

PENNSYLVANIA BULLETIN

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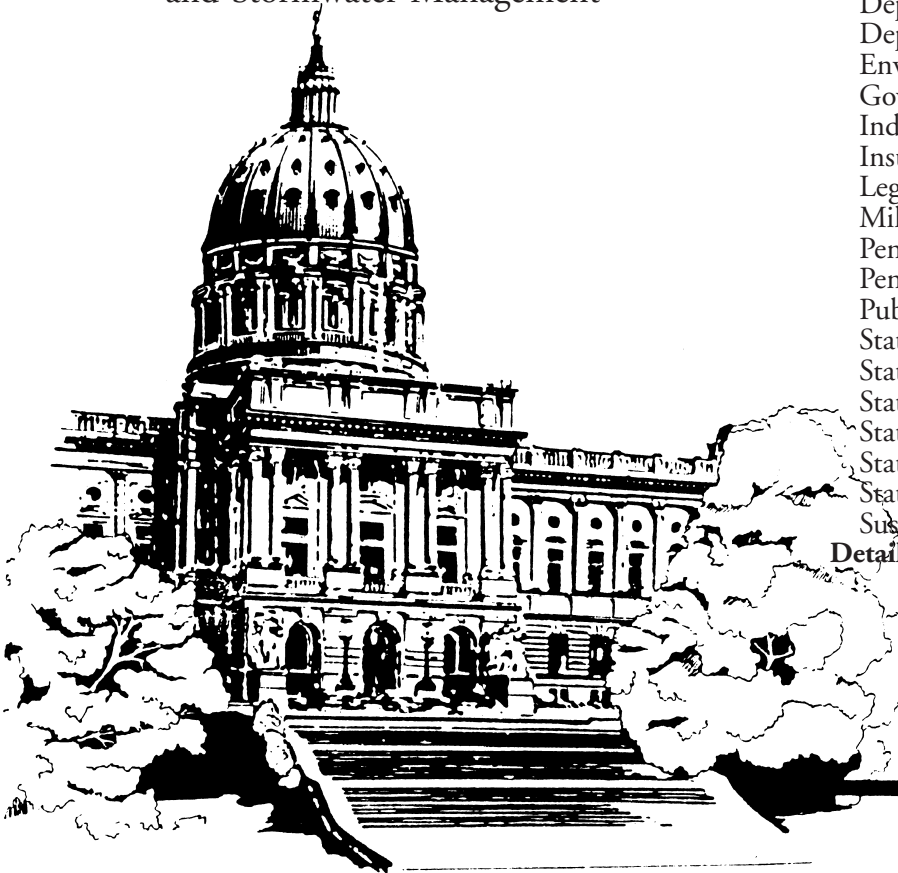
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**Latest Pennsylvania Code Reporters
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No. 429, August 2010

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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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THE COURTS

Title 237—JUVENILE RULES

PART I. RULES

[237 PA. CODE CHS. 1, 3 AND 8]

Proposed Amendments to Rules 120, 160, 166, 340 and 800 and Proposed New Rule 161

The Juvenile Court Procedural Rules Committee (Committee) is planning to recommend to the Supreme Court of Pennsylvania that the modification of Rules 120, 160, 161, 166, 340 and 800 be adopted and prescribed. These proposed modifications distinguish the official court record from the juvenile probation file.

The following Explanatory Report highlights the intent of these Rules. Note that the Committee's Reports should not be confused with the official Committee Comments to the Rules. Also note that the Supreme Court does not adopt the Committee's Comments or the contents of the Explanatory Reports.

The Committee requests that interested persons submit suggestions, comments or objections concerning this proposal to the Committee through counsel, Christine Riscili at juvenilerules@pacourts.us. E-mail is the preferred method for receiving comments in an effort to conserve paper and expedite the distribution of comments to the Committee. E-mailed comments need not be reproduced and sent by means of hard copy. The Committee will acknowledge receipt of your comment.

For those who do not have access to e-mail, comments may be faxed to the Committee at (717) 231-9541 or written comments may be mailed to:

Christine Riscili, Esq., Counsel
 Supreme Court of Pennsylvania
 Juvenile Court Procedural Rules Committee
 Pennsylvania Judicial Center
 601 Commonwealth Avenue, Suite 6200
 P. O. Box 62635
 Harrisburg, PA 17106-2635.

All comments shall be received no later than Monday, September 20, 2010.

By the Juvenile Court Procedural Rules Committee
 CYNTHIA K. STOLTZ, Esq.,
Chair

Annex A

TITLE 237. JUVENILE RULES

PART I. RULES

Subpart A. DELINQUENCY MATTERS

CHAPTER 1. GENERAL PROVISIONS

PART A. BUSINESS OF COURTS

Rule 120. Definitions.

* * * * *

JUVENILE PROBATION FILES are those records maintained by the juvenile probation office and its officers, including, but not limited to, copies of information contained in the official juvenile court record; social studies; school records and reports; health evaluations, records, and reports, including psychological and psychiatric evaluations and reports, drug and alcohol testing, evaluations, and

reports; placement reports and documents; employment records; and probation notes and evaluations.

* * * * *

Official Note: Rule 120 adopted April 1, 2005, effective October 1, 2005. Amended December 30, 2005, effective immediately. Amended March 23, 2007, effective August 1, 2007. Amended February 26, 2008, effective June 1, 2008. Amended July 28, 2009, effective immediately. Amended December 24, 2009, effective immediately.

Committee Explanatory Reports:

Final Report explaining the amendments to Rule 120 published with the Court's Order at 36 Pa.B. 186 (January 14, 2006).

Final Report explaining the amendments to Rule 120 published with the Court's Order at 37 Pa.B. 1483 (April 7, 2007).

Final Report explaining the amendments to Rule 120 published with the Court's Order at 38 Pa.B. 1142 (March 8, 2008).

Final Report explaining the amendment to Rule 120 published with the Court's Order at 39 Pa.B. 4743 (August 8, 2009).

Final Report explaining the amendments to Rule 120 published with the Court's Order at 40 Pa.B. 222 (January 9, 2010).

PART C. RECORDS

PART C(1). ACCESS TO JUVENILE RECORDS

Rule 160. Inspection of the Official Court Record.

* * * * *

Comment

The term "inspection" in paragraph (A) does not include the copying of the official court record. The court may order that any person, agency, or department listed in paragraph (A) receive a copy of all or portions of the record. The court order is to state: 1) the specific information the person may receive; 2) that the information received shall not be disseminated to any person, agency, or department not listed in the court order; and 3) that any dissemination of the information received is a violation of the court order.

See the Juvenile Act, 42 Pa.C.S. § 6307, for the statutory provisions on inspection of the juvenile's file and 42 Pa.C.S. § 6352.1 for disclosure of treatment records.

* * * * *

Official Note: Rule 160 adopted April 1, 2005, effective October 1, 2005; amended December 30, 2005, effective immediately. Amended August 20, 2007, effective December 1, 2007. Amended May 12, 2008, effective immediately. Amended December 24, 2009, effective immediately.

Committee Explanatory Reports:

Final Report explaining the provisions of Rule 160 published with the Court's Order at 35 Pa.B. 2214 (April 16, 2005).

Final Report explaining the revisions of Rule 160 published with the Court's Order at 36 Pa.B. 186 (January 14, 2006).

Final Report explaining the amendments to Rule 160 published with the Court's Order at 37 Pa.B. 4866 (September 8, 2007).

Final Report explaining the amendments to Rule 160 published with the Court's Order at 38 Pa.B. 2360 (May 24, 2008).

Final Report explaining the amendments to Rule 160 published with the Court's Order at 40 Pa.B. 222 (January 9, 2010).

Rule 161. Inspection and Sharing of Juvenile Probation Files.

A. Generally. Juvenile Probation Files shall be open to inspection and/or copying only by:

- 1) the juvenile's attorney;
- 2) the attorney for the Commonwealth; or
- 3) any other person, agency, or department by order of court.

B. Contents of order. The order shall:

- 1) specify who shall be permitted to inspect the record or any portion of the record;
- 2) specify who shall be permitted to copy the record;
- 3) state that the information received shall not be disseminated to any person, agency, or department not listed in the court order; and
- 4) state that any dissemination of the information received is a violation of the court order.

C. Sharing. The juvenile probation office has discretion to share its records with service providers; placement facilities; and courts and courts' professional staff of other jurisdictions when facilitating placement or transfer to another jurisdiction. Any dissemination of the information received, unless specifically authorized by court order, is a violation of that order.

Comment

Juvenile probation can place documents from its files into the official court record. Those documents placed in the official court record are governed by Rule 160.

PART C(2). MAINTAINING RECORDS

Rule 166. Maintaining Records in the Clerk of Courts.

* * * * *
Comment
* * * * *

This rule is not intended to include items contained in the juvenile probation records or reports. [See Rule 160 (Inspection of the Official Court Record) and its Comment for items contained in juvenile probation records or reports.]

* * * * *

Official Note: Rule 166 adopted April 1, 2005, effective October 1, 2005. Amended December 24, 2009, effective immediately.

Committee Explanatory Reports:

Final Report explaining the provisions of Rule 166 published with the Court's Order at 35 Pa.B. 2214 (April 16, 2005).

Final Report explaining the amendments to Rule 166 published with the Court's Order at 40 Pa.B. 222 (January 9, 2010).

**CHAPTER 3. PRE-ADJUDICATORY PROCEDURES
PART D. PROCEDURES FOLLOWING FILING OF PETITION**

Rule 340. Pre-Adjudicatory Discovery and Inspection.

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Comment
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In addition to information requested under this rule, an attorney has the right to inspect all court records and files, including probation records and reports. See [Rule] Rules 160 and 161.

Official Note: Rule 340 adopted April 1, 2005, effective October 1, 2005.

Committee Explanatory Reports:

Final Report explaining the provisions of Rule 340 published with the Court's Order at 35 Pa.B. 2214 (April 16, 2005).

CHAPTER 8. SUSPENSIONS

Rule 800. Suspensions of Acts of Assembly.

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

1) The Act of November 21, 1990, P. L. 588, No. 138, § 1, 42 Pa.C.S. § 8934, which authorizes the sealing of search warrant affidavits, and which is implemented by Pa.R.Crim.P. Rule 211, through Pa.R.J.C.P. Rule 105, is suspended only insofar as the Act is inconsistent with Pa.R.Crim.P. Rules 205, 206 and 211.

2) The Act of July 9, 1976, P. L. 586, No. 142, § 2, 42 Pa.C.S. § 6307, which provides that all files and records of the court in a proceeding are open to inspection by the specified persons, agencies, or departments, is suspended only insofar as the Act is inconsistent with Rules 120 and 161, which provides that only the parties' attorneys may inspect and copy juvenile probation files without order of court.

3) The Act of July 9, 1976, P. L. 586, No. 142, § 2, 42 Pa.C.S. § 6335(c), which provides for the issuance of arrest warrants if the juvenile may abscond or may not attend or be brought to a hearing, is suspended only insofar as the Act is inconsistent with Rules 124, 140, and 364, which require a summoned person to fail to appear and the court to find that sufficient notice was given.

[3] 4) The Act of July 9, 1976, P. L. 586, No. 142, § 2, 42 Pa.C.S. § 6336(c), which provides that if a proceeding is not recorded, full minutes shall be kept by the court, is suspended only insofar as the Act is inconsistent with Rule 127(A), which requires all proceedings to be recorded, except for detention hearings.

[4] 5) The Public Defender Act, Act of December 2, 1968, P. L. 1144, No. 358, § 1 et seq. as amended through Act of December 10, 1974, P. L. 830, No. 277, § 1, 16 P. S. 9960.1 et seq., which requires the Public Defender to represent all juveniles who for lack of sufficient funds are unable to employ counsel is suspended only insofar as the Act is inconsistent with Rules 150 and 151, which require separate counsel if there is a conflict of interest.

[5] 6) The Act of July 9, 1976, P. L. 586, No. 142, § 2, 42 Pa.C.S. § 6337, which provides that counsel must be provided unless the guardian is present and waives counsel for the juvenile, is suspended only insofar as the Act is inconsistent with Rule 152, which does not allow a guardian to waive the juvenile's right to counsel.

[6] 7) The Act of July 9, 1976, P. L. 586, No. 142, § 2, 42 Pa.C.S. § 6305(b), which provides that the court may direct hearings in any case or class or cases be conducted by the master, is suspended only insofar as the Act is inconsistent with Rule 187, which allows masters to hear only specific classes of cases.

[7] 8) The Act of July 9, 1976, P. L. 586, No. 142, § 2, 42 Pa.C.S. § 6321, which provides for commencement of a proceeding by the filing of a petition, is suspended only insofar as the Act is inconsistent with Rule 200, which provides the submission of a written allegation shall commence a proceeding.

[8] 9) The Act of July 9, 1976, P. L. 586, No. 142, § 2, 42 Pa.C.S. § 6303(b), which provides that a district judge or judge of the minor judiciary may not detain a juvenile, is suspended only insofar as the Act is inconsistent with Rule 210, which allows Magisterial District Judges to issue an arrest warrant, which may lead to detention in limited circumstances.

[9] 10) The Act of July 9, 1976, P. L. 586, No. 142, § 2, 42 Pa.C.S. § 6334, which provides that any person may bring a petition, is suspended only insofar as the Act is inconsistent with Rules 231, 233, and 330, which provide for a person other than a law enforcement officer to submit a private written allegation to the juvenile probation office or an attorney for the Commonwealth, if elected for approval; and that only a juvenile probation officer or attorney for the Commonwealth may file a petition.

[10] 11) The Act of July 9, 1976, P. L. 586, No. 142, § 2, 42 Pa.C.S. § 6304(a)(2), which provides that probation officers may receive and examine complaints for the purposes of commencing proceedings, is suspended only insofar as the Act is inconsistent with Rules 231 and 330, which provide that the District Attorney may file a certification that requires an attorney for the Commonwealth to initially receive and approve written allegations and petitions.

[11] 12) The Act of July 9, 1976, P. L. 586, No. 142, § 2, 42 Pa.C.S. § 6331, which provides for the filing of a petition with the court within twenty-four hours or the next business day of the admission of the juvenile to detention or shelter care, is suspended only insofar as the Act is inconsistent with the filing of a petition within twenty-four hours or the next business day from the detention hearing if the juvenile is detained under Rule 242.

[12] 13) The Act of July 9, 1976, P. L. 586, No. 142, § 2, 42 Pa.C.S. § 6323(a)(2), which provides that a delinquent child may be referred for an informal adjustment by a juvenile probation officer, is suspended only insofar as the Act is inconsistent with Rule 312, which provides that only an *alleged* delinquent child may be referred for an informal adjustment because the filing of informal adjustment shall occur prior to the filing of a petition.

[13] 14) Section 5720 of the Wiretapping and Electronic Surveillance Control Act, Act of October 4, 1978, P. L. 831, No. 164, 18 Pa.C.S. § 5720, is suspended as

inconsistent with Rule 340 only insofar as the section may delay disclosure to a juvenile seeking discovery under Rule 340(B)(6); and Section 5721(b) of the Act, 18 Pa.C.S. § 5721(b), is suspended only insofar as the time frame for making a motion to suppress is concerned, as inconsistent with Rules 347 and 350.

[14] 15) The Act of July 9, 1976, P. L. 586, No. 142, § 2, 42 Pa.C.S. § 6340(c), which provides consent decree shall remain in force for six months unless the child is discharged sooner by probation services with the approval of the court, is suspended only insofar as the Act is inconsistent with the requirement of Rule 373 that a motion for early discharge is to be made to the court.

[15] 16) The Act of July 9, 1976, P. L. 586, No. 142, § 2, 42 Pa.C.S. § 6335, which provides for a hearing within ten days of the juvenile's detention unless the exceptions of (a)(1) & (2) or (f) are met, is suspended only insofar as the Act is inconsistent with Rule 391, which provides for an additional ten days of detention if a notice of intent for transfer to criminal proceedings has been filed.

[16] 17) The Act of July 9, 1976, P. L. 586, No. 142, § 2, 42 Pa.C.S. § 6353(a), which requires dispositional review hearings to be held at least every nine months, is suspended only insofar as it is inconsistent with the requirement of Rule 610, which requires dispositional review hearings to be held at least every six months when a juvenile is removed from the home.

Comment

The authority for suspension of Acts of Assembly is granted to the Supreme Court by Article V § 10(c) of the Pennsylvania Constitution. See also Rule 102.

Official Note: Rule 800 adopted April 1, 2005, effective October 1, 2005; amended December 30, 2005, effective immediately; amended March 23, 2007, effective August 1, 2007; amended February 26, 2008, effective June 1, 2008; amended March 19, 2009, effective June 1, 2009. Amended February 12, 2010, effective immediately.

Committee Explanatory Reports:

Final Report explaining the amendments to Rule 800 published with the Court's Order at 36 Pa.B. 186 (January 14, 2006).

Final Report explaining the amendments to Rule 800 published with the Court's Order at 37 Pa.B. 1483 (April 7, 2007).

Final Report explaining the amendments to Rule 800 published with the Court's Order at 38 Pa.B. 1142 (March 8, 2008).

Final Report explaining the amendments to Rule 800 published with the Court's Order at 39 Pa.B. 1614 (April 4, 2009).

Final Report explaining the amendments to Rule 800 published with the Court's Order at 40 Pa.B. 1073 (February 27, 2010).

Explanatory Report

Background

In December of 2009, the Court adopted changes to Rules 120 and 160 which eliminated the inspection of juvenile probation records from the Rules of Court. The scope of Rule 160 was changed from Inspection of Juvenile File/Records to Inspection of the Official Court Record as defined by Rule 120.

It was important to define the official court record, and provide for who oversees the record, and how the record is viewed. The Committee deferred addressing juvenile probation files until a future date.

In early 2010, judges and probation officers from various judicial districts inquired as to whether the Rules addressed the copying and inspection of juvenile probation records.

Now, in these Rule changes, the official court record is further being distinguished from juvenile probation files. These proposed changes provide for the inspection and/or copying of juvenile probation files.

Rule 120—Definitions

The definition of juvenile probation files explains what is included in the juvenile probation file and distinguishes it from the official court record. Copies of documents contained in the official court record may, however, also be included in the juvenile probation file.

Rule 160—Inspection of the Official Court Record

The Comment explains that the inspection of the record does not include copying the record. It is important that the court order clearly articulate whether copying is permitted. The court order should specify: 1) the exact information a person may receive; 2) that the information shall not be disseminated to any person, agency, or department not specified in the court order; and 3) that any dissemination is a violation of the court order.

The court must balance the importance of sharing critical information with a specific individual, agency, or department with the potential inappropriate use of information once released.

This Rule limits the distribution of the information and provides that it is unlawful to further disseminate court information concerning a juvenile.

Rule 161—Inspection of Juvenile Probation Files

This proposed Rule provides for the inspection and/or copying of juvenile probation files by the party's attorneys. If the court determines if any other person, agency, or department needs the information in the probation file, the court specifically shall order it.

The Rule also provides for the sharing of records in paragraph (C). The sharing of information is controlled by the juvenile probation office. The Rule gives the probation office discretion to share information with service providers, placement facilities, and courts of other jurisdictions. This is necessary for the juvenile probation office to perform its daily operations and carry out its responsibilities in maintaining its services for its juveniles.

The Rule also mandates that when the juvenile probation office shares information, it will not be further disseminated. Dissemination of information received, unless specifically authorized, is a violation of the court order.

Rule 166—Maintaining Records in the Clerk of Courts

Juvenile probation records are not a part of the Official Court Record; therefore, this Comment is being deleted. Prior to the changes of Rule 160 in December of 2009, many judicial districts interpreted juvenile probation files as a part of the "files and records of the court." See Rule 800 for suspension of 42 Pa.C.S. § 6307.

Rule 340—Pre-adjudatory Discovery and Inspection

The new Rule 161 has been cited in the Comment to this Rule.

Rule 800—Suspension of Acts of Assembly

This Rule suspends § 6307 of the Juvenile Act only to the extent that it conflicts with new Rule 161. "All files and records of the court" does not include juvenile probation files.

[Pa.B. Doc. No. 10-1513. Filed for public inspection August 20, 2010, 9:00 a.m.]

Title 25—LOCAL COURT RULES

CRAWFORD COUNTY

In the Matter of the Adoption of Local Criminal Rules of Procedure; AD 2 of 2010; Criminal Division

Order

And Now, this 6th day of August, 2010, it is *Ordered* and *Decreed* that the following Rules of the Court of Common Pleas of Crawford County, Pennsylvania, Criminal Division, are amended, rescinded or adopted as indicated this date, to be effective thirty (30) days after publication in the *Pennsylvania Bulletin* except the trial terms scheduling changes contained in Rule 552 will be effective for the March 2011 Term of Criminal Court.

Crawford County Local Criminal Procedural Rules 590 and 600 are amended to state as follows.

A portion of Crawford County Local Criminal Procedural Rule 319, as indicated is rescinded and Rule 502 is rescinded in its entirety, as is Form 502.

Crawford County Local Criminal Procedural Rule 552, including Form 552, is adopted.

Crawford County Local Criminal Procedural Rules 541 and 543 are amended only to the extent that any reference to Rule 502 is replaced with Rule 552.

The District Court Administrator is *Ordered* and *Directed* to:

1. Distribute two (2) certified paper copies and one (1) computer diskette or CD-ROM copy to the Legislative Reference Bureau for publication in the *Pennsylvania Bulletin*.
2. File one (1) certified copy of the local rule changes with the Administrative Office of Pennsylvania Courts.
3. Provide one (1) certified copy of the local rule changes to the Supreme Court of Pennsylvania Criminal Procedural Rules Committee.
4. Publish a copy of the local rule changes on the Unified Judicial System's web site at <http://ujportal.pacourts.us/localrules/ruleselection.aspx>.
5. Provide one (1) certified copy of the Local Rule changes to the Crawford County Law Library.
6. Keep such local rule changes, as well as all local criminal rules, continuously available for public inspection and copying in the Office of the Clerk of Courts of Crawford County and on the Crawford County web site at www.crawfordcountypa.net. Further, upon request and payment of reasonable costs of reproduction and mailing, the Clerk of Courts of Crawford County shall furnish a

copy of these changes to the local rules, as well as all local criminal procedural rules of this Court, to any person requesting the same.

By the Court

ANTHONY J. VARDARO,
President Judge

The second paragraph and the "Note" of Rule 319 is rescinded so that only Paragraph (1) of that rule, which states the following shall remain in effect:

Rule 319. Dismissal of Charges After Successful Completion of ARD Program.

Upon the successful completion of a defendant's participation in the Accelerated Rehabilitative Disposition Program, the Probation/Parole Department or the defendant may file a Motion requesting that the Court terminate the ARD case and dismiss the defendant's charges.

Rule 502. Local Scheduling Procedures. is rescinded and Rule 552. Local Scheduling Procedures. is adopted as follows:

Rule 552. Local Scheduling Procedures.

(1) Annually, no later than September 30th, the Court Administrator shall publish a schedule for the succeeding year setting forth the following pertinent dates that affect each criminal case with the appropriate schedule to be set in motion by the date the defendant either waives the preliminary hearing or is bound over following the preliminary hearing:

(a) The date of the formal arraignment, which shall be the first available formal arraignment date at least twenty (20) days after the preliminary hearing is held or waived.

(b) The date for the Call of the Criminal Trial List, which shall be no sooner than forty-five (45) days after formal arraignment nor less than thirteen (13) days from the date trial is scheduled to commence for the case.

(c) The first day of the trial term at which the case is scheduled.

(2) The Court Administrator shall, immediately after publishing said schedule, provide copies to each of the sitting judges, each sitting Issuing Authority, the District Attorney's Office, the Public Defender's Office, each member of the county criminal defense bar known to the Court Administrator and out-of-county criminal defense counsel known to have been recently practicing in Crawford County. Additionally, copies shall also be available, free of charge, at all times in the Court Administrator's Office, the Crawford County Clerk of Courts Office and shall be promptly posted by the Court Administrator on the Crawford County web site at www.crawfordcountypa.net.

(3) At the time a defendant is bound over to court or waives a preliminary hearing, each Issuing Authority shall prepare a Criminal Case Scheduling Form with an original and five copies substantially in the form set forth as Form 552.

The Issuing Authority shall orally advise the defendant and counsel of the time, date and place of formal arraignment and that the failure to appear at such formal arraignment or other required appearances as set forth in the Criminal Case Scheduling Form may result in the defendant's arrest and forfeiture of bond.

The Issuing Authority shall require the defendant to sign the Criminal Case Scheduling Form, indicating the defendant is aware of the time, date and place of formal

arraignment and of the obligation to appear at formal arraignment and other proceedings noted thereon.

Once the Criminal Case Scheduling Form has been completed, the defendant shall be provided with a copy and the Issuing Authority shall retain a copy for the Issuing Authority's records. If they are present, the Issuing Authority shall provide a copy to the defendant's attorney and/or the District Attorney's Office. All undistributed copies, together with a copy for the Court Administrator, shall be forwarded promptly to the Court Administrator for proper distribution. The original Criminal Case Scheduling Form shall be attached to the official record when it is forwarded to the Clerk of Courts as required by Pa.R.Crim.P. 547.

(4) The Thursday prior to the commencement of trials for a criminal trial term is the last day the Court will accept negotiated pleas (plea bargains) and jury trial waivers unless a judge of this Court determines there was extraordinary cause for the deadline to be missed.

For the purpose of this rule, a "negotiated plea" or "plea bargain" shall include any agreement between the parties that will result in the Commonwealth dismissing one or more charges and/or reducing the grading of one or more charges and/or making a sentencing recommendation favorable in any way to the defendant.

"Extraordinary cause" will only be found to have occurred if the Court is satisfied that, despite the best efforts of both the Commonwealth and the defense, the negotiated plea deadline or jury trial waiver deadline prescribed in these rules could not be met.

**IN THE COURT OF COMMON PLEAS OF
CRAWFORD COUNTY, PENNSYLVANIA
CRIMINAL DIVISION**

COMMONWEALTH OF PENNSYLVANIA : **Common Pleas No.: CR** _____

MDJ No.: CR _____

vs. : **OTN No.:** _____

: **Revised**

Defendant

CRIMINAL CASE SCHEDULING FORM

Charges: _____ Date Complaint Filed: _____

Defense Counsel

Date of Preliminary hearing/waiver

IMPORTANT NOTICE

You and your attorney and/or attorney's representative are required to appear for the following proceedings. These dates may not be changed without leave of Court.

1. Formal Arraignment: _____ 9:00 a.m.; prevailing local time, in Assembly Room, basement, Crawford County Courthouse, Meadville, Pennsylvania. Formal arraignment may be waived, but **ONLY** if you have an attorney prior to your formal arraignment date.

2. Criminal Call of List: _____ 8:45 a.m., prevailing local time, Courtroom No. 1, Crawford County Courthouse, Meadville, Pennsylvania.

CAUTION: YOU MUST APPEAR AT THE CALL OF THE CRIMINAL TRIAL LIST. IF YOU FAIL TO APPEAR, A BENCH WARRANT WILL BE ISSUED FOR YOUR ARREST.

THE LAST DAY FOR THE COURT TO ACCEPT NEGOTIATED PLEAS (PLEA BARGAINS) IS THE THURSDAY PRIOR TO THE FIRST DAY OF JURY TRIALS. THAT SAME DATE IS THE LAST DAY YOU MAY, WITH THE CONSENT OF THE DISTRICT ATTORNEY'S OFFICE, ASK THE COURT TO ALLOW YOU TO WAIVE YOUR RIGHT TO A JURY TRIAL AND INSTEAD BE TRIED BEFORE A JUDGE.

3. First day of Jury Trials: _____ 8:45 a.m.; prevailing local time; Courtroom No. 1, 2 or 3, Crawford County Courthouse, Meadville, Pennsylvania.

ANY FAILURE TO APPEAR FOR A SCHEDULED COURT APPEARANCE MAY RESULT IN FORFEITURE OF YOUR BAIL BOND AND THE ISSUANCE OF A BENCH WARRANT FOR YOUR ARREST AS WELL AS ADDITIONAL CHARGES OF DEFAULT IN REQUIRED APPEARANCE.

You must, within forty-eight (48) hours of any change of address and/or telephone number, notify the Crawford County Clerk of Courts Office (814-333-7442), the Crawford County Court Administrator's Office (814-333-7498), the Crawford County District Attorney's Office (814-333-7455) and your attorney of any change of address and/or telephone number.

The undersigned hereby acknowledges receipt of a copy of this notice.

Date: _____

 Signature of Defendant

Original: Clerk of Courts [White]
 Court Administrator [Gold]
 District Attorney [Green]
 Defense Counsel [Yellow]
 Defendant [Pink]
 Issuing Authority [Blue]

 Signature of Issuing Authority

Form 552

Rule 590 is amended to state as follows and Form 590 is amended only to the extent the modification to the "Megan's Law Supplement to Guilty Plea Colloquy is changed as follows:

Rule 590. Pleas, Plea Agreements and Written Colloquies.

(1) The Court will be available for the purpose of taking guilty or *nolo contendere* pleas from time to time as designated by the Court Administrator. Those times shall include each Thursday afternoon that court is in session unless otherwise rescheduled with advance notice to the District Attorney and the criminal defense bar. Pleas will also be taken immediately after the Call of the Criminal Trial List.

(2) Plea Agreements—Whenever a guilty plea or *nolo contendere* plea agreement is reached between the parties, a Plea Agreement Form substantially in the form set forth in Form 590 shall be filled out. Said form shall be signed by the District Attorney or Assistant District Attorney, defense counsel, and the defendant. A copy of the form to ultimately be filed in the Court Administrator's Office shall be provided by the District Attorney's

Office to the judge who is taking the plea. Copies of the Plea Agreement Form shall be supplied to defense counsel and the defendant.

(3) Written Guilty Plea and *Nolo Contendere* Colloquies—The Court, within the discretion of the individual judge presiding at Plea Court, will permit guilty pleas and *nolo contendere* pleas to be entered through the use of a written colloquy on a form substantially consistent with the form hereinafter set forth in this rule, provided that the defendant is represented by counsel.

Those entering pleas through a written colloquy will do so at the onset of Plea Court times scheduled as aforesaid. Counsel representing the defendant who will be entering a plea through the use of a written colloquy shall appear with such clients at the time set for Plea Court to actually begin rather than the time designated for the video explaining a defendant's rights which begins approximately a half hour before the scheduled Plea Court.

A written plea colloquy shall not be used where defendants are pleading guilty or *nolo contendere* to first, second or third degree murder. Otherwise a judge may decide that a written plea colloquy should not be used in certain cases.

If the plea is to be entered through the use of a written guilty plea or *nolo contendere* colloquy, counsel shall review and explain to the defendant the contents of the colloquy form and shall be satisfied that the defendant understands all of the questions on the form and that the defendant is entering a knowing and voluntary plea.

The defendant's counsel's signature on the Guilty or *Nolo Contendere* Plea Colloquy Form shall constitute a certification by the attorney that the attorney has read, discussed and explained the elements of all offenses and all other questions on the plea form, and to the best of counsel's knowledge, information or belief the defendant understands the consequences of his entering the plea.

The Guilty or *Nolo Contendere* Plea Colloquy shall be prepared substantially in the form hereinafter set forth and shall be filed in open court at the time of the entry of any plea of guilty or *nolo contendere*.

(4) Megan's Law Supplement to Guilty Plea Colloquy—If a guilty plea or *nolo contendere* plea is entered by a defendant using a written plea colloquy substantially in the form hereinafter set forth in this Rule and the defendant is subject to the provisions of Megan's Law, the Megan's Law Supplement to Guilty Plea Colloquy hereinafter set forth shall be used.

Counsel shall review and explain to the defendant the contents of the Megan's Law Supplement and shall be satisfied that the defendant understands all the questions on the Megan's Law Supplement form.

The Megan's Law Supplement to Guilty Plea Colloquy shall be filed in open court at the time of the entry of any plea of guilty or *nolo contendere*.

(5) Whenever a guilty plea or *nolo contendere* colloquy is presented, the judge accepting the written plea colloquy will also conduct a limited oral colloquy to supplement the written guilty plea and *nolo contendere* colloquy.

(6) The last day to enter a negotiated guilty or *nolo contendere* plea, as defined in Rule 552(4), shall be the Thursday prior to the commencement of trials unless "extraordinary cause," as defined in Rule 552(4) exists.

**MEGAN'S LAW SUPPLEMENT TO
GUILTY PLEA COLLOQUY**

FORM 590

Paragraph Number (1) of the portion of Form 590, known as the "Megan's Law Supplement to Guilty Plea Colloquy" is rescinded thirty (30) days after publication in the *Pennsylvania Bulletin* and effective that same date the following shall become numbered Paragraph (1) of the "Megan's Law Supplement to Guilty Plea Colloquy."

- (1) Do you understand that as a result of your conviction, you will be required to register with the Pennsylvania State Police and inform them of your current address and any change of address within forty-eight (48) hours of such change? _____

Rule 600. Sessions of Criminal Court, Trial List and Other Procedures. is amended to state as follows in its entirety and Form 600 is adopted.

Rule 600. Sessions of Criminal Court, Trial List and Other Procedures.

(1) Sessions of Criminal Court

(a) Regular sessions of Criminal Term of Court shall be held during the months of January, March, May, June, September and November of each year as designated on the court calendar published annually by the Court. Such sessions may be extended or other special sessions may be held at such times as will conform most conveniently to the business of the Court and the state and local criminal rules so long as at least 30 days notice of any extension of a criminal term or any addition of a term beyond a regular session of court is given. The notice shall be given by the Court Administrator to the District Attorney's Office; the Public Defender's Office; members of the Crawford County criminal defense bar; out-of-county defense attorneys known to the Court Administrator's Office to recently practice in Crawford County and to all magisterial district judges. Further, the Court Administrator shall promptly post such notice on the Crawford County web site at www.crawfordcountypa.net.

(b) Sentence Court and any other hearings shall be scheduled from time to time by the Court Administrator as the Court may direct and in compliance with the Pennsylvania Rules of Criminal Procedure as well as these Local Rules.

(c) Whenever Plea Court is scheduled pursuant to Cra.R.Crim.P. 590(1), the District Attorney shall notify the Court Administrator of the defendants who are scheduled to plead on a particular plea date. The Court Administrator shall keep a plea list with the pleas scheduled for specific plea dates. The list shall be available in the Court Administrator's Office and the Clerk of Courts Office at least twenty-four (24) hours prior to the scheduled plea date. The District Attorney shall not be required to comply with this provision for pleas scheduled following the Call of Criminal Trial List.

(2) Trial List and Other Procedures

(a)(1) The Court Administrator shall maintain a master list of criminal cases chronologically as the Court Administrator receives a copy of the Criminal Case Scheduling Form required to be provided by the Issuing Authority pursuant to Rule 552 of these rules. This list shall be known as the "Master Criminal List." Each entry on this list shall include information deemed pertinent by the Court Administrator in consultation with the Court, but shall at least contain the name of the defendant, the number docketed for the case in the Clerk of Courts

Office, the pertinent date pursuant to Pa.R.Crim.P. 600 and the name of any attorney who has appeared on behalf of the defendant.

(2) The Court Administrator shall prepare the Criminal Trial List for each session of the Criminal Term of Court and shall arrange the cases in chronological order based on the current status of the "Master Criminal List" beginning with case number one on said list and continuing through the last case in which a defendant has been notified by the Criminal Case Scheduling Form provided that that defendant's case may be tried during the term for which the list was prepared.

(3) All cases continued to a new trial term or not reached during the trial term due to the unavailability of the Court, shall appear chronologically on the "Master Criminal List" in the order in which they had previously appeared ahead of those cases chronologically listed for the next trial term so that the oldest cases will appear first on any list.

(4) The "Master Criminal List" shall be available for counsel and other interested persons to view in the Court Administrator's Office during normal business hours and copies of the Criminal Trial List based on that "Master Criminal List" for each Criminal Term of Court shall be available free of charge in the Court Administrator's Office and in the Clerk of Courts Office at least one week prior to the call of the trial list for that designated Criminal Term of Court. That Criminal Trial List shall also be placed, by the Court Administrator's Office, on the Crawford County web site at www.crawfordcountypa.net at least one week prior to the Call of the Criminal Trial List for that designated Criminal Term of Court.

(a)(1) Cases for each criminal term shall be tried in the order in which they chronologically appear on the criminal trial list for that trial term unless otherwise adjusted by the Court Administrator for proper reasons.

(2) Any party upon good cause shown may move the Court to advance a case forward from its chronological location on the Criminal Trial List or have the case moved down further on the list to be tried either within the same term of Criminal Court or to be continued to the next term of Criminal Court. Any such motion must be filed in compliance with Pa.R.Crim.P. 106 and Cra.R.Crim.P. 106. The Court in its discretion may continue a case after that deadline if the motion to continue is consented to by the opposing party and/or the Court finds that good cause to continue the case has arisen after the Call of the Criminal Trial List.

(3) Upon granting a motion under Crawford County Rule of Criminal Procedure 600(2)(b)(2), the Court will designate as part of its order where such case shall be placed on the chronological criminal list for that particular term of court or what date certain the case will commence. If the Court allows the case to be continued to the next Criminal Term of Court, it shall be placed by the Court Administrator on the "Master Criminal List" pursuant to Cra.R.Crim.P. 600(2)(a)(3).

(4) If a case involves complex issues so that it is not amenable to the normal schedule, any party may, after formal arraignment occurs or is waived, move the Court to remove said case from the "Master Criminal List" so that the flow of the case through the system is handled independently of that procedure.

(5) In the event a case is removed from its designated scheduling cycle originally established on the Criminal Case Scheduling Form (i.e. ARD consideration, omnibus pretrial motion, continuance, cases not reached during a

trial term) and is returned to a scheduling sequence, the Court Administrator shall prepare a new Criminal Case Scheduling Form setting the remaining appropriate dates for the defendant to appear with said assigned dates to be based on a reasonable effort to return the case into the sequence of the system at the point where the case was removed from the sequence or if the case is to be placed in a subsequent term of court, to a normal sequence for that term of court.

The Court Administrator shall distribute copies of the new Criminal Case Scheduling Form to the District Attorney's Office and defense counsel as well as to unrepresented defendants in a manner consistent with the Pennsylvania Rules of Criminal Procedure and the Crawford County Rules of Criminal Procedure.

(3) Call of the Criminal Trial List.

The Call of the Criminal Trial List for a particular Criminal Term of Court shall be held by the Court on the date and time scheduled by the Court Administrator's Office pursuant to Cra.R.Crim.P. 552.

(a) In order to facilitate an organized Call of the Criminal Trial List, defense counsel shall notify the Court Administrator's Office, by noon on the last day the Courthouse is open prior to the Call of Criminal Trial List, of all defendants who are anticipated to enter guilty or *nolo contendere* pleas at the Call of the Criminal Trial List.

(b) All defendants and all attorneys representing defendants for cases on the schedule for that term of criminal court must attend the Call of the Criminal Trial List unless:

(1) A Motion For Continuance has been previously properly presented and granted; or

(2) An Order has been entered by the Court prior to the Call of the Criminal Trial List excusing such appearance.

(c) Failure to comply with the requirements of this Rule may result in the imposition of sanctions by the Court, including the issuance of a bench warrant and revocation of bail bond. Additionally, the District Attorney's Office may file a charge of Default in Required Appearance.

(d) In open court, prior to calling all the names of individuals on the Criminal Trial List, the Court shall announce the day criminal trials begin and that the Thursday before criminal trials begin is the last day to enter a negotiated plea (plea bargain) and the last day to request a trial before a judge, rather than a jury.

The Court Administrator's Office shall, no later than the close of business on the day after the Call of the Trial List, notify the Population Control Manager at the Crawford County Correctional Facility of the names of all defendants whose cases were called at the Call of the Criminal Trial List who are incarcerated in the Crawford County Correctional Facility and did not enter a guilty or *nolo contendere* plea on the day of the Call of the Criminal Trial List. The Population Control Manager at the Crawford County Correctional Facility, or such designated person at that facility, shall show a brief video, provided by the Court, to those incarcerated defendants, which video shall explain to those defendants the negotiated plea and jury trial waiver deadlines as set forth in Cra.R.Crim.P. 552(4).

The person at the Correctional Facility who shows that video to the incarcerated defendants shall have each of those defendants sign "Form 600," acknowledging that they have viewed that video.

The Court Administrator's Office shall provide the necessary prepared acknowledgement forms to the Crawford County Correctional Facility or, alternatively, will provide the deadline date to be inserted in to those forms to the Crawford County Correctional Facility if the forms are already available at that facility.

ACKNOWLEDGEMENT OF NEGOTIATED PLEA
AND
JURY TRIAL WAIVER DEADLINES
IN THE COURT OF COMMON PLEAS OF
CRAWFORD COUNTY, PENNSYLVANIA
CRIMINAL DIVISION

COMMONWEALTH OF
PENNSYLVANIA :
 :
vs. : **No.:**
 : **OTN No.:**
 :

NOTICE TO DEFENDANT

I acknowledge that on the ____ day of _____, 20__ I was shown a video at the Crawford County Correctional Facility advising me that the deadline to enter a negotiated plea and to enter into a Jury Trial Waiver is Thursday, the ____ day of _____, 20__.

_____ **Defendant**

Date: _____

Form 600

Rules 541, Notice Required Following Waiver of Preliminary Hearing and 543, Disposition of Case at Preliminary Hearing are amended only to replace references to former Rule 502 with new Rule 552. Additionally, the Crawford County Local Rules of Criminal Procedure Table of Rules is amended such that Rule 502 no longer appears and Rule 552, Local Scheduling Procedures is added.

[Pa.B. Doc. No. 10-1514. Filed for public inspection August 20, 2010, 9:00 a.m.]

FAYETTE COUNTY

Rule of Civil Procedure 1042 and 212.5; No. 2001 of 2010 6D

Order

And Now, this 30th day of July, 2010, pursuant to Pennsylvania Rule of Civil Procedure 239, it is hereby ordered that Fayette County Local Rule of Civil Procedure 1042 is rescinded, and that Fayette County Local Rule of Civil Procedure 212.5 is hereby adopted to read as follows.

The Prothonotary is directed as follows:

(1) Seven certified copies of the Local Rules shall be filed with the Administrative Office of Pennsylvania Courts.

(2) Two certified copies and diskette of the Local Rules shall be distributed to the Legislative Reference Bureau for publication in the *Pennsylvania Bulletin*.

(3) One certified copy of the Local Rules shall be sent to the State Civil Procedural Rules Committee.

(4) One certified copy shall be sent to the Fayette County Law Library and the Editor of the *Fayette Legal Journal*.

The amendment and adoption of the above listed rules shall become effective thirty (30) days after publication in the *Pennsylvania Bulletin*.

By the Court

GERALD R. SOLOMON,
President Judge

Rule 212.5. Mediation.

(a) Certification of Mediators.

(1) The President Judge shall certify as many mediators as determined to be necessary.

(2) All mediators will be members of the Fayette County Bar Association.

(3) An attorney may be certified by the President Judge as a mediator if:

(i) he or she has been a member of the Pennsylvania bar for a minimum of ten (10) years;

(ii) he or she has been admitted to practice before the Fayette County Court of Common Pleas;

(iii) he or she has been referred to the President Judge by the Civil Rules Committee of the Fayette County Bar Association. Notwithstanding such referral, the President Judge may nonetheless certify an attorney as a mediator.

(iv) he or she has been determined by the President Judge to be competent to perform the duties of a mediator;

(v) he or she has professional liability insurance in the minimum amount of a \$300,000.00 single limit policy.

(4) Each individual certified as a mediator shall take the oath or affirmation prescribed by 42 Pa.C.S.A. § 3151 before serving as a mediator.

(5) A list of all persons certified as mediators shall be maintained in the office of the Court Administrator.

(6) A member of the bar certified as a mediator may be removed from the list of certified mediators by the President Judge for any reason.

(b) Payment of Mediators.

(1) The parties shall pay the mediator directly. The court assumes no responsibility for the supervision or enforcement of the parties' agreement to pay for mediation services.

(2) Any charges relating to the mediator's services shall be shared equally by the parties.

(3) The mediator shall be paid a mediation fee of one hundred (100.00) dollars by each party to the mediation within twenty (20) days of the order directing mediation. Failure to pay the fee shall result in the cancellation of the mediation and shall subject the offending party to sanctions pursuant to Pa.R.Civ.P. 4019.

(4) Except as provided herein, a mediator shall not accept anything of value from any source for services provided under the court-annexed mediation program.

(c) Types of Cases Eligible for Mediation.

Every personal injury, medical or professional malpractice, wrongful death or damage to property action filed in the Fayette County Court of Common Pleas is eligible for mediation, except any case which the assigned judge

determines, after application by any party or by the mediator, is not suitable for mediation.

