - 04/30)	2,000/100 ml as a Geometric Mean				
Total Residual Chlorine			0.5		1.6
pH	6.0 to 9.0 Standard Units at all times				

XX—Monitor and report on monthly DMRs.

The EPA waiver is not in effect.

PA0020257, Amendment No. 2, Sewage, **Borough of Grove City**, P. O. Box 110, Grove City, PA 16127-0110. This existing facility is located in Grove City Borough, **Mercer County**.

Description of Proposed Activity: Amendment of an existing NPDES permit to discharge treated sewage.

The receiving stream, the Wolf Creek, is in watershed 20-C and classified for: Cold Water Fishes, Migratory Fishes, aquatic life, water supply and recreation.

The proposed effluent limits for Outfall 001 are based on a design flow of 3.0 MGD. Interim.

Parameters	Loadings		Concentrations		
	Average Monthly (lb/day)	Average Weekly (lb/day)	Average Monthly (mg/l)	Average Weekly (mg/l)	Instantaneous Maximum (mg/l)
Flow (MGD)	XX	XX			
CBOD ₅					
(5/1-10/31)	375	560	15	22.5	30
(11/1-4/30)	625	1,000	25	40	50
Total Suspended Solids	750	1,125	30	45	60
NH ₃ -N					
(05/01 - 10/31)	87.5		3.5		7
(11/01 - 04/30)	250		10		21
Fecal Coliform					
(05/01 - 09/30)		200/100 ml as a Geometric Average			
(10/01 - 04/30)		3,600/100 ml as a Geometric Average			
Total Residual Chlorine			0.39		1.27
Dissolved Oxygen			minimum of 5 mg/l at all times		
pH			6.0 to 9.0 Standard Units at all times		

The proposed effluent limits for Outfall 001 are based on a design flow of 3.525 MGD. Final.

Parameters	Loadings		Concentrations		
	Average Monthly (lb/day)	Average Weekly (lb/day)	Average Monthly (mg/l)	Average Weekly (mg/l)	Instantaneous Maximum (mg/l)
Flow (MGD)	XX	XX			
CBOD ₅					
(5/1-10/31)	588	882	20	30	40
(11/1-4/30)	735	1,176	25	40	50
Total Suspended Solids	881	1,323	30	45	60
NH ₃ -N					
(05/01 - 10/31)	118		4		8
(11/01 - 04/30)	353		12		24
Fecal Coliform					
(05/01 - 09/30)		200/100 ml as a Geometric Average			
(10/01 - 04/30)		2,000/100 ml as a Geometric Average			
Total Residual Chlorine			0.29		0.96
Dissolved Oxygen			minimum of 4 mg/l at all times		
pH			6.0 to 9.0 Standard Units at all times		

XX—Monitor and report on monthly DMRs.

The EPA waiver is not in effect.

III. WQM Industrial Waste and Sewerage Applications under The Clean Streams Law (35 P. S. §§ 691.1—691.1001)

Southeast Region: Water Management Program Manager, 2 East Main Street, Norristown, PA 19401.

WQM Permit No. 0910401, Sewerage, **Warwick Township Water & Sewer Authority**, 1733 Township Greene, Jamison, PA 18929. This proposed facility is located in Warwick Township, **Bucks County**.

Description of Action/Activity: Construction of a new sanitary pump station to serve the Ivyland Industrial Park.

Northeast Region: Water Management Program Manager, 2 Public Square, Wilkes-Barre, PA 18711-0790.

WQM Permit No. 4510401, Sewerage, **Pocono Township Supervisors**, P. O. Box 197, Tannersville, PA 18372. This proposed facility is located in Stroud Township and Stroudsburg Borough, **Monroe County**.

Description of Proposed Action/Activity: This application is for construction and operation of a sewage force main to convey sewage from Pocono and Hamilton Townships through Stroud Township and Stroudsburg Borough to the regional treatment plant.

WQM Permit No. 5410402, Sewerage, **Schuylkill County Municipal Authority**, 221 South Centre Street, Pottsville, PA 17901. This proposed facility is located in Orwigsburg Borough and West Brunswick Township, **Schuylkill County**.

Description of Proposed Action/Activity: This application is for construction and operation of gravity sewers, a pump station and force main to serve the Lee Development. The system will connect to Orwigsburg's existing sewerage system for conveyance and treatment.

Southcentral Region: Water Management Program Manager, 909 Elmerton Avenue, Harrisburg, PA 17110. Phone: 717-705-4707.

WQM Permit No. 0610402, Sewerage, **Womelsdorf Sewer Authority**, 101 West High Street, Womelsdorf, PA 19567. This proposed facility is located in Heidelberg Township, **Berks County**.

Description of Proposed Action/Activity: Seeking permit approval for the upgrade of the sludge process for the existing plant, improving the post-aeration by adding separate blowers, relocating chemical feed (Alum), and adding influent screening and grit removal, which will both be located in a proposed Headworks Building.

WQM Permit No. 5010401, Sewerage, **Millerstown Borough Council**, 44 North High Street, Millerstown, PA 17062. This proposed facility is located in Greenwood Township, **Perry County**.

Description of Proposed Action/Activity: Seeking permit approval for the construction/operation of pumping station improvements and a sequencing batch reactor (SBR) wastewater treatment system.

WQM Permit No. 2810401, Sewerage, **Franklin County General Authority**, 5540 Coffey Avenue, Chambersburg, PA 17201. This proposed facility is located in Greene Township, **Franklin County**.

Description of Proposed Action/Activity: Seeking permit approval for the upgrade to wastewater treatment plant to include new headworks, treatment unit, blower building and upgraded sludge management at their existing plant.

WQM Permit No. 2810402, Sewerage, **Mont Alto Municipal Authority**, P. O. Box 427, Mont Alto, PA 17237-0427. This proposed facility is located in Quincy Township, **Franklin County**.

Description of Proposed Action/Activity: Seeking permit approval for the construction/operation for upgrades to the wastewater treatment facility.

WQM Permit No. 6710403, Sewerage, **Penn Township**, 20 Wayne Avenue, Hanover, PA 17331. This proposed facility is located in Penn Township, **York County**.

Description of Proposed Action/Activity: Seeking permit approval for the construction/operation for a wastewater collection and conveyance system.

WQM Permit No. 2177201, Amendment 10-1, Industrial Waste, **Body E. Diller, Inc., Diller Transfer Station**, 6820 Wertzville Road, Enola, PA 17025-1032. This proposed facility is located in Silver Spring Township, **Cumberland County**.

Description of Proposed Action/Activity: Seeking permit approval for upgrade to their wastewater treatment plant for Nitrification and Manganese removal.

Northwest Region: Oil and Gas Management Program Manager, 230 Chestnut Street, Meadville, PA 16335-3481. Phone (814) 332-6860.

WQM Permit No. 1010601, Industrial Waste, **Vavco, LLC**, 101 Mahood Road, Suite 1, Butler, PA 16001. This proposed facility is located in Connoquenessing Township, **Butler County**.

Description of Proposed Action/Activity: Construction of a Passive Water Treatment Plant to process wastewater from Stripper Oil Wells.

WQM Permit No. 4301201, Industrial Waste, **Amendment No. 2, John Koller & Son, Inc.**, 1734 Perry Highway, Fredonia, PA 15124. This proposed facility is located in Fairview Township, **Mercer County**.

Description of Proposed Action/Activity: Amendment to the Water Quality permit for the sludge dewatering filter replacement.

WQM Permit No. WQG018752, Sewerage, **Seth Michaels**, 840 Sewickley Street, Ellwood City, PA 16117. This proposed facility is located in Wayne Township, **Lawrence County**.

Description of Proposed Action/Activity: A Single Residence Sewage Treatment Plant.

WQM Permit No. WQG018750, Sewerage, **Tom Barnes**, 190 Southbrook Drive, New Castle, PA 16105. This proposed facility is located in Neshannock Township, **Lawrence County**.

Description of Proposed Action/Activity: A Single Residence Sewage Treatment Plant.

WQM Permit No. WQG018745, Sewerage, **Norman Sharp**, 298 Orangeville Road, Greenville, PA 16125. This proposed facility is located in West Salem Township, **Mercer County**.

Description of Proposed Action/Activity: A Single Residence Sewage Treatment Plant.

WQM Permit No. 2071401, Sewage, **Amendment No. 1, Titusville Estates, LLC**, 21321 Campbell Road, Titusville, PA 16354. This existing facility is located in Oil Creek Township, **Crawford County**.

Description of Proposed Action/Activity: This permit approves the amendment of Water Quality Management part II permit for sewage wastewater facilities serving a mobile home park. An aerated sludge holding tank will be constructed by adding a wall inside the aeration tank, reducing its volume down to 9,000 gallons. The original design also included (2) intermittent sand filters which are being removed as listed treatment units from this permit.

IV. NPDES Applications for Stormwater Discharges from Municipal Separate Storm Sewer Systems (MS4)

V. Applications for NPDES Wavier Stormwater Discharges from Municipal Separate Storm Sewer Systems (MS4)

VI. NPDES Individual Permit Applications for Discharges of Stormwater Associated with Construction Activities

Southeast Region: Water Management Program Manager, 2 East Main Street, Norristown, PA 19401.

<i>NPDES Permit No.</i>	<i>Applicant Name & Address</i>	<i>County</i>	<i>Municipality</i>	<i>Receiving Water/Use</i>
PAI01091003	James Baker 1748 Central Park Orefield, PA 18069	Bucks	Springfield Township	Cooks Creek EV-MF

Northeast Region: Watershed Management Program Manager, 2 Public Square, Wilkes-Barre, PA 18711-0790.

Northampton County Conservation District: 14 Gracedale Avenue, Greystone Building, Nazareth, PA 18064-9211, 610-746-1971.

<i>NPDES Permit No.</i>	<i>Applicant Name & Address</i>	<i>County</i>	<i>Municipality</i>	<i>Receiving Water/Use</i>
PAI024810001	Department of Transportation 1002 Hamilton Street Allentown, PA 18101	Northampton	Williams Township	Frya Run HQ-CWF, MF
PAI024810004	Arcadia East Associates No. 1, LP and Arcadia East Associates No. 1, Inc. 100 Gateway Drive Suite 310 Allentown, PA 18017	Northampton	East Allen Township	Monocacy Creek HQ-CWF, MF

Pike County Conservation District: 556 Route 402, Suite 1, Hawley, PA 18428, 570-226-8220.

<i>NPDES Permit No.</i>	<i>Applicant Name & Address</i>	<i>County</i>	<i>Municipality</i>	<i>Receiving Water/Use</i>
PAI025210004	Lehman Township Attn: John Sivick R. R. 4 Box 4000 Bushkill, PA 18324	Pike	Lehman Township	Saw Creek HQ-CWF, MF

Northcentral Region: Watershed Management Program Manager, 208 West Third Street, Williamsport, PA 17701.

Lycoming County Conservation District: 542 County Farm Road, Suite 202, Montoursville, PA 17754, (570) 433-3003.

<i>NPDES Permit No.</i>	<i>Applicant Name & Address</i>	<i>County</i>	<i>Municipality</i>	<i>Receiving Water/Use</i>
PAI044110002	Richard Hannan, Jr. 2029 Lycoming Creek Road Williamsport, PA 17701	Lycoming	Loyalsock Township	Mill Creek TSF/MF

Southwest Region: Watershed Management Program Manager, 400 Waterfront Drive, Pittsburgh, PA 15222-4745.

Washington County Conservation District, 602 Courthouse Square, Washington, PA 15301, (724-228-6774).

<i>NPDES Permit No.</i>	<i>Applicant Name & Address</i>	<i>County</i>	<i>Municipality</i>	<i>Receiving Water/Use</i>
PAI056310005	Majestic Hills, LLC 3625 Washington Pike Bridgeville, PA 15017	Washington	North Strabane Township	UNT to Little Chartiers Creek HQ-WWF

VII. List of NOIs for NPDES and/or Other General Permit Types

PAG-12	Concentrated Animal Feeding Operations (CAFOs)
PAG-13	Stormwater Discharges from Municipal Separate Storm Sewer Systems (MS4)

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 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>
Stoney Creek Acres c/o Daniel P. Hershberger	Bradford	328.1	1.93	Swine	N/A	Renewal
Jonathan Stauffer	Northumberland	10	288.32	Layers	None	Renewal

PUBLIC WATER SUPPLY (PWS) PERMIT

Under the Pennsylvania Safe Drinking Water Act (35 P. S. §§ 721.1—721.17), the following parties have applied for a PWS permit to construct or substantially modify a public water system.

Persons wishing to comment on a permit application are invited to submit a statement to the office listed before the application within 30 days of this public notice. Comments received within the 30-day comment period will be considered in the formulation of the final determinations regarding the application. Comments should include the name, address and telephone number of the writer and a concise statement to inform the Department of Environmental Protection (Department) of the exact basis of a comment and the relevant facts upon which it is based. A public hearing may be held after consideration of comments received during the 30-day public comment period.

Following the comment period, the Department will make a final determination regarding the proposed permit. Notice of this final determination will be published in the *Pennsylvania Bulletin* at which time this determination may be appealed to the Environmental Hearing Board.

The permit application and any related documents are on file at the office listed before the application and are available for public review. Arrangements for inspection and copying information should be made with the office listed before the application.

Persons with a disability who require an auxiliary aid, service or other accommodations to participate during the 30-day public comment period should contact the office listed before the application. TDD users should contact the Department through the Pennsylvania AT&T Relay Service at (800) 654-5984.

SAFE DRINKING WATER

Applications Received under the Pennsylvania Safe Drinking Water Act

Southeast Region: Water Supply Management Program Manager, 2 East Main Street, Norristown, PA 19401.

Application No. 0910513, Public Water Supply.

Applicant	Aqua Pennsylvania, Inc.
Borough	Chalfont
County	Bucks
Responsible Official	Ed Fortner, Jr. 762 West Lancaster Avenue Bryn Mawr, PA 19010
Type of Facility	PWS
Consulting Engineer	C.E.T. Engineering Services 1240 North Mountain Road Harrisburg, PA 17112
Application Received Date	April 30, 2010
Description of Action	Installation of chlorine contact pipe to meet GWR requirements for 4-log treatment at Chalfont Wells 8-A, 11and 12.

Application No. 1510509, Public Water Supply.

Applicant	Aqua Pennsylvania, Inc.
Township	West Whiteland
County	Chester
Responsible Official	Ed Fortner, Jr. 762 West Lancaster Avenue Bryn Mawr, PA 19010
Type of Facility	PWS
Consulting Engineer	C.E.T. Engineering Services 1240 North Mountain Road Harrisburg, PA 17112

Application Received Date April 30, 2010
 Description of Action Installation of chlorine contact pipe to meet GWR requirements for 4-log treatment at Highland Glen and Grand Oak Wells.

Application No. 0910514, Public Water Supply.

Applicant **Borough of Sellersville**
 Borough Sellersville
 County **Bucks**
 Responsible Official Alan S. Frick
 140 East Church Street
 Sellersville, PA 18960
 Type of Facility PWS
 Consulting Engineer Carrol Engineering
 949 Easton Road
 Warrington, PA 18976

Application Received Date May 4, 2010
 Description of Action Installation of arsenic treatment and upgrade distribution pump at Well No. 5.

Northeast Region: Water Supply Management Program Manager, 2 Public Square, Wilkes-Barre, PA 18711-0790.

Application No. 4010501, Public Water Supply.

Applicant **Eagle Rock Community Association**
 Township or Borough Hazle Township
Luzerne County
 Responsible Official Randy Gracy, Senior V.P.
 Double Diamond Companies
 10100 North Central
 Expressway, Suite 600
 Dallas, TX 75231
 Type of Facility Community Water System
 Consulting Engineer M. Christopher McCoach, P. E.
 Alfred Benesch & Company
 400 One Norwegian Plaza
 Pottsville, PA 17901

Application Received Date May 3, 2010
 Description of Action Application for construction of a new community water system to serve the Mt. View Phase I and Mt. View Phase II developments. Community water will be provided for the proposed 1,075 lots by the Hazleton Community Authority by means of a 16-inch conveyance main from the Humbolt North Industrial Park.

MINOR AMENDMENT

Northeast Region: Water Supply Management Program Manager, 2 Public Square, Wilkes-Barre, PA 18711-0790.

Application No. 5210503MA.

Applicant **Pennsylvania American Water**
 Township or Borough Lehman Township
Pike County

Responsible Official David R. Kaufman
 VP Engineering
 800 West Hersheypark Drive
 Hershey, PA 17033
 Type of Facility Community Water System
 Consulting Engineer Daniel G. Rickard, P. E.
 Pennsylvania American Water
 100 North Pennsylvania Avenue
 Wilkes-Barre, PA 18701
 570-830-6531

Application Received Date May 5, 2010
 Description of Action Application to replace a segment of existing 6-inch diameter conveyance line with larger diameter main to achieve 4-log compliance for treatment of viruses at the Saw Creek development, Well No. 1 facility.

Southwest Region: Water Supply Management Program Manager, 400 Waterfront Drive, Pittsburgh, PA 15222-4745.

Application No. 0410504MA, Minor Amendment.

Applicant **Beaver Falls Municipal Authority**
 1425 8th Avenue
 P. O. Box 400
 Beaver Falls, PA 15010
 Township or Borough Eastvale Borough
 Responsible Official James Riggio, General Manager
 Beaver Falls Municipal Authority
 1425 8th Avenue
 P. O. Box 400
 Beaver Falls, PA 15010
 Type of Facility Eastvale water treatment plant
 Consulting Engineer Michael Baker Jr., Inc.
 4301 Dutch Ridge Road
 Beaver, PA 15009

Application Received Date May 10, 2010
 Description of Action Replacement of filter media in filter No. 4, modification to the elevation of the wash water troughs and surface wash piping.

Northwest Region: Water Supply Management Program Manager, 230 Chestnut Street, Meadville, PA 16335-3481.

Application No. 2087501-MA1, Minor Amendment.

Applicant **Meadville Housing Corporation**
 Township or Borough West Mead Township
Crawford County
 Responsible Official John Phelps, Manager
 Type of Facility Public Water System
 Application Received Date 05/05/2010

Description of Action System upgrade to service Northgate Housing and Apartment Complex. Upgrade to add chlorine contact capacity and replace aging hydropneumatic tank (action to satisfy 4-log requirements).

LAND RECYCLING AND ENVIRONMENTAL REMEDIATION

UNDER ACT 2, 1995

PREAMBLE 1

Acknowledgment of Notices of Intent to Remediate Submitted under the Land Recycling and Environmental Remediation Standards Act (35 P. S. §§ 6026.101—6026.908).

Sections 302—305 of the Land Recycling and Environmental Remediation Standards Act (act) require the Department of Environmental Protection (Department) to publish in the *Pennsylvania Bulletin* an acknowledgment noting receipt of Notices of Intent to Remediate. An acknowledgment of the receipt of a Notice of Intent to Remediate is used to identify a site where a person proposes to, or has been required to, respond to a release of a regulated substance at a site. Persons intending to use the Background Standard, Statewide Health Standard, the Site-Specific Standard or who intend to remediate a site as a special industrial area must file a Notice of Intent to Remediate with the Department. A Notice of Intent to Remediate filed with the Department provides a brief description of the location of the site, a list of known or suspected contaminants at the site, the proposed remediation measures for the site and a description of the intended future use of the site. A person who demonstrates attainment of one, a combination of the cleanup standards or who receives approval of a special industrial area remediation identified under the act will be relieved of further liability for the remediation of the site for any contamination identified in reports submitted to and approved by the Department. Furthermore, the person shall not be subject to citizen suits or other contribution actions brought by responsible persons not participating in the remediation.

Under sections 304(n)(1)(ii) and 305(c)(2) of the act, there is a 30-day public and municipal comment period for sites proposed for remediation using a Site-Specific Standard, in whole or in part, and for sites remediated as a special industrial area. This period begins when a summary of the Notice of Intent to Remediate is published in a newspaper of general circulation in the area of the site. For the sites identified, proposed for remediation to a Site-Specific Standard or as a special industrial area, the municipality within which the site is located may request to be involved in the development of the remediation and reuse plans for the site if the request is made within 30 days of the date specified. During this comment period, the municipality may request that the person identified as the remediator of the site develop and implement a public involvement plan. Requests to be involved and comments should be directed to the remediator of the site.

For further information concerning the content of a Notice of Intent to Remediate, contact the environmental cleanup program manager in the Department regional

office before which the notice appears. If information concerning this acknowledgment is required in an alternative form, contact the community relations coordinator at the appropriate regional office. TDD users may telephone the Department through the Pennsylvania AT&T Relay Service at (800) 654-5984.

The Department has received the following Notices of Intent to Remediate:

Southeast Region: Environmental Cleanup Program Manager, 2 East Main Street, Norristown, PA 19401.

Pilgrim Gardens Senior Living, City of Philadelphia, **Philadelphia County**. Stacie Cottone, J & J Spill Service and Supplies, Inc., P. O. Box 370, Blue Bell, PA 19422 on behalf of John Adrente, Wesley Enhanced Living at Pilgrim Gardens, 7032 Rising Sun Avenue, Philadelphia, PA 19111 has submitted a Notice of Intent to Remediate. Soil at the site has been impacted with the release of No. 4 fuel oil. The property is being developed for use as a residential senior living facility.

Ursinus College, Collegeville Borough, **Montgomery County**. Gilbert Marshall, Marshall Geoscience, Inc., 170 East First Avenue, Collegeville, PA 19426, Darryl Borrelli, Manko, Gold, Katcher & Fox, LLP, 401 City Avenue, Suite 500, Bala Cynwyd, PA 19004 on behalf of Andrew Feick, Ursinus College, 601 Main Street, Collegeville, PA 190426 has submitted a Notice of Intent to Remediate. Groundwater at the site has been impacted with the release of inorganics. The future use of the property will continue to be an educational institution. A summary of the Notice of Intent to Remediate was reported to have been published in the March 5, 2010.

Southcentral Region: Environmental Cleanup Program Manager, 909 Elmerton Avenue, Harrisburg, PA 17110.

Reading School District/Windsor & Ritter Streets Property, City of Reading, **Berks County**. Barry Isett & Associates, Inc., P. O. Box 147, Trexlertown, PA 18087, on behalf of Reading School District, 800 Washington Street, Reading, PA 19601, submitted a Notice of Intent to Remediate site soils contaminated with Inorganics and PAHs. The site had been a quarry, then used as a landfill for incinerator ash and trash. The site will be used as a school after being remediated to a residential Site-Specific Standard.

Northcentral Region: Environmental Cleanup Program Manager, 208 West Third Street, Williamsport, PA 17701.

Cohen Auto Parts Property, Athens Township, **Bradford County**. Teeter Environmental Services, Inc., R. R. 1, Box 124B, Sayre, PA 18840 on behalf of Todd and Gemma Campbell, TOGEMCO, 615 South Main Street, Athens, PA 18810 has submitted a Notice of Intent to Remediate soil contaminated with lead. The applicant proposes to remediate the site to meet the Special Industrial Area standard. The intended future use of the property is as a Special Industrial Area.

DETERMINATION FOR APPLICABILITY FOR MUNICIPAL WASTE GENERAL PERMITS

Application for Determination of Applicability for General Permit Received Under the Solid Waste Management Act (35 P. S. §§ 6018.101—6018.1003); the Municipal Waste Planning, Recycling and Waste Reduction Act (53 P. S. §§ 4000.101—4000.1904); and Municipal Waste Regulations for a General Permit to Operate Municipal Waste Processing Facilities and/or the Beneficial Use of Municipal Waste.

Southeast Region: Regional Solid Waste Manager, 2 East Main Street, Norristown, PA 19401.

General Permit Application No. WMGM039SE 002B. Independent Construction Materials, 638 Lancaster Avenue, Malvern, PA 19355. This application is for Determination of Applicability under the terms and conditions of General Permit WMGM039 for the beneficial use of pre and post consumer asphalt shingles at Allan A. Myers, LP, Coatesville Asphalt Plant, located at 410 Doe Run Road, Coatesville, PA 19320-4294 in East Fallowfield Township, **Chester County**. The application for determination of applicability was received by the Southeast Regional Office on April 5, 2010.

General Permit Application No. WMGM039SE 002A. Independent Construction Materials, 638 Lancaster Avenue, Malvern, PA 19355. This application is for Determination of Applicability under the terms and conditions of General Permit WMGM039 for the beneficial use of pre and post consumer asphalt shingles at Allan A. Myers, LP, Devault Asphalt Plant, located at 4045 State Road in Charlestown Township, **Chester County**. The application for determination of applicability was received by the Southeast Regional Office on April 5, 2010.

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

Intent to Issue Plan Approvals and Intent to Issue or Amend Operating Permits under the Air Pollution Control Act (35 P.S. §§ 4001—4015) and 25 Pa. Code Chapter 127, Subchapter B. These actions may include the administrative amendments of an associated operating permit.

Southeast Region: Air Quality Program, 2 East Main Street, Norristown, PA 19401. Contact: Sachin Shankar, New Source Review Chief—Telephone: 484-250-5920.

46-0158C: Colorcon, Inc. (415 Moyer Boulevard, West Point, PA 19486) for replacement of the reaction vessel used in the existing polyvinyl acetate phthalate (PVAP) production process at their facility, as well as the installation of an additional reaction vessel. The facility is a non-Title V facility in Upper Gwynedd Township, **Montgomery County**.

Both reaction vessels will be identical to the existing reaction vessel and may contain the raw ingredients for PVAP production (at differing points in the reaction). However, at a given time, only one reaction vessel may feed the rest of the PVAP production process.

The PVAP production process is currently permitted under State-only Operating Permit No. 46-00158 and Plan Approval No. 46-0158B, and will maintain the particulate matter (PM) and volatile organic compound (VOC) emission restrictions specified in the latter. This plan approval will include monitoring, recordkeeping, reporting, and work practice requirements designed to keep the facility operating within all applicable air quality requirements.