(d) Voluntary Mediation.

The parties to any civil action, with the exception of arbitration and domestic relations/custody cases, may voluntarily submit the case to mediation by filing a joint motion of all parties with the assigned judge.

(e) Mandatory Mediation.

The assigned judge may order a case to mandatory mediation at any time. All cases selected for mandatory mediation by the assigned judge, and which are not settled or referred to arbitration, shall be given preference pursuant to Pa.R.Civ.P. 214(2) on the trial list of the assigned judge.

(f) Mediation Conference Scheduling.

(1) When the court makes a determination that referral to mediation is appropriate, it shall issue an order referring the case to mediation, appointing the mediator, directing the mediator to establish the date, time and place for the mediation session and setting forth the name, address, and telephone number of the mediator.

Within ten (10) days of his or her assignment, the mediator shall notify all parties and the Court Administrator of the date, time and place of the mediation, which shall be within forty-five (45) days of the assignment.

(2) The mediation session shall be held before a mediator selected by the assigned judge from the list of mediators certified by the President Judge.

(3) The court administrator shall provide the mediator with a current docket sheet.

(4) The mediator shall advise the court administrator as to which documents in the case file the mediator desires copies of for the mediation session. The clerk shall provide the mediator with all requested copies at no charge to the mediator. However, the assigned Judge, in his or her discretion, may require that the parties share in the cost of providing the necessary copies.

(5) Any continuance of the mediation session beyond the period prescribed in the referral order must be approved by the assigned judge.

(6) A person selected as a mediator shall be disqualified for bias or prejudice as if he or she were a district justice or judge. A party may assert the bias or prejudice of an assigned mediator by filing an affidavit with the assigned judge stating that the mediator has a personal bias or prejudice. The judge may, in his or her discretion, end alternative dispute resolution efforts, refer the case to another mediator, refer the case back to the original mediator or initiate another alternative dispute resolution mechanism.

(g) The Mediation Session and Confidentiality of Mediation Communications.

(1) The mediation session shall take place as directed by the court and the assigned mediator. The mediation session shall take place in a neutral setting designated by the mediator.

(2) The parties shall not contact or forward documents to the mediator except as directed by the mediator or the court.

(3) At least ten (10) days prior to the Mediation, the parties and/or their attorneys shall be required to prepare and submit a Confidential Position Paper disclosed only to the mediator in the format attached or as modified by

the mediator or the assigned judge. The Confidential position paper shall not become a part of the court record and shall be destroyed at the conclusion of the mediation.

(4) If the mediator determines that no settlement is likely to result from the mediation session, the mediator shall terminate the session and promptly thereafter file a report with the assigned Judge stating that there has been compliance with the requirements of mediation in accordance with the local rules, but that no settlement has been reached.

(5) In the event that a settlement is achieved at the mediation session, the mediator shall file a report with the assigned Judge stating that a settlement has been achieved. The order of referral may direct the mediator to file the report in a specific form.

(6) Unless stipulated in writing by all parties and the mediator or except as required by law or otherwise ordered by the court, all discussions which occur during mediation shall remain strictly confidential and no communication at any mediation session (including, without limitation, any verbal, nonverbal or written communication which refers to or relates to mediation of the pending litigation) shall be disclosed to any person not involved in the mediation process, and no aspect of the mediation session shall be used by anyone for any reason.

(7) No one shall have a recording or transcript made of the mediation session, including the mediator.

(8) The mediator shall not be called to testify as to what transpired in the mediation.

(9) Prior to the beginning of the mediation, all parties and their attorneys shall be required to sign a form developed by the Court wherein the parties agree:

(i) to the terms of the mediation; and

(ii) to waive any professional liability claims that they might assert against the mediator, the assigned Judge, the Court of Common Pleas of the 14th Judicial District, or Fayette County, as a result of their participation in the mediation process.

(h) *Duties of Participants at the Mediation Session.*

(1) *Parties.* All named parties and their counsel are required to attend the mediation session, participate in good faith and be prepared to discuss all liability issues, all defenses and all possible remedies, including monetary and equitable relief. Those in attendance shall possess complete settlement authority, independent of any approval process or supervision, except as set forth in subparagraphs (A) and (B) below.

Unless attendance is excused, willful failure to attend the mediation session will be reported by the mediator to the court and may result in the imposition of sanctions pursuant to Pa.R.Civ.P. 4019.

(A) *Corporation or Other Entity.* A party other than a natural person (e.g., a corporation or association) satisfies this attendance requirement if represented by a person (other than outside counsel) who either has authority to settle or who is knowledgeable about the facts of the case, the entity's position, and the policies and procedures under which the entity decides whether to accept proposed settlements.

(B) *Government Entity.* A unit or agency of government satisfies this attendance requirement if represented by a person who either has authority to settle or who is knowledgeable about the facts of the case, the government unit's position, and the policies and procedures under which the governmental unit decides whether to

accept proposed settlements. If the action is brought by or defended by the government on behalf of one or more individuals, at least one such individual also shall attend.

(2) *Counsel.* Each party shall be accompanied at the mediation session by the attorney who will be primarily responsible for handling the trial of the matter.

(3) *Insurers.* Insurer representatives are required to attend in person unless excused, if their agreement would be necessary to achieve a settlement. Insurer representatives shall possess complete settlement authority, independent of any approval process or supervision.

(4) *Request to be Excused.* A person who is required to attend a mediation session may be excused from attending in person only after a showing that personal attendance would impose an extraordinary or otherwise unjustifiable hardship. A person seeking to be excused must submit, no fewer than ten (10) days before the date set for the mediation, a written request to the mediator, simultaneously copying all counsel. The written request shall set forth all considerations that support the request and shall indicate whether the other party or parties join in or object to the request. A proposed order prepared for the signature of the Judge shall be submitted to the mediator with the request. The mediator shall promptly consider the request and shall submit the proposed order to the Judge with a recommendation that the request be granted or denied. In the absence of an order excusing attendance, the person must attend.

Where an individual requests to be excused from personal participation at the mediation, a preference shall be given to attending by telephone at the expense of the excused party rather than complete excusal from the mediation.

(i) *Mediator's Report.*

Within fifteen (15) days of the mediation, the mediator shall send to the assigned judge a mediation report which shall advise that court whether the case has settled. If not, the mediation report shall set forth the following:

- (1) plaintiff's final settlement demand;
- (2) defendant's final settlement offer;
- (3) Mediator's assessment of liability;
- (4) Mediator's assessment of damages;
- (5) Mediator's opinion regarding potential range of verdict and settlement value of case; and
- (6) Mediator's recommendation regarding settlement of case.

The mediator shall provide all parties and the Court Administrator with a copy of the mediation report.

Appendix A: Form for Confidential Position Paper
Confidential Position Paper

Case Caption:

Docket #:

Assigned Judge:

Date of Report:

A. Summary of Critical Facts

B. Insurance Coverage

C. Prior demands and offers of settlement

D. Issues that may Assist the Mediator, with citations

E. Medical and Expert reports

F. Itemized list of damages

G. succinct statement of position regarding liability and damages

[Pa.B. Doc. No. 10-1515. Filed for public inspection August 20, 2010, 9:00 a.m.]

LUZERNE COUNTY

Juvenile Restitution Fund; No. 704 MD 2009

Administrative Order No. 3 of 2010

And Now, this 6th day of August, 2010, the Honorable Thomas F. Burke, Jr., President Judge of Luzerne County, Pennsylvania, serving the Eleventh Judicial District of Pennsylvania, hereby reauthorizes the creation of the Luzerne County Juvenile Court Restitution Fund and hereby amends and restates the previous Orders dated June 25, 2009 and January 2, 2009 of the former President Judges as stated herein. The statutory authority for the creation of this Fund appears at 42 Pa.C.S. Section 6352(a)(5), The Juvenile Act, Disposition of Delinquent Children.

The purpose of the Fund is to provide a means whereby the Court may:

- a) direct children under its supervision to pay a reasonable amount of money into a common fund;
- b) collect the previously-mentioned revenues and deposit same into an appropriate account that is under the supervision of the Court or its designee;
- c) distribute monies received by the Fund to victims of delinquent behavior in a fair and equitable manner.

The period January 2, 2009 to June 30, 2009, shall constitute the origination period of the program. The balance shall be reviewed by the Juvenile Restitution Fund Development Committee and if deemed adequate, withdrawals from the account will begin July 1, 2009. If the balance is not deemed adequate to begin withdrawals, an extension period of 3 months, from July 1, 2009 to September 30, 2009 will be granted to increase the fund balance. Withdrawals would then commence on October 1, 2009. Thereafter, the program shall be reviewed quarterly by the Juvenile Restitution Fund Development Committee to determine if changes need to be made to any of the procedures or policies. Data collected during the first three months of disbursement shall be reviewed by above committee to determine the effectiveness of the program.

In accordance with the above, effective January 2, 2009, the monetary limits of liability § 5505 shall be imposed on all parents whose juvenile owes restitution (see The Juvenile Act, Appendix I). Furthermore, the Court hereby adopts and approves the attached guidelines and operating standards for use by the Juvenile Court of Luzerne County, Pennsylvania and the Luzerne County Department of Probation Services, Juvenile Division, as the "Luzerne County Juvenile Court Restitution Fund."

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

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

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

4. Forward one (1) copy for publication in the *Luzerne Legal Register*.

5. Forward one (1) copy to the Wilkes-Barre Law and Library Association.

6. Keep continuously available for public inspection copies of this Administrative Order in the Office of Court Administration, Clerk of Court's Office and Juvenile Probation Department.

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

Administrative Order No. 3 of 2010

Luzerne County Juvenile Court Restitution Fund Operating Guidelines

The Court of Common Pleas of Luzerne County, Pennsylvania (Court), through the Luzerne County Department of Probation Service, Juvenile Division, (Probation) shall establish the Luzerne County Juvenile Court Restitution Fund (Fund) for the purpose of providing financial reimbursement to the victims of delinquent behavior as defined in The Juvenile Act.

The Probation Services Department shall be responsible for establishing, monitoring, maintaining and auditing the Fund in accordance with the Fund Operating Guidelines and Standards and accepted accounting practices and principles.

Name

The name of the Fund will be the "Juvenile Court Restitution Fund." For clarity purposes, when referring to the Fund on documents such as an Informal Adjustment Consent, Consent Decree, an order issued by the Court, rules and conditions of probation, and all financial documents including restitution documents, judgments, etc., the Fund will be referred to as the JCR Fund.

Eligibility

For the purpose of the Fund, eligibility shall be defined as follows:

Eligible Benefactor (Juvenile)—An eligible benefactor of the Fund will be any child who is under the jurisdiction of the Court through the Probation Services Department on or after the effective start date of the Fund and whose disposition, as rendered by the Court or Probation Services Department, requires the child to pay restitution to a victim of a delinquent act. Requirements are as follows:

- 10 to 15 years old;
- juveniles (ages 16-18) who demonstrate an inability to obtain/maintain employment to be considered on a case-by-case basis;
- referred to the Probation Services Department, Juvenile Division;
- owe restitution for a property crime or a crime against person;
- resident of Luzerne County;

- juveniles may earn up to a maximum of \$1,000.00 in the program, regardless of the number of victims involved. Juveniles may not exceed the maximum disbursement per calendar year.

Eligible Recipient (Victim)—An eligible recipient of the Fund will be any person who has a legitimate restitution claim on file with the Probation Services Department on or after the effective start date of the Fund resulting from the delinquent act(s) of an Eligible Benefactor. Insurance companies will not be considered eligible recipients for purposes of inclusion in this program. Businesses and schools can only submit for reimbursement for a deductible incurred as a result of a delinquent act by a juvenile. Requirements are as follows:

- All direct victims of property crime, for which a written allegation to the Probation Services Department has been filed. (Victims of personal injury crime must file a crime victim compensation claim to cover incurred costs with the Pennsylvania Crime Victims' Compensation Board. If ineligible, they will be included in this program.)
- Must be a resident of Luzerne County.

Fund Revenue

On and after the effective date of the creation of the Fund, it will be supported financially in the following manner:

a) The Probation Services Department shall assess a fee in the amount of \$25.00 to all juveniles who are subject to proceedings whose case results in a final disposition of warned, counseled, case closed; an Informal Adjustment Consent; Consent Decree, or adjudication of delinquency and make check or money order payable to the Luzerne County Treasurer.

b) All juveniles referred for Failure to Pay Fine received from a District Justice shall be assessed the \$25.00 JRF fee and make check or money order payable to the Luzerne County Treasurer. Juveniles may be directed to pay the fine in full or ordered to complete community service hours in lieu of the fine payment.

c) The Court, at its discretion or upon the recommendation of the Probation Services Department, will make other sources of revenue payable to the Fund as the same become available.

Fund Management

The Fund receipts and expenditures shall be managed by the Probation Services Department. Any and all funds received by the Probation Services Department that may be considered revenue for the Fund shall be deposited into an account separate and apart from other accounts managed by the Probation Services Department. The sole purpose of this account will be to receive and disperse funds associated with the JCR Fund. As of the creation date of the Fund, the account(s) used by the Probation department is/are:

PNC Bank
11 West Market Street
Wilkes-Barre, PA 18701
Acct. # XXXXX-4435

All Fund revenues shall be receipted, recorded, deposited and otherwise handled as any other revenue received by the Probation Services Department for the intended purpose of reimbursing victims of delinquent behavior.

Additionally, expenditures made from the Fund shall be forwarded to eligible recipients by checks issued from the

above-mentioned checking account on an as-needed basis through the Luzerne County Treasurer.

All payments to and expenditures from the above-mentioned account shall be subject to an audit performed on an annual basis by the designee of the Luzerne County Treasurer as per the request of the Deputy-Chief Juvenile Probation Officer or his/her designee.

Review Committee

An administrative review team has been established. The review team shall consist of a Supervisor, the Community Liaison Probation Officer (or designee) and the assigned Probation Officer. This team will meet as needed and shall review requests made by the eligible benefactors requesting benefits from the Fund.

Fund Expenditures

Eligible benefactors of the Fund will be able to request assistance from the Fund in the following manner:

a) The Court or Probation Services Department shall prepare an application form for eligible benefactors to utilize in order to request assistance from the Fund. The application shall include the following information:

1) Probation Clients:

i) Descriptive information about the child including name, DOB, type of supervision, length of supervision.

ii) A statement as to the child's overall adjustment while under supervision, addressing behavior at home, school, and in the community.

iii) A statement as to the balance of restitution owed by the child.

iv) Verification that the parental liability has been satisfied.

2) JPO Fine Program Participants:

i) Descriptive information about the child including name, DOB.

ii) Fine program agreement.

iii) A statement as to the balance of restitution owed by the child.

b) The applicant's Probation Officer shall assist the child with completion of the application and shall forward the same to the Review Committee.

c) The Review Committee shall review the applicant's eligibility and recommend the level of expenditure and the number of community service hours in exchange for the expenditure, if any, to be made on behalf of the applicant.

d) Upon receipt of the completed community service requirement, the Review Committee will authorize the amount to be expended from the Fund and credited to the applicant's/benefactor's restitution account. The Probation Services Department will then disburse payments to all applicant's victims in a proportionate share.

e) Payments disbursed from the fund will be made on a first come, first served basis and will be made in the full amount authorized by the Review Committee.

f) The Probation Services Department shall be prohibited from disburse payments from the Fund in excess of the Fund case reserves plus \$100.00.

g) Disbursements from the Fund shall require the signatures of a probation services administrator and a member of the administrative review team.

Maximum Disbursement

The maximum amount that may be disbursed from the Fund on behalf of any single child per 12 month period will be \$1,000.00.

Fund Balance

The Fund shall maintain a minimum balance of \$100.00 at all times.

Annual Report

The Luzerne County Department of Probation Services shall provide an annual report to the President Judge at the conclusion of each calendar year detailing the aggregate and individual data regarding payments to and disbursements from the Restitution Fund.

Suspension Activity

The Court or Juvenile Restitution Fund Development Committee shall have the authority to suspend any and all activities associated with the Fund.

Audit Requirement

The fund shall be subject to an audit by the designee of the Luzerne County Treasurer's office on an annual basis.

[Pa.B. Doc. No. 10-1516. Filed for public inspection August 20, 2010, 9:00 a.m.]

VENANGO COUNTY

Public Access Policy of The Unified Judicial System of Pennsylvania; Official Case Records of the Magisterial District Courts; Doc. No. CIV 1136-2010

Amended Order

And Now, this 11th day of August, 2010, in accordance with the Judicial Code, 42 Pa.C.S. Section 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 of the 28th Judicial District. This policy supplants the former procedures originally adopted in 1994, *Public Access Policy of the Unified Judicial System of Pennsylvania: Magisterial District Judge Records* found at 204 Pa. Code Section 213.1 et seq.

It is further *Ordered* that the District Court Administrator shall send seven (7) certified copies of this Order to be filed with the Administrative Office of the Pennsylvania Courts; two (2) certified copies and one (1) diskette to be filed with the Legislative Reference Bureau for publication in the *Pennsylvania Bulletin*; and one (1) certified copy to be filed with the Civil Procedural Rules Committee of the Supreme Court of Pennsylvania.

1. Public Access Request

(a) Verbal requests for records shall be filled within seventy-two (72) hours, excluding non-business days.

(b) Information sealed pursuant to court 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.

Said requests for "complex or voluminous" records shall be filled within ten (10) business days of receipt of completed request form, if said form is required by the Court.

(d) All denials for record requests must be issued in writing. The requestor can appeal the denial to the Central Court Administrator, Venango County Court House, 1168 Liberty Street, P. O. Box 831, Franklin, PA 16323, in writing, within fifteen (15) business days of service of the written notification by the magisterial district court.

2. Fee Schedule

(a) Copying—\$.25 per page

(b) Preparing, copying, and refilling requested court documents—\$5.00 per 1/4 hour with a minimum of 1/4 hour.

(c) Estimated costs must be pre-paid.

(e) Fees paid for services are non-refundable.

3. The rule is effective thirty (30) days from the date of publication in the *Pennsylvania Bulletin*.

By the Court

OLIVER J. LOBAUGH,
President Judge

[Pa.B. Doc. No. 10-1517. Filed for public inspection August 20, 2010, 9:00 a.m.]

DISCIPLINARY BOARD OF THE SUPREME COURT

Notice of Hearing

A Petition for Reinstatement to the active practice of law has been filed by Thomas Joseph Coleman, III and will be the subject of a hearing on September 23, 2010, before a hearing committee designated by the Disciplinary Board of the Supreme Court (Board). Anyone wishing to be heard in reference to this matter should contact the District II Office of the Disciplinary Board of the Supreme Court of Pennsylvania, Suite 170, 820 Adams Avenue, Trooper, PA 19403, (610) 650-8210, on or before September 10, 2010. In accordance with Board Rule § 89.274(b), since this formerly admitted attorney resides outside of the Commonwealth of Pennsylvania, this notice is published in the *Pennsylvania Bulletin*.

ELAINE M. BIXLER,
Secretary
*The Disciplinary Board of the
Supreme Court of Pennsylvania*

[Pa.B. Doc. No. 10-1518. Filed for public inspection August 20, 2010, 9:00 a.m.]

RULES AND REGULATIONS

Title 49—PROFESSIONAL AND VOCATIONAL STANDARDS

STATE BOARD OF NURSING [49 PA. CODE CH. 21] Biennial Renewal Fees

The State Board of Nursing (Board) amends §§ 21.5, 21.147, 21.253 and 21.705. The final-form rulemaking provides for a new biennial renewal fee for licensed practical nurses (LPN), professional nurses (RN), certified registered nurse practitioners (CRNP) and licensed dietitian-nutritionists (LDN).

Effective Date

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

Statutory Authority

Section 11.2 of the Professional Nursing Law (63 P. S. § 221.2) and section 17.5 of the Practical Nurse Law (63 P. S. § 667.5) require the Board to set fees sufficient to meet expenditures.

Response to Comments

The proposed rulemaking was published at 39 Pa.B. 7105 (December 19, 2009). The Board received comments from the Pennsylvania Association of Nurse Anesthetists (PANA), the Pennsylvania Health Care Association (PHCA), Judith Giannuzzi, R. N., the House Professional Licensure Committee (HPLC) and the Independent Regulatory Review Commission (IRRC). PANA wrote that it did not have an objection to the proposed rulemaking. PHCA, an organization representing approximately 324 long-term care and senior service providers, wrote in opposition to the proposed increase in biennial renewal fees. PHCA opined that the increase could create an impediment for individuals seeking to become and to work as nurses. Judith Giannuzzi objected to the proposed increase and asked what obligations the Board could not meet without the increase and whether other cost-cutting options had been explored.

The HPLC submitted three comments. First, the HPLC requested the rationale for the proposed 45%—50% increase after 9 years without increases and after having been notified of the need for increases in the fall of 2008. Second, the HPLC recommended a duplicate listing of the fee for examination and licensure be stricken. Third, the HPLC recommended that web site references be checked and questioned the wisdom of placing web site addresses in a regulation. IRRC echoed the HPLC's second comment, recommended that the web site link be corrected but remain in the regulation and requested that the Board submit a "fee report form" for the increases in the final-form rulemaking.

In determining that a fee increase was necessary, the Board considered both its operational expenses and the ability of its licensees to pay the increased fees. The majority of the Board's expenses arise from the investigation and prosecution of individuals who have violated the nursing practice acts. Individuals who violate the nursing practice acts place patients at risk. The Board's obligation

to protect the public would be compromised if it did not have the funds necessary to investigate and prosecute violations of the nursing practice acts. The Department of State and the Bureau of Professional and Occupational Affairs have explored and implemented various cost-cutting measures over the past several years.

The HPLC requested the rationale for the amount of the increase after 9 years without increases and after having been notified of the need for an increase in the fall of 2008. The Board last increased biennial renewal fees in November 2000. The Board anticipates that the first implementation of the new fee will be in April 2011.

The Board is statutorily required to monitor revenues and expenditures and to increase fees when it appears that the Board's revenues will not meet its expenditures over a 2-year period. After monitoring revenues and expenses on a biennial basis, the Department's Bureau of Finance and Operations informed the Board, in late fall of 2008, that the Board's revenues were not projected to meet its expenses over a 2-year period. The Board began drafting its proposed rulemaking and submitted a draft for an incremental fee increase over the coming 10-year period for internal review in January 2009. The incremental increase was an approach that had been suggested by the HPLC in its review of other board's biennial renewal fee regulations, but that had not previously been adopted by another board.

Ongoing discussions ensued between the Board's regulatory officers and the Bureau of Finance and Operations regarding the uncertainty surrounding the approval of an incremental fee increase and the urgency of the Board's need to balance its budget. The Board decided to propose a traditional, one-time increase. The proposed rulemaking was published at 39 Pa.B. 7105. In accordance with the Regulatory Review Act (71 P. S. §§ 745.1—745.12), comment periods were provided for the public, the HPLC, the Senate Consumer Protection and Professional Licensure Committee (SCP/PLC) and IRRC. The Board considered the comments at its meeting on April 13, 2010, and finalized a draft of the final-form rulemaking package that day.

In determining the proposed biennial fee increases, the Board also reviewed nursing salary data compiled by the Department of Labor and Industry. This data shows the average salary in this Commonwealth for an LPN is \$39,920, \$61,390 for an RN and \$44,420 for an LDN. Data from the United States Department of Labor, Bureau of Labor Statistics showed a median salary for CRNPs in 2007 was \$82,590. The increases proposed by the Board would increase the licensure fees for LDNs, LPNs and RNs by \$10 per year to \$32.50 per year. The increase proposed by the Board would increase the licensure fee for CRNPs by \$12.50 per year to \$37.50 per year. These fees are significantly lower than the nurse licensure fees charged in most of the surrounding states. The Board does not anticipate that the increases will place an undue burden on licensees or on employers who pay the fees for their employees.

Regarding the web addresses in regulations, licensing boards within the Bureau began including web addresses in regulations at the suggestion of IRRC. Although the Board questioned, as does the HPLC, the advisability of publishing web addresses, which are subject to change, in regulations, the Board agreed with IRRC that its regulations should provide as much information as possible to

licensees. The Legislative Reference Bureau has agreed to publish changes to web addresses without requiring the Board to promulgate a rulemaking to effectuate a change. On balance, therefore, it appears that the benefit to including web and e-mail addresses outweighs the possible negative effects when these addresses are changed. The Board corrected the web addresses for the Commission on Dietetic Registration and the Certification Board for Nutrition Specialists in the final-form rulemaking.

The Board deleted the repetitious provision in the fee schedule for RNs and provided the fee report forms as requested by IRRC.

Fiscal Impact and Paperwork Requirements

The final-form rulemaking will have a fiscal impact on nurses and LDNs in this Commonwealth in that the final-form rulemaking increases the biennial licensure renewal fees for these licensees. The final-form rulemaking will not otherwise have fiscal impact nor impose additional paperwork on the private sector, the general public, the Commonwealth or its political subdivisions.

Sunset Date

The Board continuously monitors the effectiveness of its regulations. Therefore, a sunset date has not been assigned.

Regulatory Review

Under section 5(a) of the Regulatory Review Act (71 P. S. § 745.5(a)), on December 7, 2009, the Board submitted a copy of the notice of proposed rulemaking, published at 39 Pa.B. 7105, to IRRC and the Chairpersons of the HPLC and the SCP/PLC for review and comment.

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

Under section 5.1(j.2) of the Regulatory Review Act (71 P. S. § 745.5a(j.2)), on June 23, 2010, the final-form rulemaking was approved by the HPLC. On July 14, 2010, the final-form rulemaking was deemed approved by the SCP/PLC. Under section 5.1(e) of the Regulatory Review Act, IRRC met on July 15, 2010, and approved the final-form rulemaking.

Additional Information

Additional information may be obtained by writing to Ann Steffanic, Board Administrator, State Board of Nursing, P. O. Box 2649, Harrisburg, PA 17105-2649.

Findings

The Board finds that:

(1) Public notice of proposed rulemaking was given under sections 201 and 202 of the act of July 31, 1968 (P. L. 769, No. 240) and the regulations promulgated thereunder, 1 Pa. Code §§ 7.1 and 7.2.

(2) A public comment period was provided as required by law and all comments were considered in drafting this final-form rulemaking.

(3) The amendments made to the final-form rulemaking do not enlarge the purpose of the proposed rulemaking as published under section 201 of the act of July 31, 1968 (P. L. 769, No. 240) (45 P. S. § 1201).

(4) The amendments to the regulations of the Board are necessary and appropriate for the regulation of the practice of RNs in this Commonwealth.

Order

The Board orders that:

(a) The regulations of the Board, 49 Pa. Code Chapter 21, are amended by amending §§ 21.147 and 21.253 to read as set forth at 39 Pa.B. 7105 and by amending §§ 21.5 and 21.705 to read as set forth in Annex A.

(b) The Board shall submit a copy of 39 Pa.B. 7105 and Annex A to the Office of the Attorney General and the Office of General Counsel for approval as required by law.

(c) The Board shall certify this order, 39 Pa.B. 7105 and Annex A and deposit them with the Legislative Reference Bureau as required by law.

(d) The final-form rulemaking shall take effect upon publication in the *Pennsylvania Bulletin*.

ANN O’SULLIVAN, Ph.D., FAAN, CRNP,
Chairperson

(Editor’s Note: For the text of the order of the Independent Regulatory Review Commission relating to this document, see 40 Pa.B. 4359 (July 31, 2010).)

Fiscal Note: Fiscal Note 16A-5136 remains valid for the final adoption of the subject regulations.

Annex A

TITLE 49. PROFESSIONAL AND VOCATIONAL STANDARDS

PART I. DEPARTMENT OF STATE

Subpart A. PROFESSIONAL AND OCCUPATIONAL AFFAIRS

CHAPTER 21. STATE BOARD OF NURSING

Subchapter A. REGISTERED NURSES

GENERAL PROVISIONS

§ 21.5. Fees.

(a) The following fees are charged by the Board for services provided to licensees:

Examination and licensure	\$35
Reexamination.....	\$30
Licensure by endorsement.....	\$100
Temporary permit.....	\$35
Extension of temporary permit	\$60
Fee for review and challenge of RN exams	\$170
Application fee for out-of-State graduates.....	\$100
Verification of licensure	\$15
Reactivation of license (after 5 years or longer)	\$50
Restoration after suspension or revocation.....	\$50
Certification of scores	\$25
Certification of license history	\$40

(b) The following fees are charged by the Board to support its operations:

Biennial renewal of license	\$65
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(c) The following fees are charged by the Board for services provided to nursing education programs:

Application for approval of new nursing program ...	\$935
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(d) The following fees related to continuing education are charged by the Board:

Request, under § 21.134(b) (relating to continuing education sources) by a provider of a continuing education activity not listed in § 21.134(a) or an individual seeking credit for a continuing education activity not pre-approved by the Board, for approval of each hour of continuing education for which credit is requested . . . \$75

(e) In addition to the examination and licensure fee prescribed in subsection (a), which is payable directly to the Board, a candidate for the registered nurse licensing examination shall also pay a fee to the National Council of the State Board of Nursing (www.ncsbn.org) to cover costs associated with the preparation and administration of the registered nurse licensing examination.

**Subchapter G. DIETITIAN-NUTRITIONISTS
GENERAL PROVISIONS**

§ 21.705. Fees.

(a) The following fees are charged by the Board for services to licensees:

Application for licensure	\$45
Reactivation of inactive or lapsed license	\$50
License verification fee	\$15
License certification fee	\$25
Restoration after suspension or revocation	\$50

(b) The following fees are charged by the Board to support its operations:

Biennial renewal of license	\$65
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(c) In addition to the application fee prescribed in subsection (a), which is payable directly to the Board, a candidate for the Registration Examination for Registered Dietitians shall also pay an additional examination fee. A candidate may contact the Commission on Dietetic Registration, 120 South Riverside Plaza, Suite 2000, Chicago, IL 60606-6995, www.cdrnet.org for more information regarding the examination and examination fee.

(d) In addition to the application fee prescribed in subsection (a), which is payable directly to the Board, a candidate for the Certification Board for Nutrition Specialists examination for Certified Nutrition Specialists shall also pay an additional examination fee. A candidate may contact the Certification Board for Nutrition Specialists, 300 South Duncan Avenue, Suite 225, Clearwater, FL 33755, www.cbns.org for more information regarding the examination and examination fee.

[Pa.B. Doc. No. 10-1519. Filed for public inspection August 20, 2010, 9:00 a.m.]

**STATE BOARD OF VETERINARY MEDICINE
[49 PA. CODE CH. 31]
Biennial Renewal Fees**

The State Board of Veterinary Medicine (Board) amends § 31.41 (relating to schedule of fees) to read as set forth in Annex A. The final-form rulemaking increases the Board's biennial renewal fees for the upcoming renewal period beginning on December 1, 2010, and provides for an additional increase for the next biennial renewal period. The Board's original proposed rulemaking, which provided for a new fee for the initial biennial period beginning on December 1, 2010, followed by five incremental increases, was disapproved by the

Independent Regulatory Review Commission (IRRC) on April 22, 2010, with delivery of the disapproval order on April 28, 2010.

Effective Date

The final-form rulemaking will be effective upon publication in the *Pennsylvania Bulletin*. The new fees will be instituted for the upcoming biennial renewal cycle, which will begin on December 1, 2010. An incremental increase will be instituted beginning with the December 1, 2012, biennial renewal cycle.

Statutory Authority

Section 13(b) of the Veterinary Medicine Practice Act (act) (63 P. S. § 485.13(b)) requires the Board to increase fees by regulation to meet or exceed projected expenditures if the revenues raised by fees, fines and civil penalties are not sufficient to meet Board expenditures. In its 2007 and 2008 annual reports to the Board, the Department's Bureau of Finance and Operations (BFO) reported significant anticipated deficits requiring an increase in fees. In response to suggestions by the House Professional Licensure Committee (HPLC), the Board proposed to raise fees incrementally. The fees proposed by the Board were based on estimates from the BFO and were intended to ensure the continued operation of the Board in accordance with its statutory mandate.

In its disapproval order, IRRC opined that the General Assembly did not intend for the Board to set fees on an incrementally increasing basis. The act specifies that the Board may only increase fees so that its projected revenues meet or exceed its projected expenditures. The act directs the Board to consider its revenues and expenditures on a biennial basis because fees are collected biennially. In consideration of IRRC's concerns, and the concerns of the HPLC that licensees be subject to smaller, incremental increases, the Board amended this final-form rulemaking to provide for an initial increase to the biennial renewal fee followed by one small increase to set the new fee that will thereafter be applied. In addition, based on more recent projections by the BFO, the fees have been set at an amount lower than originally proposed.

Summary of Comments and the Board's Response

The Board received one comment from an individual member of the public and a comment from the Pennsylvania Veterinary Medical Association (PVMA). The individual commented that he was opposed to the fee increase because "many complaints and issues before the board are based on disputes over fees and concern about paying bills." The Board does not have jurisdiction over fee disputes and complaints regarding fees are closed at a very early stage; therefore, costs associated with these types of complaints are minimal. Rather, the Board attributes the increases in expenditures to increased regulatory efforts and an increase in practice-related complaints.

The PVMA wrote to state that it did not have objections to the proposed fee increases in light of the past deficits and projected future deficits. The PVMA also noted its willingness to work with the Board to educate the veterinary profession and potentially help decrease the number of complaints and, therefore, the need to raise fees. The Board appreciates the PVMA's demonstrated willingness to educate the veterinary profession, particularly with regard to the Board's recent rulemakings related to recordkeeping and professional conduct.

The HPLC questioned how the new projected expenditures over the next six biennial renewal periods for

veterinarians and veterinary technicians were determined to assure that the fee increases will adequately meet their intended goal. The BFO bases its calculations on income and expenses for the past 3 years and also considers particular items identified by the Board that may alter the estimates. The Board's expenses have risen dramatically over the past 10 years, requiring several fee increases. This historic trend was also considered. The Board has had an increase in practice issue cases, which require greater resources. The Board has also undertaken a more ambitious regulatory agenda, including regulations to effectuate section 27(a)(2) of the act (63 P. S. § 485.27(a)(2)), which requires the Board to inspect all animal hospitals or veterinary establishments, including mobile clinics, at least biennially. The BFO considered this information when it proposed fees to the Board. The Board, cognizant of the expense of repeatedly promulgating fee regulations and the disruption to licensees caused by unpredictable fees, determined that it should round the BFO's proposals up slightly.

The HPLC urged the Board to closely monitor its expenses to determine the adequacy of the increase over the proposed period and beyond so if a change in fees is needed, it will be realized as soon as possible. The Board has always monitored its budget on a fiscal and biennial basis and will continue to do so, especially since the proposed rulemaking has now been limited to the next two biennial renewal periods. The Board will request information from the groups that provide services to the Board and will endeavor to ensure that expenses do not increase unnecessarily.

Finally, the HPLC noted that it appreciated the graduated increase as being easier for the Board's licensees. The Board agrees that the graduated increase will be easier for its licensees to plan for and manage their budgets.

IRRC noted that while it did not question the policy behind the incremental fee increases, it asked the Board to explain how the increases conform to the intent of the General Assembly and section 13 of the act. IRRC asked the Board to explain its statutory authority for automatic increases that may or may not be needed 10 years in the future and asked if the financial condition of the Board improves, would the fees be decreased accordingly? Section 13(b) of the act requires the Board to increase its biennial renewal fees if the Board's revenues are not sufficient to meet expenditures over a 2-year period. The General Assembly references a 2-year period because license renewal fees are collected biennially; therefore, the Board can only accurately gauge its revenue and expenses by looking at a given 2-year period. Section 13(b) of the act does not limit the Board to looking only 2 years into the future when projecting a budget surplus or shortfall. It is simply a legislative mandate to increase fees at the point that biennial revenue is inadequate to fund the Board's projected expenditures over a biennial period to provide for the continued operations of the Board. For this reason, the Board voted to continue with its plan to incrementally increase biennial renewal fees, albeit over only the next two renewal periods, adjusted to reflect the BFO's updated projections.

The HPLC approved the final-form rulemaking package. As previously noted, IRRC disapproved the final-form rulemaking package. Following the disapproval, the Board requested that representatives from the BFO appear at its May 6, 2010, meeting to update the Board on its projected budget and to present alternatives to the proposed rulemaking. The Board considered the informa-

tion presented by the BFO and adopted the BFO's proposed initial fee increase followed by an incremental increase in the following biennial period. The Board believes that this approach addresses IRRC's concerns about raising fees 10 years out, while still incorporating the HPLC's suggestion of smaller, more frequent changes to the biennial renewal fees.

Fiscal Impact and Paperwork Requirements

The final-form rulemaking will increase the biennial renewal fee to \$345 for veterinarians and \$85 for veterinary technicians for the biennial period beginning December 1, 2010, and to \$360 for veterinarians and \$100 for veterinary technicians beginning December 1, 2012. The final-form rulemaking should not have other fiscal impact on the private sector, the general public or political subdivisions. The final-form rulemaking will require the Board to alter some of its forms to reflect the new biennial renewal fees; however, the final-form rulemaking should not create additional paperwork for the private sector.

Sunset Date

The Board continuously monitors its regulations. Therefore, a sunset date has not been assigned.

Regulatory Review

Under section 5(a) of the Regulatory Review Act (71 P. S. § 745.5(a)), on September 2, 2009, the Board submitted a copy of the notice of proposed rulemaking, published at 39 Pa.B. 5436 (September 19, 2009), to IRRC and the Chairpersons of the HPLC and the Senate Consumer Protection and Professional Licensure Committee (SCP/PLC) for review and comment.

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

Under section 5.1(j.2) of the Regulatory Review Act (71 P. S. § 745.5a(j.2)), on March 24, 2010, the final-form rulemaking was approved by the HPLC. On April 22, 2010, the final-form rulemaking was deemed approved by the SCP/PLC. Under section 5.1(e) of the Regulatory Review Act, IRRC met on April 22, 2010, and disapproved the final-form rulemaking and delivered notice of its disapproval on April 28, 2010.

Under section 7(c) of the Regulatory Review Act (71 P. S. § 745.7(c)), the Board amended its final rulemaking package and submitted a report to IRRC and the Chairpersons of the HPLC and the SCP/PLC. Following submission of the report, IRRC met on July 15, 2010, and approved the amended final rulemaking. Under section 7(d) of the Regulatory Review Act (71 P. S. § 745.7(d)), the amended final-form rulemaking was deemed approved by the HPLC and the SCP/PLC on July 29, 2010.

Findings

The Board finds that:

(1) Public notice of proposed rulemaking was given under sections 201 and 202 of the act of July 31, 1968 (P. L. 769, No. 240) and the regulations promulgated thereunder, 1 Pa. Code §§ 7.1 and 7.2.

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

(3) This final-form rulemaking is necessary and appropriate for administering and enforcing the authorizing act identified in this preamble.

Order

The Board, acting under its authorizing statute, orders that:

(a) The regulations of the Board, 49 Pa. Code Chapter 31, are amended by amending § 31.41 to read as set forth in Annex A.

(b) The Board shall submit this order and Annex A to the Office of General Counsel and the Office of Attorney General as required by law.

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

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

ROBIN J. BERNSTEIN, Esq.,
Chairperson

(Editor's Note: For the text of the order of the Independent Regulatory Review Commission relating to this document, see 40 Pa.B. 4359 (July 31, 2010).)

Fiscal Note: Fiscal Note 16A-5723 remains valid for the final adoption of the subject regulations.

Annex A

TITLE 49. PROFESSIONAL AND VOCATIONAL STANDARDS

PART I. DEPARTMENT OF STATE

Subpart A. PROFESSIONAL AND OCCUPATIONAL AFFAIRS

CHAPTER 31. STATE BOARD OF VETERINARY MEDICINE

FEES

§ 31.41. Schedule of fees.

An applicant for a license, certificate or service shall submit a payment at the time of the request under the following fee schedule:

Veterinarian fees for services:

Application to original, reactivated, reissued or reciprocal license	\$35
Application for continuing education program approval	\$35
Verification of licensure	\$15
Certification of scores or hours	\$25
Temporary permit.....	\$35
Late renewal fee per month or part of month.....	\$5

Veterinarian biennial renewal:

Biennial renewal fee for biennial period December 1, 2010—November 30, 2012.....	\$345
Biennial renewal fee for biennial period December 1, 2012—November 30, 2014	\$360

Veterinary technician fees for services:

Application for certification.....	\$35
Application for continuing education program approval	\$35
Verification of certification.....	\$15
Certification of scores or hours	\$25

Late renewal fee per month or part of month..... \$5

Veterinary technician biennial renewal:

Biennial renewal fee for biennial period
December 1, 2010—November 30, 2012

Biennial renewal fee for biennial period
December 1, 2012—November 30, 2014

[Pa.B. Doc. No. 10-1520. Filed for public inspection August 20, 2010, 9:00 a.m.]

STATE REAL ESTATE COMMISSION

[49 PA. CODE CH. 35]

Initial Licensure Fees

The State Real Estate Commission (Commission) amends § 35.203 (relating to fees) to read as set forth in Annex A.

Summary

The final-form rulemaking amends the current fees by consolidating the initial licensure fee charged to new applicants from a two-tiered structure to a one-tier structure. Instead of charging applicants in the first year of the licensure period 100% of the biennial renewal fee and applicants who apply in the second year of the licensure period 50% of the biennial renewal fee, the final-form rulemaking consolidates these fees into one fee, which represents 75% of the biennial renewal fee.

Statutory Authority

The final-form rulemaking is authorized under sections 404 and 407 of the Real Estate Licensing and Registration Act (act) (63 P. S. §§ 455.404 and 455.407).

Response to Comments

The proposed rulemaking was published at 39 Pa.B. 7109 (December 19, 2009). Publication was followed by a 30-day public comment period during which the Board received a public comment from the Pennsylvania Association of Realtors, who remained neutral on the rulemaking. Following the close of the public comment period, the Board received comments from the Independent Regulatory Review Commission (IRRC) and the House Professional Licensure Committee (HPLC). The Senate Consumer Protection and Professional Licensure Committee (SCP/PLC) did not comment.

IRRC recommended that the Commission add builder-owner salesperson and time-share salesperson to the categories of licensees required to pay biennial renewal fees if those fees are currently being charged as the initial licensure fees include those categories of licensees. In that builder-owner salespersons and time-share salespersons pay biennial renewal fees, the Commission added both categories of licensees in the final-form rulemaking.

The HPLC questioned which licensing boards within the Bureau of Professional and Occupational Affairs are able and unable to accept online applications. All boards, except for the State Board of Cosmetology and the State Board of Barber Examiners, are able to have initial licensure applications processed electronically. However, to date, only the State Board of Vehicle Manufacturers, Dealers and Salespersons, which accepts initial licensure applications for salespersons and representatives, and the State Board of Nursing, which accepts online applications for temporary and examination applications for registered and licensed professional nurses, are currently set up to

accept online applications. The State Board of Cosmetology and the State Board of Barber Examiners cannot use this system because their initial licensure applications go to their examination vendor by contract.

Compliance with Executive Order 1996-1, Regulatory Review and Promulgation

The Board reviewed this final-form rulemaking and considered its purpose and likely impact on the public and the regulated population under the directives of Executive Order 1996-1.

Fiscal Impact and Paperwork Requirements

The final-form rulemaking will not have adverse fiscal impact or paperwork requirements on the Board, licensees, the Commonwealth, its political subdivisions or the public sector.

Sunset Date

The Board continually monitors the effectiveness of its regulations through communication with the regulated population; accordingly, a sunset date has not been set.

Regulatory Review

Under section 5(a) of the Regulatory Review Act (71 P. S. § 745.5(a)), on December 7, 2009, the Committee submitted a copy of the notice of proposed rulemaking, published at 39 Pa.B. 7109, to IRRC and the Chairpersons of the HPLC and the SCP/PLC for review and comment.

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

Under section 5.1(j.2) of the Regulatory Review Act (71 P. S. § 745.5a(j.2)), on June 9, 2010, the final-form rulemaking was approved by the HPLC. On July 14, 2010, the final-form rulemaking was deemed approved by the SCP/PLC. Under section 5.1(e) of the Regulatory Review Act, IRRC met on July 15, 2010, and approved the final-form rulemaking.

Contact Person

Further information may be obtained by contacting Patricia Ridley, Administrator, State Real Estate Commission, P. O. Box 2649, Harrisburg, PA 17105-2649, (717) 783-3658.

Findings

The Commission finds that:

(1) Public notice of proposed rulemaking was given under sections 201 and 202 of the act of July 31, 1968 (P. L. 769, No. 240) and the regulations promulgated thereunder, 1 Pa. Code §§ 7.1 and 7.2.

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

(3) The amendment made to the final-form rulemaking does not enlarge the purpose of proposed rulemaking published at 39 Pa.B. 7109.

(4) This final-form rulemaking is necessary and appropriate for administering and enforcing the act.