Southcentral Region: Air Quality Program, 909 Elmerton Avenue, Harrisburg, PA 17110. Contact: Thomas J. Hanlon, Chief, East Permitting Section—Telephone: 717-705-4862 or Daniel Husted, Chief, West Permitting Section—Telephone: 814-949-7935.

28-03025C: Wenger's Feed Mill, Inc. (101 West Harrisburg Avenue, Rheems, PA 17570-0026) for modification to split an existing pellet line, consisting of two (2) pellet mills, a cyclone and cooler, into two lines that can be run independently of one another in **Franklin County**. A new cyclone (and cooler) will be added to control emissions. This plan approval will include appropriate conditions designed to keep the new lines operating within all applicable air quality requirements. The plan approval will be incorporated into State-only Operating Permit No. 28-03025 in accordance with 25 Pa. Code § 127.450 (Administrative Amendment).

01-05022B: Knouse Foods Cooperative, Inc. (1505 Orrtanna Road, Orrtanna, PA 17353) for construction of a turbine and waste heat boiler at their Ortanna Plant in Hamiltonban Township, **Adams County**. The source has the potential to emit 38 tons per year of oxides of nitrogen, 62 tons per year of carbon monoxide and 9.2 tons per year of volatile organic compounds. The plan approval and subsequent operating permit will include

emission restrictions, work practice standards, testing, monitoring, recordkeeping and reporting requirements designed to keep the facility operating within all applicable air quality requirements. The plan approval will be incorporated into the permit in accordance with 25 Pa. Code § 127.450 (Administrative Amendment) at a later date.

OPERATING PERMITS

Intent to Issue Title V Operating Permits under the Air Pollution Control Act (35 P. S. §§ 4001—4015) and 25 Pa. Code Chapter 127, Subchapter G.

Southeast Region: Air Quality Program, 2 East Main Street, Norristown, PA 19401. Contact: Janine Tulloch-Reid, Facilities Permitting Chief—Telephone: 484-250-5920.

23-00082: Liberty Electric, LLC (1000 Industrial Highway, Eddystone, PA 19022) for operation of a natural gas fired electric generating station in the Borough of Eddystone, **Delaware County**. The permit is for a Title V facility. The facility is considered a major source of Nitrogen Oxides (NO_x), Carbon Monoxide (CO), Volatile Organic Compounds (VOC), Particulate Matter (PM) and Sulfur Dioxide (SO₂). This initial issuance of the Title V Operating Permit (TVOP) does not authorize any increase in air emissions of regulated pollutants above previously approved levels. Plan Approval PA-23-0082, which authorized construction of the facility will be incorporated in the TVOP. The facility is also subject to the requirements of 40 CFR Part 60, New Source Performance Standards, Subparts GG and Subpart Db as well as Acid Rain Requirements of 40 CFR Parts 72-78 and Clean Air Interstate Rules of 40 CFR Part 97. The permit contains all applicable requirements including monitoring, recordkeeping and reporting.

ORIS Number 55231: Liberty Electric, LLC (1000 Industrial Highway, Eddystone, PA 19022) for an Acid Rain Permit to establish sulfur dioxide allowances for Source IDs 031 and 032 in Eddystone Borough, **Delaware County**. Requirements of 25 Pa. Code § 127.531 and 40 CFR Parts 72—78 are included in the permit.

Southcentral Region: Air Quality Program, 909 Elmerton Avenue, Harrisburg, PA 17110. Contact: Thomas J. Hanlon, Chief, East Permitting Section—Telephone: 717-705-4862 or Daniel Husted, Chief, West Permitting Section—Telephone: 814-949-7935.

06-05063: Boyertown Foundry Co. (P. O. Box 443, New Berlinville, PA 19545) for operation of their gray iron foundry in Boyertown Borough, **Berks County**. This action is a renewal of the Title V operating permit issued in September of 2004.

21-05053: PPL Renewable Energy, LLC/Community Refuse Service, Inc. Landfill Project (Two North Ninth Street, Allentown, PA 18101-1179) for an engine generating facility. This facility will generate electric power for the electric power grid from landfill gas generated by the Community Refuse Service, Inc./Cumberland County Landfill. The facility is located in Hopewell Township, **Cumberland County**. This facility's actual emissions will be approximately 244 tpy of CO, 35 tpy of NO_x, 25 tpy of SO₂, 16 tpy Particulate Matter and 1 tpy of VOCs. This plan approval will include monitoring, recordkeeping and reporting requirements designed to keep the sources operating within all applicable air quality requirements.

Department of Public Health, Air Management Services: 321 University Avenue, Philadelphia, PA 19104 Contact: Edward Braun, Chief—Telephone: 215-685-9476.

V10-011: Sunoco Partners Marketing & Terminals LP—Belmont Terminal (2700 Passyunk Avenue, Philadelphia, PA 19145) For operation of a gasoline loading terminal in the City of Philadelphia, **Philadelphia County**. The Title V Facility's air emission sources include a gasoline and distillate truck loading and fugitive emissions from pumps, valves and flanges. Gasoline loading is controlled by two vapor combustion units. In addition, there is one (1) 80 kw diesel 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 Mr. Edward Wiener (215) 685-9426.

Persons wishing to file protest or comments on the previous operating permit must submit the protest or comments within 30 days from the date of this notice. Any protests or comments filed with AMS must include a concise statement of the objections to the permit issuance and the relevant facts upon which the objections are based. Based upon the information received during the public comment period, AMS may modify the operating permit or schedule a public hearing. The hearing notice will be published in the *Pennsylvania Bulletin* and a local newspaper at least 30 days before the hearing.

Intent to Issue Operating Permits under the Air Pollution Control Act (35 P. S. §§ 4001—4015) and 25 Pa. Code Chapter 127, Subchapter F.

Southeast Region: Air Quality Program, 2 East Main Street, Norristown, PA 19428. Contact: Janine Tulloch-Reid, Facilities Permitting Chief—Telephone: 484-250-5920.

15-00115: QVC, Inc. (1200 Wilson Drive, West Chester, PA 19380) for operation of multiple combustion sources at their facility in West Goshen Township, **Chester County**. This action is a renewal of the permit for a non-Title V (Synthetic Minor) facility. There are no proposed changes to equipment or operating conditions. The permit will continue to include monitoring, recordkeeping and reporting requirements designed to keep the facility operating within all applicable air quality requirements.

09-00110: Riverside Construction Materials, Inc. (7900 North Radcliffe Street, Bristol, PA 19007) to renew a non-Title V Facility Operating Permit No. 09-00110 for the continued operation of their cement and bulk material handling processes in Bristol Township, **Bucks County**. As part of the permit renewal, Plan Approval No. 09-0110E will be incorporated into the Natural Minor Operating Permit. The Natural Minor Operating Permit will contain monitoring, recordkeeping and operating conditions designed to keep the facility operating within the allowable emissions and all applicable air quality requirements.

Northeast Region: Air Quality Program, 2 Public Square, Wilkes-Barre, PA 18711-0790. Contact: Ray Kempa, New Source Review Chief—Telephone: 570-826-2507.

39-00088: Oak Street USA, LLC (1949 South 5th Street, Allentown, PA 18103-4907) for their wood furni-

ture manufacturing facility in Allentown City, **Lehigh County**. This is an initial State-only Synthetic Minor operating permit for this facility. The State-only operating permit includes emissions, work practice standards and testing, monitoring, recordkeeping and reporting requirements designed to keep the facility operating within all applicable air quality requirements.

Southcentral Region: Air Quality Program, 909 Elmerton Avenue, Harrisburg, PA 17110. Contact: Thomas J. Hanlon, Chief, East Permitting Section—Telephone: 717-705-4862 or Gary Helsel, Chief, West Permitting Section—Telephone: 814-949-7935.

67-03126: Yorkshire Animal Hospital (3434 East Market Street, York, PA 17402) for operation of an animal crematory at the facility located in Springettsbury Township, **York County**. This is a renewal of the State-only operating permit issued in 2005.

36-03120: Esbenshade Mills (220 Eby Chiques Road, Mount Joy, PA 17552) for operation of their feed mill in Rapho Township, **Lancaster County**. This is a renewal of the State-only Operating permit issued in 2004.

Northwest Region: Air Quality Program, 230 Chestnut Street, Meadville, PA 16335-3481. Contact: Matthew Williams, New Source Review Chief—Telephone: 814-332-6940.

16-00003: State System of Higher Education—Clarion State University (840 Wood Street, Clarion, PA 16214-1240) for issuance of a Natural Minor Operating Permit to operate the boiler plant at the university in Clarion Borough, **Clarion County**. The facility's primary emission sources include three (3) Boilers and various Emergency Power Generators. The emissions of criteria pollutants from this facility are below major source levels.

24-00062: Metal Powder Products Co. (879 Washington Street, Saint Marys, PA 15857-3644) for a Natural Minor Permit to operate a fabricated metal products in Saint Marys City, **Elk County**. The significant sources are natural gas fired boiler (1), sintering ovens (12), parts washer (1) and rust inhibitors (2). The facility is natural minor because the emission of pollutants is less than Title V threshold limits.

61-00034: The Franklin Investment Corporation, d/b/a Franklin Industries Company, (600 Atlantic Avenue, P. O. Box 671, Franklin, PA 16323-2206) for issuance of a Synthetic Minor Operating Permit to operate a process that converts steel railroad rails into steel rods and posts in the City of Franklin, **Venango County**. The facility's primary emission sources include a walking beam furnace, rail scarfing, five (5) parts washers, post line ovens, post dip coating, post flow coating and miscellaneous natural gas combustion.

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 fac-

tors to be considered include public comments and Total Maximum Daily Loads (TMDLs).

Persons wishing to comment on an NPDES permit application should submit a statement to the Department at the address of the district mining office indicated previously each application within 30 days of this public notice. Comments received within the comment period will be considered in the final determinations regarding the NPDES permit applications. Comments must include the name, address and telephone number of the writer and a concise statement to inform the Department of the exact basis of a comment and the relevant facts upon which it is based.

The Department will also accept requests or petitions for a public hearing on NPDES permit applications, as provided in 25 Pa. Code § 92.61. The request or petition for a public hearing shall be filed within 30 days of this

public notice and shall contain the name, address, telephone number and the interest of the party filing the request, and shall state the reasons why a hearing is warranted. A public hearing may be held if the Department considers the public interest significant. If a hearing is scheduled, a notice of the hearing on the NPDES permit application will be published in the *Pennsylvania Bulletin* and a newspaper of general circulation within the relevant geographical area. In the case where a public hearing is held, the Department will consider comments from the public hearing in the final determination on the NPDES permit application.

Coal Applications Received

Effluent Limits—The following range of effluent limits will apply to NPDES permits issued in conjunction with the associated coal mining activity permit and, in some cases, noncoal mining permits:

Parameter	30-Day Average	Daily Maximum	Instantaneous Maximum
Iron (Total)	1.5 to 3.0 mg/l	3.0 to 6.0 mg/l	3.5 to 7.0 mg/l
Manganese (Total)	1.0 to 2.0 mg/l	2.0 to 4.0 mg/l	2.5 to 5.0 mg/l
Suspended solids	10 to 35 mg/l	20 to 70 mg/l	25 to 90 mg/l
Aluminum (Total)	0.75 to 2.0 mg/l	1.5 to 4.0 mg/l	2.0 to 5.0 mg/l
pH ¹		greater than 6.0; less than 9.0	
Alkalinity greater than acidity ¹			

¹The 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.

Cambria District Mining Office: 286 Industrial Park Road, Ebensburg, PA 15931, 814-472-1900.

11020202 and NPDES No. PA0269254. Ebensburg Power Company, 2840 New Germany Road, P. O. Box 845, Ebensburg, PA 15931, revision of an existing bituminous surface refuse reprocessing beneficial use of coal ash mine to add ~ 10 acres for mining and a stream variance along the south side of Pergrin Run East and West in Jackson Township, **Cambria County**, affecting 47.9 acres. Receiving stream(s): Pergrin Run classified for the following use(s): cold water fishery. There are no potable water supply intakes within 10 miles downstream. Application received February 23, 2010.

Greensburg District Mining Office: Armbrust Professional Center, 8205 Route 819, Greensburg, PA 15601, 724-925-5500.

26080103 and NPDES Permit No. PA0251402. Amerikohl Mining, Inc. (1384 SR 711, Stahlstown, PA 15687). Revision application for landuse change to forestland and unmanaged natural habitat to an existing bituminous surface mine, located in Wharton Township, **Fayette County**, affecting 94.1 acres. Receiving streams: McIntyre Run and unnamed tributaries to Mill Run and McIntyre Run, classified for the following use: HQ-CWF. There is no potable water supply intake within 10 miles downstream from the point of discharge. Application received: April 29, 2010.

63090101 and NPDES Permit No. PA0251941. Amerikohl Mining, Inc. (1384 SR 711, Stahlstown, PA 15687). Application for commencement, operation and reclamation of a bituminous surface mine, located in Nottingham Township, **Washington County**, affecting 367.0 acres. Receiving streams: unnamed tributaries to Mingo Creek and Sugar Run, classified for the following use: HW-TSF. There is no potable water supply intake within 10 miles downstream from the point of discharge. Application received: April 29, 2010.

30100101 and NPDES Permit No. PA0251950. Border Energy, LLC (308 Dents Run Road, Morgantown, WV 26501). Application for commencement, operation and reclamation of a bituminous surface mine and auger, located in Monongahela Township, **Greene County**, affecting 206.7 acres. Receiving streams: unnamed tributaries to Whitely Creek, classified for the following use: WWF. The potable water supplies that have intakes within 10 miles downstream from the point of discharge: Masontown Water Works, Carmichaels Municipal Authority, and Southwestern PA Water Authority. Application received: April 30, 2010.

Moshannon District Mining Office: 186 Enterprise Drive, Philipsburg, PA 16866, 814-342-8200.

17100107 and NPDES No. 0257354. C.M.T. Energy, Inc. (108 South Twig Street, Box 23, Smoke Run, PA 16681). Commencement, operation and restoration of a bituminous surface mine located in Chest Township, **Clearfield County** affecting 32.2 acres. Receiving streams: Hunter Run and an unnamed tributary to Hunter Run classified for Cold Water Fisheries. There are no potable water supply intakes within 10 miles downstream. Application received April 30, 2010.

17100108 and NPDES No. PA0257362. Waroquier Coal Co. (P. O. Box 128, Clearfield, PA 16830). Com-

mencement, operation and restoration of a bituminous surface mine located in Glen Hope Borough and Beccaria Township, **Clearfield County** affecting 65.0 acres. Receiving streams: Dotts Run (Cold Water Fishery), unnamed tributaries to Clearfield Creek (Cold Water Fishery) and Blue Run (Cold Water Fishery). There are no potable water supply intakes within 10 miles downstream. Application received May 3, 2010.

Pottsville District Mining Office: 5 West Laurel Boulevard, Pottsville, PA 17901, 570-621-3118.

54070202C2. Coaldale Energy, LLC, (P. O. Box 502, Tamaqua, PA 18252), boundary correction to an existing coal refuse reprocessing operation to add 7.5 acres for a total of 201.5 acres in Coaldale and Tamaqua Boroughs,

Schuylkill County, receiving stream: Panther Creek. Application received: April 28, 2010.

54743208R5 and NPDES Permit No. PA0612219. Ginther Coal Company, (P. O. Box 989, Pottsville, PA 17901), renewal of an existing anthracite coal refuse reprocessing and prep plant operation in East Norwegian and Blythe Township, **Schuylkill County** affecting 62.0 acres, receiving stream: Schuylkill River. Application received: May 4, 2010.

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.

Permit No. 56092801. Black Resources, Inc., 162 Cumberland Street, Berlin, PA 15530, commencement, operation and restoration of a small noncoal (industrial minerals) operation in Brothersvalley Township, **Somerset County**, affecting 4.5 acres, receiving stream(s): unnamed tributary to Kimberly Run. Permit received October 7, 2009. Permit issued May 3, 2010.

Pottsville District Mining Office: 5 West Laurel Boulevard, Pottsville, PA 17901, 570-621-3118.

8274SM4A2C10 and NPDES Permit No. PA0010111. Rohrer's Quarry, Inc., (P. O. Box 365, Lititz, PA 17543), renewal of NPDES Permit for discharge of treated mine drainage from a quarry operation in Penn and Warwick Townships, **Lancaster County**, receiving stream: unnamed tributary to Little Conestoga Creek, classified for the following use: warm water fishes. Application received: April 26, 2010.

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

Southeast Region: Water Management Program Manager, 2 East Main Street, Norristown, PA 19401.

E09-942. Township of Falls, 188 Lincoln Highway, Suite 100, Fairless Hills, PA 19030, Falls Township, **Bucks County**, ACOE Philadelphia District.

To construct and maintain a 160-foot long by 30-foot wide boat ramp in and along the 100-year floodway of the

Delaware River in Quaker Penn Park. This work also includes approximately 0.91 acre of dredging in the River. Approximately 0.24 acre of fill will be placed in the floodway associated with maintenance of the existing access road and storm water improvements.

The site is located approximately 1 mile southwest of the intersection of Bordertown and Pennsbury Roads (Trenton West, PA USGS Quadrangle N: 1.75 inches; W: 2.85 inches).

E51-241. Lisa Magee, Philadelphia Regional Port Authority (PRPA), 3460 North Delaware Avenue, Philadelphia, PA 19134, Philadelphia, **Philadelphia County**, ACOE Philadelphia District.

To demolish and remove the abandoned and dilapidated residential buildings including foundations, basements, utility lines, asphalt roadways, and the like within the floodplain of Delaware River (WWF, MF) associated with Mustin Housing Demolition project. This work includes grading associated with construction of stormwater swales to preserve positive drainage to the River.

The site is located along Delaware River near Admiral Peary Way and Mustin Avenue (Philadelphia, PA USGS Quadrangle N: 2.625 inches; W: 3.75 inches).

Northeast Region: Watershed Management Program Manager, 2 Public Square, Wilkes-Barre, PA 18711-0790, Telephone 570-826-2511.

E66-147. Department of Transportation, Engineering District 4-0, 55 Keystone Industrial Park, Dunmore, PA 18512, in Noxen Township, **Wyoming County**, U.S. Army Corps of Engineers, Baltimore District.

To place fill in a *de minimis* area of wetlands equal to 0.05 acre; to remove the existing structure; and to construct and maintain a single-span, pre-stressed concrete spread box beam bridge having a total normal clear span of 49.6 feet and a minimum underclearance of 7.6 feet over Beaver Run (HQ-CWF, MF). The project also includes the relocation of 85 feet of an unnamed tributary to Beaver Run. The project is located at SR 29, Segment 0050, Offset 0000, approximately 1.1 miles northwest of the intersection of SR 29 and SR 415 (Noxen, PA Quadrangle Latitude: 41° 24' 03"; Longitude: -76° 04' 18").

E66-148. Department of Transportation, Engineering District 4-0, 55 Keystone Industrial Park, Dunmore, PA 18512, in Mehoopany Township, **Wyoming County**, U.S. Army Corps of Engineers, Baltimore District.

To place fill in a *de minimis* area of wetlands equal to 0.01 acre; to remove the existing structure; and to construct and maintain a two-span, pre-stressed concrete bulb-tee I-beam bridge having a total normal clear span of 231 feet and an underclearance of 35 feet over Mehoopany Creek (CWF, MF) approximately 200 feet downstream of the existing bridge. The project is located at SR 3003 (Sugar Hollow Road), Segment 0150, Offset 1374, just west of the intersection of SR 3003 and SR 87 (Meshoppen, PA Quadrangle Latitude: 41° 33' 52"; Longitude: -76° 03' 33").

E66-149. Department of Transportation, Engineering District 4-0, 55 Keystone Industrial Park, Dunmore, PA 18512, in Clinton Township, **Wyoming County**, U.S. Army Corps of Engineers, Baltimore District.

To remove the existing structure and to construct and maintain a single-span, pre-stressed concrete bulb-tee beam bridge having a normal clear span of 78 feet and an underclearance of 13 feet over South Branch Tunkhan-

nock Creek (TSF, MF). The project is located at SR 2012 (Lithia Valley Road), Segment 0010, Offset 1625, approximately 0.3 mile south of the intersection of SR 2012 and SR 6 (Factoryville, PA Quadrangle Latitude: 41° 33' 14"; Longitude: -75° 50' 00").

Southwest Region: Watershed Management Program Manager, 400 Waterfront Drive, Pittsburgh, PA 15222-4745.

E02-1636. Allegheny County Department of Public Works, County Office Building, 542 Forbes Avenue, Room 501, Pittsburgh, PA 15219. To construct an extension to the existing structure across the channel of Lick Run in South Park and Pleasant Hills Township and Baldwin Borough, **Allegheny County**, Pittsburgh ACOE District (Glassport, PA Quadrangle N: 14.7 inches; W: 15.7 inches, Latitude: 41° 19' 51"; Longitude: 79° 59' 14"). The applicant proposes to operate, maintain and construct an extension to the existing structure across the channel of Lick Run (Unnamed Tributary to Peters Creek) (TSF) for the purpose of widening Brownsville Road and improving highway safety, and to construct and maintain several outfall structures. The proposed culvert extension will consist of a culvert 125.0 feet in length having a span of 20.0 ft. with an underclearance of 10.0 ft. The project is located on Brownsville Road, approximately 180.0 feet north from the intersection of Brownsville and Broughton Library Roads in South Park Township, Pleasant Hills Township and Baldwin Borough, Allegheny County and will impact approximately 385.0 linear feet of stream channel.

E26-359. Game Commission, 2001 Elmerton Avenue, Harrisburg, PA 17110-9797. To construct a single span bridge in Dunbar Township, **Fayette County**, Pittsburgh ACOE District (Carmichaels, PA Quadrangle N: 12.4"; W 3.1", Latitude: 39° 56' 34"; Longitude: 79° 31' 17"). The applicant proposes to construct and maintain a single span bridge of steel beam construction, set on concrete abutments with a treated wood deck, and a span of 38', an underclearance of 5' and a width of 14'; across Morgan Run (HQ-CWF) all for the purpose of providing access to state game lands.

Northwest Region: Watershed Management Program Manager, 230 Chestnut Street, Meadville, PA 16335-3481.

E24-255. Game Commission, Engineering Division, 2001 Elmerton Avenue, Harrisburg, PA 17110-9797, Mosquito Run Bridge in Benetzette Township, **Elk County**, ACOE Pittsburgh District (The Knobs, PA Quadrangle N: 41° 14' 17"; W: -78° 16' 52").

This project includes the installation of a new 40' span steel frame bridge with timber deck and concrete abutments over Mosquito Creek (HQ-CWF). Site is located south from the Quenhanna Highway on Ardell Road. Proceed 2 miles and turn left onto Ardell Dam Road. Travel roughly 1 mile to site.

E24-256. Fox Township, 116 Irishtown Road, Kersey, PA 15846-2608, Hemlock Lane Culvert on Mill Creek in Fox Township, **Elk County**, ACOE Pittsburgh District (The Kersey, PA Quadrangle N: 41° 21' 36"; W: -78° 36' 35").

This project includes the replacement of two 36" culverts on Mill Creek (CWF) with a single box culvert that crosses Hemlock Lane. New culvert to incorporate Department of Transportation fish baffles. From Ridgeway take PA-948 South approximately 4.4 miles. Turn right onto Dagus Mines Road then take the first left onto Hemlock Lane.

ENVIRONMENTAL ASSESSMENTS

Central Office: Bureau of Waterways Engineering, Rachel Carson State Office Building, Floor 3, 400 Market Street, Harrisburg, PA 17105.

D65-127EA. CBS Corporation, 11 Stanwix Street, Pittsburgh, PA 15222-1384. Trafford Borough, **Westmoreland County**, ACOE Pittsburgh District.

Project proposes to breach and remove Westinghouse Dam across Turtle Creek (TSF) for the purpose of eliminating a threat to public safety and restoring the stream to a free flowing condition. The project will restore approximately 2,700 feet of stream channel. The dam is located approximately 1,000 feet west of the intersection

of Fifth Street (SR 130) and Brinton Avenue (SR 993) (Braddock, PA Quadrangle Latitude: 40° 23' 12"; Longitude: -79° 45' 52").

D30-003EA. Mr. and Mrs. Ed Presley, 323 Toms Run Road, Brave, PA 15316, Wayne Township, **Greene County**, ACOE Pittsburgh District.

Project proposes to breach and remove Brave Station Dam across Dunkard Creek (WWF) for the purpose of eliminating a threat to public safety and restoring the stream to a free flowing condition. The project will restore approximately 1,700 linear feet of stream channel. The dam is located approximately 2,300 feet northeast of the intersection of SR 3009 and Oak Forest Road (SR 3013) (Wadestown, PA Quadrangle Latitude: 39° 43' 43"; Longitude: -80° 15' 09").

STORAGE TANKS**SITE-SPECIFIC INSTALLATION PERMITS**

The following Storage Tank Site-Specific Installation Permit application has been received by the Department of Environmental Protection (Department) and is currently under review. Persons wishing to comment on the proposed permit are invited to submit a statement to the Bureau of Waste Management, Division of Storage Tanks, P. O. Box 8763, Harrisburg, PA 17105-8763, within 30 days from the date of this publication. Comments received within this 30-day period will be considered in the formulation of the final determinations regarding this application. Responses should include the name, address and telephone number of the writer and a concise statement to inform the Department of the exact basis of the comment and the relevant facts upon which it based.

The following applications have been received for Storage Tank Site-Specific Installation Permits under the authority of the Storage Tank Spill Prevention Act (35 P. S. §§ 6021.304, 6021.504, 6021.1101 and 6021.1102) and under 25 Pa. Code Chapter 245, Subchapter C.