Order

The Commission, under the act, orders that:

(a) The regulations of the Commission, 49 Pa. Code Chapter 35, are amended by amending § 35.203 to read as set forth in Annex A.

(b) The Commission shall submit this order and Annex A to the Office of General Counsel and the Office of Attorney General as required by law.

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

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

JOSEPH TARANTINO, Jr.,
Chairperson

(Editor's Note: For the text of the order of the Independent Regulatory Review Commission relating to this document, see 40 Pa.B. 4359 (July 31, 2010).)

Fiscal Note: Fiscal Note 16A-5615 remains valid for the final adoption of the subject regulation.

Annex A

TITLE 49. PROFESSIONAL AND VOCATIONAL STANDARDS

PART I. DEPARTMENT OF STATE

Subpart A. PROFESSIONAL AND OCCUPATIONAL AFFAIRS

CHAPTER 35. STATE REAL ESTATE COMMISSION

Subchapter B. GENERAL PROVISIONS

§ 35.203. Fees.

The following fees are charged by the Commission:

Review of qualifications of candidate for broker or cemetery broker licensing examination \$40

Application for standard or reciprocal licensure of:

(i) Broker, cemetery broker or rental listing referral agent \$75

(ii) Branch office \$65

(iii) Associate broker, salesperson, cemetery associate broker, builder-owner salesperson, time-share salesperson, campground membership salesperson, or broker of record, partner or officer for a partnership, association or corporation \$25

(iv) Cemetery salesperson \$20

Application for registration of cemetery company . . \$25

Initial standard or reciprocal licensure for broker, cemetery broker, branch office, rental listing referral agent, or broker of record, partner or officer for a partnership, association or corporation \$94.50

Initial standard or reciprocal registration for cemetery company or initial standard or reciprocal licensure for associate broker, salesperson, cemetery associate broker, cemetery salesperson, builder-owner salesperson, time-share salesperson or campground membership salesperson \$72

Title 58—RECREATION

PENNSYLVANIA GAMING CONTROL BOARD

[58 PA. CODE CHS. 401a AND 435a]

Definitions and Licensing Requirements

Biennial renewal of standard or reciprocal license of broker, cemetery broker, branch office, rental listing referral agent or broker of record, partner or officer for a partnership, association or corporation \$126

Biennial renewal of cemetery company registration or standard or reciprocal license of associate broker, salesperson, cemetery associate broker, cemetery salesperson or campground membership salesperson. \$96

Biennial renewal of cemetery company registration or standard or reciprocal license of associate broker, salesperson, cemetery associate broker, cemetery salesperson, campground membership salesperson, builder-owner salesperson or time-share salesperson. \$64

Registration of promotional real estate \$120

Annual renewal of registration of promotional real estate \$113

Approval of real estate education provider \$120

Reinspection of real estate education provider after first failure \$65

Annual renewal of approval of real estate education provider. \$375 plus \$15 for each satellite location, course and instructor

Change of name or office location of broker, cemetery broker or rental listing referral agent \$75

Change of name or address for cemetery company or change of employer, change of employer's name or change of employer's address for associate broker, cemetery associate broker, salesperson, cemetery salesperson, builder-owner salesperson, time-share salesperson, campground membership salesperson, or broker of record, partner or officer for a partnership, association or corporation. . . \$20

Reinspection after failure for change of name or office location of broker, cemetery broker or rental listing referral agent. \$55

Change of ownership or directorship of real estate education provider \$75

Change of name of real estate education provider. . \$45

Change of location of real estate education provider. \$70

Addition of satellite location or instructor for real estate education provider \$20

Addition of course for real estate education provider. \$25

Certification of current status of standard or reciprocal licensure, registration or approval \$15

Certification of history of standard or reciprocal licensure, registration or approval \$40

Duplicate standard or reciprocal license \$5

Late renewal of standard or reciprocal license In addition to the prescribed renewal fee, \$5 for each month or part of the month beyond the renewal date

The Pennsylvania Gaming Control Board (Board), under its general authority in 4 Pa.C.S. § 1202(b)(30) (relating to general and specific powers) and the specific authority in 4 Pa.C.S. §§ 1103, 1213, 1326 and 1603, amends Chapters 401a and 435a (relating to preliminary provisions; and employees) to read as set forth in Annex A.

Omission of Proposed Rulemaking

The Board, under section 204(3) of the act of July 31, 1968 (P. L. 769, No. 240) (45 P. S. § 1204(3)), known as the Commonwealth Documents Law (CDL), and 1 Pa. Code § 7.4(3) (relating to omission of notice of proposed rulemaking), finds that notice of proposed rulemaking under these circumstances is unnecessary and impractical and therefore may be omitted. The Board's justification for utilizing the proposed rulemaking omitted process is that the only changes being made in this final-omitted rulemaking are those specifically required to bring the Board's regulations into conformity with the act of January 7, 2010 (P. L. 1, No. 1) (Act 1).

Act 1 amended the definitions of "gaming employee" and "key employee" in 4 Pa.C.S. § 1103 (relating to definitions), amended 4 Pa.C.S. § 1213 (relating to license or permit prohibition) governing who may not be issued a license or permit, amended 4 Pa.C.S. § 1326 (relating to license renewals) to set forth the time period for the renewal of a license or permit and added 4 Pa.C.S. Chapter 16 (relating to junkets) to require gaming junket representatives to obtain an occupation permit. The amendments in this final-omitted rulemaking these statutory changes.

Purpose of the Final-Omitted Rulemaking

The final-omitted rulemaking amends the definitions of "gaming employee" and "key employee" and makes other amendments regarding licensing to bring the Board's regulations into conformity with the revisions made to 4 Pa.C.S. Part II (relating to gaming) by Act 1.

Explanation of Amendments to Chapters 401a and 435a

In § 401a.3 (relating to definitions), the terms "gaming employee" and "key employee" have been amended to conform to the revised statutory definitions. The principal impact of this change, which has already been implemented by the Bureau of Licensing, has been to reduce the number of employees who are required to obtain a key employee license. These former key employees now fall under the "gaming employee" definition and are now only required to obtain an occupation permit.

In § 435a.1 (relating to general provisions), subsections (f) and (g) have been added to reflect the amendments to 4 Pa.C.S. § 1213, which prohibit anyone with a felony conviction from receiving a principal or key employee license and prohibit anyone with a misdemeanor gambling offense from getting a principal or key employee license unless at least 15 years has passed since the conviction for the offense. Former subsection (f), now subsection (h), has been amended to reflect the statutory prohibition on the issuance of occupation permits to an individual convicted of a felony or misdemeanor gambling offense unless 15 years has passed since his conviction.

[Pa.B. Doc. No. 10-1521. Filed for public inspection August 20, 2010, 9:00 a.m.]

Former subsection (g), now subsection (i), has also been amended to make the language of this section consistent with the statutory amendments. Finally, subsection (j) has been added to mirror 4 Pa.C.S. § 1213(4), which specifies what will be considered to be a felony.

In § 435a.4 (related to key employee license and occupation permit term and renewal), the time period for which a license or permit will be valid has been changed from 1 to 3 years consistent with the change to 4 Pa.C.S. § 1326.

Affected Parties

Employees of slot machine licensees and applicants for licenses and permits impacted by the amendments in Act 1 are similarly impacted by this final-omitted rulemaking.

Fiscal Impact

Commonwealth

The Board does not anticipate that there will be costs or savings to the Board or any other Commonwealth agency as a result of this final-omitted rulemaking.

Political subdivisions

This final-omitted rulemaking will not have fiscal impact on political subdivisions of this Commonwealth.

Private sector

As a result of the passage of Act 1, applicants for and holders of licenses or permits will experience lower costs. This final-omitted rulemaking, which mirrors the statutory changes, will not result in additional costs or savings.

General public

This final-omitted rulemaking will not have fiscal impact on the general public.

Paperwork Requirements

The reclassification of positions to gaming employee from key employee and the extension of the time period that a license or permit is valid from 1 year to 3 years will result in fewer and in some cases shorter applications for some applicants and individuals seeking renewals.

Effective Date

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

Contact Person

The contact person for questions about this final-omitted rulemaking is Susan Yocum, Assistant Chief Counsel (717) 703-2971.

Regulatory Review

Under section 5.1(c) of the Regulatory Review Act (71 P. S. § 745.5a(c)) on June 22, 2010, the Board submitted a copy of the final-form regulations, proposed rulemaking omitted, to the Independent Regulatory Review Commission (IRRC), the Senate Community, Economic and Recreational Development Committee and the House Gaming Oversight Committee (Committees) and the Attorney General. In addition to submitting the final-omitted rulemaking, the Board also provided IRRC, the Committees and the Attorney General with a copy of a detailed Regulatory Analysis Form prepared by the Board.

Under section 5.1(j.1)—(j.3) of the Regulatory Review Act, this final-omitted rulemaking was deemed approved by the Committees on August 4, 2010. IRRC met on August 5, 2010, and approved the regulations in accordance with section 5.1(e) of the Regulatory Review Act.

Findings

The Board finds that the final-omitted rulemaking is necessary and appropriate for the administration and enforcement of the authorizing statute. Under section 204 of the CDL, the Board also finds that the proposed rulemaking procedures in sections 201 and 202 of the CDL (45 P. S. §§ 1201 and 1202) are unnecessary because it is in the public interest to expedite this final-omitted rulemaking.

Order

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

(a) The regulations of the Board, 58 Pa. Code Chapters 401a and 435a, are amended by amending §§ 401a.3, 435a.1 and 435a.4 to read as set forth in Annex A, with ellipses referring to the existing text of the regulations.

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

(c) This order shall become effective upon publication in the *Pennsylvania Bulletin*.

GREGORY C. FAJT,
Chairperson

(Editor's Note: For the text of the order of the Independent Regulatory Review Commission relating to this document, see 40 Pa.B. 4814 (August 21, 2010).)

Fiscal Note: 125-127. No fiscal impact; (8) recommends adoption.

Annex A

TITLE 58. RECREATION

PART VII. GAMING CONTROL BOARD

Subpart A. GENERAL PROVISIONS

CHAPTER 401a. PRELIMINARY PROVISIONS

§ 401a.3. Definitions.

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

* * * * *

Gaming employee—

- (i) An employee of a slot machine licensee, including:
 - (A) Cashiers.
 - (B) Change personnel.
 - (C) Count room personnel.
 - (D) Slot attendants.
 - (E) Dealers or croupiers.
 - (F) Machine mechanics, computer machine technicians or table game device technicians.
 - (G) Security personnel.
 - (H) Surveillance personnel.
 - (I) Personnel with SLOTS Link security administrator access and responsibilities.
 - (J) Hosts or other individuals authorized to extend complimentary services, including employees performing functions similar to those performed by a gaming junket representative.

(K) Promotional play supervisors, credit supervisors, pit supervisors, cashier supervisors, shift supervisors, table game managers and assistant managers and other

supervisors and managers, except for those specifically identified in this part as key employees.

- (L) Boxpersons.
- (M) Floorpersons.
- (N) Personnel authorized to issue promotional play.
- (O) Personnel authorized to issue credit.

* * * * *

(iii) Employees of a registered or certified gaming service provider, licensed manufacturer or manufacturer designee whose duties require the employee's presence on the gaming floor or in a restricted area of a licensed facility.

- (iv) Gaming junket representatives.

* * * * *

Key employee—An individual who is:

(i) Employed in a director or department head capacity and who is empowered to make discretionary decisions that regulate slot machine or table game operations in this Commonwealth, including the general manager and assistant manager of the licensed facility, director of slot operations, director of table games operations, director of cage operations, director of credit operations, director of surveillance, director of marketing, director of management information systems, director of security, director of human resources, comptroller and any employee who is not otherwise designated as a gaming employee and who supervises the operations of these departments or to whom these department directors or department heads report.

* * * * *

Subpart B. LICENSING, PERMITTING, CERTIFICATION AND REGISTRATION

CHAPTER 435a. EMPLOYEES

§ 435a.1. General provisions.

* * * * *

(f) A principal or key employee license will not be issued to an individual who has been convicted of a felony offense in any jurisdiction.

(g) A principal or key employee license will not be issued to an individual who has been convicted of a misdemeanor gambling offense in any jurisdiction, unless 15 years have elapsed from the date of conviction for the offense.

(h) A permit will not be issued to an individual who has been convicted of a felony offense or misdemeanor gambling offense in any jurisdiction, unless 15 years have elapsed from the date of conviction for the offense.

(i) When considering an application for a registration from an individual who has been convicted of a felony or misdemeanor gaming offense in any jurisdiction, an application for a permit from an individual who has been convicted of a felony or misdemeanor gaming offense in any jurisdiction when 15 years have elapsed from the date of the conviction for the offense, or an application for a license from an individual who has been convicted of a misdemeanor gaming offense in any jurisdiction when 15 years have elapsed from the date of the conviction for the offense, the Board will consider:

* * * * *

(j) For purposes of this section, a felony offense is any of the following:

(1) An offense punishable under the laws of this Commonwealth by imprisonment for more than 5 years.

(2) An offense which, under the laws of another jurisdiction, is either:

- (i) Classified as a felony.
- (ii) Punishable by imprisonment for more than 5 years.

(3) An offense under the laws of another jurisdiction which, if committed in this Commonwealth, would be subject to imprisonment for more than 5 years.

* * * * *

§ 435a.4. Key employee license and occupation permit term and renewal.

(a) A key employee license or occupation permit issued under this chapter shall be valid for 3 years from the date of Board approval.

(b) A renewal application shall be submitted to the Board at least 60 days prior to the expiration of a key employee license or occupation permit.

(c) A key employee license or occupation permit for which a completed renewal application and fee has been received by the Board will continue in effect until the Board sends written notification to the holder of the key employee license or occupation permit that the Board has approved or denied the key employee license or occupation permit.

[Pa.B. Doc. No. 10-1522. Filed for public inspection August 20, 2010, 9:00 a.m.]

NOTICES

DEPARTMENT OF AGRICULTURE

Order of Quarantine; Emerald Ash Borer

Recitals

A. Emerald Ash Borer (EAB), *Agrilus planipennis* (*Fairemaire*)—a beetle indigenous to Asia—is a serious plant pest that attacks and kills ash trees belonging to the genus *Fraxinus*. EAB has worked its way east from Michigan, where it was first detected in 2002.

B. EAB has killed 40 million ash trees during the short time it has been present in North America. Typically, trees are killed within 3 years of the initial attack by this beetle. EAB presents a clear threat to this Commonwealth's forest and horticultural resources.

C. The Plant Pest Act (act) (3 P. S. §§ 258.1—258.27) empowers the Department of Agriculture (Department) to take various measures to detect, contain and eradicate plant pests. These powers include the authority to establish quarantines to prevent the spread of plant pests within this Commonwealth.

D. The Department has issued previous EAB-related Orders of Quarantine, establishing a quarantined area that includes all of Allegheny, Armstrong, Beaver, Bedford, Butler, Indiana, Juniata, Lawrence, Mercer, Mifflin, Washington and Westmoreland Counties, and restricting the movement of designated articles and materials from this quarantined area.

E. EAB has recently been detected in Centre, Cumberland, Fulton, Somerset and Union Counties—counties outside of the current quarantined area—making it necessary to expand the quarantined area to include these counties. In addition, as the quarantined area continues to expand, the Department believes it is necessary to further expand the quarantined area to include various counties adjacent to counties in which EAB has, to date, been discovered. These additional counties include Blair, Cambria, Cameron, Clarion, Clearfield, Clinton, Columbia, Crawford, Elk, Erie, Fayette, Forest, Franklin, Greene, Huntingdon, Jefferson, Lycoming, McKean, Montour, Northumberland, Perry, Potter, Snyder, Tioga, Venango and Warren Counties.

Order

Under authority of section 21 of the act (3 P. S. § 258.21), and with the Recitals previously listed incorporated into this Order by reference, the Department orders the following:

1. Confirmation of Quarantine; Addition of Counties to the Quarantined Area.

a. The quarantine established by previous Orders with respect to Allegheny, Armstrong, Beaver, Bedford, Butler, Indiana, Juniata, Lawrence, Mercer, Mifflin, Washington and Westmoreland Counties (collectively, the "quarantined area") remains in effect, subject to the conditions set forth in this Order.

b. A quarantine is hereby established with respect to Blair, Cambria, Cameron, Centre, Clarion, Clearfield, Clinton, Columbia, Crawford, Cumberland, Elk, Erie, Fayette, Forest, Franklin, Fulton, Greene, Huntingdon,

Jefferson, Lycoming, McKean, Montour, Northumberland, Perry, Potter, Snyder, Somerset, Tioga, Union, Venango and Warren Counties.

2. *Limitations Imposed.* The following objects or materials may not be moved out of the quarantined area, unless done in accordance with Paragraph No. 3 of this Order:

- a. The Emerald Ash Borer in any living stage of development;
- b. Ash trees of any size;
- c. Ash limbs, branches, stumps and roots;
- d. Any cut, nonconiferous (hardwood) firewood;
- e. Nonconiferous (hardwood) bark and nonconiferous (hardwood) wood chips larger than 1 inch in two dimensions;
- f. Ash logs and lumber with either the bark or the outer 1 inch of sapwood, or both, attached;
- g. Any item made from or containing the wood of the ash tree that is capable of spreading emerald ash borer; and

h. Any other article, product or means of conveyance determined by the Department to present a risk of spreading the EAB infestation.

3. *Movement of regulated articles from quarantined areas.* An article described in Paragraph No. 2 of this Order may be moved from a quarantined area only under the following circumstances:

a. *With* a valid certificate or limited permit (as described in Paragraph No. 4) attached;

b. *Without* a certificate or limited permit (as described in Paragraph No. 4) attached if:

i. The regulated article is moved by the United States Department of Agriculture or the Department for experimental or scientific purposes; or

ii. The regulated article originates outside the quarantined area and is moved intrastate through the quarantined area under the following conditions:

A. The points of origin and destination are indicated on a waybill accompanying the regulated article; and

B. The regulated article, if moved through the quarantined area during the period of May 1 through August 31 or when the ambient air temperature is 40° F or higher, is moved in an enclosed vehicle or is completely covered to prevent access by the EAB; and

C. The regulated article is moved directly through the quarantined area without stopping (except for refueling or for traffic conditions, such as traffic lights or stop signs), or has been stored, packed or handled at locations approved by an inspector as not posing a risk of infestation by emerald ash borer; and

D. The article has not been combined or commingled with other articles so as to lose its individual identity.

c. Without a certificate or limited permit (as described in Paragraph No. 4) attached if a USDA-issued or USDA-authorized (by USDA compliance agreement) certificate or permit is attached.

4. *Obtaining a Certificate or Limited Permit from the Department for Intrastate Movement of Articles.* The Department or a person operating under a compliance

agreement will issue a certificate or limited permit authorizing the intrastate movement of articles described in Paragraph No. 2 of this Order if it is satisfied that all of the following are accurate:

a. The article is either of the following:

i. The article is apparently free of EAB, based on inspection; or the article has been grown, produced, manufactured, stored or handled in a manner that, in the judgment of the Department, prevents the article from presenting a risk of spreading EAB; or

ii. The article is to be moved to a specified destination for specific processing, handling or utilization (the destination and other conditions to be listed on the advance written permission), and this movement will not result in the spread of EAB because EAB will be destroyed by the specific processing, handling or utilization; and

b. The article is to be moved in compliance with this Order and any additional emergency conditions that the Department may impose under the Plant Pest Act in order to prevent the artificial spread of EAB; and

c. The article is eligible for intrastate movement under all other Federal domestic plant quarantines and regulations applicable to the regulated articles.

5. *Cancellation of a Certificate or Limited Permit.* Any certificate or limited permit may be canceled orally or in writing by the Department whenever the Department determines that the holder of the certificate or limited permit has not complied with the act or this Order. If the cancellation is oral, the cancellation will become effective immediately, and the cancellation and the reasons for the cancellation will be confirmed in writing as soon as circumstances permit.

6. *Compliance Agreements.* The Department will consider entering into a compliance agreement with any person that demonstrates an understanding of the requirements of this Order and otherwise satisfies the Department it is capable of issuing certificates or limited permits in accordance with the requirements of this Order. The Department shall either provide blank certificates and limited permits to a person operating under a compliance agreement or authorize reproduction of the certificates or limited permits on shipping containers, or both, as requested by the person operating under the compliance agreement. These certificates and limited permits may then be completed and used, as needed, for the intrastate movement of regulated articles that have met all of the requirements of Paragraph No. 4.

7. *Documentation to Accompany Articles in Intrastate Movement from the Quarantined Area.* If an article described in Paragraph No. 2 of this Order is to be moved intrastate from the quarantined area, the article must be plainly marked with the name and address of the consignor and the name and address of the consignee and must have a copy of the applicable Department-issued or Department-authorized (by compliance agreement as described in Paragraph No. 6) certificate or limited permit securely attached at all times during intrastate movement attached to the article itself, or to the container carrying the article, or to the consignee's copy of the accompanying waybill: Provided, that the description of the article on the certificate or limited permit, and on the waybill, are sufficient to identify the regulated article. The carrier must furnish the certificate or limited permit authorizing the intrastate movement of the article to the consignee at the destination of the shipment.

8. *Federal Requirements for Interstate Movement of Articles.* This Order is distinct from, and in addition to,

any Federal statute, regulation or quarantine order addressing the interstate movement of articles from the quarantined area or this Commonwealth.

9. *Contacting the Department.* A person seeking information about the requirements of this Order, or a limited permit for intrastate movement of quarantined articles, or a compliance agreement for intrastate movement of quarantined articles, shall contact the Department at: Department of Agriculture, Attention: Walt Blosser, 2301 North Cameron Street, Harrisburg, PA 17110-9408, (717) 772-5205, wblosser@state.pa.us.

10. *Criminal and Civil Penalties.* A person who violates this Order will face summary criminal prosecution carrying up to 90 days imprisonment and a fine of up to \$300 with respect to each violation. In addition, a person who violates this Order may be assessed a civil penalty of up to \$20,000 with respect to each violation.

11. *Cooperation with other agencies.* The Department will consult with USDA, other State agencies and the Pennsylvania State University Cooperative Extension with respect to the most efficacious measures to survey for and detect EAB to slow the spread or eradicate this pest.

12. *Effective Date.* This quarantine is effective as of August 1, 2010, and shall remain in effect until rescinded by subsequent order.

RUSSELL C. REDDING,
Secretary

[Pa.B. Doc. No. 10-1523. Filed for public inspection August 20, 2010, 9:00 a.m.]

DEPARTMENT OF CONSERVATION AND NATURAL RESOURCES

Intent to Apply for Patent on Unappropriated Lands

The Commonwealth of Pennsylvania, acting by and through the Department of Conservation and Natural Resources (Department), Bureau of Forestry, intends to acquire the unappropriated land as provided in 68 Pa.C.S. Chapter 61 (relating to Pennsylvania Public Lands Act).

The Commonwealth intends to claim and patent a certain tract of land situated in Curtin Township, Centre County. The tract being 136.89 acres of unappropriated, unimproved mountain ground, being a portion of the J. Z. Long Warrant (A-75-151); being more particularly described as follows:

Beginning at a found Iron pin in stones, said corner being the south east corner of said tract, also said corner being corner point of three warrants, the Charles Bruce, the Jesse Brooke, and the Rebecca Kelso warrants.

Thence, North 88° 33' 01" West along Rebecca Kelso warrant 2,663.22 feet to found stones corner, said corner being corner point for two warrants, the Rebecca Kelso and the James White warrant.

Thence, South 87° 25' 49" West along the James White warrant passing through found stones at 5,326.57 feet, continuing along the James White warrant 5,616.64 feet

to Set Rebar and Stones corner, said corner being the south west corner of said tract, corner also being North West corner of the James White warrant and lying on the J. W. Packer Warrant's Eastern Line.

Thence, North 2° 39' 04" West along the J. W. Packer warrant 840.48 feet to a corner point, said point being the North West corner of said tract, said point lying on the southern line of the Michael Myers warrant.

Thence, North 89° 31' 02" East along the Michael and the Philip Myers warrants 7,252 feet to a found stones corner, said corner being the corner point of two warrants, the Philip Myers and J. Z. Long warrants (C-8-97).

Thence, North 89° 31' 02" East along the J. Z. Long warrant 1,051.41 feet to a corner point, said corner being the North East corner of said tract, said corner being the South East corner of the J. Z. Long warrant and lying on the Western line of the Charles Bruce warrant.

Thence, South 00° 43' 13" East along Charles Bruce warrant 725.17 feet to found Iron Pin in stones corner, Point Of Beginning.

As is the policy of the Department, the public is hereby notified of the Commonwealth's intent to acquire the unappropriated lands. A 30-day period for public inquiry and comment will be in effect beginning August 28, 2010, and ending September 27, 2010. Oral or written comments or questions concerning this transaction may be addressed to Dan Devlin, State Forester, Bureau of Forestry, P. O. Box 8552, Harrisburg, PA 17105-8552, (717) 787-4837. All oral and/or written comments will become part of the official document used in the final decision process.

JOHN QUIGLEY,
Secretary

[Pa.B. Doc. No. 10-1524. Filed for public inspection August 20, 2010, 9:00 a.m.]

DEPARTMENT OF ENVIRONMENTAL PROTECTION

Applications, Actions and Special Notices

APPLICATIONS

THE PENNSYLVANIA 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 listed 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 listed 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 applications 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 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 any public hearing is held.

Persons with a disability who require an auxiliary aid, service, including TDD users, or other accommodations to seek additional information should contact the Department through the Pennsylvania AT&T Relay Service at (800) 654-5984.

I. NPDES Renewal Applications

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

<i>NPDES No. (Type)</i>	<i>Facility Name & Address</i>	<i>County & Municipality</i>	<i>Stream Name (Watershed #)</i>	<i>EPA Waived Y/N?</i>
PA0029653 (Sewage)	Jewish Community Center Day Camp Route 502 Daleville, PA 18444	Lackawanna County Covington Township	Spring Brook 5-A	Y
PA0060593 (Sewage)	Little Washington Wastewater Company (Laurel Lakes WWTF) 762 West Lancaster Avenue Bryn Mawr, PA 19010-3489	Luzerne County Rice Township	Nuangola Outlet to Little Wapwallopen Creek 5-B	Y
PA0014681 (Industrial Waste)	Nestle Purina PetCare Company 2050 Pope Road Allentown, PA 18104-9308	Lehigh County South Whitehall Township	Unnamed Tributary to Jordan Creek 2-C	Y

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

<i>NPDES No. (Type)</i>	<i>Facility Name & Address</i>	<i>County & Municipality</i>	<i>Stream Name (Watershed #)</i>	<i>EPA Waived Y/N ?</i>
PA0246999 (Transfer)	David R. Marshall 7886 Lincoln Way West St. Thomas, PA 17252	St. Thomas Township Franklin County	UNT Campbell Run 13-C	Y
PA0081388 (Sew)	Barcas, Inc. Robert Barclay 14871 Mount Olivet Road Stewartstown, PA 17363	York County North Hopewell Township	UNT of East Branch Codorus Creek 7-H	Y
PA0009016 (IW)	Osram Sylvania Products, Inc. 1128 Roosevelt Avenue York, PA 17404-2348	York County West Manchester Township	Willis Run 7-H	Y

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

<i>NPDES No. (Type)</i>	<i>Facility Name & Address</i>	<i>County & Municipality</i>	<i>Stream Name (Watershed #)</i>	<i>EPA Waived Y/N ?</i>
PA0221554 (Sewage)	Bruce Wish Management, LP 1605 Old Route 18 Wampum, PA 16157	Lawrence County New Beaver Borough	Beaver River 20-B	Y
PA0221481 (Industrial Waste)	Norfolk Southern Meadville Yard Linden and Water Streets Meadville, PA 16335	Crawford County Meadville City	French Creek 16-D	Y
PA0102717 (Sewage)	Sandy Hill Estates MHP 120 Deer Run Road Middlesex, PA 16059	Butler County Middlesex Township	Glade Run 20-C	Y

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

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

PA0243965, Industrial Waste, SIC Code 3273, **Silvi Concrete of Chester County, LLC**, 355 Newbold Road, Fairless Hills, PA 19030-4313. Facility Name: Silvi Concrete Oxford Plant. This existing facility is located in Lower Oxford Township, **Chester 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 West Branch Big Elk Creek, is located in State Water Plan watershed 7-K and is classified for High Quality Waters-Trout Stocking and Mi, 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 stormwater runoffs.

Parameters	Minimum	Concentration (mg/l)		Instantaneous Maximum
		Annual Average	Daily Maximum	
pH (S.U.)	6.0		9.0	
Total Suspended Solids		50	100	100
Oil and Grease		Report	Report	Report

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

1. DMR to DEP.
2. BAT guidelines.
3. Change of ownership.
4. I-MAX.
5. Stormwater outfalls requirements.

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.

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

PA0261530, Sewage, SIC Code 6514, **David W. Ketner**, 159 Garland Drive, Carlisle, PA 17013. Facility Name: Ketner SFTF This proposed facility is located in North Middleton 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), Conodoguinet Creek, is located in State Water Plan watershed 7-B and is classified for Migratory Fishes, 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 0.0005 MGD.

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

PA0261556, Sewage, SIC Code 8322, **Whispering Hope East**, 23A South New Holland Road, Gordenville, PA 17529. Facility Name: Whispering Hope East STP. This proposed facility is located in West Earl Township, **Lancaster County**.

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

The receiving stream(s), Conestoga River, is located in State Water Plan watershed 7-J and is classified for Migratory Fishes, 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 0.0007 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
Total Residual Chlorine	XXX	XXX	XXX	0.5	XXX	1.6
CBOD ₅	XXX	XXX	XXX	25	XXX	50
Total Suspended Solids	XXX	XXX	XXX	30	XXX	60
				200		
Fecal Coliform (CFU/100 ml)				Geometric Mean		
May 1 - Sep 30	XXX	XXX	XXX	2,000	XXX	XXX
				Geometric Mean		
Oct 1 - Apr 30	XXX	XXX	XXX	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.

PA0260967, Sewage, SIC Code 6515, **Hodges Mobile Home Park**, 82 Linda Lane, Mechanicsburg, PA 17050. Facility Name: Hodges MHP. This proposed facility is located in Silver Spring 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 Conodoguinet Creek, is located in State Water Plan watershed 7-B and is classified for Migratory Fishes, 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 0.013 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	0.03	XXX	0.10
CBOD ₅	XXX	XXX	XXX	25	XXX	50
Total Suspended Solids	XXX	XXX	XXX	30	XXX	60
				200		
Fecal Coliform (CFU/100 ml)				Geometric Mean		
May 1 - Sep 30	XXX	XXX	XXX	2,000	XXX	XXX
				Geometric Mean		
Oct 1 - Apr 30	XXX	XXX	XXX	XXX	XXX	XXX
Ammonia-Nitrogen						
May 1 - Oct 31	XXX	XXX	XXX	2.0	XXX	4.0
Nov 1 - Apr 30	XXX	XXX	XXX	6.0	XXX	12
Total Phosphorus	XXX	XXX	XXX	2.0	XXX	4.0

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.

PA0083909, Sewage, SIC Code 2431, **Conestoga Wood Specialties Corp.**, 245 Reading Road, East Earl, PA 17519. Facility Name: Conestoga Wood Specialties. This existing facility is located in East Earl Township, **Lancaster 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), Conestoga River, is located in State Water Plan watershed 7-J and is classified for Migratory Fishes, 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 0.019 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	0.5	XXX	1.6

Parameters	Mass (lb/day)			Concentration (mg/l)		
	Average Monthly	Daily Maximum	Minimum	Average Monthly	Daily Maximum	Instantaneous Maximum
CBOD ₅	XXX	XXX	XXX	25	XXX	50
Total Suspended Solids	XXX	XXX	XXX	30	XXX	60
				200		
Fecal Coliform (CFU/100 ml)				Geometric Mean		
May 1 - Sep 30	XXX	XXX	XXX	2,000	XXX	XXX
Oct 1 - Apr 30	XXX	XXX	XXX	Geometric Mean	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.

PA0081591, Sewage, SIC Code 3469, **Eastern York County Sewer Authority**, 44 Walnut Springs Road, York, PA 17406-9000. Facility Name: Eastern York County STP. This existing facility is located in Hallam Borough, **York 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), Kreutz Creek, is located in State Water Plan watershed 7-I 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 0.5 MGD.

Parameters	Mass (lb/day)			Concentration (mg/l)		
	Average Monthly	Weekly Average	Minimum	Average Monthly	Weekly Average	Instantaneous Maximum
		Report Daily Maximum				
Flow (MGD)	Report	XXX	XXX	XXX	XXX	XXX
pH (S.U.)	XXX	XXX	6.0	XXX	XXX	9.0
Dissolved Oxygen	XXX	XXX	5.0	XXX	XXX	XXX
CBOD ₅						
May 1 - Oct 31	60.0	90.0	XXX	15.0	22.0	XXX
Nov 1 - Apr 30	125.0	165.0	XXX	25.0	40.0	60.0
		Report Daily Maximum				
BOD ₅						
Raw Sewage Influent	Report	XXX	XXX	Report	XXX	XXX
		Report Daily Maximum				
Total Suspended Solids						
Raw Sewage Influent	Report	XXX	XXX	Report	XXX	XXX
Total Suspended Solids	125.0	185.0	XXX	30.0	45.0	60.0
				200		
Fecal Coliform (CFU/100 ml)				Geometric Mean		
May 1 - Sep 30	XXX	XXX	XXX	2,000	XXX	XXX
Oct 1 - Apr 30	XXX	XXX	XXX	Geometric Mean	XXX	XXX
Ammonia-Nitrogen						
May 1 - Oct 31	20.0	XXX	XXX	5.0	XXX	10.0
Nov 1 - Apr 30	60.0	XXX	XXX	15.0	XXX	30.0
Total Phosphorus	XXX	XXX	XXX	2.0	XXX	XXX

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

Parameters	Mass (lb/day)			Concentration (mg/l)		
	Monthly	Annual	Minimum	Monthly Average	Maximum	
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 (Interim)	Report	Report	XXX	XXX	XXX	
Net Total Nitrogen (Final)	Report	9,132	XXX	XXX	XXX	
Net Total Phosphorus (Interim)	Report	Report	XXX	XXX	XXX	
Net Total Phosphorus (Final)	Report	1,218	XXX	XXX	XXX	

* This permit contains conditions which authorize the permittee to apply nutrient reduction credits to meet the Net Total Nitrogen and the Net Total Phosphorus effluent mass limits, under the Department of Environmental Protection's (Department) Trading of Nutrients and Sediment Reduction Credits Policy and Guidelines (Document No. 392-0900-001, December 30, 2006). The condition includes the requirement to report the application of these credits in Supplemental Discharge Monitoring Reports (DMRs) submitted to the Department.

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

The EPA waiver is not in effect.

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

PA0254100, Industrial Waste, SIC, 5541, **Worthington Sunoco**, 1050 Route 422, Worthington, PA 16262. This application is for issuance of an NPDES permit to discharge treated petroleum product-contaminated groundwater from Worthington Sunoco in Worthington Borough, **Armstrong County**.

The following effluent limitations are proposed for discharge to the receiving waters, unnamed tributary of Buffalo Creek, classified as a high quality trout-stock fishery with existing and/or potential uses for aquatic life, water supply and recreation.

Outfall 001: new discharge, design flow of 0.007 mgd.

Parameter	Mass (lb/day)		Concentration (mg/l)		
	Average Monthly	Maximum Daily	Average Monthly	Maximum Daily	Instantaneous Maximum
Flow (MGD)	Monitor and Report				
Total Suspended Solids			10	20	
Oil and Grease			Not Detectable		
Iron, Dissolved			1.08	1.69	
Benzene			0.001		0.0025
Total BTEX			0.1		0.25
Toluene			Monitor and Report		
Ethylbenzene			Monitor and Report		
Xylenes, Total			Monitor and Report		
MTBE			0.072	0.112	
pH	not less than 6.0 nor greater than 9.0 s.u.				

Other Conditions: Special conditions concerning compliance with not detectable effluent limitations, residual waste disposal, oil-bearing wastewaters, and prohibitions on discharges of floating materials, oil, grease, scum and substance which produce tastes, color, odors, turbidity or settle to form deposits.

The EPA waiver is in effect.

PA0252620, Industrial Waste, SIC, 4941, **West Carroll Township Water and Sewer Authority**, P. O. Box 328, Elmora, PA 15737. This application is for issuance of an NPDES permit to discharge treated process water from the water treatment plant in West Carroll Township, **Cambria County**.

The following effluent limitations are proposed for discharge to the receiving waters, Unnamed Tributary of Fox Run, classified as a cold water fishery with existing and/or potential uses for aquatic life, water supply and recreation. The first existing/proposed downstream potable water supply is Reliant Energy, located at Shawville, 51 miles below the discharge point.

Outfall 001: new discharge, design flow of 0.0021 mgd.

Parameter	Mass (lb/day)		Concentration (mg/l)		
	Average Monthly	Maximum Daily	Average Monthly	Maximum Daily	Instantaneous Maximum
Flow (MGD)	Monitor and Report				
TSS			30		60
Aluminum			4		8
Iron			2		4
Manganese			1		2
TRC			0.5		1.0
pH	not less than 6.0 nor greater than 9.0				

The EPA waiver is in effect.

III. WQM Industrial Waste and Sewerage Applications under The Clean Streams Law (35 P. S. §§ 691.1—691.1001)

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

WQM Permit No. 2802402, Sewerage, **David R. Marshall**, 7886 Lincoln Way West, St. Thomas, PA 17252. This proposed facility is located in St. Thomas Township, **Franklin County**.

Description of Proposed Action/Activity: Transfer of permit.

Southwest Region: Water Management Program Manager, 400 Waterfront Drive, Pittsburgh, PA 15222-4745.

WQM Permit No. 5610405, Sewerage, **Nathan L. Sleasman**, 1280 Buckstown Road, Stoystown, PA 15563. This proposed facility is located in Stoncreek Township, **Somerset County**.

Description of Proposed Action/Activity: Application for the construction and operation of a residential sewage treatment facility.

WQM Permit No. 5610406, Sewerage, **Grace E. Dupstadt**, 1300 Buckstown Road, Stoystown, PA 15563. This proposed facility is located in Stoncreek Township, **Somerset County**.

Description of Proposed Action/Activity: Application for the construction and operation of a residential sewage treatment facility.

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

WQM Permit No. 6110402, Sewerage, **Borough of Rouseville**, P. O. Box 317, Rouseville, PA 16344-0317. This proposed facility is located in Cornplanter Township, **Venango County**.

Description of Proposed Action/Activity: Upgrade of an existing Sewage Treatment Facility to provide for redevelopment of the Route 8 area.

WQM Permit No. 208401, Sewerage, **Amendment No. 1, Sugar Creek Area Sewage Authority**, 19 Creek Road, Sugar Grove, PA 16350. This proposed facility is located in Sugar Grove Township, **Warren County**.

Description of Proposed Action/Activity: The proposed project consists of the addition of one duplex booster pumping station to the proposed Sugar Gove Area Sewage Authority Phase III Wastewater Collection Project. The pumping station will serve 8 EDU's and will allow the proposed collection system to maintain 2 feet/second scouring velocity.

IV. NPDES Applications for Stormwater Discharges from Municipal Separate Storm Sewer Systems (MS4)

V. Applications for NPDES Waiver Stormwater Discharges from Municipal Separate Storm Sewer Systems (MS4)

VI. NPDES Individual Permit Applications for Discharges of Stormwater Associated with Construction Activities

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

Lehigh County Conservation District: Lehigh Agricultural Center, Suite 102, 4184 Dorney Park Road, Allentown, PA 18104, 610-391-9583.

<i>NPDES Permit No.</i>	<i>Applicant Name & Address</i>	<i>County</i>	<i>Municipality</i>	<i>Receiving Water/Use</i>
PAI023910010	Reserve at Saucon Creek, LP Attn: Michael Weaver 1750 Walton Road Blue Bell, PA 19422	Lehigh	Upper Saucon Township	Laurel Run CWF, MF Tributary to Saucon Creek CWF, MF

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 091004	Trumbauersville Fire Co. No. 1 P. O. Box 142 Trumbauersville, PA 18970	Bucks	Trumbauersville Borough	Unami Creek HQ-TSF-MF
PAI01 151020	Valley Forge Educational Services 1777 North Valley Road Paoli, PA 19301	Chester	Tredyffrin Township	Tributary Little Valley Creek EV
PAI01 151021	Melissa K. Stabenberg 5 Greenfield Lane West Grove, PA 19390	Chester	London Grove Township	East Branch White Clay Creek EV-MF

<i>NPDES Permit No.</i>	<i>Applicant Name & Address</i>	<i>County</i>	<i>Municipality</i>	<i>Receiving Water/Use</i>
PAI01 151022	Hankin Family Limited Partnership 707 Eagleview Boulevard Exton, PA 19341-1159	Chester	East Goshen Township	Unnamed Tributary Ridley Creek HQ-TSF
PAI01 511004	Kuusakowki Philadelphia, LLC 3150 Orthodox Street Philadelphia, PA 19137	Philadelphia	City of Philadelphia	Delaware River WWF-MF

Southcentral Region: Water Management Program Manager, 909 Elmerton Avenue, Harrisburg, PA 17110.

<i>NPDES Permit No.</i>	<i>Applicant Name & Address</i>	<i>County</i>	<i>Municipality</i>	<i>Receiving Water/Use</i>
PAI032110006	United States Army Corp of Engineers David Dale 600 Martin Luther King, Jr. Place Louisville, KY 40202	Cumberland	Hampden Township	Trindle Spring Run HQ-CWF
PAI036710001	Robert Borden, VP Real Places, LP 415 Norway Street York, PA 17403	York	Shrewsbury Township	Deer Creek CWF

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

Centre County Conservation District: 414 Holmes Avenue, Suite 4, Bellefonte, PA 16823, (814) 355-6817.

<i>NPDES Permit No.</i>	<i>Applicant Name & Address</i>	<i>County</i>	<i>Municipality</i>	<i>Receiving Water/Use</i>
PAI041410005	PA American Water Co. Nittany District Water Main 800 West Hersheypark Drive Hershey, PA 17033	Centre Clinton	Walker and Porter Townships	Fishing Creek HQ-CWF, MF Little Fishing Creek HQ-CWF, MF Roaring Run HQ-CWF, MF

Southwest Region: Watershed Management Program Manager, 400 Waterfront Drive, Pittsburgh, PA 15222-4745.

Westmoreland County Conservation District, 218 Donohoe Road, Greensburg, PA 15601, (724-837-5271).

<i>NPDES Permit No.</i>	<i>Applicant Name & Address</i>	<i>County</i>	<i>Municipality</i>	<i>Receiving Water/Use</i>
PAI056504001-R	James A. Yokopenic Unity Land Management, LLC 245 Bruno Road Greensburg, PA 15601	Westmoreland	Unity Township	Tributary to Sewickley Creek HQ-CWF

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

Butler County Conservation District, 122 McCune Drive, Butler, PA 16001-6501, 724-284-5270.

<i>NPDES Permit No.</i>	<i>Applicant Name & Address</i>	<i>County</i>	<i>Municipality</i>	<i>Receiving Water/Use</i>
PAI 0610 10 002	Charles Jones American Transmission Systems, Inc. 76 South Main Street Akron, OH 44308	Butler	Cranberry Township	UNT Brush Creek

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)**

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 the 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.

NUTRIENT MANAGEMENT PLAN—PUBLIC NOTICE SPREADSHEET

<i>Agricultural Operation Name and Address</i>	<i>County</i>	<i>Total Acres</i>	<i>Animal Equivalent Units</i>	<i>Animal Type</i>	<i>Special Protection Waters (HQ or EV or NA)</i>	<i>Renewal / New</i>
William and Karol Wingert 5497 Shade Lane Alexandria, PA 16611	Huntingdon	1,108.2 total acres 1,049.2 acres for manure application	11.58.9 animal equivalent units 1.10 animal equivalent units per acre	Dairy	Pike Run HQ-CWF	New

**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 PWS.

Persons wishing to comment on the 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 this 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 available for public review. Arrangements for inspection and copying information should be made with the office listed above the application.

Persons with a disability that 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 may 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

Southcentral Region: Water Supply Management Program Manager, 909 Elmerton Avenue, Harrisburg, PA 17110.

Permit No. 38910503, Public Water Supply.
 Applicant **HMS Host Corp.**
 Municipality Lawn Township
 County **Lebanon**
 Responsible Official Randy S. Eddinger
 Consultant/PADEP operator
 1697 Swamp Pike
 Gibbertsville, PA 19525
 Type of Facility Public Water Supply
 Consulting Engineer George W. Ruby, P. E.
 Ruby Engineering
 3605 Island Club Drive
 North Port, FL 34288-6611
 Application Received 7/22/2010
 Description of Action Installation of a new treatment
 system for existing groundwater
 sources at the Lawn Service
 Plaza on the Turnpike.

Permit No. 3610530, Public Water Supply.
 Applicant **Pequea Christian School**
 Municipality Sadsbury Township
 County **Lancaster**
 Responsible Official Matthew D. Stoltzfus
 School Board Treasurer
 115 Blank Road
 Narvon, PA 17555
 Type of Facility Public Water Supply
 Consulting Engineer Charles A. Kehew II, P. E.
 James R. Holley & Assoc., Inc.
 18 South George Street
 York, PA 17401
 Application Received 8/3/2010
 Description of Action Installation of a softener, nitrate
 treatment system and sodium
 hypochlorite disinfection system.

*Southwest Region: Water Supply Management Program
 Manager, 400 Waterfront Drive, Pittsburgh, PA 15222-
 4745.*

Permit No. 0210513, Public Water Supply.
 Applicant **Pennsylvania American
 Water Company**
 800 West Hersheypark Drive
 P. O. Box 888
 Hershey, PA 17033
 Township or Borough Baldwin Borough and the City of
 Pittsburgh
 Responsible Official David Kaufman
 Vice President of Engineering
 Pennsylvania American Water
 Company
 800 West Hersheypark Drive
 P. O. Box 888
 Hershey, PA 17033
 Type of Facility Water treatment plant
 Consulting Engineer
 Application Received April 29, 2010
 Date

Description of Action Addition of a ferric polymer
 blend at the Hays Mine water
 treatment plant.

Permit No. 0210514, Public Water Supply.
 Applicant **Pennsylvania American
 Water Company**
 800 West Hersheypark Drive
 P. O. Box 888
 Hershey, PA 17033
 Township or Borough Union Township
 Responsible Official David Kaufman
 Vice President of Engineering
 Pennsylvania American Water
 Company
 800 West Hersheypark Drive
 P. O. Box 888
 Hershey, PA 17033
 Type of Facility Water treatment plant
 Consulting Engineer
 Application Received April 29, 2010
 Date
 Description of Action Addition of a ferric polymer
 blend at the E. H. Aldrich water
 treatment plant.

Permit No. 0210518, Public Water Supply.
 Applicant **Pennsylvania American
 Water Company**
 800 West Hersheypark Drive
 P. O. Box 888
 Hershey, PA 17033
 Township or Borough Baldwin Borough
 City of Pittsburgh
 Responsible Official David Kaufman
 Vice President of Engineering
 Pennsylvania American Water
 Company
 800 West Hersheypark Drive
 P. O. Box 888
 Hershey, PA 17033
 Type of Facility Water treatment plant
 Consulting Engineer
 Application Received August 6, 2010
 Date
 Description of Action Construction of the Hays Mine
 clearwell numbers 3 and 4.

Permit No. 0210518, Public Water Supply.
 Applicant **Pennsylvania American
 Water Company**
 800 West Hersheypark Drive
 P. O. Box 888
 Hershey, PA 17033
 Township or Borough Baldwin Borough
 City of Pittsburgh
 Responsible Official David Kaufman
 Vice President of Engineering
 Pennsylvania American Water
 Company
 800 West Hersheypark Drive
 P. O. Box 888
 Hershey, PA 17033
 Type of Facility Water treatment plant
 Consulting Engineer
 Application Received August 6, 2010
 Date
 Description of Action Construction of the Hays Mine
 clearwell numbers 3 and 4.

Permit No. 0210518, Public Water Supply.
 Applicant **Pennsylvania American
 Water Company**
 800 West Hersheypark Drive
 P. O. Box 888
 Hershey, PA 17033
 Township or Borough Baldwin Borough
 City of Pittsburgh
 Responsible Official David Kaufman
 Vice President of Engineering
 Pennsylvania American Water
 Company
 800 West Hersheypark Drive
 P. O. Box 888
 Hershey, PA 17033
 Type of Facility Water treatment plant
 Consulting Engineer
 Application Received August 6, 2010
 Date
 Description of Action Construction of the Hays Mine
 clearwell numbers 3 and 4.

Permit No. 5610508, Public Water Supply.
 Applicant **Rockwood Borough
 Municipal Authority**
 358 Market Street
 Rockwood, PA 15557
 Township or Borough Black Township
 Responsible Official Donald Warick
 Rockwood Borough Municipal
 Authority
 358 Market Street
 Rockwood, PA 15557
 Type of Facility Water treatment plant

Consulting Engineer CME Management, LP
165 East Union Street
Suite 100
Somerset, PA 15501

Application Received Date July 28, 2010

Description of Action Addition of a chlorination system.

Permit No. 5610509, Public Water Supply.

Applicant **Conemaugh Township Municipal Authority**
Box 429
113 South Main Street
Davidsville, PA 15928

Township or Borough Conemaugh Township and Benson Borough

Responsible Official Charles Carrico
Chairperson
Conemaugh Township Municipal Authority
Box 429
113 South Main Street
Davidsville, PA 15928

Type of Facility Water treatment plant

Consulting Engineer The EADS Group, Inc.
450 Aberdeen Drive
Somerset, PA 15501

Application Received Date July 19, 2010

Description of Action Installation of waterline, construction of the Ham Ridge water storage tank and construction of the Ham Ridge booster pump station.

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

Permit No. 2510502, Public Water Supply.

Applicant **Albion Borough**

Township or Borough Albion Borough

County **Erie**

Responsible Official Jerry Hall

Type of Facility Public Water Supply

Consulting Engineer August E. Maas, P. E.

Application Received Date August 6, 2010

Description of Action Gage Road chlorination and chlorine contact pipeline.

MINOR AMENDMENT

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

Application No. 3910510MA.

Applicant **Slatington Borough**

Township or Borough Slatington Borough
Lehigh County

Responsible Official Stephen R. Salvesen
Borough Manager
125 South Walnut Street
Slatington, PA 18080

Type of Facility Community Water System

Consulting Engineer Amy Kunkel, P. E.
SSM Group, Inc.
2005 City Line Road
Suite 300
Bethlehem, PA 18017
610-849-9700

Application Received Date 8/6/2010

Description of Action Application for construction of approximately 125 LF of 24-inch water main at Well No. 7 to achieve increased chlorine contact time to meet 4-log disinfection of viruses requirements.

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

Application No. 6410502MA, Minor Amendment.

Applicant **Honesdale Consolidated Water Company**
1775 North Main Street
Honesdale, PA

Township or Borough Honesdale Borough
Wayne County

Responsible Official Roswell McMullen

Type of Facility Public Water System

Consulting Engineer Entech Engineering, Inc.
4 South Fourth Street
Reading, PA

Application Received Date 7/27/10

Description of Action Modification of disinfection equipment to meet the log 4 inactivation of viruses. The replacement of gas chlorination with hypochlorite.

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

Application No. 6410503MA, Minor Amendment.

Applicant **Aqua Pennsylvania, Inc.**
Gouldsboro System
1775 North Main Street
Honesdale, PA

Township or Borough Lehigh Township
Wayne County

Responsible Official Roswell McMullen

Type of Facility Public Water System

Consulting Engineer Entech Engineering, Inc.
4 South Fourth Street
Reading, PA

Application Received Date 7/21/10

Description of Action Modification of disinfection equipment to meet the log 4 inactivation of viruses. The replacement of gas chlorination with hypochlorite.

Southwest Region: Water Supply Management Program Manager, 400 Waterfront Drive, Pittsburgh, PA 15222-4745.

Application No. 1110507GWR, Minor Amendment.

Applicant	Reade Township Municipal Authority 1032 Skyline Drive Blandburg, PA 16619
Township or Borough	Reade Township
Responsible Official	Blair McGarvey, Operator Reade Township Municipal Authority 1032 Skyline Drive Blandburg, PA 16619
Type of Facility	Water system
Consulting Engineer	
Application Received Date	August 4, 2010
Description of Action	Demonstration of 4-log treatment of viruses for groundwater sources.

DETERMINATION OF APPLICABILITY FOR RESIDUAL WASTE GENERAL PERMITS

Application(s) for General Permit Renewal Received under the Solid Waste Management Act (35 P. S. §§ 6018.101—6018.1003); the Municipal Waste Planning, Recycling and Waste Reduction Act (53 P. S. §§ 4000.101—4000.1904); and Residual Waste Regulations for a General Permit to Operate Residual Waste Processing Facilities and/or the Beneficial Use of Residual Waste Other Than Coal Ash

Central Office: Division of Municipal and Residual Waste, Rachel Carson State Office Building, 14th Floor, 400 Market Street, Harrisburg, PA 17105-8472.

General Permit Number WMGR065. General Permit Number WMGR065 authorizes beneficial use, in the Northeast Region, of various wastes from steelmaking and foundry operations taken from a remediation site owned by the permittee as construction fill at an adjacent Act 2 remediation site, also owned by the permittee. Only beneficial use of the following types of residual wastes is authorized under General Permit Number WMGR065: refractories, foundry sands, slags, air emission control solids, and the media associated with their excavation.

Applications for renewal of General Permit Number WMGR065 and their coverage under the general permit were received and determined to be administratively complete on August 2, 2010, for the following:

WMGR065D001. Lehigh Valley Industrial Park, Inc., Suite 150, 1720 Spillman Drive, Bethlehem, PA 18015-2164.

WMGR065D002. Sands Bethworks Gaming, LLC, 511 East 3rd Street, Bethlehem, PA 18015-2201.

Comments concerning the application should be directed to Scott E. Walters, General Permits/Beneficial Use Section, Division of Municipal and Residual Waste, Bureau of Waste Management, P. O. Box 8472, Harrisburg, PA 17105-8472, 717-787-7381. TDD users may contact the Department of Environmental Protection through the Pennsylvania Relay Service, (800) 654-5984. Public comments must be submitted within 60 days of this notice and may recommend revisions to, and approval or denial of the application.

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 these 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 the proposed plan approval or operating permit must indicate their interest to the Department regional office within 30 days of the date of this notice and must file protests or comments on a proposed plan approval or operating permit within 30 days of the Department providing a copy of the proposed document to that person or within 30 days of its publication in the *Pennsylvania Bulletin*, whichever comes first. Interested persons may also request that a hearing be held concerning the proposed plan approval and operating permit. Comments or protests filed with the Department regional offices must include a concise statement of the objections to the issuance of the Plan approval or operating permit and relevant facts which serve as the basis for the objections. If the Department schedules a hearing, a notice will be published in the *Pennsylvania Bulletin* at least 30 days prior the date of the hearing.

Persons with a disability who wish to comment and require an auxiliary aid, service or other accommodation to participate should contact the regional office identified before the application. TDD users should contact the Department through the Pennsylvania AT&T Relay Service at (800) 654-5984.

Final plan approvals and operating permits will contain terms and conditions to ensure that the source is constructed and operating in compliance with applicable requirements in 25 Pa. Code Chapters 121—143, the Federal Clean Air Act (act) and regulations adopted under the act.

PLAN APPROVALS

Plan Approval Applications Received under the Air Pollution Control Act (35 P. S. §§ 4001—4015) and 25 Pa. Code Chapter 127, Subchapter B that may have special public interest. These applications are in review and no decision on disposition has been reached.

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.

CORRECTION: INCORRECT PERMIT NO.

30-00193 should be 32-00409: Rosebud Mining Company (301 Market Street, Kittanning, PA 16201-9642) for construction of new coal processing facility at Starford Mine Preparation Plant in Green Township, **Indiana County**.

30-00194: EQT Gathering, LLC (EQT Plaza, 625 Liberty Avenue, Suite 1700, Pittsburgh, PA 15222) for installation of Callisto Compressor Station in Morris Township, **Greene County**.

30-00195: EQT Gathering, LLC (EQT Plaza, 625 Liberty Avenue, Suite 1700, Pittsburgh, PA 15222) for installation of Jefferson Compressor Station in Jefferson Borough, **Greene County**.

Northwest Region: Air Quality Program, 230 Chestnut Street, Meadville, PA 16335-3481. Contact: Mark Gorog, New Source Review Chief—Telephone: 814-332-6940.

20-040F: Advanced Cast Products, Inc. (18700 Mill Street, Meadville, PA 16335) for establishment of an alternative opacity limitation per 25 Pa. Code § 123.45 in Vernon Township, **Crawford County**. This is a Title V facility.

Intent to Issue Plan Approvals and Intent to Issue or Amend Operating Permits under the Air Pollution Control Act (35 P. S. §§ 4001—4015) and 25 Pa. Code Chapter 127, Subchapter B. These actions may include the administrative amendments of an associated operating permit.

Northeast Region: Air Quality Program, 2 Public Square, Wilkes-Barre, PA 18711-0790. Contact: Ray Kempa, New Source Review Chief—Telephone: 570-826-2507.

PA No. 35-322-011: Alliance Sanitary Landfill, Inc., 398 South Keyser Avenue, Taylor, PA 18517 to construct a landfill expansion at the previously approved municipal solid waste landfill with an Active Gas Collection System with landfill gas flares for methane gas collection in Taylor and Old Forge Boroughs, Ransom Township and **Lackawanna County**.

In accordance with 25 Pa. Code §§ 127.44(b) and 127.424(b), the Department of Environmental Protection (Department) intends to issue Plan Approval No. 35-322-011 to Alliance Sanitary Landfill, Inc., 398 South Keyser Avenue, Taylor, PA 18517 for their landfill located in Taylor and Old Forge Boroughs, Ransom Township and Lackawanna County. This plan approval will be incorporated into the Title V Operating Permit No. 35-00011 through an administrative amendment at a later date, and the action will be published as a notice in the *Pennsylvania Bulletin*.

The plan approval No. 35-322-011 is to construct a landfill expansion at the previously approved municipal solid waste landfill with an Active Gas Collection System with landfill gas flares for methane gas collection and recovery. Landfill construction and waste disposal activities are currently taking place in permitted waste disposal area, Area I and II. This major permit modification application presents a proposed plan to expand the facility into an 87.3 acre area adjacent to Area II called Area 2A. The proposed Area 2A will provide additional waste disposal capacity for the existing permitted landfill and will modify existing site facilities to accommodate this expansion. The existing Alliance Sanitary Landfill covers an area of approximately 196 acres comprised of Area I and Area II, being approximately 150 and 46

acres, respectively. Area 2A will add approximately 87.3 acres to the landfill footprint for a total waste disposal area of approximately 283.3 acres. Area 2A will be constructed in a phased approach using separate landfill pads ranging in size from 8 to 18 acres. The Area 2A expansion will add a proposed net permitted capacity of approximately 29 million cubic yards to the existing landfill, extending the life of this facility by an estimated 16 years, assuming an average waste intake of 4,000 tons per day. The landfill gas well field will be designed and operated having a radii of influence (ROI) of 145 feet. The area 2A field will contain 165 vertical LFG collection wells over approximately 87.3 acres. The well placing at 145 feet ROI will cover almost 100% of landfill area. The gas management system will be installed incrementally with the placement of waste in each of the pads. This system entails the “capping” of closed pads shortly after the pad has accumulated its design capacity of municipal waste. After capping, active gas collection wells will be placed in the pad. The gas management system will incorporate “best available technology” (BAT) by transporting the collected gas under negative pressure to an enclosed ground type flares where the gas will be burned and 98% of the NMOC will be destroyed. It is proposed to burn the collected landfill gas in existing enclosed type ground flares prior to being released to the atmosphere or be routed to a treatment system that processes the gas for subsequent use in the PEI Energy Archbald Power Facility.

The volatile organic compound (VOC) emissions from the landfill will be controlled by enclosed landfill gas flares and shall not exceed 50 tons per year keeping the landfill below the major source threshold. The Department will place conditions to limit the emissions from the landfill. The Plan Approval and Operating Permit will contain additional recordkeeping and operating restrictions designed to keep the facility operating within all applicable air quality requirements.

Copies of the application, the Department’s analysis and other documents used in the evaluation of the application are available for public review during normal business hours at the Department, Air Quality Program, 2 Public Square, Wilkes-Barre, PA 18701.

Interested persons may submit written comments, suggestions or objections which they believe should be considered prior to the issuance of this permit to the address shown in the preceding paragraph. Written comments submitted to the Department during the 30-day public comment period shall include the name, address and telephone number of the person submitting the comments, identification of the proposed permit No. 54-322-011, and a concise statement regarding the relevancy of the information or objections to the issuance of the permit.

The Department reserves the right to hold a public hearing on the proposed action based upon the information received during the public comment period. All persons submitting comments or requesting a hearing will be notified of the decision to hold a hearing by publication in the newspaper or the *Pennsylvania Bulletin* or by telephone, whichever the Department determines such notification is sufficient. Written comments or requests for a public hearing should be directed to Mark J. Wejkszner, P. E., Program Manager, Air Quality Program, 2 Public Square, Wilkes-Barre, PA 18701, phone (570) 826-2528 within 30 days after publication date.

Northcentral Region: Air Quality Program, 208 West Third Street, Williamsport, PA 17701. Contact: Muhammad Q. Zaman, Environmental Program Manager—Telephone: 570-327-3648.

17-00017C: Rescar, Inc. (407 West Brentwood Street, Channelview, TX 77530-3952) to construct an abrasive blasting operation at their facility in DuBois, **Clearfield County**. The respective facility is a synthetic minor facility for which State-only Operating Permit 17-00017 has been issued.

The Department of Environmental Protection's (Department) review of the information submitted by Rescar, Inc. indicates that the construction of the abrasive blasting operation will meet all applicable air quality regulatory requirements pertaining to air contamination sources and the emission of air contaminants. Based on these findings, the Department intends to issue a plan approval for the construction of an abrasive blasting operation. Additionally, if the Department determines that the abrasive blasting operation is operating in compliance with all plan approval conditions, the conditions established in the plan approval will be incorporated into State-only Operating Permit 17-00017 via an administrative amendment under 25 Pa. Code § 127.450.

The following is a summary of the conditions that the Department proposes to place in the plan approval to be issued to ensure compliance with all applicable regulatory requirements:

1. The permittee shall not permit the emission of particulate matter into the outdoor atmosphere from Source P206 in such a manner that the concentration of particulate matter in the effluent gas from Control Device C206 exceeds 0.005 grains per dry standard cubic foot of effluent gas volume. Additionally, the emission of particulate matter, including particulate matter with an aerodynamic diameter of 10 microns or less, from Source P206 shall not exceed 1.50 tons in any 12 consecutive month period.

Compliance with this condition also ensures compliance with 25 Pa. Code § 123.13.

2. Control Device C206 shall be equipped with instrumentation to continuously monitor the differential pressure across the collector.

3. The permittee shall maintain accurate and comprehensive records of the total number of hours that abrasive blasting occurs in Source P206 for each month. All records generated pursuant to this permit condition shall be retained for a minimum of 5 years and shall be made available to the Department upon request.

4. The compressed air system associated with Control Device C206 shall be equipped with an air dryer and oil trap.

5. The permittee shall keep on hand a sufficient quantity of spare collector cartridges for Control Device C206 to be able to immediately replace any cartridges requiring replacement due to deterioration resulting from routine operation of Source P206 and Control Device C206.

6. Source P206 is an abrasive blasting operation comprised of a 25 ton media hopper, a Hoffman grit delivery system and a Quiet Cube vacuum system. The particulate matter emissions from the abrasive blasting operation shall be controlled by a Farr Gold Series Model GS8 reverse pulse cartridge collector (Control Device C206).

A copy of the plan approval application is available for public review between 8 a.m. and 4 p.m. at the Depart-

ment's Northcentral Regional Office, 208 West Third Street, Suite 101, Williamsport, PA 17701. Appointments for scheduling a review may be made by calling the Department at 570-327-3693. Written comments or requests for a public hearing should be directed to Muhammad Q. Zaman, Environmental Program Manager, Department of Environmental Protection, Air Quality Program, Northcentral Regional Office, 208 West Third Street, Suite 101, Williamsport, PA 17701, 570-327-3648.

Northwest Region: Air Quality Program, 230 Chestnut Street, Meadville, PA 16335-3481. Contact: Mark Gorog, New Source Review Chief—Telephone: 814-332-6940.

10-333C: Penn United Technologies, Inc. (799 North Pike Road, Cabot, PA 16023-2223) to change the recordkeeping requirement for the closed sump system to a visual observation rather than an actual physical measurement and to add the New Source Performance Standards for the batch vapor degreaser solvent degreasing unit (40 CFR 60, Subpart T) when halogenated solvents are used under the alternative operating scenario in Jefferson Township, **Butler County**.

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.

Southwest Region: Air Quality Program, 400 Waterfront Drive, Pittsburgh, PA 15222-4745. Contact: Barbara Hatch, Facilities Permitting Chief—Telephone: 412-442-4174.

32-00200: Indiana University of Pennsylvania: (525 Pratt Drive, Indiana, PA 15705-1028) for operation of the SW Jack Cogeneration Facility at IUP in Indiana Borough, **Indiana County**. This is a Title V Renewal.

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.

09-00158: Allied Crematory, LLC (864 Bristol Pike, Bensalem, PA 19020) for renewal of the Non-Title V State-only Operating Permit for operation of two existing incinerators at a crematory in Bensalem Township, **Bucks County**. There are no changes to the existing crematory (Source ID 101) listed in the facility-wide permit. The newest crematory (Source ID 102) has been operating under General Permit-14 No. 09-301-125GP; this renewal permit incorporates the requirements of GP No. 09-301-125GP. The facility has the potential to emit less than 25 tons of Volatile Organic Compounds (VOC) and less than 25 tons per year of Nitrogen Oxides (NOx); the facility is a Natural Minor. The renewal permit will include monitoring, recordkeeping and reporting requirements designed to keep the facility operating within all applicable air quality requirements.

09-00152: Gelest, Inc. (11 East Steel Road, Morrisville, PA 19067) for a State-only, Natural Minor Permit in Falls Township, **Bucks County**. The Company has a specialty chemical operation with mainly seven reactors and an electric dryer controlled by condenser and two scrubbers. This facility is a Natural Minor facility. The estimated total VOC emissions from the facility are less than 21.66 tpy, and total HAPs emissions are less than 17.98 tpy.

The permit will contain monitoring, recordkeeping, and reporting requirements designed to address all applicable air quality requirements.

09-00175: Hanson Aggregates BMC, Inc.—Penns Park Aggregate Plant (852 Swamp Road, Penns Park, PA 18943) in Wrightstown Township, **Bucks County**. This facility is a non-Title V facility. Renewal of a Synthetic Minor Operating Permit issued under the Air Pollution Control Act (35 P. S. §§ 4001—4015) and 25 Pa. Code § 127.450. The Operating Permit will contain recordkeeping requirements, monitoring requirements and operating conditions designed to keep the facility operating within the allowable emission limits and 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.

28-05009: Borough of Chambersburg—Falling Spring Diesel Power Plant (100 South Second Street, Chambersburg, PA 17201) for renewal of their synthetic minor operating permit issued in March 2006 in Chambersburg Borough, **Franklin County**.

Northcentral Region: Air Quality Program, 208 West Third Street, Williamsport, PA 17701. Contact: Muhammad Q. Zaman, Environmental Program Manager—Telephone: 570-327-3648.

19-00016: Milco Industries, Inc. (P. O. Box 568, Bloomsburg, PA 17815) for their facility in the Town of Bloomsburg, **Columbia County**. The facility's main sources include two identical Kewanee manufactured natural gas/No. 2 fuel fired boilers and two natural gas fired tenter frame fabric dryers. The facility has the potential to emit sulfur oxides (SO_x), nitrogen oxides (NO_x), carbon monoxide (CO), particulate matter (PM₁₀), volatile organic compounds (VOCs) and hazardous air pollutants (HAPs) below the major emission thresholds. The proposed operating permit contains all applicable requirements including Federal and State regulations. In addition, monitoring, recordkeeping and reporting conditions regarding compliance with all applicable requirements are included.

41-00056: Wenger's Feed Mill, Inc. (101 West Harrisburg Avenue, P. O. Box 26, Rheems, PA 17570-0026) for the Muncy Mill in Clinton Township, **Lycoming County**. The facility's main sources include two natural gas/No. 2 fuel oil-fired boilers and 17 grain processing operations. The facility has the potential to emit particulate matter (PM₁₀), nitrogen oxides (NO_x), carbon monoxide (CO), volatile organic compounds (VOCs), hazardous air pollutants (HAPs) and sulfur oxides (SO_x) below the major emission thresholds. The proposed operating permit contains requirements including monitoring, recordkeeping, and reporting conditions to ensure compliance with applicable Federal and State regulations.

COAL AND NONCOAL MINING ACTIVITY APPLICATIONS

Applications under the Surface Mining Conservation and Reclamation Act (52 P. S. §§ 1396.1—1396.19(a)); 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 such 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 before 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.

Where a National Pollutant Discharge Elimination System (NPDES) number is listed, the mining activity permit application was accompanied by an application for an individual NPDES permit. The Department has made a tentative determination to issue the NPDES permit in conjunction with the mining activity permit, but the issuance of the NPDES permit is contingent upon the approval of the associated mining activity permit.

For coal mining activities, NPDES permits, when issued, will contain effluent limits that do not exceed the technology-based effluent limitations. The proposed limits are listed in Table 1.

For noncoal mining activities, the proposed limits are found in Table 2. Discharges from noncoal mines located in some geologic settings (for example, in the coal fields) may require additional effluent limits. If additional effluent limits are needed for an NPDES permit associated with a noncoal mining permit, then the permit description below specifies the parameters. The limits will be in the ranges specified in Table 1.

More restrictive effluent limitations, restrictions on discharge volume, or restrictions on the extent of mining that may occur, will be incorporated into an NPDES permit when necessary for compliance with water quality standards and antidegradation requirements (in accordance with 25 Pa. Code Chapters 91—96).

The procedures for determining the final effluent limits, using a mass-balance equation or model, are found in Technical Guidance Document 362-0600-001, NPDES Program Implementation-Memorandum of Understanding (MOU) Concerning Water Quality Management, NPDES Program Implementation and Related Matters. Other specific factors to be considered include public comments and Total Maximum Daily Loads (TMDLs).

Persons wishing to comment on an NPDES permit application should submit a statement to the Department at the address of the district mining office indicated before 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			

¹ The parameter is applicable at all times.

A settleable solids instantaneous maximum limit of 0.5 ml/l applied to: surface runoff (resulting from a precipitation event of less than or equal to a 10-year 24-hour event) 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.

56060107. Coal Loaders, Inc., (210 East Main Street, Ligonier, PA 15658), transfer of an existing bituminous surface and auger mine from Greathouse and Greathouse Enterprises, 2066 Whistler Road, Stoystown, PA 15563, located in Quemahoning Township, **Somerset County**, affecting 26.4 acres. Receiving stream(s): Higgins Run, a tributary to Quemahoning Creek classified for the following use: highway quality cold water fishery. The first downstream potable water supply intake from the point of discharge is Cambria Somerset Authority and Johnstown Water Authority. Application received: July 15, 2010.

Greensburg District Mining Office: Armbrust Professional Center, 8205 Route 819, Greensburg, PA 15601, 724-925-5500.

65060101 and NPDES Permit No. PA0250856. Coal Loaders, Inc. (210 East Main Street, Ligonier, PA 15658). Application received for transfer of permit currently issued to Gary Gioia Coal Company for continued operation and reclamation of a bituminous surface mine located in South Huntingdon Township, **Westmoreland County**, affecting 23.2 acres. Receiving streams: Un-

named Tributary A to the Youghiogheny River, classified for the following use: warm water fishes. There are no potable water supply intakes within 10 miles downstream from the point of discharge. Transfer application received: July 22, 2010.

Knox District Mining Office: P. O. Box 669, 310 Best Avenue, Knox, PA 16232-0669, 814-797-1191.

33080105 and NPDES Permit No. PA0258547. Original Fuels, Inc. (P. O. Box 343, Punxsutawney, PA 15767) Revision to add 2.0 acres to the existing bituminous strip operation in Perry and Young Townships, **Jefferson County** affecting 432.9 acres. Receiving streams: Three unnamed tributaries to Mahoning Creek, classified for the following use: CWF. There are no potable surface water supply intakes within 10 miles downstream. Application received: August 2, 2010.

10040103 and NPDES Permit No. PA0242535. Annandale Quarries, Inc. (219 Goff Station Road, Boyers, PA 16020) Revision to an existing bituminous strip operation in Venango Township, **Butler County** affecting 23.3 acres. Receiving streams: Seaton Creek to Slippery Rock Creek, classified for the following use: CWF. There are no potable surface water supply intakes within 10 miles downstream. Revision to include a post-mining land use change from forestland to unmanaged natural habitat on the land of Samuel W. Tiche. Application received: August 2, 2010.

4674SM8 and NPDES Permit No. PA0258920. Fairview Coal Company (P. O. Box R, Ridgway, PA 15853) Revision to add an NPDES Permit to an existing bituminous strip operation in Fox Township, **Elk County**

affecting 63.4 acres. Receiving streams: Benninger Run, classified for the following use: CWF. There are no potable surface water supply intakes within 10 miles downstream. Application received: August 4, 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. § 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 or Water Obstruction and Encroachment Permit, or the approval of an Environmental Assessment must submit any comments, suggestions or objections within 30 days of the date of this notice as well as any 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 and wish to attend the hearing and you require an auxiliary aid, service or other accommodations to participate in the proceedings should contact the specified program. TDD users should contact the Department through the Pennsylvania AT&T Relay Service at (800) 654-5984.

Applications Received under the Dam Safety and Encroachments Act (32 P. S. §§ 693.1—693.27) and section 302 of the Flood Plain Management Act (32 P. S. § 679.302) and requests for certification under section 401(a) of the Federal Water Pollution Control Act (33 U.S.C.A. § 1341(a)).

WATER OBSTRUCTIONS AND ENCROACHMENTS

Northeast Region: Watershed Management Program Manager, 2 Public Square, Wilkes-Barre, PA 18711-0790, Telephone 570-826-2511.

E54-345. Schuylkill County Municipal Authority, 221 South Centre Street, Pottsville, PA 17901, in West Brunswick Township and Deer Lake Borough, **Schuylkill County**, U.S. Army Corps of Engineers, Philadelphia District.

To authorize the following water obstructions and encroachments associated with the: 1. Deer Lake Wastewater Treatment Plant Expansion; 2. Deer Lake Pump Station Upgrade; and 3. Deer Lake Sanitary Sewer Collection System. The project will permanently impact

0.91 acre of PEM, SS, FO wetlands and temporarily impact 1.00 acre of PEM, SS, FO wetlands.

1. *Deer Lake Wastewater Treatment Plant Expansion*—To place and maintain an average of 3 feet of fill in approximately 2.2 acres of the floodplain of Pine Creek (CWF, MF); to place fill in 0.91 acre of wetlands; and to construct and maintain a treated wastewater outfall pipe with an endwall and riprap apron in the floodway of Pine Creek. The Deer Lake Wastewater Treatment Plant Expansion is located on the south side of SR 0895 (Market Street) approximately 0.3 mile southwest of its intersection with SR 0061 (Auburn, PA Quadrangle Latitude: 40° 36' 59"; Longitude: -76° 03' 40") in West Brunswick Township, Schuylkill County.

2. *Deer Lake Pump Station Upgrade*—To place and maintain an average of 3 feet of fill in approximately 0.1 acre of the floodplain of Pine Creek and to construct and maintain an 8-inch diameter sanitary PVC force main across Pine Creek and approximately 45 feet of adjacent PEM wetlands. The Deer Lake Pump Station Upgrade is located approximately 300 feet west of the intersection of SR 0895 and SR 0061 (Auburn, PA Quadrangle Latitude: 40° 37' 11.3"; Longitude: -76° 03' 25.7") in Deer Lake Borough, Schuylkill County.

3. *Sanitary Sewer Collection System*—To construct and maintain the following stream and wetland crossings. The collection system starts at the Deer Lake Pump Station and runs approximately 1.5 miles northwest to near the intersection of Pheasant Run Road and SR 0061 (Orwigsburg, PA Quadrangle Latitude: 40° 38' 14.3"; Longitude: -76° 04' 17.8") in West Brunswick Township, Schuylkill County.

a. (Stream Crossing A) To construct and maintain a 12-inch diameter PVC sanitary sewer line crossing and a temporary road crossing of a tributary to Pine Creek. (Latitude: 40° 37' 14"; Longitude: -76° 03' 25")

b. (Stream Crossing B) To construct and maintain a 12-inch diameter DIP (mechanical joints) sanitary sewer line crossing of Pine Creek. (Latitude: 40° 37' 14"; Longitude: -76° 03' 27")

c. (Stream Crossing C) To construct and maintain a 12-inch diameter PVC sanitary sewer line crossing and a temporary road crossing of a tributary to Pine Creek. (Latitude: 40° 37' 35"; Longitude: -76° 03' 32")

d. (Stream Crossing D) To construct and maintain a 12-inch diameter PVC sanitary sewer line crossing and a temporary road crossing of a tributary to Pine Creek. (Latitude: 40° 37' 41"; Longitude: -76° 03' 34")

e. (Stream Crossing E) To construct and maintain a 12-inch diameter PVC sanitary sewer line crossing and a temporary road crossing of a tributary to Pine Creek. (Latitude: 40° 37' 42"; Longitude: -76° 03' 35")

f. (Stream Crossing F) To construct and maintain a 12-inch diameter PVC sanitary sewer line crossing and a temporary road crossing of a tributary to Pine Creek. (Latitude: 40° 38' 01"; Longitude: -76° 03' 52")

g. (Stream Crossing G) To construct and maintain a 12-inch diameter DIP (concrete encased) sanitary sewer line crossing of Pine Creek. (Latitude: 40° 38' 06"; Longitude: -76° 03' 58")

h. (Stream Crossing H) To construct and maintain a 12-inch diameter PVC sanitary sewer line crossing and a temporary road crossing of a tributary to Pine Creek. (Latitude: 40° 38' 08"; Longitude: -76° 04' 06")

i. (Wetland Crossing J1) To construct and maintain a 12-inch diameter PVC sanitary sewer line and a temporary road 489 feet of PEM wetlands. (Latitude: 40° 37' 35"; Longitude: -76° 03' 31")

j. (Wetland Crossing J2) To construct and maintain a 12-inch diameter PVC sanitary sewer line and a temporary road crossing 219 feet of PEM wetlands. (Latitude: 40° 37' 42"; Longitude: -76° 03' 34")

k. (Wetland Crossing J3) To construct and maintain a 12-inch diameter PVC sanitary sewer line and a temporary road crossing 82 feet of PEM wetlands. (Latitude: 40° 37' 42"; Longitude: -76° 03' 35")

l. (Wetland Crossing K1) To construct and maintain a 12-inch diameter PVC sanitary sewer line and a temporary road crossing 29 feet of PEM wetlands. (Latitude: 40° 37' 56"; Longitude: -76° 03' 47")

m. (Wetland Crossing K2) To construct and maintain a 12-inch diameter PVC sanitary sewer line and a temporary road crossing 27 feet of PEM wetlands. (Latitude: 40° 37' 58.5"; Longitude: -76° 03' 50")

n. (Wetland Crossing K3) To construct and maintain a 12-inch diameter PVC sanitary sewer line and a temporary road crossing 246 feet of PSS wetlands. (Latitude: 40° 38' 0.5"; Longitude: -76° 03' 53")

o. (Wetland Crossing K4) To construct and maintain a 12-inch diameter PVC sanitary sewer line and a temporary road crossing 61 feet of PEM wetlands. (Latitude: 40° 38' 5.5"; Longitude: -76° 03' 57.6")

p. (Wetland Crossing L1) To construct and maintain a 12-inch diameter PVC sanitary sewer line and a temporary road crossing 63 feet of PSS wetlands. (Latitude: 40° 38' 5.9"; Longitude: -76° 03' 57.4")

q. (Wetland Crossing L2) To construct and maintain a 12-inch diameter PVC sanitary sewer line and a temporary road crossing 51 feet of PSS wetlands. (Latitude: 40° 38' 8.4"; Longitude: -76° 03' 58.4")

The project is located approximately 0.02 mile southwest of the intersection of SR-895 and SR-61. (Auburn, Orwigsburg, PA Quadrangle Latitude: 40° 36' 59"; Longitude: -76° 03' 40").

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

E67-884: Mark Koski, 12294 Pleasant Valley Road, Glen Rock, PA 17327, **York County**, ACOE Baltimore District.

The applicant proposes to realign approximately 30.0 feet of stream and to construct and maintain a 24.0-foot wide, single span bridge having a normal span of 50.0 feet and an underclearance of 10.7 feet across South Branch Codorus Creek (WWF) for the purpose of gaining access to adjacent property. The project is located at 12294 Pleasant Valley Road, Glen Rock, PA 17327, 600 feet north of the intersection of Fissels Church and Pleasant Valley Roads (Glen Rock, PA Quadrangle N: 4.5 inches; W: 11.8 inches, Latitude: 39° 46' 46.84"; Longitude: 76° 43' 34.29") in Shrewsbury Township, York County.

E36-873: Conewago Industrial Park Association, P. O. Box 332, Lemoyne, PA 17043, West Donegal Township, **Lancaster County**, ACOE Baltimore District.

To place and maintain fill in 0.93 acre of palustrine emergent/forested (PEM/PFO) wetlands for the purpose of developing lots on an existing industrial park located off

SR 230 on Industrial Road (Middletown, PA Quadrangle N: 5.55 inches; W: 2.33 inches, Latitude: 40° 09' 20"; Longitude: 76° 38' 30") in West Donegal Township, Lancaster County. To compensate for wetland impacts, the permittee shall provide 3.27 acres of PEM/PSS/PFO replacement wetlands onsite.

Northcentral Region: Watershed Management Program Manager, 208 West Third Street, Williamsport, PA 17701, 570-327-3636.

E41-610. Anadarko Marcellus Midstream, LLC, P. O. Box 1330, Houston, TX 77251. Larry's Creek Pipeline, in Cummings and Mifflin Townships, **Lycoming County**, ACOE Baltimore District (Waterville, PA Quadrangle Latitude: 41° 19' 26"; Longitude: 77° 15' 33").

The application proposes a total of eight stream and three wetland crossings. Wetland and stream crossing number 1 and 3 will be avoided. Wetland crossing number 2 and 7 will cross Exceptional Value wetlands in the Harbor Run Drainage and the other in an Unnamed Tributary to Larry's Creek. The remaining stream crossings 2 and 4—8 in Harbor Run and an Unnamed Tributary to Larry's Creek are proposed to be open trench crossings with the exception of crossing 7 and 8, which will be Directional Drilled. The total stream impacts for the 8 crossings are 181 linear feet and the total area of temporary wetland impacts is 93 square feet. All of these crossings are within Wild Trout Waters along with Exceptional Value waters.

Southwest Region: Watershed Management Program Manager, 400 Waterfront Drive, Pittsburgh, PA 15222-4745.

E02-1640. Plum Borough, 4575 New Texas Road, Pittsburgh, PA 15239. To remove and replace a box culvert and maintain fill in wetlands in Plum Borough, **Allegheny County**, Pittsburgh ACOE District (New Kensington East, PA Quadrangle N: 1.5 inches; W: 14.4 inches, Latitude: 40° 30' 30"; Longitude: 79° 43' 43"). The applicant proposes to remove the existing structure and to construct and maintain a box culvert having a span of 10.0 feet with an underclearance of 8.0 feet in the channel of Little Plum Creek (WWF) and to place and maintain fill in approximately 0.14 acre of for the purpose of providing access to the proposed Plum Borough Municipal Center which will consists of a new Public Works Building, Salt Storage Building, Renton Firehouse and a Plum Municipal Building. The project is located approximately 1,700.0 feet downstream from the intersection of Little Plum Creek and Renton Road and will impact approximately 130.0 linear feet of stream channel and 0.14 acre of wetlands.

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

E10-462, Butler Area Sewer Authority, 100 Litman Road, Butler, PA 16001. Monroe Diversion, Pumping and Storage Facility, in City of Butler, **Butler County**, ACOE Pittsburgh District (Butler, PA Quadrangle N: 40° 51' 31"; W: 79° 53' 15").

The applicant is proposing to construct and maintain the following structures within the Federal Flood Control project in Connoquenessing Creek within the City of Butler: 1) a stormwater/sewage emergency overflow structure having a 1.5-foot diameter outfall pipe and concrete endwall at the Monroe Equalization Tanks site approximately 240 feet southwest of the intersection East Cunningham and South Monroe Streets; and 2) a stormwater/sewage emergency overflow structure having a 2-foot diameter outfall pipe and concrete endwall at the Monroe

Pump Station site approximately 300 feet northeast of the intersection of McClain Avenue and South Monroe Street. Connoquenessing Creek is a perennial stream classified as a warm water fishery.

E37-183, Lawrence County Commissioners, Lawrence County Government Center, 430 Court Street, New Castle, PA 16101. South Mill Street Bridge Across Neshannock Creek, in City of New Castle, **Lawrence County**, ACOE Pittsburgh District (New Castle South, PA Quadrangle N: 40° 59' 54.6"; W: 80° 20' 39.3").

To remove the existing single span truss bridge and to construct and maintain a 44.6 ft long steel girder bridge having two clear spans of 109 feet (bearing to bearing) and a maximum underclearance of 14 feet on a 45° skew across Neshannock Creek (TSF) on South Mill Street between SR 422 Business (East Washington Street) and SR 108/168 (South Croton Avenue). Temporary construction access causeway and cofferdams will be installed from the south bank of Neshannock Creek to about mid channel for removal of the existing bridge and construction of the new bridge.

ENVIRONMENTAL ASSESSMENTS

Southcentral Region: Water Management Program Manager, 909 Elmerton Avenue, Harrisburg, PA 17110.

EA21-005: Turnpike Commission, P. O. Box 67676, Harrisburg, PA 17107-7676, Hopewell and North Newton Townships, **Cumberland County**, ACOE Baltimore District.

The applicant proposes to impact 0.95 acre of Palustrine Emergent (PEM) wetland for the purpose of tying in a 3.6 acre wetland creation/enhancement project, located east of the intersection of SR 0641 and Mountain Road in Hopewell and North Newton Townships, Cumberland County (Newburg, PA Quadrangle N: 4.09 inches; W: 1.09 inches, Latitude: 40° 08' 51"; Longitude: -77° 30' 28").

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

EA25-052. Department of Environmental Protection Northwest Regional Office, 230 Chestnut Street, Meadville, PA 16335. Currie Landfill Remediation, in Millcreek Township, **Erie County**, ACOE Pittsburgh District (Swanville, PA Quadrangle N: 42° 5' 55"; W: 80° 8' 5").

The Department of Environmental Protection Northwest Regional Office Hazardous Sites Cleanup Program is requesting 401 Water Quality Certification for encroachments associated with the consolidation and capping of waste in place at the Currie Landfill site. The Currie Landfill site is bordered to the north by West 15th Street, to the east by Pittsburgh Avenue, to the northwest by Sellinger Avenue and to the south by Conrail railroad tracks. The site consists of three parcels of land, two currently owned by the Erie Drive-In Theater Corporation, referred to as parcels A and B; and one owned by UPS Freight, referred to as parcel C. The area that will be part of the remedial response will include the entirety of parcels A and B, and also include the northwest corner of parcel C.

The proposed remediation will consolidate the landfill waste and place a two foot soil cap over the waste. This alternative will remove the waste from parcel A and a portion of parcel C to be incorporated with the waste in parcel B. A two foot soil cap would be placed over parcel B. Parcel A will be covered with clean fill followed by course aggregate for future land development opportunities. The northeastern area of the undeveloped landfill will serve as the constructed wetland stormwater detention basin. Waste will be removed from the stream banks and will be restored with a 25' riparian buffer. The waste and soil cap will be graded to a final slope of 1% crowned from the center of parcel B to the north and south into collection channels that will drain into the stormwater detention basin. Parcel A will slope 1% to the south and drain into the stormwater detention basin. Parcel A will be an impervious surface and parcel B will have a vegetative cover. Operations and maintenance will be required by the landowners to maintain the landfill cap and to ensure the wetland stormwater detention pond operates properly.

The proposed encroachments are: 1) to remove waste from the streambanks and associated floodplain of the West Branch of Cascade Creek for a length of approximately 700 feet; 2) to reconstruct and maintain streambanks, riparian area and stream channel for a length of approximately 700 feet; 3) to construct stormwater BMPs including associated outfalls within the floodway and floodplain of the West Branch of Cascade Creek; and 4) to impact an unknown area of wetland if the wetland is located on top of waste that would be removed. The West Branch of Cascade Creek is a perennial stream classified as a warm water fishery and migratory fishery.

DAM SAFETY

Central Office: Bureau of Waterways Engineering, 400 Market Street, Floor 3, P. O. Box 8554, Harrisburg, PA 17105-8554.