<i>SSIP Application No.</i>	<i>Applicant Name & Address</i>	<i>County</i>	<i>Municipality</i>	<i>Tank Type</i>	<i>Tank Capacity</i>
10004	Royal Farms/Two Farms, Inc. 3611 Roland Avenue Baltimore, MD 21211 Attn: Mr. Dwayne Stambaugh	York	Dover Township	4 ASTs storing petroleum products	40,000 gallons total

ACTIONS

**THE CLEAN STREAMS LAW AND THE FEDERAL CLEAN WATER ACT
FINAL ACTIONS TAKEN FOR NATIONAL POLLUTION DISCHARGE
ELIMINATION SYSTEM (NPDES) PERMITS AND WATER QUALITY
MANAGEMENT (WQM) PERMITS**

The Department of Environmental Protection (Department) has taken the following actions on previously received applications for new, amended and renewed NPDES and WQM permits, applications for permit waivers and Notices of Intent (NOI) for coverage under general permits. This notice is provided in accordance with 25 Pa. Code Chapters 91 and 92 and 40 CFR Part 122, implementing provisions of The Clean Streams Law (35 P. S. §§ 691.1—691.1001) and the Federal Clean Water Act.

<i>Location</i>	<i>Permit Authority</i>	<i>Application Type or Category</i>
Section I	NPDES	Renewals
Section II	NPDES	New or amendment
Section III	WQM	Industrial, sewage or animal wastes; discharges to groundwater
Section IV	NPDES	MS4 individual permit
Section V	NPDES	MS4 permit waiver
Section VI	NPDES	Individual permit stormwater construction
Section VII	NPDES	NOI for coverage under NPDES general permits

Sections I—VI contain actions related to industrial, animal or sewage wastes discharges, discharges to groundwater and discharges associated with municipal separate storm sewer systems (MS4), stormwater associated with construction activities and concentrated animal feeding operations (CAFOs). Section VII contains notices for parties who have submitted NOIs for coverage under general NPDES permits. The approval for coverage under general NPDES permits is subject to applicable effluent limitations, monitoring, reporting requirements and other conditions set forth in each general permit. The approval of coverage for land application of sewage sludge or residential septage under applicable general permit is subject to pollutant limitations, pathogen and vector attraction reduction requirements, operational standards, general requirements, management practices and other conditions set forth in the respective permit. Permits

and related documents, effluent limitations, permitting requirements and other information are on file and may be inspected and arrangements made for copying at the contact office noted before the action.

Persons aggrieved by an action may appeal, under section 4 of the Environmental Hearing Board Act (35 P. S. § 7514) and 2 Pa.C.S. §§ 501—508 and 701—704 (relating to the Administrative Agency Law), to the Environmental Hearing Board, Second Floor, Rachel Carson State Office Building, 400 Market Street, P. O. Box 8457, Harrisburg, PA 17105-8457, (717) 787-3483. TDD users should contact the Environmental Hearing Board (Board) through the Pennsylvania 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.

I. NPDES Renewal Permit Actions

Southcentral Region: Water Management Program Manager, 909 Elmerton Avenue, Harrisburg, PA 17110, Phone: 717-705-4707.

NPDES No. (Type)	Facility Name & Address	County & Municipality	Stream Name (Watershed #)	EPA Waived Y/N ?
PA0247154 (IW)	Possum Valley Municipal Authority Adams County Big Hill Membrane Filtration Bendersville, PA 17306	Adams County Menallen Township	UNT to Opossum Creek 7-F	Y
PA0021849 (Sew)	Millerstown Borough Council P. O. Box E Millerstown, PA 17062	Perry County Greenwood Township	Juniata River 12-B	Y

Northwest Region: Water Management Program Manager, 230 Chestnut Street, Meadville, PA 16335-3481.

NPDES No. (Type)	Facility Name & Address	County & Municipality	Stream Name (Watershed #)	EPA Waived Y/N ?
PA0025534	USDA Forest Service Allegheny National Forest 4 Farm Colony Drive Warren, PA 16365	McKean County Hamilton Township	Kinzua Creek— Allegheny Reservoir	Y
PA0239607	James Kapp 8100 Ohio River Boulevard Pittsburgh, PA 15202	Clarion County Perry Township	Unnamed tributary to the Allegheny River 17-C	Y

II. New or Expanded Facility Permits, Renewal of Major Permits and EPA Nonwaived Permit Actions

Southeast Region: Water Management Program Manager, 2 East Main Street, Norristown, PA 19401.

NPDES Permit No. PA0058963, Industrial Waste, **JDM Materials Company**, 851 County Line Road, Huntingdon Valley, PA 19006. This proposed facility is located in Telford Borough, **Bucks County**.

Description of Proposed Action/Activity: Approval for the renewal to discharge stormwater from their Telford Ready Mix concrete plant into an Unnamed Tributary to Mill Creek in Watershed 3-E.

Southcentral Region: Water Management Program Manager, 909 Elmerton Avenue, Harrisburg, PA 17110, Phone: 717-705-4707.

NPDES Permit No. PA0261424, Sewage, **Mr. John A. Beiler, Jr.**, 8512 Newburg Road, Newburg, PA 17240. This proposed facility is located in Lurgan Township, **Franklin County**.

Description of Proposed Action/Activity: Authorization to discharge to Clippingers Run in Watershed 7-B.

Northcentral Region: Water Management Program Manager, 208 West Third Street, Williamsport, PA 17701.

PA0229091, CAFO, SIC 254, **GNH Farms, LLC**, 224 White Church Road, Elysburg, PA 17824. This proposed facility is located in Cleveland Township, **Columbia County**.

Description of Proposed Activity: This farm operates as a layer operation. There are 96,000 birds housed in a single high-rise layer house. There are also 8 steers and 3 horses on this operation. The farm consists of 325.4 owned and rented

crop acres on which a rotation of corn, soybeans, small grains and grass/alfalfa mix is grown. There are 0.5 acre of pasture lands a farmstead area of 4.7 acres. There is 748 tons of manure used on the farm and 988 tons of manure is exported to neighboring farms.

The receiving stream, Mugser Run, is in the State Water Plan watershed 5E 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 individual 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 PA Nutrient Management Act and The Clean Stream Law constitutes compliance with the State narrative water quality standards.

Northwest Region: Watershed Management Program Manager, 230 Chestnut Street, Meadville, PA 16335-3481.

PA0263591, CAFO, **Apple Shamrock Dairy, LLC**, 32821 Guys Mills Road, Townville, PA 16360, Steuben Township, **Crawford County**.

Description of Size and Scope of Proposed Operation/Activity: The operation is a dairy operation and consists of the farmstead and crop fields. The facility has an existing approved nutrient management plan for the handling of manure and application of manure on farm fields, which has been revised and updated. The farm presently has 940.5 AEU's and is planning to expand to 1,382.5 AEU's.

The receiving streams are in the Muddy and Sugar Creeks, and Dry Run watersheds. Dry Run is tributary to Sugar Creek and enters Sugar Creek downstream of East Branch Sugar Creek. Sugar Creek (including Dry Run) is classified as CWF. Muddy Creek is classified as HQ-CWF Basin, Source to East Branch Muddy Creek; HQ-TSF from East Branch Muddy Creek to Mackey Run (unnamed tributaries are HQ-CWF); and HQ-TSF Basin, Mackey Run to Mouth.

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.

NPDES Permit No. PA0100277, Sewage, **North and South Shenango Township Joint Municipal Authority**, 3397 Dam Road, Jamestown, PA 16134-4403. This existing facility is located in South Shenango Township, **Crawford County**.

Description of Proposed Action/Activity: Issuance of a renewal NPDES permit for discharge of treated sewage from a POTW. This is a major discharge. The Department of Environmental Protection has modified the draft NPDES permit published on February 27, 2010, by adding monthly monitoring for total iron, total lead and total aluminum. The monitoring requirement for these parameters will expire on May 31, 2011.

III. WQM Industrial Waste and Sewerage Actions under The Clean Streams Law (35 P. S. §§ 691.1—691.1001)

Southeast Region: Water Management Program Manager, 2 East Main Street, Norristown, PA 19401.

WQM Permit No. 0909410, Sewerage, **Bucks County Water & Sewer Authority**, 1275 Almshouse Road, Warrington, PA 18976. This proposed facility is located in Doylestown Township, **Bucks County**.

Description of Action/Activity: Expansion of existing plant to provide additional treatment capacity for projected wastewater flows from Doylestown Borough and Township.

WQM Permit No. 1509406, Sewerage, **Camp Hill Special Schools, Beaver Farm**, 1784 Fairview Road, Glenmoore, PA 19343. This proposed facility is located in East Vincent Township, **Chester County**.

Description of Action/Activity: A new onsite wastewater treatment facility consists of two septic tanks in series followed by an intermittent sand filter and drip irrigation system.

WQM Permit No. 1509412, Sewerage, **East Marlborough Township**, 721 Unionville Road, Kennett Square, PA 19348. This proposed facility is located in East Marlborough Township, **Chester County**.

Description of Action/Activity: Upgrade of existing pump station to serve expansion of existing high school.

WQM Permit No. 1506418, Sewerage, **West Brandywine Township Municipal Authority**, 198 Lafayette Road, Coatesville, PA 19320. This proposed facility is located in West Brandywine Township, **Chester County**.

Description of Action/Activity: Construction and operation of a new wastewater collection system, treatment system and drip disposal system to serve 92 new homes.

WQM Permit No. 4607412, Sewerage, **Transfer, Stephanie Huntzinger**, 3947 Geryville Pike, Pennsburg, PA 18073. This proposed facility is located in Marlborough Township, **Montgomery County**.

Description of Action/Activity: Permit Transferred from Craig Schuster to Stephanie Huntzinger.

Southcentral Region: Water Management Program Manager, 909 Elmerton Avenue, Harrisburg, PA 17110, Phone: 717-705-4707.

WQM Permit No. 2809405, Sewage, **John A. Beiler, Jr.**, 8512 Newburg Road, Newburg, PA 17240. This proposed facility is located in Lurgan Township, **Franklin County**.

Description of Proposed Action/Activity: Permit approval for the construction/operation of sewerage facilities consisting of: A small flow treatment facility with septic tank, peat filter and chlorine disinfection with discharge to Clippingers Run.

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 & Address</i>	<i>County</i>	<i>Municipality</i>	<i>Receiving Water/Use</i>
PAI01 2309004	BPG Land Partners VII Seaport, LLC 322 A Street Suite 300 Wilmington, DE 19901	Delaware	City of Chester	Delaware River WWF-MF
PAI01 1505033	Lafayette Hibernia Investment Company, Inc. 3000 Cabot Boulevard Suite 200 Langhorne, PA 19047	Chester	West Brandywine Township	Unnamed Tributary West Branch Brandywine Creek HQ-TSF-MF
PAI01 2308007	Sweetwater Valley, LLC P. O. Box 287 Gradyville, PA 19093	Delaware	Middletown Township	Rocky Run HQ-CWF-MF

Northeast Region: Watershed Management Program Manager, 2 Public Square, Wilkes-Barre, PA 18711-0790.

<i>NPDES Permit No.</i>	<i>Applicant Name & Address</i>	<i>County</i>	<i>Municipality</i>	<i>Receiving Water/Use</i>
PAI024509012	Tobyhanna Army Depot 11 Hap Arnold Boulevard Mailstop 5078 Tobyhanna, PA 18466-5078	Monroe	Coolbaugh Township	Tobyhanna Creek HQ-CWF, MF
PAI026608001	Mehoopany Wind Energy, LLC 455 2nd Street SE Suite 400 Charlottesville, VA 22902	Wyoming	Eaton, Forkston, Mehoopany, Noxen and Washington Townships	Stone Run HQ-CWF, MF Kasson Brook HQ-CWF, MF South Branch Roaring Run CWF, MF Roaring Run CWF, MF Newton Run HQ-CWF, MF Sugar Hollow Creek HQ-CWF, MF Bowman's Creek HQ-CWF, MF Tributary to Bowman's Creek HQ-CWF, MF Hettesheimer Run HQ-CWF, MF York Run HQ-CWF, MF Bowman Hollow HQ-CWF, MF Susquehanna River CWF, MF Tributary to Susquehanna River CWF, MF

Southwest Region: Watershed Management Program Manager, 400 Waterfront Drive, Pittsburgh, PA 15222-4745.

Beaver County Conservation District, 156 Cowpath Road, Aliquippa, PA 15001, (724-378-1701).

<i>NPDES Permit No.</i>	<i>Applicant Name & Address</i>	<i>County</i>	<i>Municipality</i>	<i>Receiving Water/Use</i>
PAI050409002	James Palmer and Charles Betters Aliquippa Tin Mill, LP 250 Insurance Street Beaver, PA 15009	Beaver	City of Aliquippa	Ohio River WWF

Fayette County Conservation District, 10 Nickman Plaza, Lemont Furnace, PA 15456, (724-438-4497).

<i>NPDES Permit No.</i>	<i>Applicant Name & Address</i>	<i>County</i>	<i>Municipality</i>	<i>Receiving Water/Use</i>
PAI052609001	James J. Kalp Department of Natural Resources P. O. Box 8451 400 Market Street Harrisburg, PA 17105	Fayette	Ohiopyle Borough	Youghiogheny River HQ-CWF

VII. Approvals to Use NPDES and/or Other General Permits

The EPA Region III Administrator has waived the right to review or object to this permit action under the waiver provision 40 CFR 123.23(d).

List of NPDES and/or Other General Permit Types

PAG-1	General Permit for Discharges From Stripper Oil Well Facilities
PAG-2	General Permit for Discharges of Stormwater Associated With Construction Activities (PAR)
PAG-3	General Permit for Discharges of Stormwater From Industrial Activities
PAG-4	General Permit for Discharges From Small Flow Treatment Facilities
PAG-5	General Permit for Discharges From Gasoline Contaminated 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 & County</i>	<i>Permit No.</i>	<i>Applicant Name & Address</i>	<i>Receiving Water/Use</i>	<i>Contact Office & Phone No.</i>
Quakertown Borough Bucks County	PAG0200 0909074	Stainless Steel Associates 190 Kelly Road Quakertown, PA 18901	Tohickon Creek Delaware River TSF	Southeast Regional Office 2 East Main Street Norristown, PA 19401 484-250-5900
East Bradford Township West Chester Borough Chester County	PAG200 1509039	UCM/TSF-Bradford Plaza, LP 633 West Germantown Pike Suite 200 Plymouth Meeting, PA 19462	Taylor Run Tributary Brandywine Creek TSF-MF	Southeast Regional Office 2 East Main Street Norristown, PA 19401 484-250-5900

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<i>Facility Location: Municipality & County</i>	<i>Permit No.</i>	<i>Applicant Name & Address</i>	<i>Receiving Water / Use</i>	<i>Contact Office & Phone No.</i>
East Bradford Township Chester County	PAG0200 1510010	Linda A. Thomas 322 Highland Farm Road West Chester, PA 19382	Taylor Run TSF	Southeast Regional Office 2 East Main Street Norristown, PA 19401 484-250-5900
Chadds Ford Township Delaware County	PAG0200 2305003-R	Toll Brothers, Inc. 250 Gibraltar Road Horsham, PA 19044	Harvey Run WWF-MF	Southeast Regional Office 2 East Main Street Norristown, PA 19401 484-250-5900
West Norriton Township Montgomery County	PAG0200 4609065	Jubilee Presbyterian Church 20 West 6th Avenue Suite B Conshohocken, PA 19428	Schuylkill River WWF-MF	Southeast Regional Office 2 East Main Street Norristown, PA 19401 484-250-5900
West Norriton Township Montgomery County	PAG200 4608143	Montgomery Delva Associate, LP 600 Old Elm Street Conshohocken, PA 19428	Unnamed Tributary Schuylkill River WWF-MF	Southeast Regional Office 2 East Main Street Norristown, PA 19401 484-250-5900
Upper Moreland Township Montgomery County	PAG0200 4610021	John S. Oyler/Gail C. Faulkner 1840 Huntingdon Road Huntingdon Valley, PA 19006	Tributary Pennypack Creek WWF-MF	Southeast Regional Office 2 East Main Street Norristown, PA 19401 484-250-5900
City of Philadelphia Philadelphia County	PAG0201 511014	City of Philadelphia Fairmount Park c/o SRDC 2929 Arch Street 13th Floor Philadelphia, PA 19104	Schuylkill River WWF-MF	Southeast Regional Office 2 East Main Street Norristown, PA 19401 484-250-5900
East Union and North Union Townships Schuylkill County	PAG2005403032R(3)	Eagle Rock Resort Attn: John Grohol Western Summit South Phases 5—7 1031 Valley of Lakes Hazleton, PA 18202	Tomhicken Creek CWF, MF	Schuylkill County Conservation District 570-622-3742
Porter Township Schuylkill County	PAG2005409011	Future Power PA, Inc. 72 Glenmaura National Boulevard Suite 105 Moosic, PA 18507	Good Spring Creek CWF, MF Swatara Creek CWF, MF	Schuylkill County Conservation District 570-622-3742
Ryan Township Schuylkill County	PAG2005409013	County of Schuylkill 401 North Second Street Pottsville, PA 17901	Stony Creek CWF, MF Tributary to Mud Run CWF, MF	Schuylkill County Conservation District 570-622-3742
Washington Township Schuylkill County	PAG2005410003	Dennis Nolt 105 Turkey Farm Road Pine Grove, PA 17963	Tributary to Upper Little Swatara Creek CWF, MF	Schuylkill County Conservation District 570-622-3742
West Brunswick Township Schuylkill County	PAG2005410002	Ernst Partnership, LTD Attn: Mr. Terry Ernst 15 Pinedale View Drive Orwigsburg, PA 17961	Pine Creek CWF, MF	Schuylkill County Conservation District 570-622-3742
Edwardsville Borough Luzerne County	PAG2004010002	Wilkes University Attn: Petra Carver 84 West South Street Wilkes-Barre, PA 18766	Susquehanna River WWF, MF	Luzerne County Conservation District 570-674-7991

<i>Facility Location: Municipality & County</i>	<i>Permit No.</i>	<i>Applicant Name & Address</i>	<i>Receiving Water / Use</i>	<i>Contact Office & Phone No.</i>
Dunmore Borough Lackawanna County	PAG2003506016(1)	Marywood University Attn: Wendy Yankelitis 2300 Adams Avenue Scranto, PA 18509	Meadow Brook CWF, MF	Lackawanna County Conservation District 570-281-9495
Bethlehem Township Northampton County	PAG2004809014	St. Luke's Hospital & Health Network Attn: Anita Kingsbauer 801 Ostrum Street P. O. Box 5345 Bethlehem, PA 18018	Tributary to Lehigh River CWF, MF	Northampton County Conservation District 610-746-1971
Berwick Township Abbottstown Borough Adams County	PAG2000109016	Joe A. Myers 160 Ram Drive Hanover, PA 17331	Beaver Creek WWF	Adams County Conservation District 670 Old Harrisburg Road Suite 201 Gettysburg, PA 17325 717-334-0636
Mount Pleasant Township Adams County	PAG2000110003	John Repasky 240 Bender Road Hanover, PA 17331	South Branch Conewago Creek WWF	Adams County Conservation District 670 Old Harrisburg Road Suite 201 Gettysburg, PA 17325 717-334-0636
Guilford Township Franklin County	PAR10M187R-2	William Gsell Kolpark Subdivision 133 Heritage Drive Chambersburg, PA 17202	Conococheague Creek CWF	Franklin County Conservation District 185 Franklin Farm Lane Chambersburg, PA 17201 717-264-5499
Greene Township Franklin County	PAG20028043-R	Lawrence Rachuba Village Green 946A Marimich Court Eldersburg, MD 21784	UNT to Muddy Run WWF	Franklin County Conservation District 185 Franklin Farm Lane Chambersburg, PA 17201 717-264-5499
Antrim Township Franklin County	PAG2002805002-R	Tom Mongold Antrim Meadows 418 Epic Drive Chambersburg, PA 17201	Paddy Run WWF	Franklin County Conservation District 185 Franklin Farm Lane Chambersburg, PA 17201 717-264-5499
Washington Township Berks County	PAG2000605070-1	Rich Mingey Barto Mall, Inc. 63 Chestnut Road Paoli, PA 19301	UNT to Swamp Creek CWF-MF	Berks County Conservation District 1238 County Welfare Road Suite 200 Leesport, PA 19533-9710 610-372-4657 Ext. 201

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<i>Facility Location: Municipality & County</i>	<i>Permit No.</i>	<i>Applicant Name & Address</i>	<i>Receiving Water / Use</i>	<i>Contact Office & Phone No.</i>
Lower Heidelberg Township Berks County	PAG2000609048	Mark Powell Legacy Papermill Associates, LP 49 Fairwood Avenue Sinking Spring, PA 19608	Tulpehocken Creek CWF	Berks County Conservation District 1238 County Welfare Road Suite 200 Leesport, PA 19533-9710 610-372-4657 Ext. 201
Tulpehocken Township Berks County	PAG2000610009	Glenn Hurst 4315 Conrad Weiser Parkway Womelsdorf, PA 19567	Mill Creek TSF-MF	Berks County Conservation District 1238 County Welfare Road Suite 200 Leesport, PA 19533-9710 610-372-4657 Ext. 201
Hampden Township Cumberland County	PAG2002105040R-1	Richard Yingst Grand Meadows Fishing Valley Associates, Inc. 4712 Smith Street Harrisburg, PA 17109	Pine Run WWF	Cumberland County Conservation District 310 Allen Road Carlisle, PA 17013 717-240-7812
Carroll Township Perry County	PAG2035010001	Carroll Township 50 Rambo Hill Road Shermans Dale, PA 17090	Fishing Run WWF	Perry County Conservation District P. O. Box 36 31 West Main Street New Bloomfield, PA 17068 717-582-5119
Warwick Township Lancaster County	PAG2003610009	Lancaster Evangelical Free Church 419 Pierson Road Lititz, PA 17543	Lititz Run CWF	Lancaster County Conservation District 1383 Arcadia Road, Room 200 Lancaster, PA 17601 717-299-5361 Ext. 5
Conoy Township Lancaster County	PAG2003610020	G & R Associates 48 South Market Street Elizabethtown, PA 17022	Bainbridge Creek WWF-MF	Lancaster County Conservation District 1383 Arcadia Road Room 200 Lancaster, PA 17601 717-299-5361 Ext. 5
Manor Township Lancaster County	PAG2003610021	MBI Development Company 1100 Pennsylvania Avenue Suite 700 Wilmington, DE 19806	West Branch Little Conestoga Creek TSF	Lancaster County Conservation District 1383 Arcadia Road Room 200 Lancaster, PA 17601 717-299-5361 Ext. 5
Springettsbury Township York County	PAG2006710003	Harley-Davidson Motor Company Operations 1425 Eden Road York, PA 17402	Mill Creek— UNT to Codorus Creek WWF	York County Conservation District 118 Pleasant Acres Road York, PA 17402 717-840-7430

<i>Facility Location: Municipality & County</i>	<i>Permit No.</i>	<i>Applicant Name & Address</i>	<i>Receiving Water / Use</i>	<i>Contact Office & Phone No.</i>
Newberry Township York County	PAG2006709038	Maia's Meadow 320 Rosedale Avenue Highspire, PA 17034	Fishing Creek TSF	York County Conservation District 118 Pleasant Acres Road York, PA 17402 717-840-7430
Paradise Township York County	PAG2006704108-R	Country Club Heights 1500 Baltimore Pike Hanover, PA 17331	Beaver Creek WWF	York County Conservation District 118 Pleasant Acres Road York, PA 17402 717-840-7430
Windsor Township York County	PAG2006707094	Rockledge 336 West King Street Lancaster, PA 17603	Pine Creek CWF	York County Conservation District 118 Pleasant Acres Road York, PA 17402 717-840-7430
East Manchester Township York County	PAG2006710002	Northern Heights 400 North Cedar Street Lititz, PA 17543	UNT to Susquehanna River WWF	York County Conservation District 118 Pleasant Acres Road York, PA 17402 717-840-7430
South Londonderry Township Lebanon County	PAG003810007	John M. DiSanto Triple Crown Corporation 5351 Jaycee Avenue Harrisburg, PA 17112	Spring Creek WWF	Lebanon County Conservation District 2120 Cornwall Road Suite 5 Lebanon, PA 17042 717-272-3908, Ext. 4
North Londonderry Township Lebanon County	PAG2003810006	Stephen Myers The Hershey Company 1025 Reese Avenue P. O. Box 805 Hershey, PA 17033	Quarry Creek—Spring Creek WWF-MF	Lebanon County Conservation District 2120 Cornwall Road Suite 5 Lebanon, PA 17042 717-272-3908, Ext. 4
Bethel Township Lebanon County	PAG2003810005	David W. Brubaker Brubaker & Kuhn, Inc. P. O. Box 38 Fredericksburg, PA 17026	Little Swatara Creek WWF	Lebanon County Conservation District 2120 Cornwall Road Suite 5 Lebanon, PA 17042 717-272-3908, Ext. 4
East Hanover Township Lebanon County	PAG2003809011-1	Timothy Bartholomew Commonwealth of Pennsylvania Building 0-47 Fort Indiantown Gap Annville, PA 17003	Indiantown Run CWF	Lebanon County Conservation District 2120 Cornwall Road Suite 5 Lebanon, PA 17042 717-272-3908, Ext. 4
College Township Centre County	PAG2001410005	Paul Silvis Redline Speedshine Car Wash 600 Siltop Lane Port Matilda, PA 16870	UNT to Spring Creek CWF	Centre County Conservation District 414 Holmes Avenue Suite 4 Bellefonte, PA 16823 (814) 355-6817
Spring Township Centre County	PAG2001410007	Tom Hood HoodCo, Inc. 649 East Rolling Ridge Drive Bellefonte, PA 16823	UNT to Logan Branch CWF	Centre County Conservation District 414 Holmes Avenue Suite 4 Bellefonte, PA 16823 (814) 355-6817