D46-350. Upper Dublin Township, 801 Loch Ash Avenue, Fort Washington, PA 19034-1697. To construct, operate, and maintain the Rapp Run Flood Retarding Dam across Rapp Run (TSF). Project proposes permanent impacts to 0.53-acre of PEM/PSS/PFO wetland; temporary impacts to 0.23-acre of PEM wetland; permanent impacts to 191 lineal feet of stream channel; and temporary impacts to 70 lineal feet of stream channel and providing 0.90-acre of wetland mitigation, for the purpose of alleviating flooding within the Fort Washington Office Center (Ambler, PA Quadrangle N: 2.9 inches; W: 8.3 inches) in Upper Dublin Township, **Montgomery County**.

D46-351. Upper Dublin Township, 801 Loch Ash Avenue, Fort Washington, PA 19034-1697. To construct, operate and maintain the Pine Run Flood Retarding Dam across Pine Run (TSF). Project proposes permanent impacts to 0.43-acre of PEM/PFO wetland; temporary impacts to 0.12-acre of PEM wetland; permanent impacts to 375 lineal feet of stream channel; and temporary impacts to 377 lineal feet of stream channel and providing 0.62-acre of wetland mitigation, for the purpose of alleviating flooding within the Fort Washington Office Center (Ambler, PA Quadrangle N: 3.3 inches; W: 5.7 inches) in Upper Dublin Township, **Montgomery County**.

ACTIONS

**THE CLEAN STREAMS LAW AND THE FEDERAL CLEAN WATER ACT
FINAL ACTIONS TAKEN FOR NATIONAL POLLUTION DISCHARGE
ELIMINATION SYSTEM (NPDES) PERMITS AND WATER QUALITY
MANAGEMENT (WQM) PERMITS**

The Department of Environmental Protection (Department) has taken the following actions on previously received applications for new, amended and renewed NPDES and WQM permits, applications for permit waivers and Notices of Intent (NOI) for coverage under general permits. This notice is provided in accordance with 25 Pa. Code Chapters 91 and 92 and 40 CFR Part 122, implementing provisions of The Clean Streams Law (35 P. S. §§ 691.1—691.1001) and the Federal Clean Water Act.

<i>Location</i>	<i>Permit Authority</i>	<i>Application Type or Category</i>
Section I	NPDES	Renewals
Section II	NPDES	New or amendment
Section III	WQM	Industrial, sewage or animal wastes; discharges to groundwater
Section IV	NPDES	MS4 individual permit
Section V	NPDES	MS4 permit waiver
Section VI	NPDES	Individual permit stormwater construction
Section VII	NPDES	NOI for coverage under NPDES general permits

Sections I—VI contain actions related to industrial, animal or sewage wastes discharges, discharges to groundwater and discharges associated with municipal separate storm sewer systems (MS4), stormwater associated with construction activities and concentrated animal feeding operations (CAFOs). Section VII contains notices for parties who have submitted NOIs for coverage under general NPDES permits. The approval for coverage under general NPDES permits is subject to applicable effluent limitations, monitoring, reporting requirements and other conditions set forth in each general permit. The approval of coverage for land application of sewage sludge or residential septage under applicable general permit is subject to pollutant limitations, pathogen and vector attraction reduction requirements, operational standards, general requirements, management practices and other conditions set forth in the respective permit. Permits and related documents, effluent limitations, permitting requirements and other information are on file and may be inspected and arrangements made for copying at the contact office noted before the action.

Persons aggrieved by an action may appeal, under section 4 of the Environmental Hearing Board Act (35 P. S. § 7514) and 2 Pa.C.S. §§ 501—508 and 701—704 (relating to the Administrative Agency Law), to the Environmental Hearing Board, Second Floor, Rachel Carson State Office Building, 400 Market Street, P. O. Box 8457, Harrisburg, PA 17105-8457, (717) 787-3483. TDD users should contact the Environmental Hearing Board (Board) through the Pennsylvania 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

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

<i>NPDES No. (Type)</i>	<i>Facility Name & Address</i>	<i>County & Municipality</i>	<i>Stream Name (Watershed #)</i>	<i>EPA Waived Y/N?</i>
PA0060691 (Sewage)	Moon Lake Park Moon Lake Park Plymouth Township, PA 18621	Luzerne County Plymouth Township	Unnamed Tributary of Hunlock Creek 5-B CWF	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.

<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>
PA0011801 (Industrial Waste)	Air Products & Chemicals 400 Island Park Easton, PA 18042	Northampton County Glendon Borough	Lehigh River Warm Water Fishes 2-C	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>
PA0035033 (Sewage)	Pinebrook Bible Conference & Retreat Center 1 Pinebrook Road East Stroudsburg, PA 18301-0001	Monroe County Stroud Township	Brodhead Creek 1-E	Y
<i>Southwest Region: Water Management Program Manager, 400 Waterfront Drive, Pittsburgh, PA 15222-4745.</i>				
<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>
PA0216852 Sewage	TRC, Inc. 441 Route 31 Ruffsedale, PA 15679	Westmoreland County East Huntingdon Township	Buffalo Run	Y
PA0203955 Sewage	84 Lumber Company 1019 Route 519 Building 5 Eighty Four, PA 15339	Washington County North Strabane Township	Little Chartiers Creek	Y
PA0252735 Sewage	Huston Farms, LLC 626 Cross Road Rockwood, PA 15557	Somerset County Milford Township	UNT of South Glade Creek	Y
PA0216208 Sewage	John F. Kotun 319 Anderson Hozak Road Clinton, PA 15026	Raccoon Township Beaver County	Swale to UNT of Service Creek	Y
PA0217247 Sewage	Marion Center Area School District Box 156 Route 403 Marion Center, PA 15759	Indiana County Washington Township	UNT of South Branch Plum Creek	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. PAG040150, Sewage, **Sheri C. Guenst**, 1512 Route 309, Quakertown, PA 18951. This proposed facility is located in Springfield Township, **Bucks County**.

Description of Proposed Action/Activity: Approval to discharge of 500 gpd of treated sewage into an Unnamed Tributary to Tohickon Creek in Watershed 2-D.

NPDES Permit No. PA0055395, Amendment 2, Sewage, **Green Top Management, LLC**, P. O. Box 677, Morgantown, PA 19543. This proposed facility is located in West Rockhill Township, **Bucks County**.

Description of Proposed Action/Activity: Approval to discharge of 18,000 gpd of treated sewage into an Unnamed Tributary to Tohickon Creek in Watershed 2-D.

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

NPDES Permit No. PA0021563, Sewage, **Gettysburg Borough Municipal Authority**, 59 East High Street, P. O. Box 3307, Gettysburg, PA 17325. This proposed facility is located in Gettysburg Borough, **Adams County**.

Description of Proposed Action/Activity: Authorization to discharge to Rock Creek in Watershed 13-D.

Southwest Region: Water Management Program Manager, 400 Waterfront Drive, Pittsburgh, PA 15222-4745.

NPDES Permit No. PA0002062-A3, Industrial Waste, **RRI Energy Northeast Management Company**, 121 Champion Way, Canonsburg, PA 15317. This existing facility is located in Plumcreek Township, **Armstrong County**.

Description of Proposed Action/Activity: Permit amendment issuance to add new discharges from two proposed stormwater settling basins.

III. WQM Industrial Waste and Sewerage Actions under The Clean Streams Law (35 P. S. §§ 691.1—691.1001)

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

WQM Permit No. 4010401, Sewerage, **Borough of Freeland Municipal Authority**. This proposed facility is located in Foster Township, **Luzerne County**.

Description of Proposed Action/Activity: Issuance of Water Quality Management Permit for expansion/upgrading of the existing wastewater treatment plant and existing Combined Sewer Outfall Structure.

WQM Permit No. 3509403, Sewerage, **Borough of Archbald**, 400 Church Street, Archbald, PA 18403. This proposed facility is located in Jessup and Archbald Boroughs, **Lackawanna County**.

Description of Proposed Action/Activity: Issuance of Water Quality Management Permit for sanitary sewer extension to service the Valley View Business Park—Phase II area and PEI Power Park Lot 10.

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

WQM Permit No. 0998401, Transfer, Sewerage, Sheri C. Guent, 1512 Route 309, Quakertown, PA 18951-4157. This proposed facility is located in Springfield Township, **Bucks County**.

Description of Action/Activity: Permit is being transferred from Glendora Schueck to Sheri Guent. This is a single residence sewage treatment plant.

WQM Permit No. 0909409, Sewerage, Green Top Management, LLC, P. O. Box 677, Morgantown, PA 19543. This proposed facility is located in West Rockhill Township, **Bucks County**.

Description of Action/Activity: Construction and operation of a sewage treatment plant.

Southwest Region: Water Management Program Manager, 400 Waterfront Drive, Pittsburgh, PA 15222-4745.

WQM Permit No. 0310201, Industrial Waste, RRI Energy Northeast Management Company, 121 Champion Way, Suite 200, Canonsburg, PA 15317. This proposed facility is located in Plumcreek Township, **Armstrong County**.

Description of Proposed Action/Activity: Permit issuance for the construction and operation of a settling basin.

WQM Permit No. 6510402, Sewerage, Mon Valley Sewage Authority, P. O. Box 792, Donora, PA 15033. This proposed facility is located in Carroll Township, **Washington County**.

Description of Proposed Action/Activity: Permit issuance for the construction and operation of replacement sewer system and pump stations.

WQM Permit No. WQG026129, Sewerage, Shade Township, Box 39, 1221 No. 1 Road, Cairnbrook, PA 15924. This proposed facility is located in Shade Township, **Somerset County**.

Description of Proposed Action/Activity: Permit issuance for the construction and operation of a sanitary sewer system.

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

WQM Permit No. 4310402, Sewerage, Daniel and Tracy Scott, d/b/a Rainbow Valley Restaurant, 70 Baker Road, Greenville, PA 16125. This existing facility is located in Perry Township, **Mercer County**.

Description of Proposed Action/Activity: This treatment plant and discharge will replace an existing onlot system which was used to service the old restaurant.

WQM Permit No. WQG018762, Sewerage, Charles Kenney, 5736 Meridian Road, Gibsonia, PA 15044-9461. This proposed/existing facility is located in Brady Township, **Clarion County**.

Description of Proposed Action/Activity: A Single Residence Small Flow Treatment Facility.

WQM Permit No. WQG018763, Sewerage, Korine Guthrie, 1605 Winner Road, Hermitage, PA 16148. This proposed facility is located in the City of Hermitage, **Mercer County**.

Description of Proposed Action/Activity: A Single Residence Small Flow Treatment Facility.

IV. NPDES Stormwater Discharges from MS4 Permit Actions

V. NPDES Waiver Stormwater Discharges from MS4 Actions

VI. NPDES Discharges of Stormwater Associated with Construction Activities Individual Permit Actions

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 461001	Pennsylvania Air National Guard 111th Fighter Wing 2164 McGuire Street Willow Grove, ARS, PA 19090-5232	Montgomery	Horsham Township	Unnamed Tributary Park Creek WWF

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>
PAI024507017	Sawmill Highlands, LLC P. O. Box K Stroudsburg, PA 18360	Monroe	Hamilton Township	Appenzell Creek HQ-CWF, MF

<i>NPDES Permit No.</i>	<i>Applicant Name & Address</i>	<i>County</i>	<i>Municipality</i>	<i>Receiving Water/Use</i>
PAI024507008(2)	Pocono Township Supervisors P. O. Box 197 Tannersville, PA 18372	Monroe	Stroud Township Stroudsburg Borough	Tributary to Pocono HQ-CWF, MF Flagler Run HQ-CWF, MF Wigwam Run HQ-CWF, MF Big Meadow Run HQ-CWF, MF Tributary to Brodhead Creek TSF, MF
PAI023907008	Taylor Drive, LLC 822 West Hamilton Street Suite 301 Allentown, PA 18101	Lehigh	Upper Saucon Township	Saucon Creek CWF, MF

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

<i>NPDES Permit No.</i>	<i>Applicant Name & Address</i>	<i>County</i>	<i>Municipality</i>	<i>Receiving Water/Use</i>
PAI030610004	Clair Martin 354 Oak Haven Road Fleetwood, PA 19522	Berks	Richmond Township	Moselem Creek HQ-CWF-MF

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

<i>NPDES Permit No.</i>	<i>Applicant Name & Address</i>	<i>County</i>	<i>Municipality</i>	<i>Receiving Water/Use</i>
PAI 0624 10 001	Robert Yoder 5960 Susquehanna Trail Turbotville, PA 17772	Elk	City of St. Mary's	Elk Creek 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:
Municipality &
County**Permit No.**Applicant Name &
Address**Receiving
Water/Use**Contact Office &
Phone No.*

Warminster Township Bucks County	PAG0200 091024	Nativity of Our Lord Church 625 West Street Road Warminster, PA 18974	Little Neshaminy Creek WWF-MF	Southeast Regional Office 2 East Main Street Norristown, PA 19401 484-250-5900
Upper Southampton Township Bucks County	PAG0200 0905084-R	The Donnelly Family, LP 550 Swamp Road Newtown, PA 18940	Neshaminy Creek WWF-MF	Southeast Regional Office 2 East Main Street Norristown, PA 19401 484-250-5900
West Rockhill Township Bucks County	PAG0200 0905168-1	Penn Foundation, Inc. 807 Lawn Avenue P. O. Box 32 Sellersville, PA 18960	East Branch Perkiomen Creek TSF	Southeast Regional Office 2 East Main Street Norristown, PA 19401 484-250-5900
Lower and Upper Southampton Townships Bucks County	PAG0200 091033	Lower Southampton Township 1500 Desire Avenue Feasterville, PA 19053	Mill Creek CWF-MF	Southeast Regional Office 2 East Main Street Norristown, PA 19401 484-250-5900
Lower Southampton Township Bucks County	PAG0200 1034	Lower Southampton Township 1500 Desire Avenue Feasterville, PA 19053	Neshaminy Creek WWF-MF	Southeast Regional Office 2 East Main Street Norristown, PA 19401 484-250-5900
West Marlborough Township Chester County	PAG0200 151017	Keith E. Adams 111 Patriot Drive Suite A Middletown, DE 19709	West Branch Red Clay Creek TSF-MF	Southeast Regional Office 2 East Main Street Norristown, PA 19401 484-250-5900
New Garden Township Chester County	PAG0200 151012	Sharon Miller Berkshire Bank 1 Hearthstine Court Reading, PA 19606	Unnamed Tributary West Branch Red Clay Creek TSF	Southeast Regional Office 2 East Main Street Norristown, PA 19401 484-250-5900
London Britain Township Chester County	PAG0200 151021	West Grove Fire Company P. O. Box 210 West Grove, PA 19390 and London Britain Township P. O. Box 215 Kemblesville, PA 19347	Christina River WWF	Southeast Regional Office 2 East Main Street Norristown, PA 19401 484-250-5900
Marple Township Delaware County	PAG0200 2308007-2	Delaware County Community College 901 Media Line Road Media, PA 19063	Tributary Crum Creek WWF	Southeast Regional Office 2 East Main Street Norristown, PA 19401 484-250-5900
Moore and Lehigh Townships Northampton County	PAG2004810010	Alan Van Norman 3420 West Walker Road Walnutport, PA 18088-9557	Tributary to Hokendauqua Creek CWF, MF	Northampton County Conservation District 610-746-1971
Silver Spring Township Cumberland County	PAG2002110010	Silver Spring Township Terri Martini 6475 Carlisle Pike Mechanicsburg, PA 17050	Conodoguinet Creek WWF	Cumberland County Conservation District 310 Allen Road Carlisle, PA 17013 717-240-7812

<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>
Millcreek Township Lebanon County	PAG2003810004	Lloyd Newswanger 313 South Millbach Road Newmanstown, PA 17073	Mill Creek CWF-MF	Lebanon County Conservation District 2120 Cornwall Road Suite 5 Lebanon, PA 17042 717-272-2908 Ext. 4
Bethel Township Lebanon County	PAG2003810008	Wayne Zimmerman 576 Long Road Lebanon, PA 17046	UNT to Little Swatara Creek WWF	Lebanon County Conservation District 2120 Cornwall Road Suite 5 Lebanon, PA 17042 717-272-2908 Ext. 4
Shrewsbury Township York County	PAG2006705086-1	Chase Mill 18147 Amanda Drive New Freedom, PA 17349	Deer Creek CWF	York County Conservation District 118 Pleasant Acres Road York, PA 17402 (717) 840-7430
East Manchester Township York County	PAG2006705070-R	Vas-Land, Inc. 336 West King Street Lancaster, PA 17603	Hartman Run WWF	York County Conservation District 118 Pleasant Acres Road York, PA 17402 (717) 840-7430
Fairview Township York County	PAG2006704138-R	S & A Homes 2121 Old Gateburg Road Suite 200 State College, PA 16803	Big Springs Run TSF	York County Conservation District 118 Pleasant Acres Road York, PA 17402 (717) 840-7430
West Manheim Township York County	PAG2006705021-R	Stone Ridge Developers 1500 Baltimore Pike Hanover, PA 17331	West Branch Codorus WWF	York County Conservation District 118 Pleasant Acres Road York, PA 17402 (717) 840-7430
Carroll Township York County	PAG2006705024-1	Windy Heights 201 South Filey Road Dillsburg, PA 17019	Stoney Run CWF	York County Conservation District 118 Pleasant Acres Road York, PA 17402 (717) 840-7430
Carroll Township York County	PAG2006710006	Shirl Acres 8468 Carlisle Pike York Springs, PA 17372	Stoney Run CWF	York County Conservation District 118 Pleasant Acres Road York, PA 17402 (717) 840-7430
Shrewsbury Borough York County	PAG2006705017-R	Heathcote Glen 18147 Amanda Lane New Freedom, PA 17349	Trout Run WWF	York County Conservation District 118 Pleasant Acres Road York, PA 17402 (717) 840-7430
Shrewsbury Township York County	PAG2006709051	Shrewsbury Gospel Temple 713 Forrest Avenue Glen Rock, PA 17327	Trout Run WWF	York County Conservation District 118 Pleasant Acres Road York, PA 17402 (717) 840-7430

NOTICES

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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>
West Manheim Township York County	PAG2006706006	West Manheim Township 2412 Baltimore Pike Hanover, PA 17331	South Branch Codorus Creek WWF	York County Conservation District 118 Pleasant Acres Road York, PA 17402 (717) 840-7430
West Manchester Township York County	PAG2006710017	Voith Hydro, Inc. P. O. Box 712 York, PA 17405	UNT WWF	York County Conservation District 118 Pleasant Acres Road York, PA 17402 (717) 840-7430
Newberry Township York County	PAG2006709056	Eclipse Builders, Inc. 2047 Raleigh Street Hummelstown, PA 17036	Fishing Creek TSF	York County Conservation District 118 Pleasant Acres Road York, PA 17402 (717) 840-7430
Blair Township Blair County	PAG2000710006	Freedom Township Water & Sewer 131 Municipal Street East Freedom, PA 16637	Frankstown Branch Juniata River— McDonald Run TSF-WWF	Blair County Conservation District 1407 Blair Street Hollidaysburg, PA 16648 814-696-0877 Ext. 5
Logan Township Blair County	PAG2000710004	Ian Salada Penn State University 101 P Physical Plant Building University Park, PA 16802	Spring Run WWF	Blair County Conservation District 1407 Blair Street Hollidaysburg, PA 16648 814-696-0877 Ext. 5
Montgomery Township Franklin County	PAG2002810016	Tower Bank 40 Center Square Greencastle, PA 17225	Welsh Run TSF-MF	Franklin County Conservation District 185 Franklin Farm Lane Chambersburg, PA 17201 717-264-5499
Wernersville Borough Berks County	PAG2000610032	Wernersville Properties, LP 59 Hopewell Road Elverson, PA 19520	Little Cacossing and Tulpehocken Creeks WWF	Berks County Conservation District 1238 County Welfare Road Suite 200 Leesport, PA 19533 610-372-4657
Douglass Township Berks County	PAG2000610034	Douglass Village, LLC c/o Mark L. Stewart 3801 Germantown Pike Collegetown, PA 19426	UNT to Schuylkill River WWF	Berks County Conservation District 1238 County Welfare Road Suite 200 Leesport, PA 19533 610-372-4657
Oley Township Berks County	PAG2000610017	David W. Mast 161 Baker Road Oley, PA 19547	Little Manatawny Creek CWF-MF	Berks County Conservation District 1238 County Welfare Road Suite 200 Leesport, PA 19533 610-372-4657

<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>
Ferguson Township Centre County	PAG2001410014	S & A Homes, Inc. The Landings 2121 Old Gatesburg Road Suite 200 State College, PA 16801	Big Hollow CWF	Centre County Conservation District 414 Holmes Avenue Suite 4 Bellefonte, PA 16823 (814) 355-6817
Ferguson Township Centre County	PAG2001410016	Foxpointe Drive Extension Elwin Stewart 2480 Old Gatesburg Road State College, PA 16803	UNT to Big Hollow CWF	Centre County Conservation District 414 Holmes Avenue Suite 4 Bellefonte, PA 16823 (814) 355-6817
Franklin Township Columbia County	PAG2001910004	Charles Reh Southern Columbia Area School District 800 Southern Drive Catawissa, PA 17820	Roaring Creek TSF	Columbia County Conservation District 702 Sawmill Road Suite 204 Bloomsburg, PA 17815 (570) 784-1310 Ext. 102
Cambria County Richland Township	PAG02001110004	Darwin Owens JRA Development Group, Inc. 123 36th Street Pittsburgh, PA 15201	UNT Stonycreek River CWF	Cambria County Conservation District 401 Candlelight Drive Suite 221 Ebensburg, PA 15931 814-472-2120
Cambria County Stonycreek Township Lorain and Geistown Boroughs	PAG02001110003	Highland Sewer & Water Authority 120 Tank Drive Johnstown, PA 15904	Sam's Run WWF	Cambria County Conservation District 401 Candlelight Drive Suite 221 Ebensburg, PA 15931 814-472-2120
Washington County Cecil Township	PAG2006310003-1	Oakbrooke Muse Partners, LP 300 Weyman Road Suite 210 Pittsburgh, PA 15236	UNT to Brush Run WWF	Washington County Conservation District 602 Courthouse Square Washington, PA 15301 724-228-6774
Westmoreland County New Alexandria Borough Derry Township	PAG2006510002	Derry Township Municipal Authority P. O. Box 250 New Derry, PA 15671	Loyalhanna Creek WWF	Westmoreland County Conservation District 218 Donohoe Road Greensburg, PA 15601 724-837-5271
Westmoreland County Hempfield Township	PAG2006510014	Hempfield Township Supervisor 1132 Woodward Drive Suite A Greensburg, PA 15601	UNT to Jacks Run CWF	Westmoreland County Conservation District 218 Donohoe Road Greensburg, PA 15601 724-837-5271
Benezette Township Elk County	PAG02 0024 10 002	Benezette Township P. O. Box 10 Benezette, PA 15821	Bennett's Branch and Tributary; Trout Run and Tributary WWF/CWF	Elk County Conservation District 814-776-5373
Snyder Township Jefferson County	PAG02 0033 10 002	Department of Transportation P. O. Box 429 2550 Oakland Avenue Indiana, PA 15701-0429	Mill Creek CWF Little Toby Creek CWF	Jefferson County Conservation District 814-849-7463

General Permit Type—PAG-3

*Facility Location:
Municipality &
County*

Berks County
Reading City

Permit No.
PAR803625

*Applicant Name &
Address*
Reading Truck Body, LLC
P. O. Box 650
Shillington, PA 19607-0650

*Receiving
Water/Use*
Schuylkill River
WWF

*Contact Office &
Phone No.*
DEP—SCRO
909 Elmerton Avenue
Harrisburg, PA 17110
717-705-4707

General Permit Type—PAG-4

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

*Facility Location:
Municipality &
County*

Brady Township
Clarion County

Permit No.
PAG049594

*Applicant Name &
Address*
Charles Kenney
5736 Meridian Road
Gibsonia, PA 15044-9461

*Receiving
Water/Use*
Allegheny River
17-C

*Contact Office &
Phone No.*
DEP—NWRO
Water Management
230 Chestnut Street
Meadville, PA
16335-3481
814/332-6942

City of Hermitage
Mercer County

Permit No.
PAG049595

*Applicant Name &
Address*
Korine Guthrie
1605 Winner Road
Hermitage, PA 16148

*Receiving
Water/Use*
Unnamed Tributary
to Golden Run
20-A

*Contact Office &
Phone No.*
DEP—NWRO
Water Management
230 Chestnut Street
Meadville, PA
16335-3481
814/332-6942

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 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 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

<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>
J. Kevin Rohrer 2115 Rohrer Road Manheim, PA 17545	Lancaster	400	627.19	Swine/ Beef	HQ	A
James Charles 3241 Blue Rock Road Lancaster, PA 17603	Lancaster	104.4	311.14	Swine/ Layers	None	A

<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>
Jeff Frey 13 Radcliff Road Willow Street, PA 17584	Lancaster	550	558.30	Swine	None	A
Hibred Swine Farm Lori Stone 415 Forest Road Denver, PA 17517	Lancaster	7.8	571.90	Swine	HQ	A
Middle Creek Swine Farm Lori Stone 1925 West Route 897 Denver, PA 17519	Lancaster	50.7	728.80	Swine	HQ	A

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 Program Manager, 2 East Main Street, Norristown, PA 19401.

Operations Permit 1510514 issued to **Aqua Pennsylvania, Inc.**, 762 West Lancaster Avenue, Bryn Mawr, PA 19010.

(PWSID 1460073) Schuylkill Township, **Chester County**, June 17, 2009, for operations Facilities approved under construction permit No. 1505507 for operations to

improvements at the Air Scour at Pickering West Waste Water Treatment Plant located at Schuylkill Township, Chester County.

Southcentral Region: Water Supply Management Program Manager, 909 Elmerton Avenue, Harrisburg, PA 17110.

Permit No. 2809504, Public Water Supply.

Applicant	Sandy Hook Water Association
Municipality	Hamilton Township
County	Franklin
Responsible Official	Richard Mellott, Association Member 5103 Mountain Road Chambersburg, PA 17201
Type of Facility	Cartridge filtration and disinfection.
Consulting Engineer	Harry E. Bingaman, P. E. Glace Assoc., Inc. 3705 Trindle Road Camp Hill, PA 17011
Permit to Construct Issued:	8/5/2010

Permit No. 2210503, Public Water Supply.

Applicant	Pennsylvania-American Water
Municipality	South Hanover Township
County	Dauphin
Responsible Official	David R. Kauffman 800 West Hersheypark Drive Hershey, PA 17033
Type of Facility	Installation of upgrades/improvements at the existing Hershey WTP. These are to include the addition of a raw water pump, clarifier, supplemental raw water pH adjustment facility, finished water pump emergency chlorine gas scrubber and a generator. Replacement of a bulk storage tank and the filter media will also occur. PA American is also requesting an increase in the filtration rate to 4 gpm/sf.

Consulting Engineer Mark E. Bottin, P. E.
Hazen & Sawyer
Suite 1001
Philadelphia, PA 19108

Permit to Construct 7/28/2010
Issued:

Permit No. 2210505 MA, Minor Amendment, Public Water Supply.

Applicant **United Water Pennsylvania, Inc.**

Municipality Susquehanna Township

County **Dauphin**

Responsible Official John D. Hollenbach, Vice President
4211 East Park Circle
Harrisburg, PA 17111-0151

Type of Facility Repainting of the Sixth Street Elevated Storage Tank.

Consulting Engineer Arthur Saunders, P. E.
United Water Pennsylvania
4211 East Park Circle
Harrisburg, PA 17111

Permit to Construct 7/28/2010
Issued:

Permit No. 2210509 MA, Minor Amendment, Public Water Supply.

Applicant **United Water Pennsylvania**

Municipality Dauphin Borough

County **Dauphin**

Responsible Official John D. Hollenbach, Vice President
4211 East Park Circle
Harrisburg, PA 17111-0151

Type of Facility Installation of a PAX mixing system in the 2.0 MG Hillside Storage Tank.

Consulting Engineer Arthur Saunders, P. E.
United Water Pennsylvania
4211 East Park Circle
Harrisburg, PA 17111

Permit to Construct 8/2/2010
Issued:

Operations Permit issued to **Motiva Enterprises, LLC**, 7360964, Lancaster, **Lancaster County** on 8/4/2010 for the operation of facilities approved under Construction Permit No. 3602508.

Operations Permit issued to **Pennsylvania American Water—West Shore Plant**, 7210029, Fariview Township, **York County** on 8/4/2010 for the operation of facilities approved under Construction Permit No. 6707515 MA.

Operations Permit issued to **City of Lebanon Authority**, 7380010, Lebanon, **Lebanon County** on 8/4/2010 for the operation of facilities approved under Construction Permit No. 3809510 MA.

Operations Permit issued to **Pillow Borough Authority**, 7220046, Pillow Borough, **Dauphin County** on 8/4/2010 for the operation of facilities approved under Construction Permit No. 2209505.

Operations Permit issued to **City of Lebanon Authority**, 7380010, Swatara Township, **Lebanon County**

on 8/4/2010 for the operation of facilities approved under Construction Permit No. 3810502 MA.

Operations Permit issued to **Millersville University**, 7360127, Millersville Borough, **Lancaster County** on 8/4/2010 for the operation of facilities approved under Construction Permit No. 3610528 MA.

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

Permit No. MA (1808501)—Construction, Public Water Supply.

Applicant **Suburban Lock Haven Water Authority**

Township or Borough Lamar Township

County **Clinton**

Responsible Official Jack D. Peters, Chairperson
Suburban Lock Haven Water Authority
326 Main Street
Mill Hall, PA 17751

Type of Facility Public Water Supply—Construction

Consulting Engineer David M. Swisher, P. E.
HRG, Inc.
474 Windmere Drive
Suite 100
State College, PA 16801

Permit Issued Date August 10, 2010

Description of Action Construction of the bulk filling/metering station.

Permit No. 4301501, Public Water Supply.

Applicant **Aqua Pennsylvania, Inc.**

Borough or Township Farrell Borough

County **Mercer**

Type of Facility Public Water Supply

Consulting Engineer Brian T. Bison, P. E.
VP of Engineering
Aqua Ohio, Inc.
66650 South Avenue
Boardman, OH 44512

Permit to Construct 8/2/2010
Issued

Permit No. 2010501, Public Water Supply.

Applicant **Aqua Pennsylvania, Inc.**
762 West Lancaster Avenue
Bryn Mawr, PA 19010

Borough or Township Sadsbury and Summit Townships

County **Crawford**

Type of Facility Public Water Supply

Consulting Engineer Peter Kusky, P. E.

Permit to Construct 8/2/2010
Issued

Operations Permit Transfer issued to **Aqua Pennsylvania, Inc.**, 762 West Lancaster Avenue, Bryn Mawr, PA 19010, 6200014, Sadsbury and Summit Townships, **Crawford County** on August 3, 2010 for the operation of facilities approved under construction permit No. 2087502, Lakeside Acres and Oakland Beach.

Northwest Region: Watershed Management Program Manager, 230 Chestnut Street, Meadville, PA 16335.

Wellhead Protection Program Approval issued to the **City of Oil City**, City Plaza 21, Seneca Street, Oil City, PA 16301, PWSID No. 6610023, Oil City, **Venango County** on August 9, 2010.

STORMWATER MANAGEMENT

Action on plans submitted under the Stormwater Management Act (32 P. S. § 680.9)

Bureau of Watershed Management, P. O. Box 8775, Harrisburg, PA 17105-8775.

The Act 167 County-Wide Stormwater Management Plan for Dauphin County, submitted by Dauphin County, was approved on June 25, 2010. This plan applies all watersheds and all areas within Dauphin County.

HAZARDOUS SITES CLEAN-UP UNDER THE ACT OF OCTOBER 18, 1988

Notice of Prompt Interim Response

Port Richmond Gate Site, Philadelphia County

The Department of Environmental Protection (Department), under the authority of the Hazardous Sites Cleanup Act, 35 P. S. §§ 6020.101—6020.1305 (HSCA) is proposing a Prompt Interim Response at the Port Richmond Gate Site (Site) in Philadelphia County, PA.

The Department, under the authority of HSCA, is conducting an investigation of the Site. The Site is the former location of a railroad car staging area that has since been developed and consists of 58 homes bounded by E. Tioga, Edgemont, Venango and Thompson Streets in the Port Richmond section of Philadelphia. This investigation consists of soil sampling over the entire Site along with a Human Health Risk Assessment.

To address the hazardous substances at the Site, and potential threats to human health and the environment, the Department proposes a response action that may include limited soil removal and/or capping, and environmental covenants to restrict certain future land uses of the properties under sections 501(a) of HSCA, 35 P. S. § 6020.501(a). This proposed alternative complies with Applicable, Relevant and Appropriate Requirements (ARARs) and is feasible and cost-effective. Another possible alternative is no action.

An Administrative Record, which contains more detailed information concerning this proposed response action, is available for public inspection. The Administrative Record may be examined from 8 a.m. until 4 p.m. at the Department's office at 2 East Main Street, Norristown, PA 19401. Those interested in examining the Administrative Record should contact Charles Clark at (484) 250-5731 or chaclark@state.pa.us to arrange for an appointment. An additional copy of the Administrative Record is available for review at Philadelphia Free Library—Richmond Branch, 2987 Almond Street, Philadelphia, PA 19134-4955, (215) 685-9992.

Under section 506(d) of HSCA, 35 P. S. § 6020.506(d), the Department shall conduct a public hearing on October 6, 2010, at 7 p.m. at the Grace Church and the Incarnation, 2645 East Venango Street, Philadelphia, PA 19134. Anyone who would like to present formal oral comments regarding this Prompt Interim Response may do so by registering with Department's Community Relations Coordinator Lynda Rebarchak, at (484) 250-5820.

LAND RECYCLING AND ENVIRONMENTAL REMEDIATION

UNDER ACT 2, 1995

PREAMBLE 3

The Department has taken action on the following plans and reports under the Land Recycling and Environmental Remediation Standards Act (35 P. S. §§ 6026.101—6026.908).

Provisions of 25 Pa. Code § 250.8, administration of the Land Recycling and Environmental Remediation Standards Act (act), require the Department of Environmental Protection (Department) to publish in the *Pennsylvania Bulletin* a notice of final actions on plans and reports. A final report is submitted to document cleanup of a release of a regulated substance at a site to one of the remediation standards of the act. A final report provides a description of the site investigation to characterize the nature and extent of contaminants in environmental media, the basis of selecting the environmental media of concern, documentation supporting the selection of residential or nonresidential exposure factors, a description of the remediation performed and summaries of sampling methodology and analytical results which demonstrate that the remediation has attained the cleanup standard selected. Plans and reports required by provisions of the act for compliance with selection of remediation to a Site-Specific Standard, in addition to a final report, include a remedial investigation report, risk assessment report and cleanup plan. A remedial investigation report includes conclusions from the site investigation, concentration of regulated substances in environmental media, benefits of refuse of the property and, in some circumstances, a fate and transport analysis. If required, a risk assessment report describes potential adverse effects caused by the presence of regulated substances. If required, a cleanup plan evaluates the abilities of potential remedies to achieve remedy requirements. A work plan for conducting a baseline remedial investigation is required by provisions of the act for compliance with selection of a special industrial area remediation. The baseline remedial investigation, based on the work plan, is compiled into the baseline environmental report to establish a reference point to show existing contamination, describe proposed remediation to be done and include a description of existing or potential public benefits of the use or reuse of the property. The Department may approve or disapprove plans and reports submitted. This notice provides the Department's decision and, if relevant, the basis for disapproval.

For further information concerning the plans and reports, contact the Environmental Cleanup Program manager in the Department regional office before which the notice of the plan or report appears. If information concerning a final report is required in an alternative form, contact the Community Relations Coordinator at the appropriate regional office. TDD users may telephone the Department through the Pennsylvania AT&T Relay Service at (800) 654-5984.

The Department has received the following plans and reports:

Southeast Region: Environmental Cleanup Program Manager, 2 East Main Street, Norristown, PA 19401.

Lonza, Inc., Conshohocken Borough, **Montgomery County**. Heath A. Brown, Environmental Standards, Inc., 1140 Valley Forge Road, Valley Forge, PA 19482, Martin

Bagnall, Tier De, Inc., 5745 Lincoln Highway, Gap, PA 17527 on behalf of Peter McGinnis, Lonza, Inc., 900 River Road, Conshohocken, PA 19428 has submitted a 90 day Final Report concerning the remediation of site soil contaminated with other organics. The 90 day Final Report demonstrated attainment of the Statewide Health Standard and was approved by the Department of Environmental Protection on May 21, 2010.

CRC Chemical Industrial, Inc., Warminster Township, **Bucks County**. Peter Beyer, Environmental Resource Management, Inc., 350 Eagleview Boulevard, Suite 200, Exton, PA 19341, Michelle Rudnick, CRC Industrial, Inc., 885 Louis Drive, Warminster, PA 18974, on behalf of Adam Selisker, CRC Industrial, Inc., 885 Louis Drive, Warminster, PA 18974 has submitted a Risk Assessment Report concerning the remediation of site groundwater contaminated with chlorinated solvents. The Risk Assessment Report was approved by the Department of Environmental Protection on July 28, 2010.

Leboss Residence, Morrisville Borough, **Bucks County**. Richard D. Trimpi, Trimpi Associates, Inc., 1635 Old Plains Road, Pennsburg, PA 18073, Christine Dimming, P. O. Box 13, Concordville, PA 19331 on behalf of Juliet Leboss, 1684 Jasmine Way, Lincoln, CA 95648 has submitted a Final Report concerning the remediation of site soil and groundwater contaminated with No. 2 fuel oil. The Final Report demonstrated attainment of the Statewide Health Standard and was approved by the Department of Environmental Protection on July 26, 2010.

Dreshertown Plaza, Upper Dublin Township, **Montgomery County**. Craig Herr, RT Environmental Services, Inc., 215 West Church Road, King of Prussia, PA 19406, Harry Watts, Brandolini Property Management, Inc., 1301 Lancaster Avenue, Berwyn, PA 19312 has submitted a Final Report concerning the remediation of site soil and groundwater contaminated with chlorinated solvents. The Final Report was withdrawn by the Brandolini Companies on July 19, 2010.

Southwest Region: Environmental Cleanup Program Manager, 400 Waterfront Drive, Pittsburgh, PA 15222-4745.

1215 Federal Street, City of Pittsburgh, **Allegheny County**. American Geosciences, Inc., 3925 Reed Boulevard, Suite 400, Murrysville, PA 15668 on behalf of Andrew Stewart, Federal North Associates, LP, 5812 Darlington Road, Pittsburgh, PA 15217 has submitted a Final Report concerning the remediation of site soil and groundwater contaminated with PCE, TCE and its degradation products from a former dry cleaning operation. The Final Report approved by the Department of Environmental Protection on August 4, 2010.

Former Worldwide Refractories, Resco Products, Inc., Tarentum Borough, **Allegheny County**. Conestoga-Rovers & Associates, 103 Gamma Drive Extension, Suite 190, Pittsburgh, PA 15238 on behalf of William Brown, Resco Products, Inc., Penn Center West Building 2, Suite 430, Pittsburgh, PA 15276 has submitted a combined Remedial Investigation and Final Report concerning the remediation of site soil and groundwater contaminated with arsenic and antimony. The Remedial Investigation and Final Report was noticed in the *Valley News Dispatch* on June 25, 2010.

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 combined Report demonstrated attainment of the Site-Specific Standard, and was approved by the Department of Environmental Protection on July 29, 2010

Bobby Rahal Automotive Retail Center, Silver Spring Township, **Cumberland County**. Marshall Miller & Associates, Inc., 3913 Hartzdale Drive, Suite 1306, Camp Hill, PA 17011, on behalf of Federated Insurance, 121 East Park Square, P. O. Box 328, Owatonna, NM 55060; Ferris Land Development, Six Penns Way Road, Mechanicsburg, PA 17050; and RM Roach & Sons, Inc., P. O. Box 2899, Martinsburg, WV 25402, submitted a Final Report concerning remediation of site soils, groundwater and surface water contaminated with unleaded gasoline. The Final Report demonstrated attainment of the Residential Statewide Health Standard, and was approved by the Department of Environmental Protection on August 2, 2010.

Northcentral Region: Environmental Cleanup Program Manager, 208 West Third Street, Williamsport, PA 17701.

UGI-Penn Natural Gas-Danville Holder/Regulator Station, Danville Borough, **Montour County**. Stantec Consulting, 400 Davis Drive, Suite 400, Plymouth Meeting, PA 19462 on behalf UGI Penn Natural Gas, 100 Kachel Boulevard, P. O. Box 12677, Reading, PA 19612-2677 has submitted a Final Report concerning the remediation of site soil contaminated with arsenic, antimony and lead. The Final Report demonstrated attainment of the Site-Specific Standard and was approved by the Department of Environmental Protection on August 3, 2010.

Northwest Region: Environmental Cleanup Program Manager, 230 Chestnut Street, Meadville, PA 16335-3481.

Industrial Steel and Pipe Supply Co., City of St. Marys, **Elk County**. Quad Three Group, Inc., 72 Glenmaura National Boulevard, Moosic, PA 18507 on behalf of The City of St. Marys, 11 Lafayette Street, St. Marys, PA 15857 has submitted a Risk Assessment Report and Final Report concerning the remediation of site soil contaminated with Lead and Arsenic. The Risk Assessment Report and Final Report demonstrated attainment of the Site-Specific Standard and was approved by the Department of Environmental Protection on August 6, 2010.

Pennzoil Rouseville Refinery (Plant 2), Cornplanter Township, **Venango County**. URS Corporation, 200 Orchard Ridge Drive, Suite 101, Gaithersburg, MD 20878 on behalf of Pennzoil Quaker State Company, Environmental Services, 910 Louisiana OSP 687, Houston, TX 77002 has submitted a Cleanup Plan concerning remediation of site soil contaminated with volatile and semi-volatile organic compounds including but not limited to, benzene, 1,2,4-trimethylbenzene, 1,3,5-trimethylbenzene, benzo[a]pyrene, 1,2,3-trichloropropane, 1,1,2,2-tetrachloroethane, dibenzofuran, and inorganic compounds including but not limited to arsenic, iron, thallium, lead and site groundwater contaminated with volatile and semi-volatile organic compounds including but not limited to 1,3,5-trimethylbenzene, 1,2,4-trimethylbenzene, methyl tert-butyl ether, benzene, and 2-hexanone. The Cleanup Plan is intended to document remediation of the site to meet the Site-Specific Standard.

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.

40-399-069GP5: Encana Oil & Gas (USA), Inc. (370 17th Street, Suite 1700, Denver, CO 80202) on August 5, 2010, to construct and operate a Natural Gas Compressor Station at the BUDA-1H well site in Fairmount Township, **Luzerne 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 Daniel Husted, Chief, West Permitting Section—Telephone: 814-949-7935.

GP9-2-31-03003: New Enterprise Stone & Lime Co., Inc. (P. O. Box 77, New Enterprise, PA 16664) on August 2, 2010, to install a diesel-fired IC engine at the Orbisonia Quarry in Cromwell Township, **Huntingdon County**.

GP3-2-31-03003: New Enterprise Stone & Lime Co., Inc. (P. O. Box 77, New Enterprise, PA 16664) on August 2, 2010, to install a portable crusher at the Orbisonia Quarry in Cromwell Township, **Huntingdon County**.

Northcentral Region: Air Quality Program, 208 West Third Street, Williamsport, PA 17701. Contact: Muhammad Q. Zaman, Environmental Program Manager—Telephone: 570-327-3648.

GP5-59-208: Seneca Resources Corp. (51 Zents Boulevard, Brookville, PA 15825-2701) on July 28, 2010, to construct and operate a 8.3 million standard cubic feet per day glycol dehydrator equipped with a 375,000 Btu/hr reboiler under the General Plan Approval and/or General Operating Permit for Natural Gas, Coal Bed Methane or Gob Gas Production or Recovery Facilities (BAQ-GPA/GP-5) at their Department of Conservation and Natural Resources Tract 595 in Bloss Township, **Tioga County**.

GP3-57-054A: Insinger Excavating, Inc. (3046 Dushore-Overton Road, Dushore, PA 18613) on July 27, 2010, to construct and operate two Terex Pegson model XR400 portable crushing plants, a Terex Pegson 428 Trackpactor portable crushing plant, a Terex Powerscreen Chiefton 1,800 portable screening plant and a Terex Powerscreen Warrior 1,800 portable screening plant under the General Plan Approval and/or General Operating Permit for Portable Nonmetallic Mineral Processing Plants (BAQ-GPA/GP-3) at their site in Forks Township, **Sullivan County**.