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<i>Facility Location: Municipality & County</i>	<i>Permit No.</i>	<i>Applicant Name & Address</i>	<i>Receiving Water / Use</i>	<i>Contact Office & Phone No.</i>
Somerset County Berlin Borough	PAG02005610002	Tom Croner 3872 Huckleberry Highway Berlin, PA 15530	Stonycreek River CWF	Somerset County Conservation District 6024 Glades Pike Suite 103 Somerset, PA 15501 814-445-4352
Elk County Fox Township	PAG02002410001	Rebco, Inc., 650 Brandy Camp Road Kersey, PA 15846	Benninger Creek CWF	Elk County Conservation District 814-776-5373

General Permit Type—PAG-3

<i>Facility Location: Municipality & County</i>	<i>Permit No.</i>	<i>Applicant Name & Address</i>	<i>Receiving Water / Use</i>	<i>Contact Office & Phone No.</i>
Berks County Maidencreek Township	PAR213552	Albrecht Schall Lehigh Cement Company 7660 Imperial Way Allentown, PA 18195-1040	Maidencreek WWF 3B	DEP—SCRO—WQM 909 Elmerton Avenue Harrisburg, PA 17110 717-705-4707
York County Newberry Township	PAR603587	Charles Black LKQ Penn-Mar, Inc. 269 River Road York Haven, PA 17370-9009	Susquehanna River WWF 7E	DEP—SCRO—WQM 909 Elmerton Avenue Harrisburg, PA 17110 717-705-4707
Mifflin County Decatur Township	PAR603550	Mike Parsons Parsons Auto Salvage 3760 Old State Road McClure, PA 17841	UNT Meadow Creek CWF 12A	DEP—SCRO—WQM 909 Elmerton Avenue Harrisburg, PA 17110 717-705-4707
Juniata County Fayette Township	PAR223530	Doug Ryan Tangent Rail Products, Inc. McAlisterville, PA 17049-0251	Little Lost Creek TSF 12A	DEP—SCRO—WQM 909 Elmerton Avenue Harrisburg, PA 17110 717-705-4707
Tioga County Ward Township	PAR504806	Pine Hill, Inc. P. O. Box 62 Blossburg, PA 16912	UNT Fall Brook CWF	Northcentral Regional Office Water Management Program 208 West Third Street Suite 101 Williamsport, PA 17701 (570) 327-3664
Wayne Township Lawrence County	PAG049583	Seth Michaels 840 Sewickley Street Ellwood City, PA 16117	Unnamed tributary to the Beaver River 20-B	DEP—NWRO Water Management 230 Chestnut Street Meadville, PA 16335-3481 814/332-6942
Neshannock Township Lawrence County	PAG049581	Tom Barnes 190 Southbrook Drive New Castle, PA 16105	Unnamed tributary to Neshannock Creek 20-A	DEP—NWRO Water Management 230 Chestnut Street Meadville, PA 16335-3481 814/332-6942
West Salem Township Mercer County	PAG049575	Norman Sharp 298 Orangeville Road Greenville, PA 16125	Unnamed tributary to Big Run 20-A	DEP—NWRO Water Management 230 Chestnut Street Meadville, PA 16335-3481 814/332-6942

General Permit Type—PAG-10

Facility Location:

Municipality & County
 Shrewsbury Penn, Franklin Moreland and Jordan Townships Lycoming County Jackson Sugarloaf Greenwood and Benton Townships Columbia County

Permit No.
 PAG104818

Applicant Name & Address
 XTO Energy, Inc.
 810 Houston Street
 Forth Worth, TX 76102

Receiving Water/Use
 Muncy Creek
 Gregs Run
 Sugar Run
 Jakes Run
 Derr Run
 Little Indian Run
 Little Muncy Creek
 Little Sugar Run
 Broad Run
 German Run
 Laurel Run
 West Branch Little Muncy Creek
 West Creek
 Buck Run
 Lick Run
 Green Creek
 Spencer Run
 UNT to Fishing Creek
 Fishing Creek
 Cully Run
 All CWF
 Except Muncy Creek and Green Creek
 TSF

Contact Office & Phone No.
 Northcentral Regional Office
 Water Management Program
 208 West Third Street
 Suite 101
 Williamsport, PA 17701
 (570) 327-3664

STATE CONSERVATION COMMISSION

NUTRIENT MANAGEMENT PLANS RELATED TO APPLICATIONS FOR NATIONAL POLLUTION DISCHARGE ELIMINATION SYSTEM (NPDES) PERMITS FOR CONCENTRATED ANIMAL FEEDING OPERATIONS (CAFO)

The State Conservation Commission has taken the following actions on previously received applications for nutrient management plans under the act of July 6, 2005 (Act 38 of 2005, 3 Pa.C.S. §§ 501—522) (hereinafter referred to as Act 38), for agricultural operations that have or anticipate submitting applications for new, amended or renewed NPDES permits, or Notices of Intent for coverage under a general permit, for CAFOs, under 25 Pa. Code Chapter 92. This notice is provided in accordance with 25 Pa. Code Chapter 92 and 40 CFR Part 122, implementing The Clean Streams Law (35 P. S. §§ 691.1—691.1001) and the Federal Clean Water Act.

Persons aggrieved by any action may appeal under section 517 of Act 38, section 4 of the Environmental Hearing Board Act (35 P. S. § 7514) and 2 Pa.C.S. §§ 501—508 and 701—704 (relating to Administrative Agency Law) to the Environmental Hearing Board, Second Floor, Rachael Carson State Office Building, 400 Market Street, P. O. Box 8457, Harrisburg, PA 17105-8457, (717) 787-3483. TDD users should contact the Environmental Hearing Board (Board) through the Pennsylvania AT&T Relay Service at (800) 654-5984. Appeals must be filed with the Board within 30 days of publication of this notice in the *Pennsylvania Bulletin*. Copies of the appeal form and the Board's rules of practice and procedure may be obtained from the Board. The appeal form and the Board's rules of practice and procedure are also available in Braille or on audiotape from the Secretary of the Board at (717) 787-3483. This paragraph does not, in and of itself, create any right of appeal beyond that permitted by applicable statutes and decision law.

For individuals who wish to challenge an action, appeals must reach the Board within 30 days. A lawyer is not needed to file an appeal with the Board.

Important legal rights are at stake, however, so individuals should show this notice to a lawyer at once. Persons who cannot afford a lawyer may qualify for pro bono representation. Call the Secretary of the Board at (717) 787-3483 for more information.

CAFO PUBLIC NOTICE SPREADSHEET—ACTIONS

Agricultural Operation Name and Address	County	Total Acres	Animal Equivalent Units	Animal Type	Special Protection Waters (HQ or EV or NA)	Approved or Disapproved
Robert L. Brubaker, Jr. 2871 North Colebrook Road Manheim, PA 17545	Lancaster	38.5	386.41	Swine Pullet	NA	Approved

<i>Agricultural Operation Name and Address</i>	<i>County</i>	<i>Total Acres</i>	<i>Animal Equivalent Units</i>	<i>Animal Type</i>	<i>Special Protection Waters (HQ or EV or NA)</i>	<i>Approved or Disapproved</i>
Glenn and Joel Martin 2077 Mountain Road Manheim, PA 17545	Lancaster	212.1	64.08	Ducks	NA	Approved
Lime Valley Farm, Inc. Steve Good 1415 Lime Valley Road Lancaster, PA 17602	Lancaster	140	501.08	Broiler Dairy	NA	Approved
Greystone Pork Farm 12950 Forge Road Mercersburg, PA 17236	Franklin	0	715.12	Swine	NA	Approved
Longacre Farm Path Valley Road Dry Run, PA 17220	Franklin	65	576.82	Swine	NA	Approved

NUTRIENT MANAGEMENT PLAN—PUBLIC NOTICE SPREADSHEET—ACTIONS

<i>Agricultural Operation Name and Address</i>	<i>County</i>	<i>Total Acres</i>	<i>Animal Equivalent Units</i>	<i>Animal Type</i>	<i>Special Protection Waters (HQ or EV or NA)</i>	<i>Approved or Disapproved</i>
Dr. Joe Jurgielewicz and Son's Ltd.	Northumberland	60.2	80.1	Finishing Ducks	None	Approved

PUBLIC WATER SUPPLY (PWS) PERMITS

The Department of Environmental Protection has taken the following actions on applications received under the Pennsylvania Safe Drinking Water Act (35 P. S. §§ 721.1—721.17) for the construction, substantial modification or operation of a public water system.

Persons aggrieved by an action may appeal, under section 4 of the Environmental Hearing Board Act (35 P. S. § 7514) and 2 Pa.C.S. §§ 501—508 and 701—704 (relating to the Administrative Agency Law), to the Environmental Hearing Board, Second Floor, Rachel Carson State Office Building, 400 Market Street, P. O. Box 8457, Harrisburg, PA 17105-8457, (717) 787-3483. TDD users should contact the Environmental Hearing Board (Board) through the Pennsylvania AT&T Relay Service, (800) 654-5984. Appeals must be filed with the Board within 30 days of publication of this notice in the *Pennsylvania Bulletin*, unless the appropriate statute provides a different time period. Copies of the appeal form and the Board's rules of practice and procedure may be obtained from the Board. The appeal form and the Board's rules of practice and procedure are also available in Braille or on audiotape from the Secretary of the Board at (717) 787-3483. This paragraph does not, in and of itself, create any right of appeal beyond that permitted by applicable statutes and decision law.

For individuals who wish to challenge an action, appeals must reach the Board within 30 days. A lawyer is not needed to file an appeal with the Board.

Important legal rights are at stake, however, so individuals should show this notice to a lawyer at once. Persons who cannot afford a lawyer may qualify for pro bono representation. Call the Secretary to the Board at (717) 787-3483 for more information.

SAFE DRINKING WATER

Actions taken under the Pennsylvania Safe Drinking Water Act

Southeast Region: Water Supply Management Program Manager, 2 East Main Street, Norristown, PA 19401.

Permit No. 1510507, Public Water Supply.

Applicant **Aqua Pennsylvania, Inc.**
762 West Lancaster Avenue
Bryn Mawr, PA 19010

Township East Caln

County **Chester**

Type of Facility PWS

Consulting Engineer C.E.T. Engineering Services
1240 North Mountain Road
Harrisburg, PA 17112

Permit to Construct Issued March 25, 2010

Permit No. 1510508, Public Water Supply.

Applicant **Aqua Pennsylvania, Inc.**
762 West Lancaster Avenue
Bryn Mawr, PA 19010

Township Schuylkill

County **Chester**

Type of Facility PWS

Consulting Engineer C.E.T. Engineering Services, Inc.
1240 North Mountain Road
Harrisburg, PA 17112

Permit to Construct Issued August 25, 2009

Operations Permit 1510508 issued to **Aqua Pennsylvania, Inc.**, 762 West Lancaster Avenue, Bryn Mawr, PA 19010 (PWSID No. 1460073) Schuylkill Township, Chester County on August 25, 2009, for the operation of

painting and Baffles at Pickering Clearwells 1 and 2, located at Schuylkill Township, **Chester County**.

Southcentral Region: Water Supply Management Program Manager, 909 Elmerton Avenue, Harrisburg, PA 17110.

Permit No. 0610501 MA, Minor Amendment, Public Water Supply.

Applicant **Borough of Fleetwood**
 Municipality Ruscombmanor Township
 County **Berks**
 Responsible Official Eric Burkert
 Water Department Head
 110 West Arch Street
 Suite 104
 Fleetwood, PA 19522
 Type of Facility Addition of 500,000 gallon finished water storage tank to existing system.
 Consulting Engineer Bradley D. Smith, P. E.
 ARRO Consulting, Inc.
 50 Berkshire Court
 Suite 104
 Wyomissing, PA 19610
 Permit to Construct Issued: 4/23/2010

Permit No. 3610502, Public Water Supply.

Applicant **Mt. Hope Nazerene Community**
 Municipality Rapho Township
 County **Lancaster**
 Responsible Official Joseph G. Mraz, Administrator
 3026 Mt. Hope Home Road
 Manheim, PA 17545-9529
 Type of Facility Convert UV disinfection to sodium hypochlorite disinfection system.
 Consulting Engineer Charles A. Kehew II, P. E.
 James A. Holley & Associates, Inc.
 18 South George Street
 York, PA 17401
 Permit to Construct Issued: 4/29/2010

Permit No. 3610503, Public Water Supply.

Applicant **Columbia Water Company**
 Municipality West Hempfield Township
 County **Lancaster**
 Responsible Official David T. Lewis, General Manager
 220 Locust Street
 Columbia, PA 17512
 Type of Facility Addition of Chlorine Booster Pump Station on Marietta Avenue.
 Consulting Engineer David T. Lewis, P. E.
 Columbia Water Company
 220 Locust Street
 Columbia, PA 17512
 Permit to Construct Issued: 4/29/2010

Permit No. 0110502 MA, Minor Amendment, Public Water Supply.

Applicant **Gettysburg Municipal Authority**
 Municipality Cumberland Township
 County **Adams**
 Responsible Official Mark Guise, Manager
 601 East Middle Street
 Gettysburg, PA 17325-3307
 Type of Facility Replacement of the filter underdrains and the replacement of the filter media.
 Consulting Engineer Diana M. Young, P. E.
 Buchart-Horn
 445 West Philadelphia Street
 York, PA 17405-7040
 Permit to Construct Issued: 4/27/2010

Operations Permit issued to **United Water Pennsylvania**, 7220015, Hummelstown Borough, **Dauphin County** on 4/29/2010 for the operation of facilities approved under Construction Permit No. 2205504.

Operations Permit issued to **Delta Borough**, 7670070, Delta Borough, **York County** on 4/28/2010 for the operation of facilities approved under Construction Permit No. 6707511.

Operations Permit issued to **Cherry Lane Motor Inn**, 7360353, East Lampeter Township, **Lancaster County** on 4/30/2010 for the operation of facilities approved under Construction Permit No. 3609503.

Operations Permit issued to **Wernersville Municipal Authority**, 3060076, South Heidelberg Township, **Berks County** on 4/23/2010 for the operation of facilities approved under Construction Permit No. 0609516 MA.

Operations Permit issued to **Newville Borough Water and Sewer Authority**, 7210041, West Pennsboro and Penn Townships, **Cumberland County** on 5/4/2010 for the operation of facilities approved under Construction Permit No. 2107501.

Southwest Region: Water Supply Management Program Manager, 400 Waterfront Drive, Pittsburgh, PA 15222-4745.

Operations Permit issued to **Green Township Municipal Authority**, Barr Slope water treatment plant, P. O. Box 129, 77 Musser Street, Commodore, PA 15729 (PWSID No. 5320010), Green Township, **Indiana County** on May 7, 2010, for the operation of facilities approved under Permit No. 3209503.

Operations Permit issued to **Beaver Falls Municipal Authority**, 1425 Eighth Avenue, Beaver Falls, PA 15010 (PWSID No. 5040012), Eastvale Borough, **Beaver County** on May 7, 2010, for the operation of facilities approved under Construction Permit No. 0407508MA.

Operations Permit issued to **Authority of the Borough of Charleroi**, 3 McKean Avenue, P. O. Box 211, Charleroi, PA 15022 (PWSID No. 5630039), Borough of Speers, **Washington County** on May 7, 2010, for the operation of facilities approved under Construction Permit No. 6306510MA.

Operations Permit issued to **Pennsylvania American Water Company**, 800 West Hersheypark Drive, P. O. Box 888, Hershey, PA 17033 (PWSID No. 5020039),

Brownsville Borough, **Fayette County** on May 7, 2010, for the operation of facilities approved under Construction Permit No. 2609504.

Operations Permit issued to **Pennsylvania American Water Company**, 800 West Hersheypark Drive, P. O. Box 888, Hershey, PA 17033 (PWSID No. 5260005), Mount Pleasant Township, **Washington County** on May 3, 2010, for the operation of facilities approved under Construction Permit No. 0208515MA.

Northwest Region: Water Supply Management Program Manager, 230 Chestnut Street, Meadville, PA 16335-3481.

Operations Permits issued to **Aqua Pennsylvania, Inc.—Oakland Beach Division**, PWSID No. 6200017, Sadsbury Township, **Crawford County**, April 30, 2010, for the operation of the sequestration facility in the Oakland Beach well building. This action is in response to an inspection by Department of Environmental Protection personnel conducted April 29, 2010, and as approved under construction permit 368W001-T2-MA3, issued April 29, 2010.

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, Telephone: 717-705-4707.

Plan Location: on Herr's Ridge Road in Cumberland Township, Adams County.

<i>Borough or Township</i>	<i>Borough or Township Address</i>	<i>County</i>
Cumberland Township	1370 Fairfield Road Gettysburg, PA 17325	Adams County

Plan Description: The development proposed construction of a new single family home on an existing lot and utilizing a small flow treatment facility for wastewater disposal. The name of the project is Robert E. Plank and the code number is A3-01911-284-3s. The plan was disapproved because the proposed method of sewage disposal would create a potential nuisance condition at the point of discharge.

LAND RECYCLING AND ENVIRONMENTAL REMEDIATION

UNDER ACT 2, 1995

PREAMBLE 2

The following plans and reports were submitted under the Land Recycling and Environmental Remediation Standards Act (35 P. S. §§ 6026.101—6026.908).

Provisions of Chapter 3 of the Land Recycling and Environmental Remediation Standards Act (act) require the Department of Environmental Protection (Department) to publish in the *Pennsylvania Bulletin* a notice of submission of plans and reports. A final report is submitted to document cleanup of a release of a regulated substance at a site to one of the act's remediation standards. A final report provides a description of the site investigation to characterize the nature and extent of contaminants in environmental media, the basis for selecting the environmental media of concern, documentation supporting the selection of residential or nonresidential exposure factors, a description of the remediation

performed and summaries of sampling analytical results which demonstrate that remediation has attained the cleanup standard selected. Submission of plans and reports, other than the final report, shall also be published in the *Pennsylvania Bulletin*. These include the remedial investigation report, risk assessment report and cleanup plan for a Site-Specific Standard remediation. A remedial investigation report includes conclusions from the site investigation, concentration of regulated substances in environmental media; benefits of refuse of the property and, in some circumstances, a fate and transport analysis. If required, a risk assessment report describes potential adverse effects caused by the presence of regulated substances. If required, a cleanup plan evaluates the abilities of potential remedies to achieve remedy requirements.

For further information concerning plans or reports, contact the Environmental Cleanup Program manager in the Department regional office after which the notice of receipt of plans or reports appears. If information concerning plans or reports is required in an alternative form, contact the Community Relations Coordinator at the appropriate regional office. TDD users may telephone the Department through the Pennsylvania AT&T Relay Service at (800) 654-5984.

The Department has received the following plans and reports:

Southeast Region: Environmental Cleanup Program Manager, 2 East Main Street, Norristown, PA 19401.

1610 Republic Road Property, Lower Merion Township, **Montgomery County**. Stacie Cottone, J & J Spill Service and Supplies, Inc., P. O. Box 370, Blue Bell, PA 19422 on behalf of John Swanson, Han Mar Associates, MLP and Mark Hankin, Building 1, 5301 Tacony Street, Philadelphia, PA 19137 has submitted a Final Report concerning remediation of site soil contaminated with diesel fuel. The Report is intended to document remediation of the site to meet the Statewide Health Standard.

Johnson & Johnson Pharmaceutical Research and Development, LLC, Lower Gwynedd Township, **Montgomery County**. Heath A. Brown, Environmental Standards, 1140 Valley Forge Road, Valley Forge, PA 19482, Steven Ohrwawchel, Lewis Environmental Group, 155 Railroad Plaza, Royersford, PA 19468 on behalf of David G. Link, Johnson & Johnson PRD, LLC, Welsh and Mckean Roads, Spring House, PA 19477 has submitted a 90 day Final Report concerning remediation of site soil contaminated with unleaded gasoline. The Report is intended to document remediation of the site to meet the Statewide Health Standard.

Buemi Residence, Bethel Township, **Delaware County**. Brenda MacPhail Kellogg, REPSG, Inc., 6901 Kingsessing Avenue, 2nd Floor, Philadelphia, PA 19142, Thomas Maloney, Erie Insurance, 1400 North Providence Road, Media, PA 19063 on behalf of Joseph and Colleen Buemi, 3062 Booth Drive, Bethel, PA 19060 has submitted a Final Report concerning remediation of site soil contaminated with No. 2 fuel oil. The Report is intended to document remediation of the site to meet the Statewide Health Standard.

Southcentral Region: Environmental Cleanup Program Manager, 909 Elmerton Avenue, Harrisburg, PA 17110.

Service Oil Company/Aronson-Stern Property, Swatara Township, **Dauphin County**. GeoServices, Ltd., 1525 Cedar Cliff Drive, Camp Hill, PA 17011, on behalf of Raphael Aronson, Deborah Aronson-Stern and Service Oil Company, 3798 Paxton Street, Harrisburg, PA 17111-1412

submitted a combined Remedial Investigation and Final Report concerning remediation of site soils and groundwater contaminated with leaded gasoline from an underground pipeline. The Report is intended to document remediation of the site to meet the Site-Specific Standard.

Northcentral Region: Environmental Cleanup Program Manager, 208 West Third Street, Williamsport, PA 17701.

Barry L. Kuhns Accident, Penn Township, **Snyder County**. Northridge Group, Inc., 1172 Ridge Road, Northumberland, PA 17857 on behalf of Charles and Ruth Knouse, 2242 SR 204, Selinsgrove, PA 17870 has submitted a Final Report concerning remediation of site soil contaminated with diesel fuel. The Report is intended to document remediation of the site to meet the Statewide Health Standard.

Northwest Region: Environmental Cleanup Program Manager, 230 Chestnut Street, Meadville, PA 16335-3481.

New Castle Refractories, City of New Castle, **Lawrence County**. INTEX Environmental Group, Inc., 6205 Easton Road, Pipersville, PA 18947 on behalf of Dixon Ticonderoga Company, 195 International Parkway, Heathrow, FL 32746 has submitted a Final Report concerning remediation of site soils contaminated with lead and site groundwater contaminated with arsenic, bis[2-ethylhexyl] phthalate, lead, and thallium. The Report is intended to document remediation of the site to meet the Statewide Health Standard.

LAND RECYCLING AND ENVIRONMENTAL REMEDIATION

UNDER ACT 2, 1995

PREAMBLE 3

The Department has taken action on the following plans and reports under the Land Recycling and Environmental Remediation Standards Act (35 P. S. §§ 6026.101—6026.908).

Provisions of 25 Pa. Code § 250.8, administration of the Land Recycling and Environmental Remediation Standards Act (act), require the Department of Environmental Protection (Department) to publish in the *Pennsylvania Bulletin* a notice of final actions on plans and reports. A final report is submitted to document cleanup of a release of a regulated substance at a site to one of the remediation standards of the act. A final report provides a description of the site investigation to characterize the nature and extent of contaminants in environmental media, the basis of selecting the environmental media of concern, documentation supporting the selection of residential or nonresidential exposure factors, a description of the remediation performed and summaries of sampling methodology and analytical results which demonstrate that the remediation has attained the cleanup standard selected. Plans and reports required by provisions of the act for compliance with selection of remediation to a Site-Specific Standard, in addition to a final report, include a remedial investigation report, risk assessment report and cleanup plan. A remedial investigation report includes conclusions from the site investigation, concentration of regulated substances in environmental media, benefits of refuse of the property and, in some circumstances, a fate and transport analysis. If required, a risk assessment report describes potential adverse effects caused by the presence of regulated substances. If required, a cleanup plan evaluates the abilities of potential remedies to achieve remedy requirements. A work plan for conducting a baseline remedial investigation is re-

quired 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:

Southeast Region: Environmental Cleanup Program Manager, 2 East Main Street, Norristown, PA 19401.

Holland Shopping Center, Northampton Township, **Bucks County**. Keith T. D'Ambrosio, Whitestone Associates, Inc., 1600 Manor Drive, Chalfont, PA 18914 on behalf of Matthew Winters, Wawa, Inc., Red Roof Office, 260 Baltimore Pike, Wawa, PA 19063 has submitted a Final Report concerning the remediation of site groundwater and soil contaminated with No. 2 fuel oil. The Final Report demonstrated attainment of the Statewide Health Standard and was approved by the Department of Environmental Protection on April 27, 2010.

Funk Residence, West Brandywine Township, **Chester County**. Dean Druckenmiller, Synergy Environmental, Inc., 155 Railroad Plaza, Royersford, PA 19468, Mark Potter, Fairmont Specialty Group, P. O. Box 2807, Houston, TX 77252 on behalf of Walter Funk, 103 Barons Hill Road, Brandamore, PA 19316 has submitted a Final Report concerning the remediation of site groundwater and soil contaminated with No. 2 fuel oil. The Final Report demonstrated attainment of the Statewide Health Standard and was approved by the Department of Environmental Protection on April 29, 2010.

Mill Street Industrial Associates LP, Quakertown Borough, **Bucks County**. Michael Christie, Penn Environmental & Remediation, Inc., 2755 Bergey Road, Hatfield, PA 19440 on behalf of Roger Altemose, Mill Street Industrial Associates, LP, 2880 Bergey Road, Suite D, Hatfield, PA 19440 has submitted a Final Report concerning the remediation of site soil contaminated with lead. The Final Report demonstrated attainment of the Site-Specific Standard and was approved by the Department of Environmental Protection on April 21, 2010.

Frazer Shopping Center, East Whiteland Township, **Chester County**. Phil Gray, Phoenix GeoEnvironmental, LLC, 445 Bethlehem Pike, Suite 108, Colmar, PA 18915 on behalf of Michael Stapler, Metropool Properties, LP, P. O. Box 1189, Frazer, PA 19355 has submitted a Remedial Investigation Report/Final Report concerning the remediation of site groundwater and soil contaminated with chlorinated solvents. The Remedial Investigation Report/Final Report was given and extension by the Department of Environmental Protection on April 21, 2010.