GP9-57-054B: Insinger Excavating, Inc. (3046 Dushore-Overton Road, Dushore, PA 18613) on July 27, 2010, to construct and operate a 275 brake-horsepower Caterpillar model C9 MBD01473 diesel engine, a 300 brake-horsepower Caterpillar model C9 CLJ07981 diesel engine, a 275 brake-horsepower Caterpillar model C9 MBD07813 diesel engine, a 96 brake-horsepower Deutz model BF4M2012C diesel engine and a 111 brake-horsepower Caterpillar model C4.4 TA diesel engine under the General Plan Approval and/or General Operat-

ing Permit for Diesel-Fired Internal Combustion Engines (BAQ-GPA/GP-9) at their site in Forks Township, **Sullivan County**.

Southwest Region: Air Quality Program, 400 Waterfront Drive, Pittsburgh, PA 15222-4745. Contact: Barb Hatch, Environmental Engineer Managers—Telephone: 412-442-4163/5226.

GP4-32-00408: MKT Technologies, Inc., (57 Cooper Avenue, Homer City, PA 15748-1361) for installation and operation of a Burn Off Oven at Homer City Plant in Homer city, **Indiana County**.

Northwest Region: Air Quality Program, 230 Chestnut Street, Meadville, PA 16335-3481. Contact: Mark Gorog, New Source Review Chief—Telephone: 814-332-6940.

GP4-25-079A: Rexam, Inc. (316 West 16th Street, Erie, PA 16502) on August 4, 2010, to operate a burn-off oven (BAQ-GPA/GP-4) in City of Erie, **Erie County**.

GP5-42-225A: SM Energy Co.—Potato Creek 3H Compressor Station (Dividing Ridge Road, Emporium, PA 15834) on August 2, 2010, to operate a natural gas fired compressor engine (BAQ-GPA/GP-5) in Norwich 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.

23-0105: Hanson Aggregates PA, LLC, Glen Mills HMA Plant (523 West Forge Road, Glen Mills, PA 19342) on August 4, 2010, for replacement and upgrade of a control device (for example, baghouse) to control emissions at the hot mix asphalt plant in Middletown Township, **Delaware County**. This facility is a non-Title V facility. The proposed modification/reconfiguration will not result in a net increase of particulate matter emissions. 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.

Northeast Region: Air Quality Program, 2 Public Square, Wilkes-Barre, PA 18711-0790. Contact: Ray Kempa, New Source Review Chief—Telephone: 570-826-2507.

48-317-023: ConAgra Food Ingredients Co. (4888 South Delaware Drive, Martins Creek, PA 18063) on July 23, 2010, to install four fabric collectors at their facility in Lower Mt. Bethel Township, **Northampton County**.

48-309-129: Hercules Cement Co., LP, d/b/a Buzzi Unicem USA (501 Hercules Drive, Stockertown, PA 18083) on July 27, 2010, for modification to burn TDF at the facility in Stockertown Borough, **Northampton County**.

Northcentral Region: Air Quality Program, 208 West Third Street, Williamsport, PA 17701. Contact: Muhammad Q. Zaman, Environmental Program Manager—Telephone: 570-327-3648.

18-315-001E: First Quality Tissue, LLC (904 Woods Avenue, Lock Haven, PA 17745) on July 21, 2010, to modify a paper towel and tissue manufacturing operation

to lower the operation's carbon monoxide emission limitations at Castanea Township, **Clinton County** facility.

Northwest Region: Air Quality Program, 230 Chestnut Street, Meadville, PA 16335-3481. Contact: Mark Gorog, New Source Review Chief—Telephone: 814-332-6940.

42-223A: Tennessee Gas Pipeline Co., Compressor Station 310 (Off of SR 146, Tax Map 29-002-300-02, Clermont, PA 16740) on August 5, 2010, to construct a compressor turbine, emergency generator, hot water boiler and fuel preheater in Sergeant Township, **McKean County**. This is a State-only facility.

61-007D: IA Construction Corp., Franklin Hot Mix Asphalt Batch Plant (24 Gibb Road, Franklin, PA 16323) on July 23, 2010, to construct a new 6 ton Hot Mix Asphalt Batch Plant to replace the existing 3 ton plant in Sugarcreek Borough, **Venango County**. This is a State-only facility.

61-218A: Tennessee Gas Pipeline Co., Compressor Station 303 (Meadow Church Road, Map AS 08-15 Lot 71, Seneca, PA 16346) on August 5, 2010, to construct a compressor turbine, emergency generator, hot water boiler and fuel preheater in Cranberry Township, **Venango County**. This is a State-only facility.

Plan Approval Revisions Issued including Extensions, Minor Modifications and Transfers of Ownership under the Air Pollution Control Act (35 P. S. §§ 4001—4015) and 25 Pa. Code §§ 127.13, 127.13a and 127.32.

Northcentral Region: Air Quality Program, 208 West Third Street, Williamsport, PA 17701. Contact: Muhammad Q. Zaman, Environmental Program Manager—Telephone: 570-327-3648.

19-00006C: Del Monte Corp. (6670 Low Street, Bloomsburg, PA 17815) on July 15, 2010, to authorize construction and operation of a pet food manufacturing line until January 25, 2011, in Bloomsburg, **Columbia County**. The plan approval has been extended.

53-399-008: PA Pellets, LLC (958 SR 49 West, Ulysses, PA 16948) on August 5, 2010, for a change of ownership of their Ulysses facility from PA Pellets, LLC (a Pennsylvania limited liability corporation) to PA Pellets, LLC (a Delaware limited liability corporation) in Ulysses Borough, **Potter County**. This revised plan approval contains all applicable regulatory requirements including monitoring, recordkeeping and reporting conditions.

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.

04-00065C: WHEMCO—Steel Casting, Inc. (One 12th Street, Midland, PA 15059) on July 27, 2010, for an extension of the Plan Approval for the temporary operation to facilitate the shake-down of the Head Burning Booth and to evaluate the source for compliance with applicable requirements at their Midland Plant located at Midland Borough, **Beaver County**. This plan approval has been extended.

Northwest Region: Air Quality Program, 230 Chestnut Street, Meadville, PA 16335-3481. Contact: Mark Gorog, New Source Review Chief—Telephone: 814-332-6940.

16-132H: Clarion Boards, Inc. (143 Fiberboard Road, Shippensburg, PA 16245) on July 31, 2010, to modify plan approvals 16-132B and C conditions with regards to the

RTO in Paint Township, **Clarion County**. These changes are due to the CO&A and are a result of the facility being major for VOC. This is a Title V facility.

Title V Operating Permits Issued under the Air Pollution Control Act (35 P. S. §§ 4001—4015) and 25 Pa. Code Chapter 127, Subchapter G.

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.

36-05138: Quality Custom Kitchens, Inc. (125 Peters Road, New Holland, PA 17557-9205) on August 2, 2010, for their wood kitchen cabinet manufacturing facility in Earl Township, **Lancaster County**. This is a renewal of the Title V Operating Permit.

Northcentral Region: Air Quality Program, 208 West Third Street, Williamsport, PA 17701. Contact: Muhammad Zaman, Environmental Program Manager—Telephone: 570-327-3648.

53-00004: Dominion Transmission, Inc. (501 Martindale Street, Suite 400, Pittsburgh, PA 15212-5817) on July 22, 2010, for operation of their Harrison Compressor Station in Harrison Township, **Potter County**. The renewal Title V operating permit contains monitoring, recordkeeping and reporting conditions to ensure compliance with applicable Federal and State regulatory requirements.

Department of Public Health, Air Management Services: 321 University Avenue, Philadelphia, PA 19104. Contact: Thomas Huynh, Chief—Telephone: 215-685-9476.

V05-008: Inolex Chemical Co. (Jackson and Swanson Streets, Philadelphia, PA 19148) on August 3, 2010, to operate a chemical manufacturing facility in the City of Philadelphia, **Philadelphia County**. The facility's air emission sources include a 52 mmBtu/hr boiler (limited to 49 mmBtu/hr), a 20 mmBtu/hr boiler, a 6.5 mmBtu/hr boiler, seven reactors, a reactor tank, a distillation column, a deodorizer tank, two preblend tanks, a vent condenser, and an adipic silo. The facility's air emission control devices include a scrubber and two baghouses.

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.

46-00270: Timberlane, Inc. (150 Demorah Drive, Montgomeryville, PA 18936) on August 4, 2010, for operation of a spray booth operation in Montgomeryville Township, **Montgomery County**. The permit is for a non-Title V (State-only) facility. The facility elects to limit VOC emissions to less than 25 tons per year; therefore the facility is considered a Synthetic Minor. The permit will include monitoring, recordkeeping and reporting requirements designed to keep the facility operating within all applicable air quality requirements.

46-00141: TSG, Inc.—Synfin Industries Division (1400 Welsh Road, North Wales, PA 19454) on August 6, 2010, for operation of two boilers, several fabric coating lines, and other miscellaneous sources, as well as a carbon absorber with a solvent recovery system associated

with a fabric spray coating line in Montgomery Township, **Montgomery County**. The State-only Operating Permit (SOOP) replaces Title V Operating Permit No. 46-00141, originally issued on January 13, 2006, for the facility. Trichloroethylene (TCE) is no longer used by the fabric spray coating line; therefore, the facility is no longer major for hazardous air pollutants (HAPs) or subject to 40 CFR 63, Subparts OOOO and DDDDD. The SOOP will contain individual and total HAP emission restrictions of 10 tons/yr and 25 tons/yr, respectively, to comply with the requirements of Clean Air Act Section 112(j) (due to the vacatur of 40 CFR 63, Subpart DDDDD). Based on this, the permit type has been changed from Title V to State-only (Synthetic Minor). The SOOP will include monitoring, recordkeeping, reporting and work practice requirements designed to keep the facility operating within all applicable air quality requirements.

46-00152: Upper Merion Area School District (435 Crossfield Road, King of Prussia, PA 19406-2363) on August 10, 2010, for the renewal of a non-Title V, State-only, Natural Minor Operating Permit in Upper Merion Township, **Montgomery County**. Upper Merion Area School District owns and operates a variety of boilers and emergency generators on the contiguous properties of the high school and middle school. The facility has a maximum potential to emit 17.5 tons of NOx per year. The permit will include monitoring, recordkeeping and reporting requirements to address all applicable air quality requirements.

Northcentral Region: Air Quality Program, 208 West Third Street, Williamsport, PA 17701. Contact: Muhammad Q. Zaman, Environmental Program Manager—Telephone: 570-327-3648.

08-00033: Talisman Energy USA, Inc. (337 Daniel Zenker Drive, Horseheads, NY 14845) on July 20, 2010, to operate their Watkins Compressor Station in Columbia Township, **Bradford County**. The State-only (Synthetic Minor) operating permit contains monitoring, recordkeeping and reporting conditions to ensure compliance with applicable Federal and State regulatory requirements.

17-00021: West Branch Area School District (516 Allport Cutoff, Morrisdale, PA 16858-9725) on July 26, 2010, to issue a State-only operating permit for their facility in Morris Township, **Clearfield County**. The facility's main air contaminant sources include four No. 2 fuel oil-fired boilers, two No. 2 fuel oil-fired hot water heaters and one diesel fuel-fired emergency generator. The State-only operating permit contains requirements including monitoring, recordkeeping and reporting conditions to ensure compliance with applicable Federal and State regulations.

17-00059: Energy Link—Corman Coal Loading (840 Philadelphia Street, Suite 305, Indiana, PA 15701-3922) on July 26, 2010, to issue a State-only Operating Permit for their facility in Lawrence Township, **Clearfield County**. The facility's main air contaminant sources include coal stockpiles and haul roads. The State-only operating permit contains requirements including monitoring, recordkeeping and reporting conditions to ensure compliance with applicable Federal and State regulations.

41-00027: Muncy Valley Hospital (1100 Grampian Boulevard, Williamsport, PA 17701) on July 26, 2010, to issue a State-only operating permit for their facility in Muncy Creek Township, **Lycoming County**. The facility's main air contaminant sources include three natural gas/No. 2 fuel oil-fired boilers and four No. 2 fuel oil-fired emergency generators. The State-only operating permit

contains requirements including monitoring, recordkeeping and reporting conditions to ensure compliance with applicable Federal and State regulations.

41-00024: Divine Providence Hospital (1100 Grampian Boulevard, Williamsport, PA 17701) on July 26, 2010, to issue a State-only (Synthetic Minor) operating permit for their facility in the City of Williamsport, **Lycoming County**. The facility's main air contaminant sources include three natural gas/No. 2 fuel oil-fired boilers, two No. 2 fuel oil-fired boilers and five No. 2 fuel oil-fired emergency generators. The State-only (Synthetic Minor) operating permit contains requirements including monitoring, recordkeeping and reporting conditions to ensure compliance with applicable Federal and State regulations.

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.

Northcentral Region: Air Quality Program, 208 West Third Street, Williamsport, PA 17701. Contact: Muhammad Q. Zaman, Environmental Program Manager—Telephone: 570-327-3648.

59-00007: RRI Energy Mid-Atlantic Power Holdings, LLC (121 Champion Way, Suite 200, Canonsburg PA 15317-5817) on July 22, 2010, issued a revised State-only (synthetic minor) operating permit for their Blossburg Generating Station in Covington Township, **Tioga County**. The amendment of this permit incorporates the change in the responsible official for the Blossburg Station. This State-only (synthetic minor) operating permit contains requirements including monitoring, recordkeeping and reporting conditions to ensure compliance with applicable Federal and State regulations.

08-399-001B: Global Tungsten & Powders, Corp. (Hawes Street, Towanda, PA 18848-0504) on July 21, 2010, issued a minor modification operating permit for their facility in North Towanda Township, **Bradford County**. This operating permit revision will require the following: the particulate matter emissions from two order swagers (No. 1 and No. 2), a radio frequency unit (No. 6) used for wiring drawing, and a swager M-8 to be controlled by the Mikropul fabric collector and filter (all existing equipment); the particulate matter emissions from two new order swagers (No. 3 and No. 4) to be controlled by the Seneca fabric collector and filter. The emissions from these sources are considered insignificant. The operating permit contains applicable regulatory requirements including monitoring, recordkeeping and reporting conditions.

59-00004: Ward Manufacturing, LLC (117 Gulick Street, P. O. Box 9, Blossburg, PA 16912-0009), on August 5, 2010, issued amendment of Title V operating permit for their facility in Blossburg Borough, **Tioga County**. This operating permit amendment incorporates all terms and conditions specified in Plan Approval 59-00004E.

Operating Permits Denied, Terminated, Suspended or Revoked under the Air Pollution Control Act (35 P. S. §§ 4001—4015) and 25 Pa. Code §§ 127.431 and 127.461.

Southeast Region: Air Quality Program, 2 East Main Street, Norristown, PA 19401. Contact: Janine Tulloch-Reid, Facilities Permitting Chief—Telephone: 484-250-5920.

46-00141: TSG, Inc.—Synfin Industries Division (1400 Welsh Road, North Wales, PA 19454) on August 6, 2010, for revocation of the facility's Title V Operating Permit (TVOP) concurrent with the issuance of State-only Operating Permit (SOOP) No. 46-00141 in Montgomery Township, **Montgomery County**. TSG, Inc., changed the solvent used in one of its fabric coating lines from trichloroethylene (TCE) to a non-volatile organic compound/hazardous air pollutant (VOC/HAP) solvent, such that the potentials to emit VOCs and HAPs from the facility no longer exceed the major facility thresholds and the facility is no longer subject to 40 CFR Part 63, Subparts OOOO and DDDDD. TSG formally requested that the TVOP be revoked and submitted a SOOP application so that the TVOP can be replaced with a SOOP. TSG, Inc. is no longer eligible to apply for Emission Reduction Credits.

ACTIONS ON COAL AND NONCOAL MINING ACTIVITY APPLICATIONS

Actions on applications under the Surface Mining Conservation and Reclamation Act (52 P. S. §§ 1396.1—1396.19a); the Noncoal Surface Mining Conservation and Reclamation Act (52 P. S. §§ 3301—3326); The Clean Streams Law (35 P. S. §§ 691.1—691.1001); the Coal Refuse Disposal Control Act (52 P. S. §§ 30.51—30.66); and The Bituminous Mine Subsidence and Land Conservation Act (52 P. S. §§ 1406.1—1406.21). The final action on each application also constitutes action on the request for 401 Water Quality Certification and the NPDES permit application. Mining activity permits issued in response to the applications will also address the application permitting requirements of the following statutes: the Air Quality Control Act (35 P. S. §§ 4001—4015); the Dam Safety and Encroachments Act (32 P. S. §§ 693.1—693.27); and the Solid Waste Management Act (35 P. S. §§ 6018.101—6018.1003).

Coal Permits Actions

California District Office: 25 Technology Drive, Coal Center, PA 15423, 724-769-1100.

30841317, Consol Pennsylvania Coal Company, LLC, (P. O. Box J, 1525 Pleasant Grove Road, Claysville, PA 15323), to revise the permit for the Enlow Fork Mine in Morris Township, **Washington County**, ACOE Pittsburgh, Prosperity, PA Quadrangle USGS map from N: 9.80 inches; W: 12.23 inches, N: 8.94 inches; W: 12.81 inches. This is a Chapter 105 Water Obstruction and Encroachment permit application (Stream Module 15), and 401 Water Quality Certification request, if applicable, submitted as part of the mining permit revision application to authorize the stream restoration for pooling/flow loss due to longwall mining in one area of Crafts Creek. The permit applicant has met the wetland replacement requirement by participating in the PA Wetland Replacement Project. In addition, the approval also includes a 401 Water Quality Certification. Application received: February 5, 2010. Permit issued: August 3, 2010.

56061303 and NPDES Permit No. PA0235709, RoxCOAL, Inc., (P. O. Box 149, Friedens, PA 15541), to revise the permit for the Kimberly Run Mine in Somerset Township, **Somerset County** to add acreage to the subsidence control plan permit area. Subsidence Control Plan Acres Proposed 1248.3. No additional discharges. Application received: July 1, 2009. Permit issued: August 6, 2010.

Cambria District Mining Office: 286 Industrial Park Road, Ebensburg, PA 15931, 814-472-1900.

56890111 and NPDES No. PA0598577. Heritage Coal & Natural Resources, LLC, 208 West Mud Pike, Rockwood, PA 15557, transfer of an existing bituminous surface mine from Ritchie Trucking & Excavating, Inc., 19709 Winners View Terrace North West, Frostburg, MD 21532-2179, located in Elk Lick Township, **Somerset County**, affecting 66.3 acres. Receiving stream(s): unnamed tributaries to/and Tub Mill Run and unnamed tributaries to/and Casselman River classified for the following use(s): highway quality cold water fishery; warm water fishery. There are no potable water supply intakes within 10 miles downstream. Application received: January 13, 2010. Permit transfer issued: July 21, 2010.

Greensburg District Mining Office: Armbrust Professional Center, 8205 Route 819, Greensburg, PA 15601, 724-925-5500.

03990105 and NPDES Permit No. PA0202592. Seven Sisters Mining Co., Inc. (6608 US Route 22, P. O. Box 300, Delmont, PA 15626). Renewal permit issued for reclamation only of an existing bituminous surface mine, located in South Bend and Burrell Townships, **Armstrong County**, affecting 206.2 acres. Receiving streams: unnamed tributary to Fagley Run and to Fagley Run. Application received: June 2, 2010. Permit issued: August 3, 2010.

26090103 and NPDES Permit No. PA0251704. T & B Excavating, Inc. (P. O. Box 337, McClellandtown, PA 15458). Transfer of permit formerly issued to Patterson Coal Company for continued operation and reclamation of a bituminous surface mining site located in German Township, **Fayette County**, affecting 58.1 acres. Receiving streams: unnamed tributary to Dunlap Creek. Application received: June 28, 2010. Transfer permit issued: August 5, 2010.

Knox District Mining Office: P. O. Box 669, 310 Best Avenue, Knox, PA 16232-0669, 814-797-1191.

37840104 and NPDES Permit No. PA0108324. Ambrosia Coal & Construction Co. (P. O. Box 422, Edinburg, PA 16116) Renewal of an existing bituminous strip, auger and tippel refuse disposal operation in North Beaver Township, **Lawrence County** affecting 400.0 acres. Receiving streams: Three unnamed tributaries to Hickory Run. Application received: June 14, 2010. Permit issued: August 6, 2010.

Moshannon District Mining Office: 186 Enterprise Drive, Philipsburg, PA 16866, 814-342-8200.

17900105. Southwest Reclamation, Inc. (P. O. Box 128, Clearfield, PA 16830). Permit renewal for reclamation only of an existing bituminous surface mine located in Huston Township, **Clearfield County** affecting 86.4 acres. Receiving streams: Horning Run to Bennett Branch classified for Cold Water Fisheries. Permit issued: August 3, 2010. Permit expires: December 3, 2015.

Pottsville District Mining Office: 5 West Laurel Boulevard, Pottsville, PA 17901, 570-621-3118.

54803203C3 and NPDES Permit No. PA0123862. Rausch Creek Land, LP, (978 Gap Street, Valley View, PA 17983), correction to reactivate an existing anthracite coal refuse reprocessing operation in Hegins Township, **Schuylkill County** affecting 76.0 acres, receiving stream: East Branch Rausch Creek. Application received: August 19, 2009. Correction issued: August 9, 2010.

Noncoal Applications Returned

Moshannon District Mining Office: 186 Enterprise Drive, Philipsburg, PA 16866, 814-342-8200.

SMP #17092801. Tri-County Resources Supply, Inc. (107 Sierra Heights, DuBois, PA 15801). Commencement, operation and restoration of small noncoal permit located in Sandy Township, **Clearfield County**, affecting 1.0 acre. Receiving stream(s): Muddy Run and Sandy Lick Creek. Application received: March 10, 2009. Application returned: July 30, 2010.

Noncoal Permits Actions

Moshannon District Mining Office: 186 Enterprise Drive, Philipsburg, PA 16866, 814-342-8200.

17092802. Larry D. Baumgardner Coal Co., Inc. (P. O. Box 186, Lanse, PA 16849), noncoal mining operation located in Decatur Township, **Clearfield County**. Restoration of 5.0 acres completed. Receiving streams: Beaver Run to Moshannon Creek. Application received: July 2, 2010. Final bond release: August 3, 2010.

08830301. Dalrymple Gravel & Contracting Co., Inc. (2105 South Broadway, Pine City, NY 14871). Renewal of the NPDES Permit for discharges of treated mine drainage from a quarry operation in Athens Township, **Bradford County** affecting 305.0 acres. Receiving streams: Chemung River classified for Warm Water Fishery. Application received: April 12, 2010. Permit issued: July 29, 2010.

Pottsville District Mining Office: 5 West Laurel Boulevard, Pottsville, PA 17901, 570-621-3118.

4873SM5C and NPDES Permit No. PA0009695. Kinsley Construction, Inc., (P. O. Box 2886, York, PA 17405), renewal of NPDES Permit for discharge of treated mine drainage from a quarry operation in West Manchester Township, **York County**, receiving stream: unnamed tributary to Codorus Creek. Application received: June 22, 2010. Renewal issued: August 9, 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.

07104001. Douglas Explosives, Inc., P. O. Box 77, Philipsburg, PA 16866, blasting activity permit issued for Windmill Construction in Logan Township, **Blair County**. Blasting activity permit end date is December 30, 2010. Permit issued: August 5, 2010.

Knox District Mining Office: P. O. Box 669, 310 Best Avenue, Knox, PA 16232-0669, 814-797-1191.

24104010. Seneca Resources Corporation (51 Zentz Road, Brookville, PA 15825) Blasting Activity Permit for well exploration in Highland Township, **Elk County**. This blasting activity permit will expire on July 1, 2011. Application received: August 3, 2010. Permit Issued: August 5, 2010.

Moshannon District Mining Office: 186 Enterprise Drive, Philipsburg, PA 16866, 814-342-8200.

08104016. Doug Wathen, LLC (16282 State Highway 13, Suite J, Branson West, MO 65737). Construction blasting for Breeze well pad located in Troy Township, **Bradford County**. Permit issued: July 26, 2010. Permit expires: December 1, 2010.

08104017. Mike Kipar (6005 SR 267, Meshoppen, PA 15630). Construction blasting for Chamberlin Road and well pad located in Stevens Township, **Bradford County**. Permit issued: July 26, 2010. Permit expires: July 16, 2011.

08104018. John Brainard (3978 SR 2023, Kingsley, PA 18826). Construction blasting for Champlavier pad located in Tuscarora Township, **Bradford County**. Permit issued: August 4, 2010. Permit expires: January 1, 2011.

14104005. Douglas Explosives, Inc. (P. O. Box 77, Philipsburg, PA 16866). Construction blasting for Rocky Ridge subdivision located in Harris Township, **Centre County**. Permit issued: August 4, 2010. Permit expires: August 2, 2011.

17104006. Larry D. Baumgardner Coal Co., Inc. (P. O. Box 186, Lanse, PA 16849). Revision to the expiration date of an existing blasting permit on the GFCC permit No. 17-08-17 located in Decatur Township, **Clearfield County**. Permit expiration date is extended from August 31, 2010 to December 31, 2011.

41104104. M & J Explosives, Inc. (P. O. Box 608, Carlisle, PA 17013). Construction blasting for a pipeline located in Penn Township, **Lycoming County**. Permit issued: August 2, 2010. Permit expires: July 31, 2011.

41104105. M & J Explosives, Inc. (P. O. Box 608, Carlisle, PA 17013). Construction blasting for a pipeline located in Watson, Cummings and Mifflin Townships, **Lycoming County**. Permit issued: August 2, 2010. Permit expires: July 31, 2011.

Pottsville District Mining Office: 5 West Laurel Boulevard, Pottsville, PA 17901, 570-621-3118.

36104147. Keystone Blasting Service, (15 Hopeland Road, Lititz, PA 17543), construction blasting for Shady Oaks in Mt. Joy Township, **Lancaster County** with an expiration date of July 31, 2011. Permit issued: August 2, 2010.

49104002. Winchester Blasting Services, Inc., (5400 Crestwood Drive, Knoxville, TN 37914), demolition blasting of 2 stacks and a boiler at the defunct Celotex Plant in the City of Sunbury, **Northumberland County** with an expiration date of September 30, 2010. Permit issued: August 4, 2010.

64104109. ER Linde Construction Corp., (9 Collan Park, Honesdale, PA 18431), construction blasting for Rutledge Gas Pad in Damascus Township, **Wayne County** with an expiration date of June 30, 2011. Permit issued: August 4, 2010.

64104110. ER Linde Construction Corp., (9 Collan Park, Honesdale, PA 18431), construction blasting for Schweighofer Gas Pad in Damascus Township, **Wayne County** with an expiration date of December 30, 2010. Permit issued: August 4, 2010.

58104036. John Brainard, (3978 SR 2083, Kingsley, PA 18826), construction blasting for Stockholm 4 and 5 Well Pad and Tank Site (Wooden Road) in Rush Township, **Susquehanna County** with an expiration date of July 1, 2011. Permit issued: August 5, 2010.

64104006. Northeast Blasting, (403 Middle Creek Road, Honesdale, PA 18431), construction blasting for the David Dulay Foundation in Cherry Ridge Township, **Wayne County** with an expiration date of July 12, 2011. Permit issued: August 5, 2010.

09104109. Brubacher Excavating, Inc., (P. O. Box 528, Bowmansville, PA 17507), construction blasting for Rockhill Mennonite Community in Sellersville Borough, **Bucks County** with an expiration date of September 30, 2011. Permit issued: August 5, 2010.

39104106. Brubacher Excavating, Inc., (P. O. Box 528, Bowmansville, PA 17507), construction blasting for 705 Liberty Business Park in Upper Macungie Township, **Lehigh County** with an expiration date of March 31, 2011. Permit issued: August 5, 2010.

58104034. John Brainard, (3978 SR 2073, Kingsley, PA 18826), construction blasting for the Warriner 5H Well Site and Tank Farm in Dimock Township, **Susquehanna County** with an expiration date of August 30, 2011. Permit issued: August 6, 2010.

58104037. Geokinetics, (R. R. 6, Box 6176, Towanda, PA 18848), seismic exploration for the Susquehanna, PA 3D Phase 1 (Extension) in Clifford, Gibson and Herrick Townships, **Susquehanna County** with an expiration date of August 1, 2011. Permit issued: August 6, 2010.

58104038. John Brainard, (3978 SR 2073, Kingsley, PA 18826) and Michael Kipar, (6005 SR 267, Meshoppen, PA 18630), construction blasting for the Rylee Gas Pad and Road in Auburn Township, **Susquehanna County** with an expiration date of August 1, 2011. Permit issued: August 6, 2010.

58104041. John Brainard, (3978 SR 2073, Kingsley, PA 18826), construction blasting for the Watrous Well and Tank Pads in Franklin Township, **Susquehanna County** with an expiration date of August 30, 2011. Permit issued: August 6, 2010.

22104110. Maine Drilling & Blasting, (P. O. Box 279, Auburn, NH 03032), construction blasting for Southpoint Meadows in Derry Township, **Dauphin County** with an expiration date of July 31, 2011. Permit issued: August 8, 2010.

66104110. Meshoppen Blasting, Inc., (P. O. Box 127, Meshoppen, PA 18630), construction blasting for McGraw Well Site in Washington Township, **Wyoming County** with an expiration date of August 31, 2010. Permit issued: August 8, 2010.

66104111. Austin Powder Northeast, LLC, (25800 Science Park Drive, Cleveland, OH 44122), construction blasting for Tiffany Gas Pad in Windham Township and Laceyville Borough, **Wyoming County** with an expiration date of August 1, 2011. Permit issued: August 8, 2010.

66104112. Meshoppen Blasting, Inc., (P. O. Box 127, Meshoppen, PA 18630), construction blasting for Lopatofsky Construction Site in Washington Township, **Wyoming County** with an expiration date of July 1, 2011. Permit issued: August 8, 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

Northcentral Region: Watershed Management Program Manager, 208 West Third Street, Williamsport, PA 17701, 570-327-3636.

E49-308. Milton Regional Sewer Authority, P. O. Box 433, Milton, PA 17847-0433. Wastewater Treatment Facility Upgrades, in Milton Borough, West Chillisquaque Township, **Northumberland County**, ACOE Baltimore District (Milton, PA Quadrangle Latitude: 41° 00' 29"; Longitude: 76° 51' 56").

To construct, operate and maintain two secondary clarifiers, an energy recovery building, a sludge storage building, a blower building, a vertical loop reactor tank, two 6 million gallon treatment tanks, a trucked in waste facility, various utility and maintenance buildings, and associated cut and fill grading to facilitate an energy self-sufficient publicly owned treatment works. This project will be constructed on 19.5 acres that is located in

the floodway of the West Branch of the Susquehanna River. This project is located along SR 405 in Milton directly behind the Milton Regional Sewer Authority complex. This permit was issued under Section 105.13(e) "Small Projects." This permit also includes 401 Water Quality Certification.

E55-225. Jackson Township Supervisors, 57 Municipal Road, Winfield, PA 17889. Benfer Drive (T-507) Bridge Replacement, in Jackson Township, **Snyder County**, ACOE Baltimore District (Lewisburg, PA Quadrangle Latitude: 40° 52' 31"; Longitude: 76° 57' 17").

To remove the existing single span, steel I-beam Bridge, including the abutments and to construct, operate and maintain a 20.0 foot clear span, single cell reinforced concrete box culvert with a minimum underclear of 6.0 feet and a skew of 50°. The new structure will be located 50 feet west of the existing structures location and will require 200 linear feet of new stream channel to align the new box structure with the existing stream channel. This permit also authorizes a temporary diversion dike system and the construction of wetlands within the abandon channel upstream of the existing bridge. The diversion dike system will have a length of 216 linear feet and be constructed of a combination of precast concrete glare screen, 6 mil plastic liner and sandbags. The 1,282 square foot wetland creation in the abandon stream channel will be filled with native material to a depth 1 foot below the existing bank elevations and seeded with an obligate wetland seed mix. The proposed work will carry Benfer Road (T-507) over an unnamed tributary to Penns Creek, which carries a water quality designation of Cold Water Fishery. The total estimated stream disturbance for the project is 250 feet new stream channel and will not impact any existing wetlands. This permit also includes 401 Water Quality Certification.

E55-226. Todd A. Hoot, 200 Old Colony Road, Selinsgrove, PA 1787-9739. Hoot Crossing, in Penn Township, **Snyder County**, ACOE Baltimore District (Freeburg, PA Quadrangle Latitude: 40° 49' 24"; Longitude: 76° 52' 52").

To construct, operate and maintain a bridge crossing that is to be used for access to the remaining lawn across the stream for lawn maintenance vehicles. The crossing is across an unnamed tributary to Penns Creek, which carries a water quality designation of Cold Water Fishery. The proposed structure will sit on the ground along the right bank and have a concrete abutment on the left bank with an underclear for the structure measure 6.5 feet to the center of the channel, with a deck width of 8 feet and length of 30 feet. This project is located 1/8 mile west of SR 204 behind the Selinsgrove Center. This permit was issued under Section 105.13(e) "Small Projects." This permit also includes 401 Water Quality Certification.

ENVIRONMENTAL ASSESSMENTS

Central Office: Bureau of Waterways Engineering, Rachel Carson State Office Building, Floor 3, 400 Market Street, Harrisburg, PA 17105.

D56-021EA. Borough of Garrett, 307 Municipal Road, Garrett, PA 15542. Summit Township, **Somerset County**, ACOE Pittsburgh District. Project proposes to breach and remove Bigby Run Dam across Bigby Creek (CWF) for the purpose of eliminating a threat to public safety and restoring the stream to a free flowing condition. The project will restore approximately 800 feet of stream channel. The dam is located approximately 2,200 feet northeast of the intersection of Johnson (SR 2037) and Phillipi Roads (T401) (Meyersdale, PA Quadrangle Latitude: 39° 51' 33"; Longitude: -79° 04' 30").

D14-030EA. Rothrock State Forest, 181 Rothrock Lane, Huntingdon, PA 16652. Ferguson Township, **Centre County**, ACOE Baltimore District. Project proposes to breach and remove Mussers Gap Dam across a tributary to Slab Cabin Run (CWF) for the purpose of eliminating a threat to public safety and restoring the stream to a free flowing condition. The dam is located approximately 1.15 miles south of the intersection of SR 45 and West Branch Road (SR 3009) (McAlevys Fort, PA Quadrangle Latitude: 40° 44' 34"; Longitude: -77° 50' 40").

WATER QUALITY CERTIFICATION

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

Notice of Final Action on Request for Certification under Section 401 of the Federal Water Pollution Control Act

Certification Request initiated by and applicant, PPL Holtwood, LCC, Two North Ninth Street, Allentown, PA 18101. Wallenpaupack Hydroelectric Project (FERC Project No. 487, Project), on Lake Wallenpaupack, in Hawley Borough, Wayne and Pike Counties, ACOE Philadelphia District, Hawley Quadrangle N: 16.25 inches; W: 0.75 inch (discharge), source water (Lake Wallenpaupack) is approximately 3.5 miles up-stream.

Date of Initial *Pennsylvania Bulletin* Notice: Volume 40, No. 28, on July 10, 2010.

Project Description: PPL Holtwood, LCC has requested an Amendment to its Section 401 Water Quality Certification for the operation of the Wallenpaupack Hydroelectric Project near Hawley Borough in Wayne and Pike Counties. The Project is used primarily to meet the peak demands within Pennsylvania-New Jersey-Maryland Interconnection, with limitations on generation set by both natural inflows to the lake and seasonal recreational demands.

Applicable Conditions: On September 23, 2003, the Department of Environmental Protection (Department) certified that there is reasonable assurance that the Lake Wallenpaupack Hydroelectric Project (Project) owned and operated by PPL Holtwood, LLC (Owner), on the Lackawaxen River will comply with Section 401 of the Federal Clean Water Act (33 U.S.C.A. § 1341) and 25 Pa. Code Chapters 93 and 96. On November 23, 2004, as a result of an appeal filed by the Owner, the Department issued a modified certification. As a result of various changes requested by the Owner as well as changes made by the Department to the Owner's National Pollutant Discharge Elimination System (NPDES) permit, the Department modifies paragraph 2 of the November 23, 2004 certification as follows:

2. Monitoring and Reporting

a. The Owner shall conduct effluent monitoring of the turbine discharge for the following parameters at the railroad bridge during the period April 1 through October 31. The effluent shall be monitored for the identified parameters as follows:

Parameter	Minimum Measurement Frequency
• Flow	Daily
• DO	Daily
• pH	Daily
• Temperature	Daily
• Total—Iron	Weekly

<i>Parameter</i>	<i>Minimum Measurement Frequency</i>
• Total—Manganese	Weekly
• Total—Aluminum	Weekly

Analytical methods promulgated in 40 CFR Part 136 must be used.

The pH of the discharge may be less than or greater than the standard/range as specified in 25 Pa. Code § 93.7 if the Owner can demonstrate that the pH of the discharge is not less than or greater than the pH of the lake water as measured at the penstock tap in the powerhouse building. The Department will accept simultaneous sampling as a component of such a demonstration.

Samples shall be taken when discharging at a time representative of the entire discharge period. Metal samples shall be a composite sample (minimum of four grabs) evenly spaced throughout the discharge period. Dissolved oxygen sampling shall consist of a minimum of four grab samples evenly spaced throughout the discharge period. The pH grab sample shall be taken at a time representative of the entire discharge period. Temperature shall be measured and reported as a daily maximum. Flow shall be measured and reported as a daily maximum and monthly average.

Monitoring results obtained during April 1 through October 31 shall be summarized for the month and submitted to the Department and received no later than the 28th day of the following month. The monthly reports shall include sample results, collection, time and date, discharge start and end times, and comments.

b. The Owner shall conduct in-stream benthos monitoring once every 5 years starting in 2014 at three stations, Station 1 above the discharge approximately 600 feet, Station 2 below the discharge approximately 1,300 feet, and Station 3 below the discharge approximately 9,500 feet in accordance with the *Macroinvertebrate Sample Collection and Processing Methodology for Cause/Effect Surveys*. The station locations are fixed and should not be changed without prior approval from the Department. The Owner will follow the sample collection protocol set forth in the previously referenced document for a stream greater than 50 feet in width. Samples must be collected between October 1 and May 31 during normal to low stream flow conditions. The benthic macroinvertebrate report shall be submitted to the Department 120 days after the sample collection.

c. The Department retains the right to specify additional studies or monitoring to ensure that the receiving water quality is not adversely impacted by any hydrogen sulfide treatment process that may be employed by the Owner.

All other provisions of the November 23, 2004 certification remain in full force and effect as originally stated.

Final Action on Request: The Department of Environmental Protection hereby certifies that there is reasonable assurance that the Lake Wallenpaupack Hydroelectric Project, owned and operated by PPL Holtwood, LLC, located on the Lackawaxen River, PA, will comply with Section 401 of the Federal Clean Water Act (33 USCA § 1341) and Pennsylvania's Water Quality Standards (25 Pa. Code Chapters 93 and 96) provided that the Project is operated and monitored in a manner consistent with the conditions contained herein.

Any person with a disability who wishes to attend the public hearing and will require an auxiliary aid, service or other accommodation to participate in the proceedings should contact Lynda Rebarchak at the telephone number listed previously or through the Pennsylvania AT&T Relay Service at (800) 654-5984 (TDD) to discuss how the Department may accommodate their needs. The public may also submit written comments regarding the Department's proposed Interim Response action during the period of public comment. In accordance with Section 506(c) of HSCA, 35 P. S. § 6020.506(c), the Department has established a period for public comment that is now open until close of business November 12, 2010. Written comments should be addressed to Charles Clark, Project Officer, Department of Environmental Protection, 2 East Main Street, Norristown, PA 19401.

Anyone with questions regarding this notice should contact Charles Clark at (484) 250-5731 or chaclark@state.pa.us.

EROSION AND SEDIMENT CONTROL

The following Erosion and Sediment Control Permits have been issued.

Any person aggrieved by these actions may appeal, under section 4 of the Environmental Hearing Board Act (35 P. S. § 7514) and 2 Pa.C.S. Chapter 5, Subchapter A (relating to practice and procedure of Commonwealth agencies), to the Environmental Hearing Board, Second Floor, Rachel Carson State Office Building, 400 Market Street, P. O. Box 8457, Harrisburg, PA 17105-8457, (717) 787-3483. TDD users may contact the Environmental Hearing Board (Board) through the Pennsylvania AT&T Relay Service, (800) 654-5984. Appeals must be filed with the Board within 30 days of publication of this notice in the *Pennsylvania Bulletin*, unless the appropriate statute provides a different time period. Copies of the appeal form and the Board's rules of practice and procedure may be obtained from the Board. The appeal form and the Board's rules of practice and procedure are also available in Braille or on audiotape from the Secretary to the Board at (717) 787-3483. This paragraph does not, in and of itself, create any right of appeal beyond that permitted by applicable statutes and decisional law.

Individuals who wish to challenge this action, their appeal must reach the Board within 30 days. Individuals do not need a lawyer to file an appeal with the Board. Important legal rights are at stake, however, so individuals should show this notice to a lawyer at once. If individuals cannot afford a lawyer, individuals may qualify for pro bono representation. Call the Secretary to the Board (717) 787-3483 for more information.

Northcentral Region: Oil and Gas Management Program Manager, 208 West Third Street, Williamsport, PA 17701.

ESCGP-1 # ESX10-015-0205
 Applicant Name Appalachia Midstream Services, LLD
 Contact Person Patrick Myers
 Address 100 1st Center
 City, State, Zip Horseheads, NY 14845-1015
 County Bradford
 Township(s) West Burlington Township
 Receiving Stream(s) and Classification(s) Mill Creek,
 UNTs to Mill Creek and Tomjack Creek

ESCGP-1 # ESX10-015-0204
 Applicant Name Appalachia Midstream Services, LLD
 Contact Person Patrick Myers
 Address 100 1st Center
 City, State, Zip Horseheads, NY 14845-1015
 County Bradford

Township(s) Burlington and Towanda Townships
 Receiving Stream(s) and Classification(s) Sugar Creek,
 Bailey Run and tributaries to Sugar Creek and Bailey
 Run

ESCGP-1 # ESX10-113-0014
 Applicant Name Chesapeake Appalachia, LLC
 Contact Person Eric Haskins
 Address 101 North Main Street
 City, State, Zip Athens, PA 18810
 County Sullivan

Township(s) Forks Township
 Receiving Stream(s) and Classification(s) UNT to Streby
 Run, Streby Run

ESCGP-1 # ESX10-015-0155
 Applicant Name Chesapeake Appalachia, LLC
 Contact Person Eric Haskins
 Address 101 North Main Street
 City, State, Zip Athens, PA 18810
 County Bradford

Township(s) Rome Township
 Receiving Stream(s) and Classification(s) UNT to Laning
 Creek and Hollow Run
 Secondary—Laning Creek/Hollow Run

ESCGP-1 # 17-09-801(01)—PHASE 7
 Applicant Name EOG Resources, Inc.
 Contact Person Nathan Wells
 Address 400 Southpointe Boulevard, Suite 300
 City, State, Zip Canonsburg, PA 15317-8548
 County Clearfield

Township(s) Lawrence Township
 Receiving Stream(s) and Classification(s) Coldstream,
 Stone Run, Little Laurel Run

ESCGP-1 # ESX10-117-0154
 Applicant Name East Resources Management, LLC
 Contact Person Jefferson Long
 Address 190 Thorn Hill Road
 City, State, Zip Warrendale, PA 15086
 County Tioga

Township(s) Osceola Township
 Receiving Stream(s) and Classification(s) Holden Creek,
 Tioga River Basin
 Secondary—Cowanesque and Tioga Rivers

ESCGP-1 # ESX10-117-0156
 Applicant Name East Resources Management, LLC
 Contact Person Jefferson Long
 Address 190 Thorn Hill Road
 City, State, Zip Warrendale, PA 15086
 County Tioga

Township(s) Farmington Township
 Receiving Stream(s) and Classification(s) UNT to
 Thornbottom Creek and Susquehanna River Basin
 Secondary—Thornbottom Creek

ESCGP-1 # ESX10-015-0206
 Applicant Name Appalachia Midstream Services, LLD
 Contact Person Patrick Myers
 Address 100 1st Center
 City, State, Zip Horseheads, NY 14845-1015
 County Bradford

Township(s) Asylum Township
 Receiving Stream(s) and Classification(s) Bennetts Creek
 and Durell Creek and Susquehanna River Watershed

ESCGP-1 # ESX10-015-0198
 Applicant Name Chesapeake Appalachia, LLC
 Contact Person Eric Haskins
 Address 101 North Main Street
 City, State, Zip Athens, PA 18810
 County Bradford

Township(s) Overton Township
 Receiving Stream(s) and Classification(s) Level Branch
*Northwest Region: Oil and Gas Program Manager, 230
 Chestnut Street, Meadville, PA 16335.*

ESCGP-1 #ESX10-083-0026
 Applicant Name Triana Energy, LLC—MROC Pad B
 Contact Person Rachelle King
 Address 900 Virginia Street East
 City Charleston State WV Zip Code 25301
 County McKean Township(s) Bradford
 Receiving Stream(s) and Classification(s) UNT of Minard
 Run EV

ESCGP-1 #ESX09-065-0009
 Applicant Name EQT Production—Frano Project
 Contact Person Todd Klaner
 Address 225 North Shore Drive
 City Pittsburgh State PA Zip Code 15212
 County Jefferson Township(s) Washington
 Receiving Stream(s) and Classification(s) Wolf Run CWF;
 UNT Rattlesnake Run CWF

ESCGP-1 #ESX10-083-0022
 Applicant PA General Energy Reed Run Norwich Pad B
 Contact Douglas Kuntz
 Address 120 Market Street
 Warren PA 16365
 County McKean Township(s) Norwich Township
 Receiving Stream(s) and Classification(s) Havens Run
 (other); Indian Run (other)

ESCGP-1 #ESX10-083-0015
 Applicant Seneca Resources Corp MOJ 3 Pipeline
 Contact Douglas Kepler
 Address 51 Zents Boulevard
 Brookville PA 15825
 County McKean Township(s) Sergeant
 Receiving Stream(s) and Classification(s) Sevenmile Run
 (HQ); Marvin Creek (HQ)

ESCGP-1 #ESX10-019-0031B
 Applicant Rex Energy Corp—Southwest Butler County
 Project Phase VB
 Contact Timothy Beattie
 Address 476 Rolling Ridge Drive, Suite 300
 State College PA 16801
 County Butler Township(s) Jackson
 Receiving Stream(s) and Classification(s) UNT to Con-
 noquenessing Creek, WWF; UNT to Breakneck WWF

ESCGP-1 #ESX09-065-0004A
 Applicant Exco Resources PA, Inc.—Brookville Wood
 Products
 Contact Larry Sanders
 Address 300 Ericsson Drive, Suite 200
 Warrendale PA 15086
 County Jefferson Township(s) Pine Creek
 Receiving Stream(s) and Classification(s) Five Mile Run
 (CWF); UNT O'Donnell Run (CWF)

ESCGP-1 # ESX10-019-0036
 Applicant Phillips Exploration, Inc.—Holy Trinity Monas-
 tery et al No. 1
 Contact Gary Clark
 Address 502 Keystone Drive
 Warrendale PA 15086
 County Butler Township(s) Butler
 Receiving Stream(s) and Classification(s) Patterson Run
 (WWF); UNT Thorn Creek (WWF)
 ESCGP-1 # ESX10-019-0039
 Applicant Phillips Exploration, Inc.—Holy Trinity Monas-
 tery et al No. 5
 Contact Gary Clark
 Address 502 Keystone Drive

Warrendale PA 15086
 County Butler Township(s) Jefferson
 Receiving Stream(s) and Classification(s) Patterson Run
 (WWF); UNT Thorn Creek (WWF)
 ESCGP-1 # ESX10-019-0042
 Applicant Phillips Exploration Inc.—Holy Trinity Monas-
 tery et al No. 8
 Contact Gary Clark
 Address 502 Keystone Drive
 Warrendale PA 15086
 County Butler Township(s) Penn
 Receiving Stream(s) and Classification(s) Patterson Run
 (WWF); UNT Thorn Creek (WWF)

STORAGE TANKS

SITE-SPECTIFIC INSTALLATION PERMITS

The following Storage Tank Site-Specific Installation Permits, under the authority of the Storage Tank Spill Prevention Act (35 P. S. §§ 6021.304, 6021.504, 6021.1101 and 6021.1102) and under 25 Pa. Code Chapter 245, Subchapter C, have been issued by the Bureau of Waste Management, Director, P. O. Box 8763, Harrisburg, PA 17105-8763.

<i>SSIP Permit No.</i>	<i>Applicant Name & Address</i>	<i>County</i>	<i>Municipality</i>	<i>Tank Type</i>	<i>Tank Capacity</i>
10-42-009	American Refining Group, Inc. 77 North Kendall Avenue Bradford, PA 16701 Attn: Jason Goodling	McKean	Bradford City	1 AST storing crude oil	2,452,597 gallons
10-25-004	Lake Erie Biofuels, d/b/a Hero BX 1540 East Lake Road Erie, PA 16511 Attn: Scott Newell	Erie	Erie City	1 AST storing non-petroleum oil	26,390 gallons

[Pa.B. Doc. No. 10-1525. Filed for public inspection August 20, 2010, 9:00 a.m.]

Bid Opportunity

BOGM 10-7, Cleaning out and plugging one abandoned oil well, (Joseph M. Bomba Property), Chapman Township, Clinton County. The principal items of work include cleaning out and plugging one abandoned oil well, estimated to be 1,300 feet in depth, to Department of Environmental Protection specifications, preparing and restoring well site and mobilizing and demobilizing plugging equipment. This project issues on August 20, 2010, and bids will be opened on September 23, 2010, at 2 p.m. Bid documents cost \$10 per set and will not be mailed until payment has been received. A prebid conference is planned for this project but a date has not been set. Use the contact information contained in this advertisement to find out more about the prebid. Contact the Construction Contracts Section at (717) 787-7820 or joelmiller@state.pa.us for more information on this bid.

JOHN HANGER,
Secretary

[Pa.B. Doc. No. 10-1526. Filed for public inspection August 20, 2010, 9:00 a.m.]

Oil and Gas Technical Advisory Board Meeting Change

The September 16, 2010, meeting of the Oil and Gas Technical Advisory Board will now convene at an alternate location than was previously advertised at 39 Pa.B. 7249 (December 26, 2009). The meeting will begin at 10 a.m. at the Department of Environmental Protection's (Department) Southcentral Regional Office, 909 Elmerton Avenue, Susquehanna Room A, Harrisburg, PA.

Questions concerning the meeting can be directed to Millie Raudabaugh at mraudabaug@state.pa.us or (717) 772-2199. The agenda and meeting materials for the meeting will be available through the Public Participation Center on the Department's web site at <http://www.depweb.state.pa.us> (DEP Keywords: "Public Participation, Participate").

Persons in need of accommodations as provided for in the Americans with Disabilities Act of 1990 should contact Millie Raudabaugh at (717) 772-2199 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. 10-1527. Filed for public inspection August 20, 2010, 9:00 a.m.]

Mining and Reclamation Advisory Board Special Meeting

The Mining and Reclamation Advisory Board will hold a special meeting on Tuesday, September 7, 2010, at 12 p.m., in the 10th Floor Conference Room of the Rachel Carson State Office Building, Harrisburg, PA. The purpose of the meeting is to review the regulation package for the Mining Program Deficiencies and Remining Financial Guarantees.

Questions concerning this schedule or agenda items can be directed to James Charowsky at (717) 787-7007 or jcharowsky@state.pa.us. This schedule, an agenda for the meeting, and notices of meeting changes will be available through the Public Participation Center on the Department of Environmental Protection's (Department) web site at <http://www.depweb.state.pa.us>.

Persons in need of accommodations as provided for in the Americans with Disabilities Act of 1990 should contact James Charowsky directly at (717) 787-7007 or through the Pennsylvania AT&T Relay Service at (800) 654-5984 (TDD) to discuss how the Department may accommodate their needs.

JOHN HANGER,
Secretary

[Pa.B. Doc. No. 10-1528. Filed for public inspection August 20, 2010, 9:00 a.m.]

Stream Redesignation Evaluations; Water Quality Standards Review

Under 25 Pa. Code § 93.4d (relating to processing of petitions, evaluation 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 as follows to determine the proper Aquatic Life Use or Special Protection designations in the Commonwealth's Water Quality Standards.

<i>Stream Name</i>	<i>County</i>	<i>Tributary To</i>
Allegheny River tributaries—Basins, from French Creek at Franklin to Emlenton	Venango	Ohio River
French Creek tributaries—Basins, from Sugar Creek to the mouth	Venango	Allegheny River
Sandy Creek tributaries—Basins, from the Village of Raymilton to the mouth	Venango	Allegheny River
Bobs Creek—Basin, from the source to the mouth	Blair, Cambria, Bedford	Dunning Creek

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 (EQB) 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 September 20, 2010. Questions concerning this evaluation can be directed to Tony Shaw at (717) 787-9637.

Allegheny River tributaries from French Creek to Emlenton are currently designated Warm Water Fishes (WWF) or Cold Water Fishes (CWF) with the exception of Dennison Run which is designated Exceptional Value (EV). The study area will include tributaries to the Allegheny River from French Creek to Emlenton.

French Creek tributaries from Sugar Creek to the mouth are currently designated WWF. The study area will include tributaries to French Creek from Sugar Creek to the mouth.

Sandy Creek tributaries from the Village of Raymilton to the mouth are currently designated WWF with the exception of Little Sandy Creek which is currently designated High Quality-Cold Water Fishes (HQ-CWF) from source to unnamed tributary at river mile 1.16 and CWF from river mile 1.16 to mouth; and South Sandy Creek basin which is currently designated CWF from source to mouth. The study area will include tributaries to Sandy Creek from the Village of Raymilton to the mouth.

Bobs Creek, a tributary to Dunning Creek, is currently designated HQ-CWF from the basin source to, and including, Deep Hollow Run and CWF from Deep Hollow Run to the mouth. The Bobs Creek study area will include the entire Bobs Creek basin.

Recent sampling efforts have indicated that the current designated use for Allegheny River, French Creek and Sandy Creek tributaries, and Bobs Creek basin should be reassessed. These assessments may lead to recommendations to the EQB for redesignation.

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. 10-1529. Filed for public inspection August 20, 2010, 9:00 a.m.]

Wastewater Treatment Requirements; Notice of Availability of Statement of Policy

By this notice, the Department of Environmental Protection (Department) announces the availability of a statement of policy, which provides the Department's interpretation of the term "authorization" as used in 25 Pa. Code Chapter 95 pertaining to the Wastewater Treatment Requirements final rulemaking. (See 40 Pa.B. 4835 (August 21, 2010).) During the rulemaking process, several stakeholders commented that they believed the term "authorization," as used in the final rulemaking, does not provide clarity concerning what authorizations are existing and are therefore exempt from the requirements of the final regulations. To ensure clarity regarding

how the term will be defined and applied in the context of the implementation of the final rulemaking, at the June 17, 2010, meeting of the Independent Regulatory Review Commission, the Department committed to issuing a statement of policy. The statement of policy is now available as document number 385-0810-001 through the Department's web site at <http://www.depweb.state.pa.us> (DEP Keywords: "eLibrary").

JOHN HANGER,
Secretary

[Pa.B. Doc. No. 10-1530. Filed for public inspection August 20, 2010, 9:00 a.m.]

DEPARTMENT OF HEALTH

Application of Hazleton Surgery Center, LLC, d/b/a Center for Advanced Surgery for Exception

Under 28 Pa. Code § 51.33 (relating to requests for exceptions), the Department of Health (Department) gives notice that Hazleton Surgery Center, LLC, d/b/a Center for Advanced Surgery has requested an exception to the requirements of 28 Pa. Code § 551.21(d) (relating to criteria for ambulatory surgery).

This request is on file with the Department. Persons may receive a copy of a request for exception by requesting a copy from the Department of Health, Division of Acute and Ambulatory Care, Room 532, Health and Welfare Building, Harrisburg, PA 17120, (717) 783-8980, fax (717) 772-2163, paexcept@health.state.pa.us.

The facility is requesting a waiver of the comment period, as set forth in 28 Pa. Code § 51.33(c).

Persons with a disability who wish to obtain a copy of a request and/or provide comments to the Department and require an auxiliary aid, service or other accommodation to do so, should contact the Division at the previously listed address or phone numbers, or for speech and/or hearing impaired persons V/TT (717) 783-6154, or the Pennsylvania AT&T Relay Service at (800) 654-5984.

EVERETTE JAMES,
Secretary

[Pa.B. Doc. No. 10-1531. Filed for public inspection August 20, 2010, 9:00 a.m.]

Long-Term Care Nursing Facilities; Requests for Exception

The following long-term care nursing facility is seeking an exception to 28 Pa. Code § 205.6(a) (relating to function of building):

Evangelical Manor
8401 Roosevelt Boulevard
Philadelphia, PA 19152
FAC ID 311202

The following long-term care nursing facility is seeking an exception to 28 Pa. Code § 205.36(c) (relating to bathing facilities).

Masonic Village at Sewickley
1000 Masonic Drive
Sewickley, PA 15143

These requests are on file with the Department of Health (Department). Persons may receive a copy of a request for exception by requesting a copy from the Division of Nursing Care Facilities, Room 526, Health and Welfare Building, Harrisburg, PA 17120, (717) 787-1816, fax (717) 772-2163, ra-paexcept@state.pa.us.

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 wish to obtain a copy of the request and/or provide comments to the Department and require an auxiliary aid, service or other accommodation to do so, should contact V/TT (717) 783-6514 for speech and/or hearing impaired persons or the Pennsylvania AT&T Relay Service at (800) 654-5984 (TT).

EVERETTE JAMES,
Secretary

[Pa.B. Doc. No. 10-1532. Filed for public inspection August 20, 2010, 9:00 a.m.]

Preventive Health and Health Services Block Grant Advisory Committee Meeting

The Preventive Health and Health Services Block Grant Advisory Committee will hold a teleconference (public) meeting on Tuesday, August 31, 2010, from 10 a.m. to 11:30 a.m. The teleconference 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 Terry L. Walker, Administrative Officer, Bureau of Health Promotion and Risk Reduction, Room 1000, Health and Welfare Building, 625 Forster Street, Harrisburg, PA, (717) 787-6214.

Persons with a disability who wish to attend the meeting and require an auxiliary aid, service or other accommodation to do so, should contact Terry L. Walker at the telephone number listed previously, or at V/TT (717) 783-6514 for speech and/or hearing impaired persons, 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. 10-1533. Filed for public inspection August 20, 2010, 9:00 a.m.]

DEPARTMENT OF LABOR AND INDUSTRY

Current Prevailing Wage Act Debarments

The following contractors have been determined to have intentionally violated the Pennsylvania Prevailing Wage Act (act) (43 P. S. §§ 165-1—165-17). This notice is published for the information and convenience of public bodies subject to the act. Under section 11(e) of the act (43 P. S. § 165-11(e)), these contractors, or either one of them, or any firms, corporations or partnerships in which either one of these contractors has an interest, shall be awarded no contract for 3 years after the date listed.

<i>Contractor</i>	<i>Address</i>	<i>Date of Debarment</i>
Stonewood Contracting, LLC & Richard B. Rachor, Ind. EIN # 3219115	1847 Leshner Mill Road Palm, PA 18062	8/3/2010

SANDI VITO,
Secretary

[Pa.B. Doc. No. 10-1534. Filed for public inspection August 20, 2010, 9:00 a.m.]

Range of Fees and Average Fee Charged by Utilization Review Organizations and Peer Review Organizations for Services Performed under the Workers' Compensation Act

Under 34 Pa. Code § 127.667(b) (relating to compensation policy) the Department of Labor and Industry (Department), Bureau of Workers' Compensation gives notice of the range of fees charged by Utilization Review Organizations and Peer Review Organizations for services performed under the Workers' Compensation Act (77 P. S. §§ 1—1041.4 and 2501—2626) during 2009. The Department further provides notice of the average fee charged by each Utilization Review Organization and Peer Review Organization during 2009.

SANDI VITO,
Secretary

2009 Utilization Review Organizations Minimum-Average-Maximum Fee

<i>URO</i>	<i>UR's</i>	<i>Minimum Fee</i>	<i>Average Fee</i>	<i>Maximum Fee</i>
Alico Services LTD	246	\$285.00	\$829.43	\$875.00
American Review Systems, Inc.	245	329.35	966.97	2,668.35
CAB Medical Consultants	238	275.00	800.88	945.00
Caduceus Lex Medical Auditing	242	385.00	803.34	860.00
CEC, Inc.	254	0.00	922.04	1,014.15
Chiro Med Review Co.	250	250.00	821.00	900.00
Denovo Management	244	96.08	904.30	1,647.48
DLB Services	248	88.64	912.34	1,894.74
Hajduk & Assoc. URO/PRO Ser.	243	275.00	813.60	870.00
Industrial Rehabilitation Assoc.	230	315.00	726.00	795.00
KVS Consulting Services	247	230.90	1,070.06	1,756.89
Laurel Reviews	239	126.20	906.56	3,218.00
Margroff Review Services	240	140.66	965.91	1,915.26
McBride & McBride Associates	240	250.00	754.64	795.00
Procura Management, Inc.	175	250.00	888.39	1,064.88
Quality Assurance Reviews, Inc.	244	495.00	953.74	1,182.82
Rehabilitation Planning	238	240.71	897.13	1,110.16
T & G Reviews	244	350.00	904.91	950.00
TX Review, Inc.	246	103.53	747.03	975.00
Uniontown MRPC	232	69.64	803.98	1,776.86
Watson Review Services	247	216.07	971.63	2,244.55
West Penn IME, Inc.	244	234.50	948.56	1,661.34
TOTAL AVERAGES	240	\$227.55	\$877.84	\$1,414.56

[Pa.B. Doc. No. 10-1535. Filed for public inspection August 20, 2010, 9:00 a.m.]

DEPARTMENT OF REVENUE

Pennsylvania Money Money Money Instant Lottery Game

Under the State Lottery Law (72 P. S. §§ 3761-101—3761-314) and 61 Pa. Code § 819.203 (relating to notice of instant game rules), the Secretary of Revenue hereby provides public notice of the rules for the following instant lottery game:

1. *Name:* The name of the game is Pennsylvania Money Money Money.

2. *Price:* The price of a Pennsylvania Money Money Money instant lottery game ticket is \$10.

3. *Play Symbols:* Each Pennsylvania Money Money Money instant lottery game ticket will contain one play area featuring a “YOUR NUMBERS” area and a “MONEY NUMBERS” area. The play symbols and their captions located in the “MONEY NUMBERS” area are: 1 (ONE), 2 (TWO), 3 (THREE), 4 (FOUR), 5 (FIVE), 6 (SIX), 7 (SEVEN), 8 (EIGHT), 9 (NINE), 10 (TEN), 11 (ELEVN), 12 (TWLV), 13 (THRTN), 14 (FORTN), 15 (FIFTN), 16 (SIXTN), 17 (SVNTN), 18 (EGHTN), 19 (NINTN), 20 (TWENT), 21 (TWYONE), 22 (TWYTWO), 23 (TWYTHR), 24 (TWYFOR), 25 (TWYFIV), 26 (TWYSIX), 27 (TWYSVN), 28 (TWYEGT), 29 (TWYNIN) and 30 (THIRTY). The play symbols and their captions located in the “YOUR NUMBERS” area are: 1 (ONE), 2 (TWO), 3 (THREE), 4 (FOUR), 5 (FIVE), 6 (SIX), 7 (SEVEN), 8 (EIGHT), 9 (NINE), 10 (TEN), 11 (ELEVN), 12 (TWLV), 13 (THRTN), 14 (FORTN), 15 (FIFTN), 16 (SIXTN), 17 (SVNTN), 18 (EGHTN), 19 (NINTN), 20 (TWENT), 21 (TWYONE), 22 (TWYTWO), 23 (TWYTHR), 24 (TWYFOR), 25 (TWYFIV), 26 (TWYSIX), 27 (TWYSVN), 28 (TWYEGT), 29 (TWYNIN), 30 (THIRTY), Money (MONEY) symbol, \$\$\$ (TRPL\$) symbol and a \$100 Box (WIN100) symbol.

4. *Prize Symbols:* The prize symbols and their captions located in the “YOUR NUMBERS” area are: \$5⁰⁰ (FIV DOL), \$10⁰⁰ (TEN DOL), \$15⁰⁰ (FIFTN), \$20⁰⁰ (TWENTY), \$40⁰⁰ (FORTY), \$100 (ONE HUN), \$200 (TWO HUN), \$400 (FOR HUN), \$1,000 (ONE THO), \$2,500 (TWYFIVHUN), \$10,000 (TEN THO), \$20,000 (TWY THO), \$25,000 (TWYFIVTHO) and \$250,000 (TWHNFYTH).

5. *Prizes:* The prizes that can be won in this game are: \$5, \$10, \$15, \$20, \$40, \$100, \$200, \$400, \$1,000, \$2,500, \$10,000, \$20,000, \$25,000 and \$250,000. A player can win up to 15 times on a ticket.

6. *Approximate Number of Tickets Printed For the Game:* Approximately 6,000,000 tickets will be printed for the Pennsylvania Money Money Money instant lottery game.

7. *Determination of Prize Winners:*

(a) Holders of tickets upon which any one of the “YOUR NUMBERS” play symbols matches any of the “MONEY NUMBERS” play symbols and a prize symbol of \$250,000 (TWHNFYTH) appears under the matching “YOUR NUMBERS” play symbol, on a single ticket, shall be entitled to a prize of \$250,000.

(b) Holders of tickets upon which any one of the “YOUR NUMBERS” play symbols matches any of the “MONEY NUMBERS” play symbols and a prize symbol of \$25,000 (TWYFIVTHO) appears under the matching “YOUR NUMBERS” play symbol, on a single ticket, shall be entitled to a prize of \$25,000.

(c) Holders of tickets upon which any one of the “YOUR NUMBERS” play symbols matches any of the “MONEY NUMBERS” play symbols and a prize symbol of \$20,000 (TWY THO) appears under the matching “YOUR NUMBERS” play symbol, on a single ticket, shall be entitled to a prize of \$20,000.

(d) Holders of tickets upon which any one of the “YOUR NUMBERS” play symbols matches any of the “MONEY NUMBERS” play symbols and a prize symbol of \$10,000 (TEN THO) appears under the matching “YOUR NUMBERS” play symbol, on a single ticket, shall be entitled to a prize of \$10,000.

(e) Holders of tickets upon which any one of the “YOUR NUMBERS” play symbols matches any of the “MONEY NUMBERS” play symbols and a prize symbol of \$2,500 (TWYFIVHUN) appears under the matching “YOUR NUMBERS” play symbol, on a single ticket, shall be entitled to a prize of \$2,500.

(f) Holders of tickets upon which any one of the “YOUR NUMBERS” play symbols matches any of the “MONEY NUMBERS” play symbols and a prize symbol of \$1,000 (ONE THO) appears under the matching “YOUR NUMBERS” play symbol, on a single ticket, shall be entitled to a prize of \$1,000.

(g) Holders of tickets upon which any one of the “YOUR NUMBERS” play symbols is a \$\$\$ (TRPL\$) symbol and a prize symbol of \$200 (TWO HUN) appears under that \$\$\$ (TRPL\$) symbol, on a single ticket, shall be entitled to a prize of \$600.

(h) Holders of tickets upon which any one of the “YOUR NUMBERS” play symbols matches any of the “MONEY NUMBERS” play symbols and a prize symbol of \$400 (FOR HUN) appears under the matching “YOUR NUMBERS” play symbol, on a single ticket, shall be entitled to a prize of \$400.

(i) Holders of tickets upon which any one of the “YOUR NUMBERS” play symbols is a \$\$\$ (TRPL\$) symbol and a prize symbol of \$100 (ONE HUN) appears under that \$\$\$ (TRPL\$) symbol, on a single ticket, shall be entitled to a prize of \$300.

(j) Holders of tickets upon which any one of the “YOUR NUMBERS” play symbols matches any of the “MONEY NUMBERS” play symbols and a prize symbol of \$200 (TWO HUN) appears under the matching “YOUR NUMBERS” play symbol, on a single ticket, shall be entitled to a prize of \$200.

(k) Holders of tickets upon which any one of the “YOUR NUMBERS” play symbols is a \$\$\$ (TRPL\$) symbol and a prize symbol of \$40⁰⁰ (FORTY) appears under that \$\$\$ (TRPL\$) symbol, on a single ticket, shall be entitled to a prize of \$120.

(l) Holders of tickets upon which any one of the “YOUR NUMBERS” play symbols matches any of the “MONEY NUMBERS” play symbols and a prize symbol of \$100 (ONE HUN) appears under the matching “YOUR NUMBERS” play symbol, on a single ticket, shall be entitled to a prize of \$100.

(m) Holders of tickets upon which any one of the "YOUR NUMBERS" play symbols is a \$100 Box (WIN100) symbol, on a single ticket, shall be entitled to a prize of \$100.

(n) Holders of tickets upon which any one of the "YOUR NUMBERS" play symbols matches any of the "MONEY NUMBERS" play symbols and a prize symbol of \$40.00 (FORTY) appears under the matching "YOUR NUMBERS" play symbol, on a single ticket, shall be entitled to a prize of \$40.

(o) Holders of tickets upon which any one of the "YOUR NUMBERS" play symbols is a Money (MONEY) symbol and a prize symbol of \$40.00 (FORTY) appears under that Money (MONEY) symbol, on a single ticket, shall be entitled to a prize of \$40.

(p) Holders of tickets upon which any one of the "YOUR NUMBERS" play symbols is a \$\$\$ (TRPL\$) symbol and a prize symbol of \$10.00 (TEN DOL) appears under that \$\$\$ (TRPL\$) symbol, on a single ticket, shall be entitled to a prize of \$30.

(q) Holders of tickets upon which any one of the "YOUR NUMBERS" play symbols matches any of the "MONEY NUMBERS" play symbols and a prize symbol of \$20.00 (TWENTY) appears under the matching "YOUR NUMBERS" play symbol, on a single ticket, shall be entitled to a prize of \$20.

(r) Holders of tickets upon which any one of the "YOUR NUMBERS" play symbols is a Money (MONEY) symbol and a prize symbol of \$20.00 (TWENTY) appears under that Money (MONEY) symbol, on a single ticket, shall be entitled to a prize of \$20.

(s) Holders of tickets upon which any one of the "YOUR NUMBERS" play symbols matches any of the "MONEY NUMBERS" play symbols and a prize symbol of

\$15.00 (FIFTN) appears under the matching "YOUR NUMBERS" play symbol, on a single ticket, shall be entitled to a prize of \$15.

(t) Holders of tickets upon which any one of the "YOUR NUMBERS" play symbols is a Money (MONEY) symbol and a prize symbol of \$15.00 (FIFTN) appears under that Money (MONEY) symbol, on a single ticket, shall be entitled to a prize of \$15.

(u) Holders of tickets upon which any one of the "YOUR NUMBERS" play symbols is a \$\$\$ (TRPL\$) symbol and a prize symbol of \$5.00 (FIV DOL) appears under that \$\$\$ (TRPL\$) symbol, on a single ticket, shall be entitled to a prize of \$15.

(v) Holders of tickets upon which any one of the "YOUR NUMBERS" play symbols matches any of the "MONEY NUMBERS" play symbols and a prize symbol of \$10.00 (TEN DOL) appears under the matching "YOUR NUMBERS" play symbol, on a single ticket, shall be entitled to a prize of \$10.

(w) Holders of tickets upon which any one of the "YOUR NUMBERS" play symbols is a Money (MONEY) symbol and a prize symbol of \$10.00 (TEN DOL) appears under that Money (MONEY) symbol, on a single ticket, shall be entitled to a prize of \$10.

(x) Holders of tickets upon which any one of the "YOUR NUMBERS" play symbols matches any of the "MONEY NUMBERS" play symbols and a prize symbol of \$5.00 (FIV DOL) appears under the matching "YOUR NUMBERS" play symbol, on a single ticket, shall be entitled to a prize of \$5.

8. *Number and Description of Prizes and Approximate Odds:* The following table sets forth the approximate number of winners, amounts of prizes and approximate odds of winning:

<i>When Any Of Your Numbers Match Any Of The Money Numbers, Win With Prize(s) Of:</i>	<i>Win:</i>	<i>Approximate Odds Are 1 In:</i>	<i>Approximate No. Of Winners Per 6,000,000 Tickets</i>
\$5 × 2	\$10	20	300,000
\$10 w/MONEY	\$10	20	300,000
\$10	\$10	17.14	350,000
\$5 × 3	\$15	120	50,000
\$5 w/\$\$\$	\$15	60	100,000
\$15 w/MONEY	\$15	120	50,000
\$15	\$15	60	100,000
\$5 × 4	\$20	120	50,000
(\$5 w/\$\$\$) + \$5	\$20	120	50,000
\$10 × 2	\$20	120	50,000
\$20 w/MONEY	\$20	120	50,000
\$20	\$20	120	50,000
\$5 × 8	\$40	600	10,000
(\$10 w/\$\$\$) + \$10	\$40	600	10,000
\$20 × 2	\$40	600	10,000
\$40 w/MONEY	\$40	600	10,000
\$40	\$40	600	10,000
(\$5 × 10) + (\$10 × 5)	\$100	150	40,000
\$10 × 10	\$100	150	40,000
\$100 w/\$100 BOX	\$100	150	40,000
\$100	\$100	150	40,000
(\$10 × 10) + (\$20 × 5)	\$200	6,000	1,000
\$20 × 10	\$200	6,000	1,000
\$40 × 5	\$200	6,000	1,000

When Any Of Your Numbers Match Any Of The Money Numbers, Win With Prize(s) Of:

Win:	Approximate Odds Are 1 In:	Approximate No. Of Winners Per 6,000,000 Tickets	
(\$40 w/\$\$\$) + (\$40 × 2)	\$200	6,000	1,000
(\$100 w/\$100 BOX) + \$100	\$200	6,000	1,000
\$200	\$200	6,000	1,000
(\$20 × 10) + (\$40 × 5)	\$400	12,000	500
\$40 × 10	\$400	12,000	500
(\$100 w/\$100 BOX) + (\$100 × 3)	\$400	12,000	500
(\$100 w/\$\$\$) + \$100	\$400	12,000	500
\$400	\$400	12,000	500
(\$40 × 10) + (\$100 × 4) + \$200	\$1,000	12,000	500
(\$100 w/\$100 BOX) + (\$100 × 9)	\$1,000	12,000	500
\$200 × 5	\$1,000	12,000	500
(\$200 w/\$\$\$) + (\$200 × 2)	\$1,000	12,000	500
\$1,000	\$1,000	10,909	550
(\$200 × 10) + (\$100 × 5)	\$2,500	120,000	50
\$2,500	\$2,500	120,000	50
\$2,500 × 10	\$25,000	600,000	10
\$25,000	\$25,000	600,000	10
(\$20,000 × 10) + (\$10,000 × 5)	\$250,000	1,200,000	5
\$250,000	\$250,000	1,200,000	5

“MONEY” (MONEY) symbol = Win prize shown under it automatically.
 “\$\$\$” (TRPL\$) symbol = Win 3 times the prize shown under it automatically.
 “\$100 BOX” (WIN100) symbol = Win \$100 instantly.

Prizes, including top prizes, are subject to availability at the time of purchase.

9. *Retailer Incentive Awards:* The Lottery may conduct a separate Retailer Incentive Game for retailers who sell Pennsylvania Money Money Money instant lottery game tickets. The conduct of the game will be governed by 61 Pa. Code § 819.222 (relating to retailer bonuses and incentive).

10. *Unclaimed Prize Money:* For a period of 1 year from the announced close of Pennsylvania Money Money Money, prize money from winning Pennsylvania Money Money Money instant lottery game tickets will be retained by the Secretary for payment to the persons entitled thereto. If no claim is made within 1 year of the announced close of the Pennsylvania Money Money Money instant lottery game, the right of a ticket holder to claim the prize represented by the ticket, if any, will expire and the prize money will be paid into the State Lottery Fund and used for purposes provided for by statute.

11. *Governing Law:* In purchasing a ticket, the customer agrees to comply with and abide by the State Lottery Law (72 P. S. §§ 3761-101—3761-314), 61 Pa. Code Part V (relating to State Lotteries) and the provisions contained in this notice.

12. *Termination of the Game:* The Secretary may announce a termination date, after which no further tickets from this game may be sold. The announcement will be disseminated through media used to advertise or promote Pennsylvania Money Money Money or through normal communications methods.

C. DANIEL HASSELL,
Secretary

[Pa.B. Doc. No. 10-1536. Filed for public inspection August 20, 2010, 9:00 a.m.]

DEPARTMENT OF TRANSPORTATION

Sale of Land No Longer Needed for Transportation Purposes Berks County, SR 0222, Section 002

The Department of Transportation (Department) under section 2003(e)(7) of The Administrative Code of 1929 (71 P. S. § 513(e)(7)), intends to sell certain land owned by the Department. The parcel is rectangular in shape, located in the southeast quadrant of SR 3020 (Old Lancaster Pike) and Joseph Way, in Cumru Township, Berks County. Consisting of approximately 0.238 acre estimated fair market value is \$51,900. The sale of the property is in as-is condition. Interested public entities are invited to express their interest in purchasing the site within 30 calendar days from the date of publication of this notice.

For further information, contact Bruce Kern, District Property Manager, Department of Transportation, 1002 Hamilton Street, Allentown, PA 18101, (610) 871-4179.

ALLEN D. BIEHLER, P. E.,
Secretary

[Pa.B. Doc. No. 10-1537. Filed for public inspection August 20, 2010, 9:00 a.m.]

GOVERNOR’S OFFICE OF HEALTH CARE REFORM

Pennsylvania Health Care Reform Implementation Advisory Committee Meeting

The Pennsylvania Health Care Reform Implementation Advisory Committee, established by Executive Order

2010-02, will hold a public meeting on Wednesday, August 25, 2010, from 10 a.m. to 1 p.m., in Hearing Room 3, Keystone Building, 400 North Street, Harrisburg, PA 17120.

This meeting is subject to cancellation without notice.

ANN S. TORREGROSSA, Esq.,
Director

[Pa.B. Doc. No. 10-1538. Filed for public inspection August 20, 2010, 9:00 a.m.]

INDEPENDENT REGULATORY REVIEW COMMISSION

Action Taken by the Commission

The Independent Regulatory Review Commission met publicly at 10 a.m., Thursday, August 5, 2010, and announced the following:

Action Taken—Regulations Approved:

Pennsylvania Gaming Control Board #125-127: Definition and Licensing Requirements (amends 58 Pa. Code §§ 401a.3, 435a.1 and 435a.4)

Department of Labor and Industry #12-85: Workers' Compensation; Individual Self-Insurance (amends 34 Pa. Code Chapter 125)

Environmental Quality Board #7-449: Large Appliance and Metal Furniture Surface Coating Processes (amends 25 Pa. Code Chapter 129)

Environmental Quality Board #7-433: Administration of the Water and Wastewater Systems Operators' Certification Program (deletes 25 Pa. Code Chapters 301, 303 and 305, and adds a new Chapter 302)

Environmental Quality Board #7-445: Hazardous Waste Management System; Proposed Exclusion for Identification and Listing of Hazardous Waste (amends 25 Pa. Code Chapter 261a.)

Action Taken—Regulations Disapproved: Order Not Yet Issued

*Bureau of Professional and Occupational Affairs #16A-47: Schedule of Civil Penalties—Funeral Directors and Funeral Establishments

*State Board of Funeral Directors #16A-4818: Continuing Education Enforcement

*Will advise when order is issued.

Approval Order

Public Meeting held
August 5, 2010

Commissioners Voting: Arthur Coccodrilli, Chairperson; George D. Bedwick, Vice Chairperson; S. David Fine-
man, Esq.; Silvan B. Lutkewitte, III; John F. Mizner,
Esq., by Phone

*Pennsylvania Gaming Control Board—
Definitions and Licensing Requirements;
Regulation No. 125-127 (#2855)*

On June 22, 2010, the Independent Regulatory Review Commission (Commission) received this regulation from

the Pennsylvania Gaming Control Board (Board). This rulemaking amends 58 Pa. Code §§ 401a.3, 435a.1 and 435a.4. Notice of proposed rulemaking was omitted for this regulation; it will become effective upon publication in the *Pennsylvania Bulletin*.

This final-omitted rulemaking revises three sections of the Board's regulations to bring them into conformity with 2010 changes to Pennsylvania's Race Horse Development and Gaming Act.

We have determined this regulation is consistent with the statutory authority of the Board (4 Pa.C.S. §§ 1202(b)(30), 1213, 1326 and 1603) and the intention of the General Assembly. Having considered all of the other criteria of the Regulatory Review Act, we find promulgation of this regulation is in the public interest.

By Order of the Commission:

This regulation is approved.

Approval Order

Public Meeting held
August 5, 2010

Commissioners Voting: Arthur Coccodrilli, Chairperson; George D. Bedwick, Vice Chairperson; S. David Fine-
man, Esq.; Silvan B. Lutkewitte, III; John F. Mizner,
Esq., by Phone

*Department of Labor and Industry—
Workers' Compensation; Individual Self-Insurance;
Regulation No. 12-85 (#2758)*

On April 20, 2009, the Independent Regulatory Review Commission (Commission) received this proposed regulation from the Department of Labor and Industry (Department). This rulemaking amends 34 Pa. Code Chapter 125. The proposed regulation was published in the May 2, 2009 *Pennsylvania Bulletin* with a 30-day public comment period. The final-form regulation was submitted to the Commission on June 23, 2010.

This final-form regulation is intended to improve clarity, provide more objective standards for qualifying for and maintaining self-insurance status, and improve the Department's ability to monitor and regulate self-insurers in the state.

We have determined this regulation is consistent with the statutory authority of the Department (77 P.S. §§ 501 and 991(a)) and the intention of the General Assembly. Having considered all of the other criteria of the Regulatory Review Act, we find promulgation of this regulation is in the public interest.

By Order of the Commission:

This regulation is approved.

Approval Order

Public Meeting held
August 5, 2010

Commissioners Voting: Arthur Coccodrilli, Chairperson; George D. Bedwick, Vice Chairperson; S. David Fine-
man, Esq.; Silvan B. Lutkewitte, III; John F. Mizner,
Esq., by Phone

*Environmental Quality Board—
Large Appliance and Metal Furniture
Surface Coating Processes;
Regulation No. 7-449 (#2813)*

On January 5, 2010, the Independent Regulatory Review Commission (Commission) received this proposed

regulation from the Environmental Quality Board (Board). This rulemaking amends 25 Pa. Code Chapter 129. The proposed regulation was published in the January 16, 2010 *Pennsylvania Bulletin* with a 65-day public comment period. The final-form regulation was submitted to the Commission on June 30, 2010.

This final-form regulation limits volatile organic compounds emissions from large appliance and metal furniture manufacturing operations.

We have determined this regulation is consistent with the statutory authority of the Board (35 P. S. §§ 4005(a)(1) and 4005(a)(8)) and the intention of the General Assembly. Having considered all of the other criteria of the Regulatory Review Act, we find promulgation of this regulation is in the public interest.

By Order of the Commission:

This regulation is approved.

Approval Order

Public Meeting held
August 5, 2010

Commissioners Voting: Arthur Coccodrilli, Chairperson; George D. Bedwick, Vice Chairperson; S. David Fine-man, Esq.; Silvan B. Lutkewitte, III; John F. Mizner, Esq., by Phone

*Environmental Quality Board—
Administration of the Water and Wastewater
Systems Operators' Certification Program;
Regulation No. 7-433 (#2774)*

On June 30, 2009, the Independent Regulatory Review Commission (Commission) received this proposed regulation from the Environmental Quality Board (Board). This rulemaking deletes 25 Pa. Code Chapters 301, 303 and 305, and adds a new Chapter 302. The proposed regulation was published in the July 11, 2009 *Pennsylvania Bulletin* with a 60-day public comment period. The final-form regulation was submitted to the Commission on June 30, 2010.

The regulation establishes both administrative requirements and defined duties for certified water and wastewater systems operators, in accordance with state and federal legislation.

We have determined this regulation is consistent with the statutory authority of the Board (63 P. S. § 1004(c)) and the intention of the General Assembly. Having considered all of the other criteria of the Regulatory Review Act, we find promulgation of this regulation is in the public interest.

By Order of the Commission:

This regulation is approved.

Approval Order

Public Meeting held
August 5, 2010

Commissioners Voting: Arthur Coccodrilli, Chairperson; George D. Bedwick, Vice Chairperson; S. David Fine-man, Esq.; Silvan B. Lutkewitte, III

*Environmental Quality Board—
Hazardous Waste Management System;
Proposed Exclusion for Identification
and Listing of Hazardous Waste;
Regulation No. 7-445 (#2805)*

On October 28, 2009, the Independent Regulatory Review Commission (Commission) received this proposed regulation from the Environmental Quality Board (Board). This rulemaking amends 25 Pa. Code Chapter 261a. The proposed regulation was published in the November 7, 2009 *Pennsylvania Bulletin* with a 30-day public comment period. The final-form regulation was submitted to the Commission on June 30, 2010.

This final rulemaking amends a delisting previously granted to a hazardous waste facility.

We have determined this regulation is consistent with the statutory authority of the Board (35 P. S. §§ 6018.105, 6018.402, and 6018.501) and the intention of the General Assembly. Having considered all of the other criteria of the Regulatory Review Act, we find promulgation of this regulation is in the public interest.

By Order of the Commission:

This regulation is approved.

ARTHUR COCCODRILLI,
Chairperson

[Pa.B. Doc. No. 10-1539. Filed for public inspection August 20, 2010, 9:00 a.m.]

Notice of Comments Issued

Section 5(g) of the Regulatory Review Act (71 P. S. § 745.5(g)) provides that the Independent Regulatory Review Commission (Commission) may issue comments within 30 days of the close of the public comment period. The Commission comments are based upon the criteria contained in section 5.2 of the Regulatory Review Act (71 P. S. § 745.5b).

The Commission has issued comments on the following proposed regulation. The agency must consider these comments in preparing the final-form regulation. The final-form regulation must be submitted within 2 years of the close of the public comment period or it will be deemed withdrawn.

<i>Reg. No.</i>	<i>Agency/Title</i>	<i>Close of the Public Comment Period</i>	<i>IRRC Comments Issued</i>
16A-7101	State Board of Crane Operators Crane Operators; Initial Rulemaking 40 Pa.B. 3041, June 5, 2010	7/6/10	8/5/10
15-449	Department of Revenue Return and Payment of Tax 40 Pa.B. 3122, June 12, 2010	7/12/10	8/11/10

**State Board of Crane Operators
Regulation #16A-7101 (IRRC #2850)**

Crane Operators; Initial Rulemaking

August 5, 2010

We submit for your consideration the following comments on the proposed rulemaking published in the June 5, 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 State Board of Crane Operators (Board) to respond to all comments received from us or any other source.

1. Possible conflict with or duplication of statutes or existing regulations.

On June 7, 2010, the Board submitted a letter to this Commission that supplemented the proposed rulemaking. The purpose of the letter was to inform the Commission that a Negotiated Rulemaking for Cranes and Derricks in Construction (Negotiated Rulemaking) that has been under consideration by the United States Department of Labor, Occupational Safety and Health Administration (OSHA) “will have become final by the time of adoption of a final rulemaking” by the Board. According to the Board, the rationale for this proposed rulemaking was based upon the anticipated adoption of the Negotiated Rulemaking.

We are aware of the Board’s statutory mandate to have a final regulation in place by October 9, 2010. Commentators are concerned that the final Negotiated Rulemaking could conflict with this final rulemaking. If there are differences between the two regulations, will the Board initiate a new rulemaking to align the federal and state requirements? To the extent possible, we ask the Board to ensure that its final rulemaking is consistent with OSHA’s final Negotiated Rulemaking.

2. Implementation procedures; Timetables for compliance by the public and private sector.

On behalf of the House Professional Licensure Committee, Chairman McGeehan and Republican Chair Harhart (Committee) have asked the Board to explain how it will enforce Section 501(a) of the Crane Operator Licensure Act (Act) (63 P. S. § 2400.501(a)) “in the likely circumstance that the final rulemaking does not occur before October 9, 2010.” Section 501(a) of the Act prohibits an individual from operating a crane without a license after October 9, 2010. We share the Committees concern and ask the Board to explain anticipated timetables for compliance if the rulemaking is not published as a final regulation by the required date.

The Committee has also raised concerns about the overlapping time periods involved with maintaining a license, renewing a license and maintaining certification. Has the Board considered aligning the time periods to assist crane operators in complying with the regulation?

3. Section 6.2. Definitions.—Consistency with intent of the General Assembly; Adverse effects on prices, productivity or competition; Protection of the public health safety and welfare; Reasonableness.

Certification

Section 102 of the Act (63 P. S. § 2400.102) defines the term “Certification” as follows:

Certification from the National Commission for the Certification of Crane Operators or another organization found by the State Board of Crane Operators

(NCCCO) to offer an equivalent testing and certification program meeting the applicable requirements of the American Society of Mechanical Engineers ASME B30.5 as relating to mobile cranes, ASME B30.3 or the requirements of ASME B30.4 as relating to tower cranes and the accreditation requirements of the National Commission for Certifying Agencies or the American National Standards Institute.