(REVISED) SC Loveland Piers 66 69 N, City of Philadelphia, **Philadelphia County**. Craig Herr, RT Environmental Services, Inc., 215 West Church Road, King of Prussia, PA 19406 on behalf of James Anderson, Berks Street Corporation, 6958 Torresdale Avenue, Philadelphia, PA 19135 has submitted a Final Report concerning the remediation of site soil and groundwater contaminated with inorganic. The Final Report did not demonstrate attainment of the Statewide Health Standard and was placed on hold by the Department of Environmental Protection on March 30, 2010.

PenFlex, East Whiteland Township, **Chester County**. Dennis Libenson, Environmental Consulting, Inc., 500 East Washington Street, Suite 375, Norristown, PA 19401 on behalf of Ray Brown, 271 LP 1404 Thursh Lane, West Chester, PA 19382 has submitted a Final Report concerning the remediation of site groundwater contaminated with chlorinated solvents. The Final Report demonstrated attainment of the Site-Specific Standard and was approved by the Department of Environmental Protection on August 12, 2008.

Clifford Residence, East Coventry Township, **Chester County**. Charles Burger, Mountain Research, LLC, 825 25th Street, Altoon, PA 16601, Clare Erskine, Allstate Insurance Company, 1200 Artwater Drive, Suite 110, Malvern, PA 19355 on behalf of Karen Clifford, 367 Bethel Church Road, Spring City, PA 19475 has submitted a Final Report concerning the remediation of site soil contaminated with No. 2 fuel oil. The Final Report demonstrated attainment of the Statewide Health Standard and was approved by the Department of Environmental Protection on April 23, 2010.

Rite Aid 2451, City of Philadelphia, **Philadelphia County**. Scott Treherne, BL Companies, 213 Market Street, 6th Floor, Harrisburg, PA 17101, Ken Yoder BL Companies, 213 Market Street, 6th Floor, Harrisburg, PA 17101 on behalf of Robert Lerner, Rite Aid Corporation, 30 Hunter Lane, Camp Hill, PA 17011 has submitted a Final Report concerning the remediation of site groundwater and soil contaminated with used motor oil. The Final Report did not demonstrate attainment of the Statewide Health Standard and was disapproved by the Department of Environmental Protection on April 21, 2010.

Woronko Residence, Buckingham Township, **Bucks County**. Jeremy Bolyn, Environmental Maintenance Company, Inc., 1420 East Mermaid Lane, Glenside, PA 19038 on behalf of George Woronko, 4109 Tersher Drive, Doylestown, PA 18902 has submitted a Final Report concerning the remediation of site soil contaminated with No. 2 fuel oil. The Final Report demonstrated attainment of the Statewide Health Standard and was approved by the Department of Environmental Protection on April 6, 2010.

Danko Property, Middletown Township, **Bucks County**. Jeremy Bolyn, Environmental Maintenance Company, Inc., 1420 East Mermaid Lane, Glenside, PA 19038 on behalf of Mark Danko, 18 Quakerhill Road, Levittown, PA 19057 has submitted a Final Report concerning the remediation of site soil contaminated with No. 2 fuel oil. The Final Report demonstrated attainment of the Statewide Health Standard and was approved by the Department of Environmental Protection on April 19, 2010.

Northeast Region: Ronald S. Brezinski, Environmental Cleanup Program Manager, 2 Public Square, Wilkes-Barre, PA 18711-0790.

Hartley Residence, 4920 SR 374, Lenox Township, **Susquehanna County**. Dean Cruciani and Martin Gilgallon, Pennsylvania Tectonics, Inc., 826 Main Street, Peckville, PA 18452 submitted a Final Report (on behalf of their client, Carol Hartley, 4920 SR 374, Lenoxville, PA 18441), concerning the remediation of soil found to have been impacted by No. 2 fuel oil as a result of an accidental release, which was due to a broken filter and supply line at the base of the heating oil aboveground storage tank. The Report documented attainment of the Statewide Health Standard for soil and was approved on April 30, 2010. The Report was originally submitted within 90 days of the release.

Southcentral Region: Environmental Cleanup Program Manager, 909 Elmerton Avenue, Harrisburg, PA 17110.

Verdelli Farms Property, Hummelstown Borough, **Dauphin County**. Herbert, Rowland & Grubic, Inc., 1820 Linglestown Road, Harrisburg, PA 17110, on behalf of Verdelli Reality, P.O. Box 133, Hummelstown, PA 17036, submitted a Final Report concerning remediation of site soils contaminated with No. 2 fuel oil from an underground storage tank. The Final Report demonstrated attainment of the Residential Statewide Health Standard, and was approved by the Department of Environmental Protection on May 7, 2010. Groundwater will be addressed in a separate report.

Hayes Construction Company/1900 Van Reed Road Site, Spring Township, **Berks County**. Liberty Environmental, Inc., 50 North Fifth Street, Fifth Floor, Reading, PA 19601, on behalf of Hayes Construction Company, 2610 Westview Drive, Wyomissing, PA 19610, and Will-O-Hill Apartments, LP, 615 Chestnut Street, Suite 120, Philadelphia, PA 19106, submitted a Final Report concerning remediation of site soils impacted by petroleum hydrocarbons from an unregulated underground storage tank. Groundwater was determined not to be of environmental concern. The Final Report demonstrated attainment of the Residential Statewide Health Standard, and was approved by the Department of Environmental Protection on May 7, 2010.

Northcentral Region: Environmental Cleanup Program Manager, 208 West Third Street, Williamsport, PA 17701.

Borough of Emporium Former Waste Disposal Area, Emporium Borough, **Cameron County**, Malcolm Pirnie, 855 Route 145, Suite 210, Clifton Park, NY 12065 on behalf of GTE Operations Support Incorporate, One Verizon Way, VC 34W414, Basking Ridge, NJ 07920 and the Borough of Emporium has submitted a Final Report concerning remediation of site soil and groundwater contaminated with VOC's and organics. The Final Report demonstrated attainment of the Site-Specific Standard and was approved by the Department of Environmental Protection on May 5, 2010.

Dana E. Erway Farm Truck Accident, Eulalia Township, **Potter County**. Minuteman Spill Response, Inc., P.O. Box 10, Mifflinville, PA 18631 on behalf of Dana Erway, 1027 Route 6 West, Coudersport, PA 16915 has submitted within 90 days of the release a Final Report concerning remediation of site soil contaminated with diesel fuel. The Final Report demonstrated attainment of the Statewide Health Standard was approved by the Department of Environmental Protection on May 5, 2010.

Southwest Region: Environmental Cleanup Program Manager, 400 Waterfront Drive, Pittsburgh, PA 15222-4745.

LTV Southside Parcel D3, City of Pittsburgh, **Allegheny County**. Mr. Martin C. Knuth, Civil and Environmental Consultants, Inc. on behalf of the Urban Redevelopment Authority of Pittsburgh, 200 Ross Street, Pittsburgh, PA and AEO Realty Co., LLC has submitted a Final Report concerning remediation of site soils contaminated with metals, volatiles and semi-volatiles. The Report Final demonstrated attainment of the Site-Specific Standard and was approved on May 5, 2010. An environmental covenant was executed.

AIR QUALITY

General Plan Approval and Operating Permit Usage Authorized under the Air Pollution Control Act (35 P. S. §§ 4001—4015) and 25 Pa. Code Chapter 127 to construct, modify, reactivate or operate air contamination sources and associated air cleaning devices.

Northeast Region: Air Quality Program, 2 Public Square, Wilkes-Barre, PA 18711-0790. Contact: Ray Kempa, New Source Review Chief—Telephone: 570-826-2507.

54-329-010GP9: R.E. Pierson Construction Co. (P. O. Box 430, Woodstown, NJ 08098-0430) on April 7, 2010, to install and operate a portable I/C engine at their site at Middleport Materials in Walker Township, **Schuylkill County**.

58-310-026GP3: Meshoppen Stone, Inc. (P. O. Box 127, Frantz Road, Meshoppen, PA 18630) on April 19, 2010, to construct and operate a Portable Crushing Operation with water sprays in Auburn Township, **Susquehanna County**.

58-329-017GP9: Meshoppen Stone, Inc. (P. O. Box 127, Frantz Road, Meshoppen, PA 18630) on April 19, 2010, to install and operate a Diesel I/C engine in Auburn Township, **Susquehanna County**.

Southcentral Region: Air Quality Program, 909 Elmerton Avenue, Harrisburg, PA 17110. Contact: Thomas J. Hanlon, Chief, East Permitting Section—Telephone: 717-705-4862 or Gary Helsel, Chief, West Permitting Section—Telephone: 814-949-7935.

GP3-01-05016: ISP Minerals, Inc. (P. O. Box O, Blue Ridge Summit, PA, 17214-0914) on May 5, 2010, for an air classifier, 2 belt conveyors and screw conveyor at their quarrying and stone processing facility in Hamiltonban Township, **Adams County**.

Southwest Region: Air Quality Program, 400 Waterfront Drive, Pittsburgh, PA 15222-4745. Contact: Barb Hatch, Environmental Engineer Managers—Telephone: 412-442-4163/5226.

GP5-63-00946: Atlas America, LLC (P. O. Box 611, 1550 Coraopolis Heights Road, 2nd Floor, Moon Township, PA 15108) on May 6, 2010, to use GP-5 to allow operation of one (1) Caterpillar G3516-TALE, lean-burn natural gas-fired engine, rated at 1,340 Bhp, and one (1) NATCO dehydrator, rated at 250,000 Btu/hr at their Deemston Compressor Station in Deemston Township, **Washington County**.

Northwest Region: Air Quality Program, 230 Chestnut Street, Meadville, PA 16335-3481. Contact: Mark Gorog, New Source Review Chief—Telephone: 814-332-6940.

GP5-42-196A: Catalyst Energy, Inc.—Swamp Angel Compressor Station (242 Sand Road, Lewis Run, PA

16738) for operation of a natural gas fired compressor engine (BAQ-GPA/GP-5) in Lafayette Township, **McKean County**.

Plan Approvals Issued under the Air Pollution Control Act (35 P. S. §§ 4001—4015) and regulations in 25 Pa. Code Chapter 127, Subchapter B relating to construction, modification and reactivation of air contamination sources and associated air cleaning devices.

Southeast Region: Air Quality Program, 2 East Main Street, Norristown, PA 19401. Contact: Sachin Shankar, New Source Review Chief—Telephone: 484-250-5920.

09-0213: DeNucci Excavating Corp. (2807 Old Rodgers Road, Bristol, PA 19007) on May 6, 2010, for operation of a portable crusher and associated diesel-fired engine in Bristol Township, **Bucks County**. The only pollutant of concern from the proposed operation is fugitive particulate matter. Emissions will be controlled by a water spray dust suppression system. The Plan Approval will contain recordkeeping and operating restrictions designed to keep the facility operating within the allowable emissions and all applicable air quality requirements.

23-0114: Henry H. Ottens Manufacturing Co., Inc. (600A Kaiser Drive, Folcroft, PA 19032) on May 11, 2010, for installation of a new savory flavor manufacturing process at their facility in Folcroft Borough, **Delaware County**. The facility will emit 1.82 tons of particulate matter per year before controls. This facility is a non-Title V facility. The Plan Approval and Operating Permit will contain recordkeeping requirements and operating restrictions designed to keep the facility operating within all applicable air quality requirements.

46-0005AF: Merck, Sharpe & Dohme Corp. (Sumneytown Pike, West Point, PA 19486-0004) on May 11, 2010, for installation of one diesel-fired generator to be used for emergency and non-emergency situations at their facility in Upper Gwynedd Township, **Montgomery County**. This installation is not subject to the Department of Environmental Protection NSR regulations or the Federal PSD regulations. There are no add-on control devices for this source. Air contaminant emissions shall not exceed any of the following: 0.12 ton/yr of PM and PM-10; 0.12 ton/yr of SO_x; 2.12 tons/yr of CO; 3.80 tons/yr, and 0.07 ton/yr of VOC. The plan approval will include monitoring, recordkeeping and reporting requirements designed to keep the facility operating within all applicable.

Northeast Region: Air Quality Program, 2 Public Square, Wilkes-Barre, PA 18711-0790. Contact: Ray Kempa, New Source Review Chief—Telephone: 570-826-2507.

48-309-132: Hercules Cement Co., LP, d/b/a Buzzi Unicem USA (501 Hercules Drive, Stockertown, PA 18083) on April 29, 2010, to install new finish mills at their facility in Stockertown Borough, **Northampton County**.

Plan Approval Revisions Issued including Extensions, Minor Modifications and Transfers of Ownership under the Air Pollution Control Act (35 P. S. §§ 4001—4015) and 25 Pa. Code §§ 127.13, 127.13a and 127.32.

Southeast Region: Air Quality Program, 2 East Main Street, Norristown, PA 19401. Contact: Sachin Shankar, New Source Review Chief—Telephone: 484-250-5920.

09-0126C: Air Liquide Electronics U.S., LP (19 Steel Road West, Morrisville, PA 19067) on May 3, 2010, to operate an ammonia purification system in Falls Township, **Bucks County**.

23-0066B: PyroPure, Inc.—T.A. Pyromet (5 Commerce Drive, Aston, PA 19014) on May 10, 2010, to operate a replace baghouse in Chester Township, **Delaware County**.

46-0147A: Chemalloy Co., Inc. (P. O. Box 350, Bryn Mawr, PA 19010) on May 10, 2010, to operate (2) two new manganese compound processing lines and controls in Plymouth Township, **Montgomery County**.

46-0268: Colorcon, Inc. (415 Moyer Boulevard, West Point, PA 19486) on May 10, 2010, to operate a diesel fuel/No. 2 fuel oil-fired internal combustion engine in Lower Salford Township, **Montgomery County**.

Southcentral Region: Air Quality Program, 909 Elmerton Avenue, Harrisburg, PA 17110. Contact: Thomas J. Hanlon, Chief, East Permitting Section—Telephone: 717-705-4862 or Gary Helsel, Chief, West Permitting Section—Telephone: 814-949-7935.

06-05109A: Atlas Minerals & Chemicals (1227 Valley Road, P. O. Box 38, Mertztown, PA 19539) on May 7, 2010, for the construction, modification of their source and cleaning device at their facility in Longswamp Township, **Berks County**. This plan approval was extended.

07-05003C: Norfolk Southern Railway Company (200 North 4th Avenue, Altoona, PA 16601-6702) on May 5, 2010, for the construction, modification of their boilers and related control equipment at their facility in Logan Township, **Blair County**. This plan approval was extended.

Southwest Region: Air Quality Program, 400 Waterfront Drive, Pittsburgh, PA 15222-4745. Contact: M. Gorog and B. Hatch, Environmental Engineer Managers—Telephone: 412-442-4163/5226.

32-00375B: Rosebud Mining Co. (301 Market Street, Kittanning, PA 16201-9642) on May 4, 2010, for plan approval modification to authorize an increase in the annual coal throughput of their facility from 500,000 tons per year to 800,000 tons per year at the Lowry Mine Coal Preparation Plant in White Township, **Indiana County**.

30-00173A: Delta Energy PA—No. 1 350 Hochberg Road, Monroeville, PA 15146) on May 4, 2010, to extend the Plan Approval for construction and temporary operation of a Tire Depolymerization plant in Cumberland Township, **Greene County**. This plan approval has been extended.

63-00549B: Arden Landfill, Inc. (625 Cherrington Parkway, Moon Township, PA 15108) on May 4, 2010, to extend the Plan Approval for expansion of their landfill in Chartiers Township, **Washington County**. This plan approval has been extended.

Title V Operating Permits Issued under the Air Pollution Control Act (35 P. S. §§ 4001—4015) and 25 Pa. Code Chapter 127, Subchapter G.

Southcentral Region: Air Quality Program, 909 Elmerton Avenue, Harrisburg, PA 17110. Contact: Thomas J. Hanlon, Chief, East Permitting Section—Telephone: 717-705-4862 or Gary Helsel, Chief, West Permitting Section—Telephone: 814-949-7935.

67-05022: Leisters Furniture, Inc. (433 Ridge Avenue, Hanover, PA 17331-9512) on May 3, 2010, for their

wood furniture manufacturing facility in Hanover Borough, **York County**. This is a renewal of the Title V operating permit.

Operating Permits for Non-Title V Facilities Issued under the Air Pollution Control Act (35 P. S. §§ 4001—4015) and 25 Pa. Code Chapter 127, Subchapter F.

Southeast Region: Air Quality Program, 2 East Main Street, Norristown, PA 19401. Contact: Janine Tulloch-Reid, Facilities Permitting Chief—Telephone: 484-250-5920.

46-00080: Lower Merion School District (301 East Montgomery Avenue, Ardmore, PA 19003) on May 11, 2010, to operate three (3) boilers which provide heat to the campus building in Lower Merion Township, **Montgomery County**. This action is a renewal of the State-only Operating Permit (Synthetic Minor). The original State-only Operating Permit was issued on April 22, 2005. The renewal contains monitoring, recordkeeping and reporting requirements designed to keep the facility operating within all applicable air quality requirements.

09-00148: Bucks County Community College (275 Swamp Road, Newtown, PA 18940-4106) on May 11, 2010, to operate a higher education facility in Newtown Township, **Bucks County**. The renewal permit is for a non-Title V (State-only) facility. The major sources of air emissions are: boilers, heaters, and emergency generators. The permit will include monitoring, recordkeeping and reporting requirements designed to keep the facility operating within all applicable air quality requirements.

Northeast Region: Air Quality Program, 2 Public Square, Wilkes-Barre, PA 18711-0790. Contact: Ray Kempa, New Source Review Chief—Telephone: 570-826-2507.

40-00045: Ralmark Co. (P. O. Box 1507, Kingston, PA 18704-0507) on April 29, 2010, to operate a pulley manufacturing process and paint spray booth at their facility in Kingston Borough, **Luzerne County**.

48-00079: Lehigh Valley Crematory, Inc. (301 Front Street, Hellertown, PA 18055) on April 26, 2010, for funeral service and crematories operation in Hellertown Borough, **Northampton County**. This is a renewal of the State-only Natural Minor Operating Permit. The State-only operating permit includes emissions, work practice standards and testing, monitoring, recordkeeping and reporting requirements designed to keep the facility operating within all applicable air quality requirements.

Southcentral Region: Air Quality Program, 909 Elmerton Avenue, Harrisburg, PA 17110. Contact: Thomas J. Hanlon, Chief, East Permitting Section—Telephone: 717-705-4862 or Gary Helsel, Chief, West Permitting Section—Telephone: 814-949-7935.

07-03017: CCK Inc.—T/A Juniata Packing Co. (118 Poorman Street, P. O. Box 276, Tyrone, PA 16686-0276) on April 27, 2010, for their meat smoking and packing facility in Snyder Township, **Blair County**. This is a renewal of the State-only operating permit.

Operating Permit Revisions Issued including Administrative Amendments, Minor Modifications or Transfers of Ownership under the Air Pollution Control Act (35 P. S. §§ 4001—4015) and 25 Pa. Code §§ 127.412, 127.450, 127.462 and 127.464.

Southeast Region: Air Quality Program, 2 East Main Street, Norristown, PA 19401. Contact: Janine Tulloch-Reid, Facilities Permitting Chief—Telephone: 484-250-5920.

15-00078: Centocor, Inc. (200 Great Valley Parkway, Malvern, PA 19355) on May 7, 2010, the operating permit was amended to incorporate Plan Approvals 15-0078D and 15-0078E for 2 MW electric generator and 750 kW electric generator at their Centocor, Inc., pharmaceutical research, development and manufacturing facility at 200 Great Valley Parkway, Malvern, PA 19355, East Whiteland Township, **Chester County**. The facility is synthetic minor for NOx. Administrative Amendment of Synthetic Minor Operating Permit is issued under the Air Pollution Control Act (35 P. S. §§ 4001—4015) and 25 Pa. Code § 127.450.

09-00120: BASF Corp. (6450 Bristol Pike, Levittown, PA 19057) on May 11, 2010, to operate three (3) dust collectors in Bristol Township, **Bucks County**. This non-Title V Operating Permit was administratively amended to transfer ownership from BASF Construction Chemicals, LLC to BASF Corporation.

The Administrative Amendment is issued under the Air Pollution Control Act (35 P. S. §§ 4001—4015) and 25 Pa. Code § 127.450.

Southcentral Region: Air Quality Program, 909 Elmerton Avenue, Harrisburg, PA 17110. Contact: Thomas J. Hanlon, Chief, East Permitting Section—Telephone: 717-705-4862 or Dan Husted, Chief, West Permitting Section—Telephone: 814-949-7935.

22-05003: Orograin Bakeries, Manufacturing, Inc. (3996 Paxton Street, Harrisburg, PA 17111-1423) on May 4, 2010, for their bakery facility in Swatara Township, **Dauphin County**. This State-only operating permit was administratively amended to reflect a change of ownership. This is Revision 1 of the permit.

06-03078: Brush Wellman, Inc. (P. O. Box 973, Reading, PA 19603) on May 5, 2010, for their metal processing and treating facility in Perry Township, **Berks County**. This State-only operating permit underwent a minor modification to reflect upgrades two scrubbers. This is Revision 1 of the permit.

01-05016: ISP Minerals, Inc. (P. O. Box O, Blue Ridge Summit, PA, 17214-0914) on May 7, 2010, for their quarrying and stone processing facility in Hamiltonban Township, **Adams County**. This State-only operating permit was administratively amended to incorporate Plan Approval No. 01- 5016J. This is Revision 4 of the permit.

36-05147: Wenger's Feed Mill, Inc. (101 West Harrisburg Avenue, Rheems, PA 17570) on May 4, 2010, for their feed manufacturing facility in Mt. Joy Borough, **Lancaster County**. This State-only operating permit was administratively amended to incorporate Plan Approval No. 36-5147A. This is Revision 1 of the permit.

ACTIONS ON COAL AND NONCOAL MINING ACTIVITY APPLICATIONS

Actions on applications under the Surface Mining Conservation and Reclamation Act (52 P. S. §§ 1396.1—1396.19a); the Noncoal Surface Mining Conservation and Reclamation Act (52 P. S. §§ 3301—3326); The Clean Streams Law (35 P. S. §§ 691.1—691.1001); the Coal Refuse Disposal Control Act (52 P. S. §§ 30.51—30.66); and The Bituminous Mine Subsidence and Land Conservation Act (52 P. S. §§ 1406.1—1406.21). The final action on

each application also constitutes action on the request for 401 Water Quality Certification and the NPDES permit application. Mining activity permits issued in response to the applications will also address the application permitting requirements of the following statutes: the Air Quality Control Act (35 P. S. §§ 4001—4015); the Dam Safety and Encroachments Act (32 P. S. §§ 693.1—693.27); and the Solid Waste Management Act (35 P. S. §§ 6018.101—6018.1003).

Coal Permits Actions

Cambria District Mining Office: 286 Industrial Park Road, Ebensburg, PA 15931, 814-472-1900.

56990104 and NPDES No. PA0235181. AMFIRE Mining Company, LLC, One Energy Place, Latrobe, PA 15650, permit renewal for reclamation only of a bituminous surface and auger mine in Jenner Township, **Somerset County**, affecting 140.0 acres. Receiving stream(s): unnamed tributaries to/and Gum Run; unnamed tributaries to/and Roaring Run classified for the following use(s): cold water fishery. The first downstream potable water supply intake from the point of discharge is Cambria Somerset Authority Quemahoning Dam Withdrawal. Application received February 25, 2010. Permit issued: May 3, 2010.

56970105 and NPDES No. PA0234630. Hoffman Mining, Inc., P. O. Box 130, 118 Runway Road, Friedens, PA 15541, permit renewal for the continued operation and restoration of a bituminous surface mine in Paint Township, **Somerset County**, affecting 171 acres. Receiving stream(s): unnamed tributary to/and Stonycreek River classified for the following use(s): cold water fishery and trout stocked fishery. There are no potable water supply intakes within 10 miles downstream. Application received February 18, 2010. Permit issued May 3, 2010.

56000102 and NPDES No. PA0235237. Action Mining, Inc., 117 Shaw Mines Road, Meyersdale, PA 15552, permit renewal for the continued operation and restoration of a bituminous surface and auger mine in Brothersvalley Township, **Somerset County**, affecting 197.6 acres. Receiving stream(s): unnamed tributaries to/and Piney Run, tributaries to Buffalo Creek classified for the following use(s): cold water fishery. There are no potable water supply intakes within 10 miles downstream. Application received February 24, 2010. Permit issued April 29, 2010.

Greensburg District Mining Office: Armbrust Professional Center, 8205 Route 819, Greensburg, PA 15601, 724-925-5500.

65000101 and NPDES Permit No. PA0202827. Coal Loaders, Inc. (210 East Main Street, P. O. Box 556, Ligonier, PA 15658). Permit renewal issued for continued reclamation only of a bituminous surface mining site located in Fairfield Township, **Westmoreland County**, affecting 25 acres. Receiving streams: N/A—facilities removed. Application received: February 18, 2010. Reclamation only renewal issued: May 5, 2010.

65030102 and NPDES Permit No. PA0250465. Amerikohl Mining, Inc. (1384 SR 711, Stahlstown, PA 15687-1301). Permit renewal issued for continued reclamation only of a bituminous surface mining site located in Ligonier Township, **Westmoreland County**, affecting 71.4 acres. Receiving streams: unnamed tributaries to Loyalhanna Creek and Loyalhanna Creek. Application received: March 16, 2010. Reclamation only renewal issued: May 5, 2010.

Knox District Mining Office: P. O. Box 669, 310 Best Avenue, Knox, PA 16232-0669, 814-797-1191.

61040102 and NPDES Permit No. PA0242560. Bedrock Mines, LP (111 Freeport Road, Aspinwall, PA 15215) Renewal of an existing bituminous strip operation in Irwin Township, **Venango County** affecting 58.0 acres. Receiving streams: Unnamed tributaries to Scrubgrass Creek. Application received: January 14, 2010. Permit Issued: May 4, 2010.

61970101 and NPDES Permit No. PA0227358. Bedrock Mines, LP (111 Freeport Road, Aspinwall, PA 15215) Transfer of an existing bituminous strip, limestone and shale removal operation from Ben Hal Mining Company in Irwin Township, **Venango County** affecting 71.5 acres. Receiving streams: Four unnamed tributaries to Scrubgrass Creek. Application received: June 12, 2009. Permit Issued: May 3, 2010.

Moshannon District Mining Office: 186 Enterprise Drive, Philipsburg, PA 16866, 814-342-8200.

17090101 and NPDES No. PA0257044. Fair Coal Co., LLC (41 North Hill Street, Coalport, PA 16627). Commencement, operation and restoration of a bituminous surface mine located in Beccaria Township and Glen Hope Borough, **Clearfield County** affecting 174.6 acres. Receiving stream: unnamed tributary to Clearfield Creek classified for Cold Water Fishery. There are no potable water supply intakes within 10 miles downstream. Application received January 15, 2009. Permit issued April 29, 2010.

Pottsville District Mining Office: 5 West Laurel Boulevard, Pottsville, PA 17901, 570-621-3118.

54850104R5 and NPDES Permit No. PA0614530. Bell Corporation, (P. O. Box 131, Tuscarora, PA 17982), renewal of an existing anthracite surface mine operation in Schuylkill Township, **Schuylkill County** affecting 102.5 acres, receiving stream: unnamed stream to East Branch Schuylkill River. Application received: July 9, 2009. Renewal issued: May 5, 2010.

54850201R5. Joe Kuperavage Coal Company, (916 Park Avenue, Port Carbon, PA 17965), renewal of an existing anthracite coal refuse reprocessing operation in Blythe Township, **Schuylkill County** affecting 31.1 acres, receiving stream: none. Application received: October 9, 2009. Renewal issued: May 7, 2010.

Noncoal Permits Actions

Greensburg District Mining Office: Armbrust Professional Center, 8205 Route 819, Greensburg, PA 15601, 724-925-5500.

3378NC17 and NPDES Permit No. PA0592579. Hanson Aggregates BMC, Inc. (2200 Springfield Pike, Connellsville, PA 15425). Transfer of permit formerly issued to Hanson Aggregates PMA, Inc., for continued operation and reclamation of a large noncoal surface mining site (limestone quarry) located in Connellsville Township, **Fayette County**, affecting 73.5 acres. Receiving streams: unnamed tributaries to Connell Run to Youghiogheny River and Connell Run to Youghiogheny River. Application received: October 13, 2009. Transfer permit issued: May 4, 2010.

Knox District Mining Office: P. O. Box 669, 310 Best Avenue, Knox, PA 16232-0669, 814-797-1191.

61090301 and NPDES Permit No. PA0258717. Schiffer Excavating, Inc., d/b/a Cooperstown Sand & Gravel (P. O. Box 4, Cooperstown, PA 16317) Commencement, operation and restoration of a large sand-

stone operation in Jackson Township, **Venango County** affecting 25.5 acres. Receiving streams: Unnamed tributaries to Wolf Run. Application received: March 9, 2009. Permit Issued: May 3, 2010.

Pottsville District Mining Office: 5 West Laurel Boulevard, Pottsville, PA 17901, 570-621-3118.

58092812. Northeast Stone Works, Inc., (2 Public Avenue, 2nd Floor, P. O. Box 332, Montrose, PA 18801), commencement, operation and restoration of a quarry operation in Bridgewater Township, **Susquehanna County** affecting 5.0 acres, receiving stream: none. Application received October 13, 2009. Permit issued May 5, 2010.

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.

32100401, KMP Associates, Inc., 3256 Rt. 981 South, Saltsburg, PA 15861, blasting activity permit issued for gas well road construction in Conemaugh Township, **Indiana County**. Blasting activity permit end date is April 28, 2011. Permit issued May 3, 2010.

Greensburg District Mining Office: Armbrust Professional Center, 8205 Route 819, Greensburg, PA 15601, 724-925-5500.

26104009. Global Geophysical Services, Inc. (13927 South Gessner Road, Missouri City, TX 77489). Blasting activity permit for seismic exploration to the Global Rolling Rock 3D, located in Dunbar and other Townships, **Fayette County**. The duration of blasting is expected to for one year. Permit issued: May 3, 2010.

Knox District Mining Office: P. O. Box 669, 310 Best Avenue, Knox, PA 16232-0669, 814-797-1191.

42104011. Pennsylvania General Energy Co., LLC (120 Market Street, Warren, PA 16365) Blasting Activity Permit for stone removal in Norwich Township, **McKean County**. This blasting activity permit will expire on July 1, 2010. Permit Issued: May 5, 2010.

42104012. Pennsylvania General Energy Co., LLC (120 Market Street, Warren, PA 16365) Blasting Activity Permit for stone removal in Norwich Township, **McKean County**. This blasting activity permit will expire on July 1, 2010. Permit Issued: May 5, 2010.

Moshannon District Mining Office: 186 Enterprise Drive, Philipsburg, PA 16866, 814-342-8200.

59104003. Seneca Resources (51 Zents Boulevard, Brookville, PA 15823). Construction blasting for a water retention pond, Bogaczyk project, located in Covington Township, **Tioga County**. Permit issued April 29, 2010. Permit expires November 29, 2010.

Pottsville District Mining Office: 5 West Laurel Boulevard, Pottsville, PA 17901, 570-621-3118.

06104105. Douglas Explosives, Inc., (P. O. Box 77, Philipsburg, PA 16866), construction blasting for Shiloh

Road Project in New Morgan Borough, **Berks County** with an expiration date of April 27, 2011. Permit issued May 4, 2010.

38104106. Keystone Blasting Service, (15 Hopeland Road, Lititz, PA 17543), construction blasting for Lloyd Newswenger Dairy in Millcreek Township, **Lebanon County** with an expiration date of September 30, 2010. Permit issued May 4, 2010.

40104108. Hayduk Enterprises, Inc., (257 Riverside Drive, Factoryville, PA 18419), construction blasting for Fairmount Township Shale Pit in Fairmount Township, **Luzerne County** with an expiration date of May 31, 2011. Permit issued May 4, 2010.

58104112. M & J Explosives, Inc., (P. O. Box 608, Carlisle, PA 17013), construction blasting for Kerr Project Compressor Station in Lathrop Township, **Susquehanna County** with an expiration date of April 30, 2011. Permit issued May 5, 2010.

39104102. Hayduk Enterprises, Inc., (257 Riverside Drive, Factoryville, PA 18419), construction blasting for Cedar Hill Cemetery in Hanover Township, **Lehigh County** with an expiration date of May 31, 2011. Permit issued May 7, 2010.

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.

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).

Permits, Environmental Assessments and 401 Water Quality Certifications Issued:

WATER OBSTRUCTIONS AND ENCROACHMENTS

Southwest Region: Watershed Management Program Manager, 400 Waterfront Drive, Pittsburgh, PA 15222-4745.

E02-1608. Allegheny County Department of Public Works, 501 County Office Building, 542 Forbes Avenue, Pittsburgh, PA 15219-2904. To remove existing structure and construct and maintain new bridge in Forward Township in **Allegheny County**, Pittsburgh ACOE District (Monongahela, PA Quadrangle N: 20.8 inches; W: 5.8 inches, Latitude: 40° 14' 18"; Longitude: 79° 55' 00"). To remove the existing structure (Pangburn Hollow Bridge No. 5) and to construct and maintain a new structure consisting of a box culvert having a span of 18.0 feet with an underclearance of 5.0 feet (1.0 foot depressed below the natural stream bed) along with its associated wing walls and gabion wall in and across the channel of Perry Mill Run (WWF) for the purpose of improving highway safety. The bridge is located on Pangburn Hollow Road, approximately 650.0 feet south from the intersection of Sadler and Pangburn Hollow Roads.

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 and Armstrong Counties** (New Bethlehem, PA Quadrangle N: 6.0 inches; W: 0.1 inch, Latitude: 41° 1' 54"; Longitude: 79° 15' 3.4"). To remove the existing 28' wide, 220' long, two span, SR 536 bridge with a 90° skew and to construct and maintain a new 29.5' wide, 250' long, two span bridge and underclearance of 20.9' 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.

E26-353. Department of Conservation and Natural Resources, P. O. Box 8451, 400 Market Street, Harrisburg, PA 17105. To remove the existing visitor area buildings in Ohioypyle Borough, **Fayette County**, Pittsburgh ACOE District (Ohioypyle, PA Quadrangle N: 18.16 inches; W: 16.8 inches, Latitude: 39° 51' 00"; Longitude: 79° 29' 41"). To remove the existing visitor area buildings and to construct and maintain a new visitor center with associated site utilities and parking in the floodplain of the Youghigheny River (HQ-CWF) within the Ohioypyle State Park. The visitor center includes an overhand structure with caisson and pier support on the riverbank.

E63-622. Department of Transportation District 12-0, North Gallatin Avenue Ext., Uniontown, PA 15401. To construct and maintain box culvert, stream restoration and redecking bridge in Chartiers and South Strabane Townships, **Washington County**, Pittsburgh ACOE District (Washington East, PA Quadrangle N: 15.5 inches; W: 14.9 inches, Latitude: 40° 12' 41"; Longitude: 80° 13'

39"; extending northeast to N: 17.2 inches; W: 12.8 inches, Latitude: 40° 13' 01"; Longitude: 80° 13' 02). To construct and maintain:

1. a 20 ft wide by 6 ft high, 70 ft long box culvert depressed 1 ft in an unnamed tributary to Chartiers Creek (WWF) to replace and remove the existing 14 ft wide, 22.5 ft long SR 1047, Manifold Road Bridge;
2. a 797 ft relocation of an unnamed tributary to Chartiers Creek for an approach road improvement;
3. 1,270 ft of stream restoration, and repair of the existing 14 foot diameter SR 79 CMP culvert connecting the unnamed tributary to Chartiers Creek to restore base flow connection of the unnamed tributary to Chartiers Creek. Currently base flow is diverted to an abandoned mine pool believed to be connected to mine voids;
4. fill in 0.086 acre of PEM/PSS wetlands for the reconstructed SR 79 approach roads;
5. fill in 1.9 acres of Chartiers Creek floodplain for the reconstructed SR 79 approach roads;
6. fill in 0.03 acre of the abandoned mine pond for an approach road improvement;
7. redecking of the SR 1009 Bridge over Chartiers Creek (WWF).

In addition, associated temporary crossings, stream diversions, and stormwater outfalls for the purpose of improving the SR 79, SR 1047 (Manifold Road), SR 1009 (Pike Street) intersection and approach roads known as the Meadowlands Interchange. Wetland and stream mitigation will be provided onsite. Wetland mitigation for the proposed loss of 0.086 acre of PEM/PSS wetlands is to be mitigated adjacent to the stream relocation site and will include two wetland cells 0.040 acre and 0.050 acre of PEM/PSS wetland. Stream mitigation of 815 feet is proposed to mitigate for the loss of stream channel due to relocation of the unnamed tributary to Chartiers Creek and will occur adjacent to the existing stream channel. The project is located north of Washington PA.

Northwest Region: Watershed Management Program Manager, 230 Chestnut Street, Meadville, PA 16335.

E43-347, Norfolk Southern Corporation, 1200 Peachtree Street NE, Box 142, Atlanta, GA 30309. Bridge MI-130.35, in Hempfield and West Salem Townships, **Mercer County**, ACOE Pittsburgh District (Greenville West, PA Quadrangle N: 41° 23' 02"; W: 80° 23' 36").

To remove the existing superstructure and support pier and to construct and maintain a three span, through-plate-girder railroad bridge (Bridge MI-130.35) having a three clear spans of 105.0 feet, 42.0 feet and 105.0 feet respectively and a maximum underclearance of approximately 16.0 feet across the Shenango River approximately 2,000 feet NW of the intersection of Hamburg and Methodist Roads. Project includes: 1) repair of existing abutments; 2) construction of a temporary stone causeway and bents temporarily impacting approximately 0.248 acre of the Shenango River and associated back channel and scour pool; 3) permanent impact of 0.009 acre of the Shenango River and 0.005 acre of Shenango River back channel; and 4) impact of 0.011 acre of PEM wetland.

DAM SAFETY

95-16-65420-005. Southwestern Energy Company, 2350 North Sam Houston Parkway East, Suite 125, Houston, TX 77032. Project proposes to operate and maintain the Greenzweig 1A Impoundment Dam as a centralized impoundment to collect and store flow-back water, for the use and re-use of hydraulic fracturing

water, from the Greenzweig Well Pad, Reeve Well Pad, Ferguson Well Pad, Ball Well Pad, and future wells in the area (LeRaysville, PA Quadrangle Latitude: N 41° 47' 12.73"; Longitude: W 76° 13' 46.54") Herrick Township, **Bradford County**.

[Pa.B. Doc. No. 10-942. Filed for public inspection May 21, 2010, 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: "eLibrary"). The "Technical Guidance 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 "Technical Guidance Draft Documents" heading is the link to the Department's draft technical guidance documents.

The Department will continue to revise its nonregulatory documents, as necessary, throughout 2010.

Ordering Paper Copies of Department Technical Guidance

The Department encourages the use of the Internet to view and download technical guidance documents. When this option is not available, persons can order a paper copy of any of the Department's draft or final technical guidance documents by contacting the Department at (717) 783-8727.

In addition, bound copies of some of the Department's documents are available as Department publications. Check with the appropriate bureau for more information about the availability of a particular document as a publication.

Changes to Technical Guidance Documents

Following is the current list of recent changes. Persons who have questions or comments about a particular document should call the contact person whose name and phone number is listed with each document.

Notice of Intent to Rescind Technical Guidance

DEP ID: 563-2000-105. Title: Coal Exploration by Slope Development. Description: Effective immediately, the Department is rescinding Technical Guidance Document 563-2000-655, relating to coal exploration by slope development. The procedures outlined in the guidance are no longer consistent with the Department's procedures for permitting underground anthracite coal mines and authorizing coal exploration by alternate methods.

Requirements for underground anthracite coal mining operations have changed since 1997 when Technical Guidance Document 563-2000-655 was issued. The 1997 guidance does not reflect the current requirements and, in certain respects, provides conflicting information.

In addition to the new requirements that have emerged since 1997, the Department decided to eliminate the option of pursuing a Phase 2 Permit as outlined in the guidance. The Phase 2 Permit was an option that was available to operators who needed to extract more than 250 tons of coal for purposes of extending their exploratory mine slopes to the depths necessary to fully assess their coal reserves. The Department found that operators rarely pursued this option and, moreover, that the option itself made it difficult to enforce the 250-ton regulatory limit on extracting coal for exploratory purposes.

The Department is planning to develop a new technical guidance describing current procedures for exploring anthracite coal reserves by slope excavation. The new guidance will be released in draft form for public comment prior to final issue. In the interim, questions relating to alternative methods of exploring anthracite coal reserves should be directed to Nathan Houtz of the Pottsville District Mining Office at (570) 621-3118 or Gregory Shuler of the Bureau of Mining and Reclamation at (717) 783-1199. Contact: Questions regarding the rescinding of this technical guidance document should be directed to Gregory Shuler, P. G. at (717) 783-1199 or gshuler@state.pa.us.

Effective Date: Upon publication of this notice in the *Pennsylvania Bulletin*.

JOHN HANGER,
Secretary

[Pa.B. Doc. No. 10-943. Filed for public inspection May 21, 2010, 9:00 a.m.]

Climate Change Advisory Committee Meeting

The Department of Environmental Protection (Department) announces the following meetings:

The Natural Resources Working Group Meeting, will be held on, Tuesday, May 25, 2010, from 10 a.m. to 3 p.m., at 107 Forest Resource Building, University Park, PA 16802.

The Tourism & Outdoor Recreation Working Group Meeting, will be held on, Thursday, May 27, 2010, from

1 p.m. to 3 p.m., in the Susquehanna Room of the Fish and Boat Commission Headquarters, 1601 Elmerton Avenue, Harrisburg, PA 17110.

Each Adaptation Working Group will focus on a specific area of impact: Infrastructure, Public Health and Safety, Natural Resources, and Tourism & Outdoor Recreation. They will work to identify vulnerabilities to climate change, adaptation efforts already underway, and practical actions the Commonwealth and other stakeholders can undertake to address the risks of climate change. They will also work to share information and knowledge across impacted areas and identify opportunities for collaboration.

For the latest on meeting details and materials, visit www.depweb.state.pa.us, Keyword: Climate Change. Questions concerning these meetings should be directed to Kim Hoover, Office of Energy and Technology Deployment, P. O. Box 8772, Harrisburg, PA 17105-8772, (717) 772-5161, khoover@state.pa.us.

Persons in need of accommodations as provided for in the Americans With Disabilities Act of 1990 should contact Kim Hoover at (717) 772-5161, 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. 10-944. Filed for public inspection May 21, 2010, 9:00 a.m.]

Stream Redesignation Evaluations; Water Quality Standards Review

Under 25 Pa. Code § 93.4d (relating to processing of petitions, evaluations and assessments to change a designated use) the Department of Environmental Protection (Department) gives notice that an evaluation will be conducted on all or portions of the streams listed to determine the proper Aquatic Life Use or Special Protection designations in this Commonwealth's Water Quality Standards.

<i>Stream Name</i>	<i>County</i>	<i>Tributary To</i>
Loyalsock Creek—Basin, from the source to the confluence with West Branch Susquehanna River	Sullivan—Lycoming	West Branch Susquehanna River
Babb Creek—Basin, from the source to the confluence with Pine Creek	Tioga	Pine Creek
Bear Run—Basin, from the source to the confluence with South Branch Bear Run	Indiana—Jefferson	South Branch Bear Run
Dwarfs Kill—Basin, from the source to the confluence with Raymondskill Creek	Pike	Raymondskill Creek
Shohola Creek—Basin, from the source to the confluence with Balliard Creek	Pike	Delaware River
Sherman Creek—Basin, from Cisna Run to the confluence with Susquehanna River	Perry	Susquehanna River

Persons who have technical data concerning the water quality, instream habitat or biological condition of these stream sections are encouraged to make it available to the Department for consideration in the assessment. These assessments may lead to recommendations to the Environmental Quality Board (Board) for redesignation.

Data should be submitted to Tony Shaw, Division of Water Quality Standards, Bureau of Water Standards and Facility Regulation, P. O. Box 8467, Harrisburg, PA 17105-8467, tshaw@state.pa.us. Data should be submitted

no later than June 21, 2010. Questions concerning this evaluation can be directed to Tony Shaw at (717) 787-9637.

Recent sampling efforts have indicated that the current designated use for Loyalsock Creek basin and Babb Creek basin should be reassessed.

The Loyalsock Creek mainstem, from McCarroll Corner downstream to its confluence with the West Branch Susquehanna River, is already undergoing a redesignation evaluation. Notice of this review was provided at 38

Pa.B. 4036 (July 26, 2008). This notice expands that redesignation evaluation described at 38 Pa.B. 4036 to include Loyalsock Creek tributaries from the headwaters downstream to its confluence with West Branch Susquehanna River. The Loyalsock Creek basin from its source to Pole Bridge Run is currently designated Cold Water Fishes (CWF). The tributaries to Loyalsock Creek from, and including, Pole Bridge Run to its confluence with the West Branch Susquehanna River are currently designated High Quality-Cold Water Fishes (HQ-CWF), with the exception of the following named tributaries or tributary segments: the Shanerburg Run basin from its source downstream to the end of a Jeep Trail (approximately 1.5 miles from the mouth) is currently designated EV and the remainder of the basin downstream from the Jeep Trail is designated HQ-CWF. The Double Run, High Rock Run and Little Loyalsock Creek basins are currently designated CWF. Kettle Creek and Noon Branch Wolf Run basins are currently designated Exceptional Value (EV) and Mill Creek (East and West) basins are currently designated Trout Stocking (TSF). The Loyalsock Creek study area will now include the entire Loyalsock Creek basin.

Babb Creek, a tributary to Pine Creek, is currently designated CWF from basin source to mouth, with the exception of Nickel Run and Long Run basins, which are currently designated EV. The Babb Creek study area will include the entire Babb Creek basin.

Bear Run, a tributary to West Branch Susquehanna River, is currently designated CWF from basin source to mouth. The petitioner is requesting redesignation of the basin source to the confluence with South Branch Bear Run as HQ-CWF. The Bear Run study area will include the Bear Run basin source to the confluence with South Branch Bear Run.

Dwarfs Kill, a tributary to Raymondskill Creek, is currently designated CWF from basin source to mouth. The petitioner is requesting redesignation of Dwarfs Kill from the basin source to mouth as EV. The Dwarfs Kill study area will include the entire Dwarfs Kill basin.

Shohola Creek, a tributary to Delaware River, is currently designated HQ-CWF from basin source to mouth. The petitioner is requesting redesignation of the basin source to Balliard Creek as EV. The Shohola Creek study area will include the basin source to Balliard Creek.

Sherman Creek mainstem, a tributary to Susquehanna River, is currently designated Warm Water Fishes (WWF) from the confluence of Cisna Run to mouth. The petitioner is requesting redesignation of the mainstem from the confluence of Cisna Run to mouth as EV. The Sherman Creek study area will include the mainstem from the confluence of Cisna Run to mouth.

Persons in need of accommodations as provided for in the Americans With Disabilities Act of 1990 should contact Tony Shaw directly at (717) 787-9637 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. 10-945. Filed for public inspection May 21, 2010, 9:00 a.m.]

DEPARTMENT OF HEALTH

Application of American Access Care for Exception

Under 28 Pa. Code § 51.33 (relating to requests for exceptions), the Department of Health (Department) gives notice that American Access Care has requested an exception to the requirements of 28 Pa. Code § 153.1 (relating to minimum standards), which requires compliance with minimum standards contained in the following publication: *Guidelines for Design and Construction of Hospitals and Healthcare Facilities*. The facility specifically requests exception from the following standards contained in this publication: 3.7-2.6.2 (relating to staff changing area) and 3.7-3.1.2 (relating to medical vacuum).

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 at the 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. 10-946. Filed for public inspection May 21, 2010, 9:00 a.m.]

Application of Tyrone Hospital for Exception

Under 28 Pa. Code § 51.33 (relating to requests for exceptions), the Department of Health (Department) gives notice that Tyrone Hospital has requested an exception to the requirements of 28 Pa. Code § 123.25(2) (relating to regulations for control of anesthetic explosion hazards).

This request is on file with the Department. Persons may receive a copy of a request for exception by requesting a copy from the Department of Health, Division of Acute and Ambulatory Care, Room 532, Health and Welfare Building, Harrisburg, PA 17120, (717) 783-8980, fax (717) 772-2163, paexcept@health.state.pa.us.

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. 10-947. Filed for public inspection May 21, 2010, 9:00 a.m.]

Application of WellSpan Surgery and Rehabilitation Hospital for Exception

Under 28 Pa. Code § 51.33 (relating to requests for exceptions), the Department of Health (Department) gives notice that WellSpan Surgery and Rehabilitation Hospital has requested an exception to the requirements of 28 Pa. Code § 153.1 (relating to minimum standards), which requires compliance with minimum standards contained in the following publication: *Guidelines for Design and Construction of Hospitals and Healthcare Facilities*. The facility specifically requests exception from the following standards contained in this publication: 5.5.3.2 (relating to control room) and 5.5.9 (relating to support areas for staff).

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 at the 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. 10-948. Filed for public inspection May 21, 2010, 9:00 a.m.]

Application of York Hospital for Exception

Under 28 Pa. Code § 51.33 (relating to requests for exceptions), the Department of Health (Department) gives notice that York Hospital has requested an exception to the requirements of 28 Pa. Code § 153.1 (relating to minimum standards), which requires compliance with

minimum standards contained in the following publication: *Guidelines for Design and Construction of Hospitals and Healthcare Facilities*. The facility specifically requests exception from the following standards contained in this publication: 3.1-2.2.4 (relating to support areas for patients) and 3.1-2.2.4.1 (relating to dressing rooms).

This facility is also requesting exception to 28 Pa. Code §§ 127.31(b) and 153.4 (relating to policies and procedures; and approval of plans).

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@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 at the 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. 10-949. Filed for public inspection May 21, 2010, 9:00 a.m.]

Long-Term Care Nursing Facilities; Request for Exception

The following long-term care nursing facility is seeking an exception to 28 Pa. Code § 205.67(k), (relating to electric requirements for existing and new construction).

Paul's Run
9896 Bustleton Avenue
Philadelphia, PA 19115
FAC ID 161902

This request is on file with the Department of Health (Department). Persons may receive a copy of a request for exception by requesting a copy from the Division of Nursing Care Facilities, Room 526, Health and Welfare Building, Harrisburg, PA 17120, (717) 787-1816, fax (717) 772-2163, ra-paexcept@state.pa.us.

Persons who wish to comment on an exception request may do so by sending a letter by mail, e-mail or facsimile to the Division at the address listed previously.

Comments received by the Department within 15 days after the date of publication of this notice will be reviewed by the Department before it decides whether to approve or disapprove the request for exception.

Persons with a disability who require an alternative format of this document or who wish to comment in an alternative format (for example, large print, audiotope, Braille), should contact the Division of Nursing Care Facilities at the address listed previously, or for speech and/or hearing impaired persons V/TT (717) 783-6514, or the Pennsylvania AT&T Relay Service at (800) 654-5984 (TT).

EVERETTE JAMES,
Secretary

[Pa.B. Doc. No. 10-950. Filed for public inspection May 21, 2010, 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 June 3, 2010, from 9 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 for persons with a disability who wish to attend the meeting and require an auxiliary aid, service or other accommodation to do so, contact Cyndi Malinen, Public Health Program Administrator, Division of Nutrition & 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. 10-951. Filed for public inspection May 21, 2010, 9:00 a.m.]

Pennsylvania Cancer Control, Prevention and Research Advisory Board Meeting

The Pennsylvania Cancer Control, Prevention and Research Advisory Board, established under section 3 of the Pennsylvania Cancer Control, Prevention and Research Act (35 P.S. § 5633), will hold a meeting on Wednesday, June 23, 2010, from 9 a.m. to 12 p.m. The meeting will be held at the Department of Health, Bureau of Health Promotion and Risk Reduction, Conference Room 1000, Health and Welfare Building, 625 Forster Street, Harrisburg, PA 17120.

For additional information contact Kathleen A. Zitka, Chief, Department of Health, Comprehensive Cancer Control Section, Room 1011, Health and Welfare Building, 625 Forster Street, Harrisburg, PA at (717) 787-5251.

For persons with a disability who wish to attend this meeting and require an auxiliary aid, service or other accommodation to do so, contact Kathleen Zitka at (717)

787-5251, for speech and/or hearing impaired persons 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. 10-952. Filed for public inspection May 21, 2010, 9:00 a.m.]

DEPARTMENT OF LABOR AND INDUSTRY

Uniform Construction Code (UCC) Review and Advisory Council; Meeting Cancelled

The meeting which was scheduled for Wednesday, May 26, 2010, 10 a.m. has been cancelled.

Additional information concerning the meeting may be found on the Department of Labor and Industry's web site at www.dli.state.pa.us. Scroll down and click on the link for "Uniform Construction Code" and then "UCC Review and Advisory Council."

Questions concerning this may be directed to Edward Leister at (717) 783-6304.

SANDI VITO,
Secretary

[Pa.B. Doc. No. 10-953. Filed for public inspection May 21, 2010, 9:00 a.m.]

DEPARTMENT OF PUBLIC WELFARE

Additional Class of Disproportionate Share Payments to Qualifying General Acute Care Hospitals

Purpose of Notice

The Department of Public Welfare (Department) is announcing its intent to discontinue an additional class of disproportionate share (DSH) payments to certain qualifying general acute care hospitals that provide a high volume of Medical Assistance acute care and psychiatric services and incur significant uncompensated care costs.

Since funding was not included in the Commonwealth's 2009-2010 Budget for these DSH payments, the Department intends to discontinue these DSH payments.

Fiscal Impact

The Fiscal Year 2009-2010 fiscal impact, as a result of the elimination of these DSH payments is a savings of \$2.213 million (\$1 million in State General Funds and \$1.213 million in Federal Funds).

Public Comment

Interested persons are invited to submit written comments regarding this notice to Department of Public Welfare, Office of Medical Assistance Programs, c/o Regulations Coordinator, Room 515, Health and Welfare Build-

ing, 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).

HARRIET DICHTER,
Secretary

Fiscal Note: 14-NOT-639. No fiscal impact; (8) recommends adoption.

[Pa.B. Doc. No. 10-954. Filed for public inspection May 21, 2010, 9:00 a.m.]

Additional Class of Payments to Qualifying Acute Care General Hospitals for Obstetrical and Neonatal Intensive Care Services

Purpose of Notice

The Department of Public Welfare (Department) is announcing its intent to decrease the allocation of funding for Fiscal Year (FY) 2009-2010 for disproportionate share hospital (DSH) payments to certain qualifying hospitals based on obstetrical and neonatal intensive care cases. This decrease is a result of necessary mid-year spending reductions to the Commonwealth's 2009-2010 enacted budget. There will be no change in the current qualifying criteria or methodology for determining eligibility for these payments.

Fiscal Impact

The FY 2009-2010 fiscal impact as a result of this reduction is \$1.107 million (\$0.500 million in State funds).

Public Comment

Interested persons are invited to submit written comments regarding this notice to 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).

HARRIET DICHTER,
Secretary

Fiscal Note: 14-NOT-638. No fiscal impact; (8) recommends adoption.

[Pa.B. Doc. No. 10-955. Filed for public inspection May 21, 2010, 9:00 a.m.]

Supplemental Payments for Burn Center Services

Purpose of Notice

The Department of Public Welfare (Department) is announcing its intent to change the funding allocated for Fiscal Year (FY) 2009-2010 for disproportionate share

hospital (DSH) payments to certain qualifying Medical Assistance (MA) enrolled acute care general hospital burn centers. There will be no change in the current qualifying criteria or methodology for determining eligibility for these payments.

Fiscal Impact

The FY 2009-2010 fiscal impact, as a result of this additional class of DSH payments is \$10.246 million (\$4.630 million in State General Funds and \$5.616 million in Federal Funds upon approval by the Centers for Medicare and Medicaid Services).

Public Comment

Interested persons are invited to submit written comments regarding this notice to 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).

HARRIET DICHTER,
Secretary

Fiscal Note: 14-NOT-640. (1) General Fund; (2) Implementing Year 2009-10 is \$4,630,000; (3) 1st Succeeding Year 2010-11 is \$0; 2nd Succeeding Year 2011-12 is \$0; 3rd Succeeding Year 2012-13 is \$0; 4th Succeeding Year 2013-14 is \$0; 5th Succeeding Year 2014-15 is \$0; (4) 2008-09 Program—\$5,170,000; 2007-08 Program—\$5,000,000; 2006-07 Program—\$5,000,000; (7) Hospital Based Burn Centers; (8) recommends adoption. Funds have been included in the budget to cover this increase.

[Pa.B. Doc. No. 10-956. Filed for public inspection May 21, 2010, 9:00 a.m.]

INDEPENDENT REGULATORY REVIEW COMMISSION

Notice of Comments Issued

Section 5(g) of the Regulatory Review Act (71 P. S. § 745.5(g)) provides that the Independent Regulatory Review Commission (Commission) may issue comments within 30 days of the close of the public comment period. The Commission comments are based upon the criteria contained in section 5.2 of the Regulatory Review Act (71 P. S. § 645.5b).

The Commission has issued comments on the following proposed regulation. The agency must consider these comments in preparing the final-form regulation. The final-form regulation must be submitted within 2 years of the close of the public comment period or it will be deemed withdrawn.

<i>Reg. No.</i>	<i>Agency/Title</i>	<i>Close of the Public Comment Period</i>	<i>IRRC Comments Issued</i>
7-450	Environmental Quality Board New Source Review 40 Pa.B. 703 (February 6, 2010)	4/12/10	5/12/10

**Environmental Quality Board
Regulation #7-450 (IRRC #2818)**

New Source Review

May 12, 2010

We submit for your consideration the following comments on the proposed rulemaking published in the February 6, 2010 *Pennsylvania Bulletin*. Our comments are based on criteria in section 5.2 of the Regulatory Review Act (71 P.S. § 745.5b). Section 5.1(a) of the Regulatory Review Act (71 P.S. § 745.5a(a)) directs the Environmental Quality Board (EQB) to respond to all comments received from us or any other source.

1. General.—Fiscal Impact; Consistency with other regulations; Reasonableness; Clarity.

There appears to be some inconsistency between the Regulatory Analysis Form (RAF) and Preamble as to whether this proposed regulation is consistent with or more stringent than Federal regulations. Item #24 of the RAF states that the proposal is not more stringent than Federal standards. Meanwhile, the Preamble or Order includes the following statement:

To the extent that any of the proposed revisions are more stringent than any Federal requirements, these revisions are reasonably necessary in order to attain and maintain the PM_{2.5} NAAQS [National Ambient Air Quality Standard for fine particulate matter equal to and less than 2.5 micrometers in diameter].

Some commentators indicated that the proposed regulation is inconsistent with and more stringent than Federal rules and standards. Department of Environmental Protection (DEP) staff members indicate that the existing regulations for the New Source Review (NSR) program are more stringent than the comparable Federal rules and standards. The provisions are the result of previous rulemakings adopted by the EQB. This proposed rulemaking would apply them to PM_{2.5}.

Section 4.2(b) of the Air Pollution Act (35 P.S. § 4004.2(b)) states that “control measures or other requirements adopted” to implement ambient air quality standards “shall be no more stringent than those required by the Clean Air Act” except under specific conditions or “if the board [EQB] determines that it is reasonably necessary” to exceed minimum Federal requirements for the Commonwealth to achieve or maintain air quality standards, to prevent assessment of Federal sanctions, to satisfy Federal requirements that apply to Pennsylvania, or to comply with the final decree of a Federal court. When the EQB adopted the existing provisions in Chapters 121 and 127, these rules and standards did not include PM_{2.5}. To the extent that this proposed regulation is more stringent than Federal rules and standards for PM_{2.5}, the EQB and DEP should provide a justification for exceeding Federal standards and requirements. The EQB should explain why, how and when it made the

determination that it was necessary to be more stringent than the Federal NSR program in controlling and reducing PM_{2.5} in Pennsylvania.

As a part of this determination, the EQB and DEP should identify the specific standards and provisions that apply to PM_{2.5} and are different from the Federal program with cross-references to the specific Federal rules and standards. Where there is a difference, the need for the state rule should be explained and justified. What impacts will the proposal have on Pennsylvania businesses and industries that are competing with the same types of businesses and industries in other jurisdictions? What impact will it have on keeping businesses and industries in Pennsylvania, and attracting new companies to locate in Pennsylvania? Answers to these questions and related information should be provided with the final-form regulation.

A related concern is the response to item #25 on page seven of the RAF. The response claims that “a number of neighboring states with PM_{2.5} nonattainment areas are also currently working on amendments to their NSR programs to meet the requirements published by the EPA.” Yet, it also states that none of these states have proposed their drafts, and “it is not anticipated that these regulations [this proposed rulemaking] will place this Commonwealth at a competitive disadvantage.” There are two concerns. First, if the neighboring states have not yet unveiled proposed drafts of rulemakings, what is the assurance that Pennsylvania industries will not be placed at a competitive disadvantage? Second, if other states are adopting regulations which are consistent with the Federal program while the EQB program is more stringent, the EQB and DEP should explain the impact on the competitiveness of Pennsylvania businesses and industries. Coordinating a regional response with the neighboring states may provide a better result for air quality and also help insure that industries in different states are not placed at a competitive disadvantage.

2. Section 121.1. Definitions.—Fiscal Impact; Consistency with other regulations; Clarity.

Regulated NSR [New Source Review] pollutant—

The proposed regulation amends this existing definition. These changes include a statement identifying sulfur dioxides (SO₂) and nitrogen oxides (NO_x) as precursors to PM_{2.5} in all PM_{2.5} nonattainment areas. The proposal is similar to language in the Federal regulations at 40 CFR 51.165(a)(xxxvii), except that Section 51.165(a)(xxxvii)(C)(3) indicates that a state may make a demonstration to the EPA that NO_x emissions from sources in a specific area are not a significant contributor to that area’s ambient PM_{2.5} concentrations. The information in the Preamble and accompanying materials with the proposed regulation does not provide any information on whether the DEP has identified areas where NO_x emissions are not a significant contributor to PM_{2.5} concentrations. This information should be provided with the final-form regulation.

Significant—

The amendment to this definition is similar to the federal language at 40 CFR 51.166(b)(23)(i), which includes the following:

PM_{2.5}: 10 tpy [tons per year] of direct PM_{2.5} emissions; 40 tpy of sulfur dioxide emissions; 40 tpy of nitrogen oxide emissions unless demonstrated not to be a PM_{2.5} precursor under paragraph (b)(49) of this section.

The one difference is that the proposed regulation does not include the language “unless demonstrated not to be a PM2.5 precursor.” What is the reason for this inconsistency?

3. Section 127.203. Facilities subject to special permit requirements. Section 127.203a. Applicability determination. Section 127.204. Emissions subject to this subchapter.—Fiscal impact; Implementation procedure; Consistency with other regulations; Reasonableness; Clarity.

There are concerns with amendments and language in Sections 127.203, 127.203a and 127.204 that appear to be interrelated. Commentators expressed concerns with the “aggregation of *de minimis* emission increases,” “proposed project” emissions and “fugitive emissions.”

First, commentators are concerned that the existing rules for a “proposed *de minimis* emission increase” in Section 127.203a(a)(2) combined with the changes in the proposed regulation, including Sections 127.203 and 127.204, will create requirements that are more stringent than Federal rules and standards for PM2.5. They claim that application of these existing rules to other pollutants may be justified but it was not the intent of Federal law or regulations to apply them to PM2.5. They contend that it will impose unnecessary burdens on Pennsylvania businesses and industries.

Second, commentators expressed concern and confusion with the amendment to Section 127.204(a) and the term “fugitive emissions.” Specifically, the use of this term in this proposed regulation and the existing provisions of Chapter 127 are different from the description of the term found in Federal regulations at 40 CFR 51.165(a)(1)(iv)(C). For example, Section 127.204(a) includes “use of parking lots and paved and unpaved roads on the facility property.” Similar words do not appear in the description of “fugitive emissions” in the Federal rules. Commentators are concerned that the proposed regulation would impose a regulatory framework that is well beyond the intent of Federal rules and standards, and would create unnecessary costs and restrict competition and economic growth.

Third, the “*de minimis*” and “fugitive” emissions provisions are also problematic because the “significant” emission rate for PM2.5 is set by Federal rule at ten tons per year [10 TPY]. Except for the pollutant “lead,” this is low. For example, PM10 is set at 15 TPY, NOx is 40 TPY, and carbon monoxide is 100 TPY. Commentators are concerned that the “significant” rate for PM2.5 combined with this proposed regulation will act as a frequent trigger requiring Pennsylvania businesses and industries to invest more funds in offsets or emissions control technology than their competitors in neighboring states.

Fourth, a related concern is the addition of the phrase “including the emissions from the proposed project” in Sections 127.203(b)(2) and (3). New language in Section 127.203a(a) also requires the inclusion of “the estimate of an emissions increase” from a new project. The apparent redundancy is confusing. The EQB should explain the intent of and need for both amendments.

In these related areas of concern, the EQB needs to clarify and justify its intent, or revise the final-form regulation to make it clear and consistent with Federal rules and standards for PM2.5.

4. Section 127.210. Offset ratios.—Fiscal impact; Implementation procedure; Consistency with other regulations; Reasonableness; Clarity.

Commentators expressed concerns with the basis or rationale for the amendments in this section. One area that is unclear is the phrase “unless interpollutant offsetting is authorized for a particular pollutant as specified in subsection (a).” One commentator refers to approval by the U.S. Environmental Protection Agency of interpollutant trading in the five-county southeastern region of the state. Are there other situations where interpollutant offsetting might be authorized? If so, what impact will this section have on those approved interpollutant offsets or trades?

ARTHUR COCCODRILLI,
Chairperson

[Pa.B. Doc. No. 10-957. Filed for public inspection May 21, 2010, 9:00 a.m.]

Notice of Filing of Final Rulemaking

The Independent Regulatory Review Commission (Commission) received the following regulation. It is scheduled to be considered on the date noted. The Commission’s public meetings are held at 333 Market Street, 14th Floor, Harrisburg, PA at 10 a.m. To obtain a copy of the regulation, interested parties should first contact the promulgating agency. If a copy cannot be obtained from the promulgating agency, the Commission will provide a copy or a copy can be obtained on the web site, www.irrc.state.pa.us.

Final-Form

<i>Reg. No.</i>	<i>Agency/Title</i>	<i>Received</i>	<i>Public Meeting</i>
57-260	Pennsylvania Public Utility Commission Abbreviated Procedure for Review of Transfer of Control and Affiliate Filings for Telecommunication Carriers	5/6/10	6/17/10

ARTHUR COCCODRILLI,
Chairperson

[Pa.B. Doc. No. 10-958. Filed for public inspection May 21, 2010, 9:00 a.m.]

INSURANCE DEPARTMENT

Application for Approval to Redomesticate to the Commonwealth of Pennsylvania by North Pointe Insurance Company

North Pointe Insurance Company, a stock casualty insurance company, has submitted an Application for Redomestication, whereby it proposes to redomesticate from the State of Michigan to the Commonwealth of Pennsylvania. The filing was made under the requirements set forth under 15 Pa.C.S. §§ 4161 and 4162 (relating to domestication; and effect of domestication) and section 357 of The Insurance Company Law of 1921 (40 P.S. § 477e).

Persons wishing to comment on the redomestication are invited to submit a written statement to the Insurance Department (Department) within 30 days from the date of this issue of the *Pennsylvania Bulletin*. Each written statement must include the 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 Cressinda Bybee, Company Licensing Division, Insurance Department, 1345 Strawberry Square, Harrisburg, PA 17120, fax (717) 787-8557 or cbybee@state.pa.us.

JOEL SCOTT ARIO,
Insurance Commissioner

[Pa.B. Doc. No. 10-959. Filed for public inspection May 21, 2010, 9:00 a.m.]

Application for the Merger of Eastern Life and Health Insurance Company with and into Security Life Insurance Company of America

An application has been received requesting approval of the merger of Eastern Life and Health Insurance Company, a stock life insurance company organized under the laws of the Commonwealth, with and into Security Life Insurance Company of America, a stock life insurance company organized under the laws of the State of Minnesota. The filing was made under the requirements set forth under Article XIV of The Insurance Company Law of 1921 (40 P. S. §§ 991.1401—991.1413); 15 Pa.C.S. §§ 1921—1932 (relating to merger, consolidation, share exchanges and sale of assets) and the GAA Amendments Act of 1990 (15 P. S. §§ 21101—21208).

Persons wishing to comment on the merger are invited to submit a written statement to the Insurance Department (Department) within 14 days from the date of this issue of the *Pennsylvania Bulletin*. Each written statement must include name, address and telephone number of the interested party; identification of the application to which the statement is addressed; and a concise statement with sufficient detail and relevant facts to inform the Department of the exact basis of the statement. Written statements should be directed to Cressinda Bybee, Company Licensing Division, Insurance Department, 1345 Strawberry Square, Harrisburg, PA 17120, fax (717) 787-8557 or cbybee@state.pa.us.

JOEL SCOTT ARIO,
Insurance Commissioner

[Pa.B. Doc. No. 10-960. Filed for public inspection May 21, 2010, 9:00 a.m.]

Application and Request for a Certificate of Authority to Provide a Continuing Care Retirement Community by Mountain View Nursing, LP

Mountain View Nursing, LP has applied for a Certificate of Authority to operate a Continuing Care Retirement Community at Mountain View, a Nursing and

Rehabilitation Center in Coal Township, PA. The initial filing was received on April 27, 2010, and was made under the requirements set forth under the Continuing-Care Provider Registration and Disclosure Act (40 P. S. §§ 3201—3325).

Persons wishing to comment on the grounds of public or private interest to the issuance of a Certificate of Authority are invited to submit a written statement to the Insurance Department (Department) within 30 days from the date of this issue of the *Pennsylvania Bulletin*. Each written statement must include name, address and telephone number of the interested party; identification of the application to which the statement is addressed; and a concise statement with sufficient detail to inform the Department of the exact basis of the statement. Written statements should be directed to Steven L. Yerger, Insurance Department, 1345 Strawberry Square, Harrisburg, PA 17120, fax (717) 787-8557 or syerger@state.pa.us.

JOEL SCOTT ARIO,
Insurance Commissioner

[Pa.B. Doc. No. 10-961. Filed for public inspection May 21, 2010, 9:00 a.m.]

Application and Request for a Certificate of Authority to Provide a Continuing Care Retirement Community by North American Medical Centers, Inc.

North American Medical Centers, Inc. has applied for a Certificate of Authority to operate a Continuing Care Retirement Community at Scenery Hill Manor in Indiana, PA. The initial filing was received on April 27, 2010, and was made under the requirements set forth under the Continuing-Care Provider Registration and Disclosure Act (40 P. S. §§ 3201—3325).

Persons wishing to comment on the grounds of public or private interest to the issuance of a Certificate of Authority are invited to submit a written statement to the Insurance Department (Department) within 30 days from the date of this issue of the *Pennsylvania Bulletin*. Each written statement must include name, address and telephone number of the interested party; identification of the application to which the statement is addressed; and a concise statement with sufficient detail to inform the Department of the exact basis of the statement. Written statements should be directed to Steven L. Yerger, Insurance Department, 1345 Strawberry Square, Harrisburg, PA 17120, fax (717) 787-8557 or syerger@state.pa.us.

JOEL SCOTT ARIO,
Insurance Commissioner

[Pa.B. Doc. No. 10-962. Filed for public inspection May 21, 2010, 9:00 a.m.]

Donegal Mutual Insurance Company; Homeowners; Rate and Rule Revision; Rate Filing

On April 30, 2010, the Insurance Department (Department) received from Donegal Mutual Insurance Company a filing for a rate level change for homeowners insurance.

The company requests an overall 4.4% increase amounting to \$1,857,612 annually, to be effective July 1, 2010, for new business and August 1, 2010, for renewal business.

Unless formal administrative action is taken prior to May 30, 2010, the subject filing may be deemed approved by operation of law.

A copy of the filing is available on the Department's web site at www.insurance.pa.gov. To access the filing, under "How to Find . . ." click on "Current Rate Filings."

Interested parties are invited to submit written comments, suggestions or objections to Michael McKenney, Insurance Department, Office of Insurance Product Regulation, 1311 Strawberry Square, Harrisburg, PA 17120, mmckenney@state.pa.us within 30 days after publication of this notice in the *Pennsylvania Bulletin*.

JOEL SCOTT ARIO,
Insurance Commissioner

[Pa.B. Doc. No. 10-963. Filed for public inspection May 21, 2010, 9:00 a.m.]

Highmark Blue Shield (Central Region); Direct Pay Medically Underwritten PPO Plans; Rate Filing

By filing No. 1A-BSMUPPO-10-HBS, Highmark, Inc., d/b/a Highmark Blue Shield, requests approval to increase the premium rates for its medically underwritten Direct Pay PPO Plan in Central Pennsylvania Region. The filing requests an average increase of 15.6% or \$48.70 per contract per month. This filing will affect approximately 8,900 contract holders and will produce additional income of about \$5.2 million annually. The requested effective date of the change is October 1, 2010.

Unless formal administrative action is taken prior to August 5, 2010, the subject filing may be deemed approved by operation of law.

A copy of the filing is available on the Insurance Department's (Department) web site at www.insurance.pa.gov. To access the filing, under "How to Find . . ." click on "Current Rate Filings."

A copy of the filing is also available for public inspection, by appointment, during normal working hours at the Department's Harrisburg office.

Interested parties are invited to submit written or e-mail comments, suggestions or objections to Rashmi Mathur, Insurance Department, Insurance Product Regulation and Administration, 1311 Strawberry Square, Harrisburg, PA 17120, rmathur@state.pa.us within 30 days after publication of this notice in the *Pennsylvania Bulletin*.

JOEL SCOTT ARIO,
Insurance Commissioner

[Pa.B. Doc. No. 10-964. Filed for public inspection May 21, 2010, 9:00 a.m.]

Highmark, Inc. and Highmark Cross Blue Shield; Provider Reimbursement Adjustments to Allowances—UCR and PremierBlue; Rate Filing

On April 28, 2010, the Insurance Department (Department) received from Highmark Blue Cross Blue Shield and Highmark Blue Shield filing number 1-Pricing (Provider Reimbursement)-10-HI requesting to adjust the base UCR Level II allowances and PremierBlue Shield preferred provider program Fee Schedule allowances for select procedures.

Highmark requests approval to implement the increases effective immediately upon approval, subject to notification and disclosure requirements.

Unless formal administrative action is taken prior to August 4, 2010, the subject filing may be deemed approved by operation of law.

A copy of the filing is available on the Department's web site at www.insurance.pa.gov. To access the filing, under "How to Find . . ." click on "Current Rate Filings."

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*.

JOEL SCOTT ARIO,
Insurance Commissioner

[Pa.B. Doc. No. 10-965. Filed for public inspection May 21, 2010, 9:00 a.m.]

Keystone Health Plan West—Individual HMO Plan; Rate Filing

By filing No. 1A-DPHMO-10-KHPW, Keystone Health Plan West, Inc. (KHPW) requests approval to adjust the premium rates for its Individual HMO Plan. The filing requests an average increase of 8.5% or \$35.03 per contract per month. This filing will affect approximately 8,200 contract holders and will produce additional income of about \$3.5 million annually. The requested effective date of the change is October 1, 2010.

Unless formal administrative action is taken prior to August 5, 2010, the subject filing may be deemed approved by operation of law.

A copy of the filing is available on the Insurance Department's (Department) web site at www.insurance.pa.gov. To access the filing, under "How to Find . . ." click on "Current Rate Filings."

A copy of the filing is also available for public inspection, by appointment, during normal working hours at the Department's Harrisburg office.

Interested parties are invited to submit written or e-mail comments, suggestions or objections to Cherri Sanders-Jones, Insurance Department, Insurance Product

Regulation and Administration, 1311 Strawberry Square, Harrisburg, PA 17120, csandersjo@state.pa.us within 30 days after publication of this notice in the *Pennsylvania Bulletin*.

JOEL SCOTT ARIO,
Insurance Commissioner

[Pa.B. Doc. No. 10-966. Filed for public inspection May 21, 2010, 9:00 a.m.]

Progressive Advanced Insurance Company; Private Passenger Automobile; Usage Based Insurance Program; Rate and Rule Filing

On April 30, 2010, the Insurance Department (Department) received from Progressive Advanced Insurance Company a private passenger automobile rate and rule filing to introduce its Usage Based Insurance Program.

At the insured's request, the company will provide a device that plugs into the on-board diagnostic port found on all vehicles sold in the U.S. since model year 1996. The device records vehicle information including, but not limited to, the date and time of installation and disconnection, and the time of day and speed at which the vehicle is operated. A usage factor is derived from the vehicle information data recorded by the device and applied to the policy's premium. Effective dates of August 31, 2010, for new business and October 10, 2010, for renewal business are requested.

Unless formal administrative action is taken prior to June 29, 2010, the subject filing may be deemed approved by operation of law.

A copy of the filing is available on the Department's web site at www.insurance.pa.gov. To access the filing, under "How to Find . . ." click on "Current Rate Filings."

Interested parties are invited to submit written comments, suggestions or objections to Michael McKenney, Insurance Department, Office of Insurance Product Regulation, 1311 Strawberry Square, Harrisburg, PA 17120, mmckenney@state.pa.us within 30 days after publication of this notice in the *Pennsylvania Bulletin*.

JOEL SCOTT ARIO,
Insurance Commissioner

[Pa.B. Doc. No. 10-967. Filed for public inspection May 21, 2010, 9:00 a.m.]

LIQUOR CONTROL BOARD

Expiration of Leases

The Liquor Control Board seeks the following new site:
Westmoreland County, Wine & Spirits Store #6509 (Relocation), Mt. Pleasant, PA

Lease expiration date: October 31, 2010

Lease retail commercial space to the Commonwealth. Proposals are invited to provide the Liquor Control Board with approximately 5,000 net useable square feet of new or existing retail commercial space in a Shopping Center environment with free parking and rear door loading near the intersection of Routes 119 and 819 in East Huntingdon Township, Mt. Pleasant, PA.

Proposals due: June 11, 2010, at 12 p.m.

Department: Liquor Control Board
Location: Real Estate Division, 158 Purity Road, Suite B, Pittsburgh, PA 15235-4441
Contact: George D. Danis, (412) 723-0124

PATRICK J. STAPLETON, III,
Chairperson

[Pa.B. Doc. No. 10-968. Filed for public inspection May 21, 2010, 9:00 a.m.]

MILK MARKETING BOARD

Sunshine Meeting for Fiscal Year 2010-2011

<i>Date</i>	<i>Room</i>	<i>Time</i>
Wednesday, July 7, 2010	202 Agriculture Building Harrisburg, PA 17110	1 p.m.
Wednesday, August 4, 2010	202 Agriculture Building Harrisburg, PA 17110	1 p.m.
Wednesday, September 1, 2010	202 Agriculture Building Harrisburg, PA 17110	1 p.m.
Wednesday, October 6, 2010	202 Agriculture Building Harrisburg, PA 17110	1 p.m.
Wednesday, November 10, 2010*	202 Agriculture Building Harrisburg, PA 17110	1 p.m.
Wednesday, December 1, 2010	202 Agriculture Building Harrisburg, PA 17110	1 p.m.
Wednesday, January 5, 2011	202 Agriculture Building Harrisburg, PA 17110	1 p.m.
Wednesday, February 9, 2011*	202 Agriculture Building Harrisburg, PA 17110	1 p.m.
Wednesday, March 2, 2011	202 Agriculture Building Harrisburg, PA 17110	1 p.m.
Wednesday, April 6, 2011	202 Agriculture Building Harrisburg, PA 17110	1 p.m.
Wednesday, May 4, 2011	202 Agriculture Building Harrisburg, PA 17110	1 p.m.
Wednesday, June 1, 2011	202 Agriculture Building Harrisburg, PA 17110	1 p.m.

* *Not the first Wednesday of the month due to conflicts.*

KEITH BIERLY,
Secretary

[Pa.B. Doc. No. 10-969. Filed for public inspection May 21, 2010, 9:00 a.m.]

PATIENT SAFETY AUTHORITY

Public Meeting

The Patient Safety Authority (Authority), established by section 303 of the Medical Care Availability and Reduction of Error (MCARE) Act (40 P.S. § 1303.303), enacted on March 20, 2002, announces a meeting of the Authority's Board to be held at the Sheraton Harrisburg/Hershey Hotel, 4650 Lindle Road, Harrisburg, PA at 10 a.m. on Tuesday, June 1, 2010.

Individuals having questions regarding this meeting, which is open to the public, should contact the Authority at (717) 346-0469.

MICHAEL C. DOERING,
Executive Director

[Pa.B. Doc. No. 10-970. Filed for public inspection May 21, 2010, 9:00 a.m.]

PENNSYLVANIA PUBLIC UTILITY COMMISSION

Petition of PPL Electric Utilities Corporation

P-2010-2174467. PPL Electric Utilities Corporation. Petition of PPL Electric Utilities Corporation for a finding that a building to shelter control equipment at the substation to be constructed in Upper Allen Township, Cumberland County, PA is reasonably necessary for the convenience or welfare of the public.

Formal protests and petitions to intervene must be filed in accordance with 52 Pa. Code (relating to public utilities). Filings must be made with the Secretary of the Pennsylvania Public Utility Commission, P. O. Box 3265, Harrisburg, PA 17105-3265, with a copy served on the applicant, on or before June 7, 2010. The documents filed in support of the application are available for inspection and copying at the Office of the Secretary between 8 a.m. and 4:30 p.m., Monday through Friday, and at the applicant's business address.

Applicant: PPL Electric Utilities Corporation

Through and By Counsel: Paul E. Russell, Associate General Counsel, PPL Services Corporation, Two North Ninth Street, Allentown, PA 18106

David B. MacGregor, Esquire, Post & Schell, P.C., Four Penn Center, 1600 John F. Kennedy Boulevard, Philadelphia, PA 19103-2808

John H. Isom, Esquire, Post & Schell, P.C., 17 North Second Street, 12th Floor, Harrisburg, PA 17101-1601

ROSEMARY CHIAVETTA,
Secretary

[Pa.B. Doc. No. 10-971. Filed for public inspection May 21, 2010, 9:00 a.m.]

Service of Notice of Motor Carrier Applications

The following temporary authority and/or permanent authority applications for the right to render service as a common carrier or contract carrier in this Commonwealth have been filed with the Pennsylvania Public Utility Commission. Formal protests and petitions to intervene must be filed in accordance with 52 Pa. Code (relating to public utilities). A protest shall indicate whether it applies to the temporary authority application, the permanent authority application, or both. Filings must be made with the Secretary, Pennsylvania Public Utility Commission, P. O. Box 3265, Harrisburg, PA 17105-3265, with a copy served on the applicant by June 7, 2010. Documents filed in support of the applications are available for inspection and copying at the Office of the Secretary

between 8 a.m. and 4:30 p.m., Monday through Friday, and at the business address of the respective applicant.

Applications of the following for the approval of the right and privilege to *discontinue/abandon operating as common carriers by motor vehicle and for cancellation of the certificate of public convenience as described under each application.*

A-2010-2174499. Roberts Limousine Service, LLC (3185 Penn Estates, East Stroudsburg, Monroe County, PA 18301), a limited liability company of the Commonwealth—for the discontinuance of service and cancellation of its certificate as a common carrier, by motor vehicle, authorizing the transportation of persons in limousine service, from points in Monroe, Lackawanna, Luzerne, Carbon, Lehigh, Northampton and Pike Counties, to points in Pennsylvania, and return; excluding areas under the jurisdiction of the Philadelphia Parking Authority; subject to the following condition: that no right, power or privilege is granted to provide service within Pike County except in the Townships of Greene, Porter, Lehman and Delaware.

A-2010-2175081. Paoli Airport Limousine Service, Inc. (105 Quaker Lane, Malvern, Chester County, PA 19355), a corporation of the Commonwealth, for discontinuance of service and cancellation of its Certificate as a common carrier, by motor vehicle, authorizing the transportation of persons in airport transfer service:

A-00095548, F.2: To transport, as a common carrier, persons in limousine-type vehicles, having a seating capacity of not less than seven passengers or more than 11 passengers, from the Borough of Malvern and the Townships of Willistown, East Whiteland, Chester County, to Philadelphia International Airport in the City and County of Philadelphia, and vice versa.

A-00095548, F.2, Am-A: To transport, as a common carrier, persons in limousine type vehicles having a seating capacity of not less than seven or more than 11 passengers, including the driver, from Newtown Square, in the Township of Newtown, the Borough of Media, the Township of Springfield, and the Village of Folsom, Ridley Township, all in the County of Delaware, to the Philadelphia International Airport in the City and County of Philadelphia, and vice versa.

A-00095548, F.2, Am-D: To transport, as a common carrier, in airport transfer service, persons and their baggage, having a prior or subsequent movement by air, in limousine-type vehicles having a seating capacity of not less than seven or more than 11 passengers, without the use of taximeters or dome lights, from the Philadelphia International Airport, in the City and County of Philadelphia, and the Township of Tinicum, Delaware County, to points in the County of Delaware and vice versa; subject to the following conditions:

(a) That no right, power or privilege is granted to perform transportation to or from the Townships of Radnor, Haverford, Marple and Newtown, Delaware County.

(b) That no right, power or privilege is granted to perform transportation to or from the area in Delaware County beginning at the intersection of the Lower Marion Montgomery County Line and Ardmore Avenue and continuing along Ardmore Avenue, Ellis Road, Lawrence Road and Darby Creek to Darby Creek; thence southwardly along Darby Creek to State Road, Springfield, Saxer, Baltimore, Woodland

and Kedron Avenues to MacDade Boulevard; thence northeastwardly along MacDade Boulevard to Winona Avenue; thence southwardly along Winona Avenue continuing in a straight line to the Delaware River; thence northwardly along the Delaware River to the Philadelphia County Line and thence along the Philadelphia County Line and the Montgomery County Line to the place of beginning.

(c) That no right, power or privilege is granted to perform transportation to or from the Townships of Birmingham and Concord in the County of Delaware.

*Pennsylvania Public Utility Commission, Bureau of
Transportation and Safety v. Active Limousine, LLC;
Doc. No. C-2010-2134265*

COMPLAINT

The Pennsylvania Public Utility Commission (Commission) is a duly constituted agency of the Commonwealth of Pennsylvania empowered to regulate public utilities within the Commonwealth. The Commission has delegated its authority to initiate proceedings which are prosecutory in nature to the Bureau of Transportation and Safety and other bureaus with enforcement responsibilities. Pursuant to that delegated authority and Section 701 of the Public Utility Code, the Bureau of Transportation and Safety prosecutory Staff hereby represents as follows:

1. That Active Limousine, LLC, Respondent, maintains a principal place of business at 327 Par Drive, Philadelphia, PA 19115.

2. That Respondent was issued a Certificate of Public Convenience by this Commission on March 16, 2009, at A-6410515.

3. That on September 28, 2009, at approximately 10:00 AM, at 327 Par Drive, Philadelphia, Philadelphia County, PA, Enforcement Officer Ralph Kane, a duly authorized officer of this Commission, performed an Annual Inspection on Respondent. The following violations were found:

(a) No criminal history record obtained, reviewed or maintained on drivers Samson Chaudhry and Sohail Javeed.

(b) No driver history obtained, reviewed or maintained on driver Sohail Javeed.

4. That Respondent, by failing to obtain, review and maintain a criminal history record for its drivers violated 52 Pa. Code § 29.505(a), (b) and (d). The penalty is \$250.00 per violation for a total penalty of \$500.00.

5. That Respondent, by failing to obtain, review and maintain a driver history record for a driver, violated 52 Pa. Code § 29.504(a), (b) and (c). The penalty is \$100.00.

Wherefore, the Bureau of Transportation and Safety Prosecutory Staff hereby requests that the Commission fine Active Limousine, LLC, the sum of six hundred dollars (\$600.00) for the illegal activity described in this complaint, and order such other remedy as the Commission may deem to be appropriate.

Respectfully submitted,

Wendy J. Keezel, Chief of Enforcement
Motor Carrier Services & Enforcement
Division
Bureau of Transportation and Safety
P. O. Box 3265
Harrisburg, PA 17105-3265

VERIFICATION

I, Wendy J. Keezel, Chief of Enforcement for the Motor Carrier Services and Enforcement Division of the Bureau of Transportation and Safety, hereby state that the facts above set forth are true and correct to the best of my knowledge, information and belief and that I expect the Bureau will be able to prove the same at any hearing held in this matter. I understand that the statements herein are made subject to the penalties of 18 Pa.C.S. § 4904 relating to unsworn falsification to authorities.

Date: _____

Wendy J. Keezel, Chief of Enforcement
Motor Carrier Services and Enforcement
Bureau of Transportation and Safety

NOTICE

A. You must file an answer within twenty (20) days of the date of service of this complaint. The date of service is the mailing date as indicated at the top the Secretarial cover letter for this complaint and notice, 52 Pa. Code § 1.56(a). An answer is a written explanation of circumstances wished to be considered in determining the outcome. The answer shall raise all factual and legal arguments that you wish to claim in your defense and must include the reference number of this complaint. Your answer must be verified and the original and three (3) copies sent to:

James J. McNulty, Secretary
Pennsylvania Public Utility Commission
P. O. Box 3265
Harrisburg, PA 17105-3265

B. If you fail to answer this complaint within twenty (20) days, the Bureau of Transportation and Safety will request that the Commission issue an Order imposing a penalty.

C. You may elect not to contest this complaint by paying the fine proposed in this Complaint by certified check or money order. Payment must be made to the Commonwealth of Pennsylvania and should be forwarded to:

James J. McNulty, Secretary
Pennsylvania Public Utility Commission
P. O. Box 3265
Harrisburg, PA 17105-3265

Your payment is an admission that you committed the alleged violation and an agreement to cease and desist from further violations. Upon receipt of your payment, the complaint proceeding shall be closed.

D. If you file an Answer which admits or fails to deny the allegations of the Complaint, the Bureau of Transportation and Safety will request that the Commission issue an Order imposing a penalty.

E. If you file an Answer which contests the Complaint, the matter will be assigned to an Administrative Law Judge for hearing and decision. The judge is not bound by the optional fine set forth above.

F. If you have questions regarding this Complaint or if you would like an alternative format of this Complaint, (for persons with disabilities), please contact the Compliance Office at (717) 787-1227.

*Pennsylvania Public Utility Commission, Bureau of
 Transportation and Safety v. Stylin' Limousine, Inc.;*
Doc. No. C-2010-2127742

COMPLAINT

The Pennsylvania Public Utility Commission (Commission) is a duly constituted agency of the Commonwealth of Pennsylvania empowered to regulate public utilities within the Commonwealth. The Commission has delegated its authority to initiate proceedings which are prosecutory in nature to the Bureau of Transportation and Safety and other bureaus with enforcement responsibilities. Pursuant to that delegated authority and Section 701 of the Public Utility Code, the Bureau of Transportation and Safety Prosecutory Staff hereby represents as follows:

1. That Stylin' Limousine, Inc., respondent, maintains its principal place of business at 1938 North Center Avenue, Somerset, PA 15501.

2. That respondent was issued a certificate of public convenience by this Commission on November 19, 2001, at Application Docket No. A-00117376.

3. That respondent's operating rights were suspended on March 12, 2008, for failure to maintain evidence of insurance on file with this Commission. The suspension was lifted August 7, 2009.

4. On September 30, 2009, Enforcement Officer Brian McGowan traveled to respondent's place of business in an attempt to meet with owner, Dan Colefish. Officer McGowan left a business card due to Mr. Colefish being unavailable. Again on October 20, 2009, Officer McGowan traveled to respondent's place of business which resulted in another unsuccessful attempt to meet with Mr. Colefish. As a result, Officer McGowan sent a ten (10) day certified letter to respondent requesting copies of all trips sheets from March 1, 2008, through and including August 31, 2009. On October 27, 2009, Mr. Colefish contacted the Altoona District Office and left his telephone number and a message for Officer McGowan to contact him. On November 12, 2009, Mr. Colefish contacted Officer McGowan and advised him that the requested documents were faxed to the district office. Officer McGowan advised Mr. Colefish that he had not received the documents, possibly because of the recent office closure and asked if he could pick up the documents. Mr. Colefish stated that Officer McGowan could pick up the trip sheets at his attorney's office. A review of the documents indicated that respondent provided a trip on March 22, 2008, which was during the period of lapsed insurance coverage. In addition, a review of the trip sheet revealed that the trip sheet failed to have the name of the certificated carrier and the PUC A number.

5. That respondent, by permitting its vehicle to be operated while under suspension, violated 52 Pa. Code § 32.2 and § 32.11 and 66 Pa.C.S. § 501(c), in that it failed to observe, obey and comply with a Commission regulation or order, and the terms and conditions thereof. The Bureau of Transportation and Safety Motor Carrier Services and Enforcement's Prosecutory staff's proposed civil penalty for this violation is \$1,000 and cancellation of the certificate of public convenience.

6. That respondent, by failing to retain a completed driver trip sheet, violated 52 Pa. Code § 29.335(a)(2). The Bureau of Transportation and Safety Motor Carrier Services and Enforcement's Prosecutory staff's proposed civil penalty for this violation is \$50.00.

Wherefore, the Bureau of Transportation and Safety Prosecutory Staff hereby requests that the Commission fine Stylin' Limousine, Inc., the sum of one thousand fifty dollars (\$1,050.00) for the illegal activity described in this complaint and cancellation of the certificate of public convenience at A-00117376.

Respectfully submitted,

Wendy J. Keezel, Chief of Enforcement
 Motor Carrier Services & Enforcement
 Division
 Bureau of Transportation and Safety
 P. O. Box 3265
 Harrisburg, PA 17105-3265

VERIFICATION

I, Wendy J. Keezel, Chief of Enforcement for the Motor Carrier Services and Enforcement Division of the Bureau of Transportation and Safety, hereby state that the facts above set forth are true and correct to the best of my knowledge, information and belief and that I expect that the Bureau will be able to prove the same at any hearing held in this matter. I understand that the statements herein are made subject to the penalties of 18 Pa.C.S. § 4904 relating to unsworn falsification to authorities.

Date: _____

Wendy J. Keezel, Chief of Enforcement
 Motor Carrier Services and Enforcement
 Bureau of Transportation and Safety

NOTICE

A. You must file an answer within twenty (20) days of the date of service of this complaint. The date of service is the mailing date as indicated at the top of the Secretarial cover letter for this complaint and notice, 52 Pa. Code § 1.56(a). An answer is a written explanation of circumstances wished to be considered in determining the outcome. The answer shall raise all factual and legal arguments that you wish to claim in your defense and must include the reference number of this complaint. Your answer must be verified and the original and three (3) copies sent to:

Rosemary Chiavetta, Secretary
 Pennsylvania Public Utility Commission
 P. O. Box 3265
 Harrisburg, PA 17105-3265

B. If you fail to answer this complaint within twenty (20) days, the Bureau of Transportation and Safety will request that the Commission issue an Order imposing a penalty. Pursuant to 66 Pa.C.S. § 3301(a), the penalty could include a fine of up to \$1,000 for each violation, the revocation of your certificate of public convenience, or any other remedy as may be appropriate. Each day you continue to violate any regulation, direction, requirement, determination or order of the Commission is a separate and distinct offense, subject to additional penalties.

C. If you file an answer which either admits or fails to deny the allegations of the complaint, the Bureau of Transportation and Safety will request that the Commission issue an Order imposing a penalty, which may include the cancellation of your certificate of public convenience. Should the Commission cancel your certificate of public convenience, it may also impose an additional fine of up to \$1,000.

D. If you file an answer which contests the complaint, the matter will be assigned to an administrative law

judge for hearing and decision. The judge is not bound by the optional fine set forth above.

E. Alternative formats of this material are available, for persons with disabilities, by contacting the Compliance Office at (717) 787-1227.

*Pennsylvania Public Utility Commission,
 Bureau of Transportation and Safety v.
 Delaware Valley Recovery System;
 Doc. No. C-2010-2172256*

COMPLAINT

The Pennsylvania Public Utility Commission (Commission) is a duly constituted agency of the Commonwealth of Pennsylvania empowered to regulate public utilities within the Commonwealth. The Commission has delegated its authority to initiate proceedings which are prosecutory in nature to the Bureau of Transportation and Safety and other Bureaus with enforcement responsibilities. Pursuant to that delegated authority and Section 701 of the Public Utility Code, the Bureau of Transportation and Safety Prosecutory Staff hereby represents as follows:

1. That Delaware Valley Recovery System, Respondent, maintains its principal place of business at 516 Sterner Mill Road, Feasterville, PA 19053.

2. That Respondent was issued a Certificate of Public Convenience by this Commission on November 7, 1995, at Application Docket No. A-00112428.

3. That on December 20, 2007, Respondent received an initial assessment of \$201.00. On August 29, 2008, Respondent received an initial assessment of \$206.00, and on September 9, 2009, Respondent received an initial assessment of \$216.00. Respondent failed to pay these assessments; therefore, a balance was due in the amount of \$623.00.

4. That Respondent has an outstanding assessment of \$623.00.

5. That Respondent failed to file objections to the assessment, pursuant to 66 Pa.C.S. § 510(c).

6. That Respondent, by failing to pay the assessment, violated the Public Utility Code at 66 Pa.C.S. § 510(c).

Wherefore, unless Respondent pays the overdue assessment in full within twenty days of the date of service of this Complaint, the Bureau of Transportation and Safety Prosecutory Staff hereby requests that the Commission issue an Order which cancels the Certificate of Public Convenience issued to Respondent, notifies the Pennsylvania Department of Revenue that Respondent's Certificate of Public Convenience has been revoked, notifies Respondent's insurance carrier that Respondent's Certificate of Public Convenience has been revoked, and imposes an additional fine on the Respondent.

Respectfully submitted,

Wendy J. Keezel, Chief of Enforcement
 Motor Carrier Services & Enforcement
 Division
 Bureau of Transportation and Safety
 P. O. Box 3265
 Harrisburg, PA 17105-3265

VERIFICATION

I, Wendy J. Keezel, hereby state that the facts above set forth are true and correct to the best of my knowl-

edge, information and belief and that I expect to be able to prove the same at any hearing held in this matter. I understand that the statements herein are made subject to the penalties of 18 Pa.C.S. § 4904 relating to unsworn falsification to authorities.

Date: _____

Wendy J. Keezel, Chief of Enforcement
 Motor Carrier Services and Enforcement
 Bureau of Transportation and Safety

NOTICE

A. You must file an Answer within twenty days of the date of service of this Complaint. The date of service is the mailing date as indicated at the top of the Secretarial Cover Letter for this Complaint and Notice, 52 Pa. Code § 1.56(a). The Answer shall raise all factual and legal arguments that you wish to claim in your defense and must include the reference number of this Complaint. Your Answer must be verified and the original and three copies sent to:

Rosemary Chiavetta, Secretary
 Pennsylvania Public Utility Commission
 P. O. Box 3265
 Harrisburg, PA 17105-3265

B. If you fail to answer this Complaint within twenty days, the Bureau of Transportation and Safety will request that the Commission issue an Order imposing a penalty. Pursuant to 66 Pa.C.S. § 3301(a), the penalty could include a fine of up to \$1,000 for each violation, the revocation of your Certificate of Public Convenience, or any other remedy as may be appropriate.

C. You may elect not to contest this Complaint by paying your outstanding assessment within twenty (20) days. Your certified check or money order for the assessment should be payable to the Commonwealth of Pennsylvania and should be forwarded to:

Bureau of Administrative Services
 Pennsylvania Public Utility Commission
 P. O. Box 3265
 Harrisburg, PA 17105-3265

D. If you file an Answer which either admits or fails to deny the allegations of the Complaint, the Bureau of Transportation and Safety will request the Commission to issue an Order imposing a penalty (see Paragraph B). Should the Commission cancel your Certificate of Public Convenience, it may also impose an additional fine of up to \$1,000.

E. If you file an Answer which contests the Complaint, the matter will be assigned to an administrative law judge for hearing and decision. The judge is not bound by the penalty set forth in Paragraph B.

F. If you have questions regarding this Complaint, or if you would like an alternative format of this Complaint for persons with disabilities, please contact the Compliance Office at 717-787-1227.

ROSEMARY CHIAVETTA,
 Secretary

[Pa.B. Doc. No. 10-972. Filed for public inspection May 21, 2010, 9:00 a.m.]

Telecommunications

A-2010-2162818. Verizon Pennsylvania, Inc. and Cincinnati Bell Any Distance, Inc. Joint petition of Verizon Pennsylvania, Inc. and Cincinnati Bell Any Distance, Inc., for approval of a revised interconnection agreement and amendment No. 1 to the interconnection agreement under section 252(e) of the Telecommunications Act of 1996.

Verizon Pennsylvania, Inc. and Cincinnati Bell Any Distance, Inc., by its counsel, filed on May 10, 2010, at the Pennsylvania Public Utility Commission (Commission), a joint petition for approval of a revised interconnection agreement and amendment No. 1 to the interconnection agreement under sections 251 and 252 of the Telecommunications Act of 1996.

Interested parties may file comments concerning the petition and agreement with the Secretary, Pennsylvania Public Utility Commission, P. O. Box 3265, Harrisburg, PA 17105-3265. Comments are due on or before 10 days after the date of publication of this notice. Copies of the Verizon Pennsylvania, Inc. and Cincinnati Bell Any Distance, Inc., joint petition are on file with the Commission and are available for public inspection.

The contact person is Cheryl Walker Davis, Director, Office of Special Assistants, (717) 787-1827.

ROSEMARY CHIAVETTA,
Secretary

[Pa.B. Doc. No. 10-973. Filed for public inspection May 21, 2010, 9:00 a.m.]

STATE BOARD OF COSMETOLOGY

Bureau of Professional and Occupational Affairs v. Khanh Nguyen; Doc. No. 0175-45-09

On March 3, 2010, Khanh Nguyen, license number CL181803, of Dorchester Center, MA, had his license revoked and was ordered to pay a civil penalty of \$1,000, because the respondent obtained his license by dishonest or unethical means.

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's (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.

SUSANNE M. PHILO,
Chairperson

[Pa.B. Doc. No. 10-974. Filed for public inspection May 21, 2010, 9:00 a.m.]

In the Matter of the Citation Issued to Charlene L. Hannold; Doc. No. 0310-45-2010

On February 18, 2010, Charlene L. Hannold, license no. CL011820L, of Meadville, Crawford County, was suspended for failing to pay a previously imposed civil penalty.

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's (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.

SUSANNE M. PHILO,
Chairperson

[Pa.B. Doc. No. 10-975. Filed for public inspection May 21, 2010, 9:00 a.m.]

In the Matter of the Citation Issued to Timothy M. Wallace; Doc. No. 0311-45-2010

On February 18, 2010, Timothy M. Wallace, license no. CO226839L, of Philadelphia, Philadelphia County, was suspended for failing to pay a previously imposed civil penalty.

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's (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.

SUSANNE M. PHILO,
Chairperson

[Pa.B. Doc. No. 10-976. Filed for public inspection May 21, 2010, 9:00 a.m.]