The proposed rulemaking defines the same term in the following manner:

Certification from the National Commission for the Certification of Crane Operators, or another organization found by the Board to offer:

(i) A testing and certification program equivalent to National Commission for the Certification of Crane Operators and meeting the applicable requirements of ASME B30.

(ii) The accreditation requirements of the National Commission for Certifying Agencies and ANSI.

We raise two issues that touch on many of the concerns raised by several commentators. First, we note that the statutory definition refers to requirements of the National Commission for Certifying Agencies (NCCA) or the American National Standards Institute (ANSI). However, Paragraph (ii) of the regulatory definition refers to requirements of the NCCA and ANSI. Numerous commentators are concerned with the difference between the two definitions. They believe the deviation from “or” to “and” inappropriately narrows the scope of potential organizations that could be certified. This, in turn, could affect the prices crane operators would have to pay to certifying organizations. It could also lead to a shortage of certifying organizations which could negatively affect the public health, safety and welfare of the citizens of the Commonwealth. We suggest that the final-form regulatory definition be aligned with the statutory definition of the term “certification.”

Second, we question the Board’s interpretation of the word “equivalent.” In the Preamble, the Board explains its interpretation as follows: “The use of the term ‘equivalence’ indicates the General Assembly’s intent that the Board limit its approval to those organizations that are point-by-point identical to NCCCO in relevant criteria, except for the fact of a separate corporate existence and control.” It is unlikely that an organization can be “point-by-point” identical to NCCCO. Therefore, in reality, only NCCCO would be considered a certifying organization. Clearly, this is not the intent of the General Assembly. If it was, the statutory definition of “certification” would only reference NCCCO.

We encourage the Board to draft a final regulation that ensures the competence of crane operators, while honoring the intent of the General Assembly by allowing for the possibility of more than one certifying organization to conduct business in this Commonwealth. We believe that amending the regulation would allow the Board to achieve one of its stated goals of promoting “competitiveness and economic efficiency in the crane industry without impairing safety, training or certification.” (See § 6.1(b)(5).)

In addition, two commentators have raised a third issue that relates to the Board’s interpretation of this definition. They note that the OSHA Negotiated Rulemaking

will allow for an employer certification program option and ask the Board to provide a similar mechanism for certification. If an organization can demonstrate that its employer certification program is equivalent to NCCCO certification, would the Board recognize that program?

References to ASME B30 in the definition of “certification” and “crane”

The statutory definition of “certification” specifically references ASME B30.3, B30.4 and B30.5. However, the regulatory definition under § 6.2 only references “applicable requirements of ASME B30.”

Conversely, the statutory definition of “crane” references ASME B30.5 for cranes with a maximum lifting capacity of 15 tons or more. However, the regulatory definition under § 6.2 references ASME B30.3, B30.4 and B30.5. In addition, the statutory definition references ASME B30.3 and B30.4 for cranes with a maximum lifting capacity of 10 meter tons or more, but the regulatory definition references the “applicable ASME B30 volume.”

We are concerned with the manner in which the rulemaking deviates from the Act, as it pertains to references to ASME B30. We do not believe the Board has the authority to include less specific references in its regulations than those contained in statute. Likewise, we do not believe that adding references is consistent with the intent of the General Assembly. Therefore, we ask the Board to align all regulatory references ASME B30 throughout the regulation with requirements of the Act.

Coal mining or coal mining operations and Work of preparing the coal

The Board has explained that both of these definitions are adopted from Section 3 of the Federal Mine Safety and Health Act. The Pennsylvania Coal Association has asked that both definitions be replaced with the definition of coal mining activity as defined in the Pennsylvania Department of Environmental Protection’s (DEP) Surface and Underground Coal Mining regulations (25 Pa. Code § 86.1). Has the Board considered including DEP’s definition in this rulemaking?

4. Section 6.22. Licensure without certification by practical examination.—Implementation procedures; Clarity.

Subsections (f) and (g) make reference to a “declaration” that will be issued by the Board in lieu of a license without certification. We are not aware of this terminology being used in any other chapter of Title 49 of the *Pennsylvania Code*, pertaining to professional and vocational standards. We suggest that this term be defined in the final-form regulation.

5. Section 6.23. Licensure without certification by experience.—Reasonableness; Need; Clarity.

Senator Waugh submitted comments that question what is acceptable experience and the number of hours of experience required by Subsection (b)(2). As noted in the Preamble, West Virginia is the only other known state to allow for licensure without certification. That state requires uncertified operators seeking licensure to document 2,000 hours in a four-year period. We ask the Board to explain the need for and reasonableness of requiring 5,000 hours in a five-year period.

6. Section 6.31. Duration of license.—Implementation procedures; Clarity.

Subsection (a) requires biennial renewal of licenses for crane operators. However, the regulation is silent on

when a biennial period begins and ends. We recommend that the final-form regulation include appropriate dates pertaining to biennial renewal periods.

7. Section 6.53. Required and discretionary bases for disapproval of an application for approval as certifying organization.—Consistency with intent of the General Assembly; Possible conflict with or duplication of statutes or existing regulations.

Subsections (a)(1) and (2)

As noted in our comment on the definition of “certification,” members of the regulated community are concerned that the regulation will require potential certifying organizations to be accredited by both ANSI and NCCA. Under these subsections the Board is again deviating from the statutory definition of “certification” by requiring an applicant to possess accreditation from ANSI and NCCA instead of from ANSI or NCCA. The Board should amend the regulation to mirror the Act.

Subsections (a)(4) and (5)

These subsections prohibit an applicant that is a parent or subsidiary of an entity that offers a program of training or education in crane operation from being a certifying organization. We have two concerns. First, how is this prohibition consistent with the Act and the intent of the General Assembly? Second, will this prohibition conflict with OSHA’s Negotiated rulemaking?

—
**Department of Revenue
Regulation #15-449 (IRRC #2852)**

Return and Payment of Tax

August 11, 2010

We submit for your consideration the following comments on the proposed rulemaking published in the June 12, 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 (Act) (71 P. S. § 745.5a(a)) directs the Department of Revenue (Department) to respond to all comments received from us or any other source.

1. Determining whether the regulation is in the public interest.

The explanation of the regulatory requirements contained in the Preamble states that the amendments provide uniformity and guidance to taxpayers in the Commonwealth. The Preamble also states that the purpose of the rulemaking is to reflect and clarify the Department’s policy regarding the form of Personal Income Tax (PIT) returns. These statements do not provide this Commission with the necessary information to determine if the regulation is in the public interest. In the Preamble included with the final-form regulation, we ask the Department to include a more detailed explanation of the policy that is the basis for this rulemaking, especially the provisions that require taxpayers to take consistent positions with respect to the facts asserted in a prior taxable year and the provision that allows the Secretary of the Department, or a deputy, to make a return for a person that fails to file a return.

2. Section 117.9. Form of return.—Implementation procedures; Clarity

Subsection (a) Required form.

This subsection allows tax returns to be transmitted to the Department electronically or telephonically. Subsection (a)(4) requires a transmittal to be verified by a

“signed declaration.” When a taxpayer transmits a return electronically or telephonically, how would the requirement for a “signed declaration” be met? We recommend that the final-form regulation specify how this obligation can be met.

Subsection (b) Filing processible returns.

This subsection states that the filing of a processible return is required to: commence the running of the statute of limitations for the assessment of tax; commence the running of interest on overpayments of tax; and obtain credit or refund of the overpayment showing on a return. The proposed regulation includes a citation to the underlying statutory provision pertaining to obtaining a credit or refund of an overpayment. To improve clarity and to assist the regulated community with complying with the rulemaking, we suggest that the appropriate statutory references for the other two events that commence with the filing of a processible return also be included in the final-form regulation.

Subsection (e) Exception.

Under this subsection, if a taxpayer is “under investigation,” that person may be allowed to omit certain information from a tax return. The phrase “under investigation” is vague. Does this phrase refer to an investigation by the Department, or can it refer to an investigation by another party, such as the Internal Revenue Service? The final-form regulation should clarify what this phrase means.

Subsection (f) Partners and Pennsylvania S corporation shareholders.

A commentator has asked the Department to provide direction on how a taxpayer that owns a de minimus interest in a partnership may file a processible return when the partnership refuses to provide the necessary documentation. We believe such direction would assist a taxpayer with complying with the regulation and suggest that it be included in the final-form regulation.

3. Section 117.9b. Consistent positions.—Statutory authority; Implementation procedures; Clarity.

Subsection (a) states, in part, the following: “A taxpayer shall take consistent positions with respect to the facts asserted in a prior taxable year.” A commentator believes this type of regulatory requirement would require a statutory change. What is the Department’s specific statutory authority for this provision? In addition, the facts surrounding a particular position may change from one year to another. If a taxpayer can demonstrate that the facts supporting a prior year’s position have changed, we assume that the taxpayer would be permitted to change their position. We suggest that the final-form regulation include language that reflects that fact.

4. Section 117.9c. Execution of return by Secretary of Revenue.—Statutory authority; Implementation procedures; Clarity.

Subsection (a) of this section reads as follows:

If a person fails to make a required processible return at the time prescribed therefore, or makes, willfully or otherwise, a false or fraudulent return, the Secretary or deputy may make the return from his own knowledge and from information obtained through testimony or otherwise.

We have three concerns. First, what is the Department’s specific statutory authority for this provision? Second, how will the provision be implemented? Will the taxpayer be notified of the Secretary’s action and provided a copy of the return? Will the return made by the

Secretary be considered a processible return under § 117.9, pertaining to form of return? Third, which deputy within the Department can make a return? These issues should be clarified in the Preamble and in the final-form regulation.

5. Miscellaneous clarity.

- Section 117.9(a) includes the following phrases: “must plausibly purport;” “honest and genuine;” and “substantially incorrect.” These phrases lack clarity and do not establish a binding norm, as regulations are intended to do. Therefore, the phrases should be replaced or deleted from the final-form regulation.

- Section 117.9c(b) includes the phrase “all legal purposes.” We have the same concern with this phrase as we do with the phrases directly above.

ARTHUR COCCODRILLI,
Chairperson

[Pa.B. Doc. No. 10-1540. Filed for public inspection August 20, 2010, 9:00 a.m.]

INSURANCE DEPARTMENT

Highmark Blue Cross Blue Shield; Direct Pay ClassicBlue Hospital Plan (Western Region); Rate Filing

By filing No. 1A-CPE-9-HBCBS, Highmark, Inc., d/b/a Highmark Blue Cross Blue Shield, requests approval to increase the premium rates for its Direct Pay ClassicBlue Hospital Plan (Western Region). The filing requests an average increase of about 13.9% or \$57.17 per contract per month. This will affect about 960 contract holders and produce additional premium income of about \$660,000 annually. For HIPAA and HCTC eligibility, the filing requests an average increase of about 13.6% or \$58.17 per contract per month. This will affect an estimated 290 contract holders and produce additional premium income of about \$204,000 annually. The requested effective date of the change is January 1, 2011.

Unless formal administrative action is taken prior to November 3, 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. Under the tab “How to Find . . .” click on the link “Current Rate Filings.”

A copy of the filing is also available for public inspection, by appointment, during normal working hours at the Department’s Regional office in Harrisburg.

Interested parties are invited to submit written or e-mail comments, suggestions or objections to Cherri Sanders-Jones, Insurance Department, Insurance Product Regulation, 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. 10-1541. Filed for public inspection August 20, 2010, 9:00 a.m.]

Highmark Blue Cross Blue Shield; Direct Pay ClassicBlue Major Medical Plan (Western Region); Rate Filing

By filing No. 1A-PMM-10-HBCBS, Highmark, Inc., d/b/a Highmark Blue Cross Blue Shield, requests approval

to increase the premium rates for the Direct Pay ClassicBlue Major Medical Plan (Western Region). The filing requests an average increase of about 14.2% or \$22.99 per contract per month. This will affect about 620 contract holders and produce additional premium income of about \$168,000 annually. For HIPAA and HCTC eligibility, the filing requests an average increase of about 5.9% or \$9.80 per contract per month. This will affect an estimated 350 contract holders and produce additional premium income of about \$39,600 annually. The requested effective date of the change is January 1, 2011.

Unless formal administrative action is taken prior to November 3, 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. Under the tab "How to Find . . ." click on the link "Current Rate Filings."

Copies of the filing are also available for public inspection, by appointment, during normal working hours at the Department's Regional office in Harrisburg.

Interested parties are invited to submit written comments, suggestions or objections to Cherri Sanders-Jones, Insurance Department, Insurance Product Regulation, 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. 10-1542. Filed for public inspection August 20, 2010, 9:00 a.m.]

Highmark Blue Shield; Direct Pay ClassicBlue Medical Surgical Products—Independence Blue Cross Plan Area; Rate Filing

By filing No. 1A-DPMS(IBC)-10-HBS, Highmark, Inc., d/b/a Highmark Blue Shield, requests approval to increase the premium rates for its Direct Pay ClassicBlue Medical Surgical products in the Independence Blue Cross plan area. The filing requests an average increase of about 14.2% or \$20.91 per contract per month. This will affect about 2,000 contract holders and produce additional premium income of about \$492,000 annually. The requested effective date of the change is January 1, 2011.

Unless formal administrative action is taken prior to November 3, 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. Under the tab "How to Find . . ." click on the link "Current Rate Filings."

A copy of the filing is also available for public inspection, by appointment, during normal working hours at the Department's Regional office in Harrisburg.

Interested parties are invited to submit written or e-mail comments, suggestions or objections to Cherri Sanders-Jones, Insurance Department, Insurance Product Regulation, 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. 10-1543. Filed for public inspection August 20, 2010, 9:00 a.m.]

Highmark, Inc.; Rate Increase Filing for Medicare Supplement Forms; Rate Filing

By filing No. 1-MGP(AA)-E-10-HBCBS-1990, Highmark, Inc., d/b/a Highmark Blue Cross Blue Shield, requests approval to increase its premium rates for its Western Pennsylvania Attained Age MedigapBlue Plans (NAIC's 1990 standardized Medigap plan E). The filing requests an overall increase of about 8.4% or \$16.71 PMPM. This will affect about 3,137 members and produce additional premium income of about \$52,408 per month. The requested effective date of these changes is January 1, 2011.

Unless formal administrative action is taken prior to November 4, 2010, the subject filing may be deemed approved by operation of law.

A copy of the filing is available on the Insurance Department's web site at www.insurance.pa.gov. To access the filing, under "How to Find . . ." click on "View Current Rate Filings."

Interested parties are invited to submit written comments, suggestions or objections to Michael Gurgiolo, Actuary, Insurance Department, Insurance Product Regulation, 1311 Strawberry Square, Harrisburg, PA 17120, mgurgiolo@state.pa.us within 30 days after publication of this notice in the *Pennsylvania Bulletin*.

JOEL SCOTT ARIO,
Insurance Commissioner

[Pa.B. Doc. No. 10-1544. Filed for public inspection August 20, 2010, 9:00 a.m.]

Highmark, Inc.; Rate Increase Filing for Medicare Supplement Forms; Rate Filing

By filing No. 1-MGP(AA)-E-10-HBS-1990, Highmark, Inc., d/b/a Highmark Blue Shield, requests approval to increase its premium rates for its Central Pennsylvania Attained Age MedigapBlue Plans (NAIC's 1990 standardized Medigap plan E). The filing requests an overall increase of about 8.2% or \$11.90 PMPM. This will affect about 8,820 members and produce additional premium income of about \$104,913 per month. The requested effective date of these changes is January 1, 2011.

Unless formal administrative action is taken prior to November 4, 2010, the subject filing may be deemed approved by operation of law.

A copy of the filing is available on the Insurance Department's web site at www.insurance.pa.gov. To access the filing, under "How to Find . . ." click on "View Current Rate Filings."

Interested parties are invited to submit written comments, suggestions or objections to Michael Gurgiolo, Actuary, Insurance Department, Insurance Product Regulation, 1311 Strawberry Square, Harrisburg, PA 17120, mgurgiolo@state.pa.us within 30 days after publication of this notice in the *Pennsylvania Bulletin*.

JOEL SCOTT ARIO,
Insurance Commissioner

[Pa.B. Doc. No. 10-1545. Filed for public inspection August 20, 2010, 9:00 a.m.]

Highmark, Inc.; Rate Increase Filing for Medicare Supplement Forms; Rate Filing

By filing No. 1-MGP(AA)-I-10-HBCBS-1990, Highmark, Inc., d/b/a Highmark Blue Cross Blue Shield, requests approval to increase its premium rates for its Western Pennsylvania Attained Age MedigapBlue Plans (NAIC's 1990 standardized Medigap plan I). The filing requests an overall increase of about 4.3% or \$9.13 PMPM. This will affect about 2,550 members and produce additional premium income of about \$23,279 per month. The requested effective date of these changes is January 1, 2011.

Unless formal administrative action is taken prior to November 4, 2010, the subject filing may be deemed approved by operation of law.

A copy of the filing is available on the Insurance Department's web site at www.insurance.pa.gov. To access the filing, under "How to Find . . ." click on "View Current Rate Filings."

Interested parties are invited to submit written comments, suggestions or objections to Michael Gurgiolo, Actuary, Insurance Department, Insurance Product Regulation, 1311 Strawberry Square, Harrisburg, PA 17120, mgurgiolo@state.pa.us within 30 days after publication of this notice in the *Pennsylvania Bulletin*.

JOEL SCOTT ARIO,
Insurance Commissioner

[Pa.B. Doc. No. 10-1546. Filed for public inspection August 20, 2010, 9:00 a.m.]

Highmark, Inc.; Rate Increase Filing for Medicare Supplement Forms; Rate Filing

By filing No. 1-MGP(AA)-I-10-HBS-1990, Highmark, Inc., d/b/a Highmark Blue Shield, requests approval to increase its premium rates for its Central Pennsylvania Attained Age MedigapBlue Plans (NAIC's 1990 standardized Medigap plan I). The filing requests an overall increase of about 5.0% or \$7.63 PMPM. This will affect about 5,723 members and produce additional premium income of about \$43,667 per month. The requested effective date of these changes is January 1, 2011.

Unless formal administrative action is taken prior to November 4, 2010, the subject filing may be deemed approved by operation of law.

A copy of the filing is available on the Insurance Department's web site at www.insurance.pa.gov. To access the filing, under "How to Find . . ." click on "View Current Rate Filings."

Interested parties are invited to submit written comments, suggestions or objections to Michael Gurgiolo,

Actuary, Insurance Department, Insurance Product Regulation, 1311 Strawberry Square, Harrisburg, PA 17120, mgurgiolo@state.pa.us within 30 days after publication of this notice in the *Pennsylvania Bulletin*.

JOEL SCOTT ARIO,
Insurance Commissioner

[Pa.B. Doc. No. 10-1547. Filed for public inspection August 20, 2010, 9:00 a.m.]

Highmark, Inc.; Rate Increase Filing for Medicare Supplement Forms; Rate Filing

By filing No. 1-MGP(AA)-IRx-10-HBCBS-1990, Highmark, Inc., d/b/a Highmark Blue Cross Blue Shield, requests approval to increase its premium rates for its Western Pennsylvania Attained Age MedigapBlue Plans (NAIC's 1990 standardized Medigap plan I with Rx). The filing requests an overall increase of about 4.3% or \$11.97 PMPM. This will affect about 239 members and produce additional premium income of about \$2,863 per month. The requested effective date of these changes is January 1, 2011.

Unless formal administrative action is taken prior to November 4, 2010, the subject filing may be deemed approved by operation of law.

A copy of the filing is available on the Insurance Department's web site at www.insurance.pa.gov. To access the filing, under "How to Find . . ." click on "View Current Rate Filings."

Interested parties are invited to submit written comments, suggestions or objections to Michael Gurgiolo, Actuary, Insurance Department, Insurance Product Regulation, 1311 Strawberry Square, Harrisburg, PA 17120, mgurgiolo@state.pa.us within 30 days after publication of this notice in the *Pennsylvania Bulletin*.

JOEL SCOTT ARIO,
Insurance Commissioner

[Pa.B. Doc. No. 10-1548. Filed for public inspection August 20, 2010, 9:00 a.m.]

Highmark, Inc.; Rate Increase Filing for Medicare Supplement Forms; Rate Filing

By filing No. 1-MGP(AA)-IRx-10-HBS-1990, Highmark, Inc., d/b/a Highmark Blue Shield, requests approval to increase its premium rates for its Central Pennsylvania Attained Age MedigapBlue Plans (NAIC's 1990 standardized Medigap plan I with Rx). The filing requests an overall increase of about 5.0% or \$10.30 PMPM. This will affect about 138 members and produce additional premium income of about \$1,418 per month. The requested effective date of these changes is January 1, 2011.

Unless formal administrative action is taken prior to November 4, 2010, the subject filing may be deemed approved by operation of law.

A copy of the filing is available on the Insurance Department's web site at www.insurance.pa.gov. To access the filing, under "How to Find . . ." click on "View Current Rate Filings."

Interested parties are invited to submit written comments, suggestions or objections to Michael Gurgiolo,

Actuary, Insurance Department, Insurance Product Regulation, 1311 Strawberry Square, Harrisburg, PA 17120, mgurgiolo@state.pa.us, within 30 days after publication of this notice in the *Pennsylvania Bulletin*.

JOEL SCOTT ARIO,
Insurance Commissioner

[Pa.B. Doc. No. 10-1549. Filed for public inspection August 20, 2010, 9:00 a.m.]

Actuary, Insurance Department, Insurance Product Regulation, 1311 Strawberry Square, Harrisburg, PA 17120, mgurgiolo@state.pa.us within 30 days after publication of this notice in the *Pennsylvania Bulletin*.

JOEL SCOTT ARIO,
Insurance Commissioner

[Pa.B. Doc. No. 10-1551. Filed for public inspection August 20, 2010, 9:00 a.m.]

Highmark, Inc.; Rate Increase Filing for Medicare Supplement Forms; Rate Filing

By filing No. 1-MGP(IA)-A-10-HBCBS-1990, Highmark, Inc., d/b/a Highmark Blue Cross Blue Shield, requests approval to increase its premium rates for its Western Pennsylvania Issue Age MedigapBlue Plans (NAIC's 1990 standardized Medigap plan A). The filing requests an overall increase of about 14.2% or \$17.47 PMPM. This will affect about 717 members and produce additional premium income of about \$12,517 per month. The requested effective date of these changes is January 1, 2011.

Unless formal administrative action is taken prior to November 4, 2010, the subject filing may be deemed approved by operation of law.

A copy of the filing is available on the Insurance Department's web site at www.insurance.pa.gov. To access the filing, under "How to Find . . ." click on "View Current Rate Filings."

Interested parties are invited to submit written comments, suggestions or objections to Michael Gurgiolo, Actuary, Insurance Department, Insurance Product Regulation, 1311 Strawberry Square, Harrisburg, PA 17120, mgurgiolo@state.pa.us within 30 days after publication of this notice in the *Pennsylvania Bulletin*.

JOEL SCOTT ARIO,
Insurance Commissioner

[Pa.B. Doc. No. 10-1550. Filed for public inspection August 20, 2010, 9:00 a.m.]

Highmark, Inc.; Rate Increase Filing for Medicare Supplement Forms; Rate Filing

By filing No. 1-MGP(IA)-B-10-HBCBS-1990, Highmark, Inc., d/b/a Highmark Blue Cross Blue Shield, requests approval to increase its premium rates for its Western Pennsylvania Issue Age MedigapBlue Plans (NAIC's 1990 standardized Medigap plan B). The filing requests an overall increase of about 4.4% or \$7.29 PMPM. This will affect about 12,492 members and produce additional premium income of about \$91,088 per month. The requested effective date of these changes is January 1, 2011.

Unless formal administrative action is taken prior to November 4, 2010, the subject filing may be deemed approved by operation of law.

A copy of the filing is available on the Insurance Department's web site at www.insurance.pa.gov. To access the filing, under "How to Find . . ." click on "View Current Rate Filings."

Interested parties are invited to submit written comments, suggestions or objections to Michael Gurgiolo, Actuary, Insurance Department, Insurance Product Regulation, 1311 Strawberry Square, Harrisburg, PA 17120, mgurgiolo@state.pa.us within 30 days after publication of this notice in the *Pennsylvania Bulletin*.

JOEL SCOTT ARIO,
Insurance Commissioner

[Pa.B. Doc. No. 10-1552. Filed for public inspection August 20, 2010, 9:00 a.m.]

Highmark, Inc.; Rate Increase Filing for Medicare Supplement Forms; Rate Filing

By filing No. 1-MGP(IA)-A-10-HBS-1990, Highmark, Inc., d/b/a Highmark Blue Shield, requests approval to increase its premium rates for its Central Pennsylvania Issue Age MedigapBlue Plans (NAIC's 1990 standardized Medigap plan A). The filing requests an overall increase of about 5.0% or \$4.93 PMPM. This will affect about 544 members and produce additional premium income of about \$2,685 per month. The requested effective date of these changes is January 1, 2011.

Unless formal administrative action is taken prior to November 4, 2010, the subject filing may be deemed approved by operation of law.

A copy of the filing is available on the Insurance Department's web site at www.insurance.pa.gov. To access the filing, under "How to Find . . ." click on "View Current Rate Filings."

Interested parties are invited to submit written comments, suggestions or objections to Michael Gurgiolo,

Highmark, Inc.; Rate Increase Filing for Medicare Supplement Forms; Rate Filing

By filing No. 1-MGP(IA)-B-10-HBS-1990, Highmark, Inc., d/b/a Highmark Blue Shield, requests approval to increase its premium rates for its Central Pennsylvania Issue Age MedigapBlue Plans (NAIC's 1990 standardized Medigap plan B). The filing requests an overall increase of about 3.5% or \$4.57 PMPM. This will affect about 6,582 members and produce additional premium income of about \$30,079 per month. The requested effective date of these changes is January 1, 2011.

Unless formal administrative action is taken prior to November 4, 2010, the subject filing may be deemed approved by operation of law.

A copy of the filing is available on the Insurance Department's web site at www.insurance.pa.gov. To access the filing, under "How to Find . . ." click on "View Current Rate Filings."

Interested parties are invited to submit written comments, suggestions or objections to Michael Gurgiolo,

Actuary, Insurance Department, Insurance Product Regulation, 1311 Strawberry Square, Harrisburg, PA 17120, mgurgiolo@state.pa.us within 30 days after publication of this notice in the *Pennsylvania Bulletin*.

JOEL SCOTT ARIO,
Insurance Commissioner

[Pa.B. Doc. No. 10-1553. Filed for public inspection August 20, 2010, 9:00 a.m.]

Actuary, Insurance Department, Insurance Product Regulation, 1311 Strawberry Square, Harrisburg, PA 17120, mgurgiolo@state.pa.us within 30 days after publication of this notice in the *Pennsylvania Bulletin*.

JOEL SCOTT ARIO,
Insurance Commissioner

[Pa.B. Doc. No. 10-1555. Filed for public inspection August 20, 2010, 9:00 a.m.]

Highmark, Inc.; Rate Increase Filing for Medicare Supplement Forms; Rate Filing

By filing No. 1-MGP(IA)-C-10-HBCBS-1990, Highmark, Inc., d/b/a Highmark Blue Cross Blue Shield, requests approval to increase its premium rates for its Western Pennsylvania Issue Age MedigapBlue Plans (NAIC's 1990 standardized Medigap plan C). The filing requests an overall increase of about 5.0% or \$10.50 PMPM. This will affect about 15,093 members and produce additional premium income of about \$158,533 per month. The requested effective date of these changes is January 1, 2011.

Unless formal administrative action is taken prior to November 4, 2010, the subject filing may be deemed approved by operation of law.

A copy of the filing is available on the Insurance Department's web site at www.insurance.pa.gov. To access the filing, under "How to Find . . ." click on "View Current Rate Filings."

Interested parties are invited to submit written comments, suggestions or objections to Michael Gurgiolo, Actuary, Insurance Department, Insurance Product Regulation, 1311 Strawberry Square, Harrisburg, PA 17120, mgurgiolo@state.pa.us within 30 days after publication of this notice in the *Pennsylvania Bulletin*.

JOEL SCOTT ARIO,
Insurance Commissioner

[Pa.B. Doc. No. 10-1554. Filed for public inspection August 20, 2010, 9:00 a.m.]

Highmark, Inc.; Rate Increase Filing for Medicare Supplement Forms; Rate Filing

By filing No. 1-MGP(IA)-H-10-HBCBS-1990, Highmark, Inc., d/b/a Highmark Blue Cross Blue Shield, requests approval to increase its premium rates for its Western Pennsylvania Issue Age MedigapBlue Plans (NAIC's 1990 standardized Medigap plan H). The filing requests an overall increase of about 5.0% or \$9.49 PMPM. This will affect about 2,914 members and produce additional premium income of about \$27,648 per month. The requested effective date of these changes is January 1, 2011.

Unless formal administrative action is taken prior to November 4, 2010, the subject filing may be deemed approved by operation of law.

A copy of the filing is available on the Insurance Department's web site at www.insurance.pa.gov. To access the filing, under "How to Find . . ." click on "View Current Rate Filings."

Interested parties are invited to submit written comments, suggestions or objections to Michael Gurgiolo, Actuary, Insurance Department, Insurance Product Regulation, 1311 Strawberry Square, Harrisburg, PA 17120, mgurgiolo@state.pa.us within 30 days after publication of this notice in the *Pennsylvania Bulletin*.

JOEL SCOTT ARIO,
Insurance Commissioner

[Pa.B. Doc. No. 10-1556. Filed for public inspection August 20, 2010, 9:00 a.m.]

Highmark, Inc.; Rate Increase Filing for Medicare Supplement Forms; Rate Filing

By filing No. 1-MGP(IA)-C-10-HBS-1990, Highmark, Inc., d/b/a Highmark Blue Shield, requests approval to increase its premium rates for its Central Pennsylvania Issue Age MedigapBlue Plans (NAIC's 1990 standardized Medigap plan C). The filing requests an overall increase of about 5.0% or \$8.97 PMPM. This will affect about 9,360 members and produce additional premium income of about \$83,968 per month. The requested effective date of these changes is January 1, 2011.

Unless formal administrative action is taken prior to November 4, 2010, the subject filing may be deemed approved by operation of law.

A copy of the filing is available on the Insurance Department's web site at www.insurance.pa.gov. To access the filing, under "How to Find . . ." click on "View Current Rate Filings."

Interested parties are invited to submit written comments, suggestions or objections to Michael Gurgiolo,

Highmark, Inc.; Rate Increase Filing for Medicare Supplement Forms; Rate Filing

By filing No. 1-MGP(IA)-H-10-HBS-1990, Highmark, Inc., d/b/a Highmark Blue Shield, requests approval to increase its premium rates for its Central Pennsylvania Issue Age MedigapBlue Plans (NAIC's 1990 standardized Medigap plan H). The filing requests an overall increase of about 2.9% or \$5.45 PMPM. This will affect about 2,342 members and produce additional premium income of about \$12,768 per month. The requested effective date of these changes is January 1, 2011.

Unless formal administrative action is taken prior to November 4, 2010, the subject filing may be deemed approved by operation of law.

A copy of the filing is available on the Insurance Department's web site at www.insurance.pa.gov. To access the filing, under "How to Find . . ." click on "View Current Rate Filings."

Interested parties are invited to submit written comments, suggestions or objections to Michael Gurgiolo, Actuary, Insurance Department, Insurance Product Regu-

lation, 1311 Strawberry Square, Harrisburg, PA 17120, mgurgiolo@state.pa.us within 30 days after publication of this notice in the *Pennsylvania Bulletin*.

JOEL SCOTT ARIO,
Insurance Commissioner

[Pa.B. Doc. No. 10-1557. Filed for public inspection August 20, 2010, 9:00 a.m.]

Highmark, Inc.; Rate Increase Filing for Medicare Supplement Forms; Rate Filing

By filing No. 1-MGP(IA)-HRx-10-HBCBS-1990, Highmark, Inc., d/b/a Highmark Blue Cross Blue Shield, requests approval to increase its premium rates for its Western Pennsylvania Issue Age MedigapBlue Plans (NAIC's 1990 standardized Medigap plan H with Rx). The filing requests an overall increase of about 5.0% or \$11.49 PMPM. This will affect about 743 members and produce additional premium income of about \$8,532 per month. The requested effective date of these changes is January 1, 2011.

Unless formal administrative action is taken prior to November 4, 2010, the subject filing may be deemed approved by operation of law.

A copy of the filing is available on the Insurance Department's web site at www.insurance.pa.gov. To access the filing, under "How to Find . . ." click on "View Current Rate Filings."

Interested parties are invited to submit written comments, suggestions or objections to Michael Gurgiolo, Actuary, Insurance Department, Insurance Product Regulation, 1311 Strawberry Square, Harrisburg, PA 17120, mgurgiolo@state.pa.us within 30 days after publication of this notice in the *Pennsylvania Bulletin*.

JOEL SCOTT ARIO,
Insurance Commissioner

[Pa.B. Doc. No. 10-1558. Filed for public inspection August 20, 2010, 9:00 a.m.]

Highmark, Inc.; Rate Increase Filing for Medicare Supplement Forms; Rate Filing

By filing No. 1-MGP(IA)-HRx-10-HBS-1990, Highmark, Inc., d/b/a Highmark Blue Shield, requests approval to increase its premium rates for its Central Pennsylvania Issue Age MedigapBlue Plans (NAIC's 1990 standardized Medigap plan H with Rx). The filing requests an overall increase of about 2.9% or \$6.57 PMPM. This will affect about 665 members and produce additional premium income of about \$4,367 per month. The requested effective date of these changes is January 1, 2011.

Unless formal administrative action is taken prior to November 4, 2010, the subject filing may be deemed approved by operation of law.

A copy of the filing is available on the Insurance Department's web site at www.insurance.pa.gov. To access the filing, under "How to Find . . ." click on "View Current Rate Filings."

Interested parties are invited to submit written comments, suggestions or objections to Michael Gurgiolo, Actuary, Insurance Department, Insurance Product Regu-

lation, 1311 Strawberry Square, Harrisburg, PA 17120, mgurgiolo@state.pa.us within 30 days after publication of this notice in the *Pennsylvania Bulletin*.

JOEL SCOTT ARIO,
Insurance Commissioner

[Pa.B. Doc. No. 10-1559. Filed for public inspection August 20, 2010, 9:00 a.m.]

Highmark, Inc. Filing No. 1A-SCMS-10-HI; Requesting Approval to Increase Rates for Special Care Medical Surgical Plans; Rate Filing

By filing No. 1A-SCMS-10-HI, Highmark, Inc., d/b/a Highmark Blue Cross Blue Shield and Highmark Blue Shield, requests approval to revise premium rates for its Special Care Medical/Surgical programs in the Western Pennsylvania region and Northeastern Pennsylvania region.

Highmark is requesting an 8.7% increase in Western Pennsylvania. This will affect 10,000 contracts and generate an additional \$64,000 per month in premium. Highmark is requesting a 14.2% increase in Northeastern Pennsylvania. This will affect 3,200 contracts and generate an additional \$29,000 per month in premium.

The filing requests an average increase of 9.9% or \$6.99 per contract per month. This will affect about 13,200 contract holders in total and produce an additional premium income of about \$1,116,000 per year. The requested effective date of the change is January 1, 2011.

Unless formal administrative action is taken prior to November 4, 2010, the subject filing may be deemed approved by operation of law.

A copy of the filing is available on the Insurance Department's web site at www.insurance.pa.gov. To access the filing, under "How to Find . . ." click on "View Current Rate Filings."

Interested parties are invited to submit written comments, suggestions or objections to James Laverty, Actuary, Insurance Department, Insurance Product Regulation, 1311 Strawberry Square, Harrisburg, PA 17120, jlaverty@state.pa.us within 30 days after publication of this notice in the *Pennsylvania Bulletin*.

JOEL SCOTT ARIO,
Insurance Commissioner

[Pa.B. Doc. No. 10-1560. Filed for public inspection August 20, 2010, 9:00 a.m.]

Keystone Health Plan West; Direct Pay Keystone-Blue for Kids; Rate Filing

By filing No. 1A-CHK-10-KHPW, Keystone Health Plan West, Inc. requests approval to increase the premium rates for its Direct Pay KeystoneBlue Kids Plan. The filing requests an increase of about 13.5% or \$16.49 per member per month. This filing will affect approximately 960 members and will produce additional income of about \$192,000 annually. The requested effective date of the change is January 1, 2011.

Unless formal administrative action is taken prior to November 4, 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 "View Current Rate Filings."

A copy of the filing is also available for public inspection, by appointment, during normal working hours at the Department's Regional office in Harrisburg.

Interested parties are invited to submit written or e-mail comments, suggestions or objections to Rashmi Mathur, Insurance Department, Insurance Product Regulation, 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. 10-1561. Filed for public inspection August 20, 2010, 9:00 a.m.]

Nationwide Affinity Insurance Company of America; Private Passenger Automobile; Rate Revision; Rate Filing

On August 2, 2010, the Insurance Department (Department) received from Nationwide Affinity Insurance Company of America a filing for a rate level change for Private Passenger Automobile insurance.

The company requests an overall 0.0% change, to be effective December 10, 2010, for new business and renewal business.

Unless formal administrative action is taken prior to October 1, 2010, the subject filing may be deemed approved by operation of law.

A copy of the filing is available on the Insurance Department's web site at www.insurance.pa.gov. To access the filing, under "How to Find . . ." click on "View Current Rate Filings."

Interested parties are invited to submit written comments, suggestions or objections to Xiaofeng Lu, Insurance Department, Insurance Product Regulation, 1311 Strawberry Square, Harrisburg, PA 17120, xlu@state.pa.us within 30 days after publication of this notice in the *Pennsylvania Bulletin*.

JOEL SCOTT ARIO,
Insurance Commissioner

[Pa.B. Doc. No. 10-1562. Filed for public inspection August 20, 2010, 9:00 a.m.]

LEGISLATIVE REFERENCE BUREAU

Documents Filed But Not Published

The Legislative Reference Bureau (Bureau) accepted the following documents during the preceding calendar month for filing without publication under 1 Pa. Code § 3.13(b) (relating to contents of *Bulletin*). The Bureau will continue to publish on a monthly basis either a summary table identifying the documents accepted during the preceding calendar month under this subsection or a statement that no documents have been received. For

questions concerning or copies of documents filed, but not published, call (717) 783-1530.

Executive Board

Resolution No. CB-10-005, Dated July 6, 2010. Attached is the Executive Board Resolution which authorizes the Memorandum of Understanding between the Commonwealth of Pennsylvania and AFSCME regarding PA Conservation Corps Regional Crew Leaders effective 1/1/2009 through 6/30/2010.

Governor's Office

Manual M210.3—Index of Issuances, Amended July 7, 2010.

Manual 530.15—Pennsylvania State Police Administrative Manual Health Benefits Program, Amended July 20, 2010.

Management Directive No. 205.34—Commonwealth of Pennsylvania Information Technology Acceptable Use Policy, Amended July 20, 2010.

Management Directive No. 205.40—Commonwealth Branding, Dated July 13, 2010.

Management Directive No. 205.41—Commonwealth of Pennsylvania Continuity of Operations (COOP) Program, Dated July 12, 2010.

Management Directive No. 210.5—The Commonwealth of Pennsylvania State Records Management Program, Amended July 29, 2010.

Management Directive No. 215.16—Contract Compliance Program, Amended July 19, 2010.

Management Directive No. 230.6—Travel Expenses of Job Applicants, Amended July 15, 2010.

Management Directive No. 530.10—Administrative Leave to Compete in International and World Championships, Amended July 20, 2010.

Management Directive No. 580.26—Transfer or Reassignment of Classified Service Employees, Amended June 29, 2010.

Management Directive No. 720.7—Bomb Threats and Suspicious Packages, Amended July 29, 2010.

MARY JANE PHELPS,
Director

Pennsylvania Code and Bulletin

[Pa.B. Doc. No. 10-1563. Filed for public inspection August 20, 2010, 9:00 a.m.]

MILK MARKETING BOARD

Hearing and Presubmission Schedule; Milk Marketing Area No. 3

Under the Milk Marketing Law (31 P. S. §§ 700j-101—700j-1302), that the Milk Marketing Board (Board) will conduct a public hearing for Milk Marketing Area No. 3 on October 6, 2010, at 10 a.m. in Room 202 of the Department of Agriculture Building, 2301 North Cameron Street, Harrisburg, PA.

The purpose of the hearing is to receive testimony and exhibits concerning cost replacement in Milk Marketing Area No. 3. Evidence will be limited to the following: annualized processing, packaging and delivery costs; updated costs for containers, ingredients and Class II

products; updated labor, utility and insurance costs based on comparisons between costs per point for the second quarters of calendar years 2009 and 2010; skim and butterfat contents of products regulated by the Board; adjustment for shrinkage, sales of bulk products and cream processing costs; monthly adjustments to in-store handling costs; and a reasonable rate of return to milk dealers and stores. In accordance with OGO A-937, evidence and testimony will be considered regarding the heating fuel adjuster in Area 3. In accordance with OGO A-939, evidence and testimony will be considered regarding the diesel fuel cost adjuster in Area 3.

The staff of the Board is deemed to be a party to this hearing, and the attorney representing staff is deemed to have entered his appearance. Other persons who wish to present evidence may be included on the Board's list of parties by: (1) having their attorney file with the Board on or before 4 p.m. on September 7, 2010, a notice of appearance substantially in the form prescribed by 1 Pa. Code § 31.25 (relating to form of notice of appearance); or (2) if unrepresented by counsel, filing with the Board on or before 4 p.m. on September 7, 2010, notification of their desire to be included as a party. Parties should indicate in their notices of appearance if alternate means of service, that is, e-mail or fax, are acceptable. Notices of appearance filed electronically should be directed to deberly@state.pa.us.

The parties shall observe the following requirements for advance filing of witness information and exhibits:

1. By 4 p.m. on September 9, 2010, Board Staff shall file with the Board, in person or by mail, one original and eight copies and ensure receipt by all other parties of one copy of:

a. A list of witnesses who will testify for the party, along with a statement of the subjects concerning which each witness will testify. A witness who will be offered as an expert shall be so identified, along with the witness's area or areas of proposed expertise. For expert witnesses there shall also be filed a statement of the substance of the facts and opinions to which the expert is expected to testify and a summary of the grounds for each opinion.

b. Each exhibit to be presented, including testimony to be offered in written form.

2. By 4 p.m. on September 23, 2010, each responding party shall file and serve as set forth in paragraph 1 information concerning rebuttal witnesses and copies of rebuttal exhibits.

3. By 4 p.m. on September 30, 2010, each party shall file and serve as set forth in paragraph 1 information concerning surrebuttal witnesses and copies of surrebuttal exhibits.

Parties that wish to offer in evidence documents on file with the Board, public documents, or records in other proceedings before the Board, or who wish the Board to take official notice of facts, shall comply with, respectively, 1 Pa. Code § 35.164, § 35.165, § 35.167 or § 35.173. Whenever these rules require production of a document as an exhibit, copies shall be provided to each Board member and to all other parties; in addition, at least 20 copies shall be available for distribution to nonparties attending the hearing.

Requests by parties for Board staff to provide data pertinent to the hearing shall be made in writing and received in the Board office by 1 p.m. on September 24, 2010.

The filing address for the Board is Milk Marketing Board, Room 110, Agriculture Building, 2301 North Cameron Street, Harrisburg, PA 17110.

KEITH BIERLY,
Secretary

[Pa.B. Doc. No. 10-1564. Filed for public inspection August 20, 2010, 9:00 a.m.]

Hearing and Presubmission Schedule; Milk Marketing Area No. 6

Under the Milk Marketing Law (31 P. S. §§ 700j-101—700j-1302), that the Milk Marketing Board (Board) will conduct a public hearing for Milk Marketing Area No. 6 on October 6, 2010, at 11 a.m. in Room 202 of the Department of Agriculture Building, 2301 North Cameron Street, Harrisburg, PA.

The purpose of the hearing is to receive testimony and exhibits concerning cost replacement in Milk Marketing Area No. 6. Evidence will be limited to the following: annualized processing, packaging and delivery costs; updated costs for containers, ingredients, and Class II products; updated labor, utility and insurance costs based on comparisons between costs per point for the second quarters of calendar years 2009 and 2010; skim and butterfat contents of products regulated by the Board; adjustment for shrinkage, sales of bulk products and cream processing costs; monthly adjustments to in-store handling costs; and a reasonable rate of return to milk dealers and stores. In accordance with OGO A-937, evidence and testimony will be considered regarding the heating fuel adjuster in Area 6. In accordance with OGO A-939, evidence and testimony will be considered regarding the diesel fuel cost adjuster in Area 6.

The staff of the Board is deemed to be a party to this hearing, and the attorney representing staff is deemed to have entered his appearance. Other persons who wish to present evidence may be included on the Board's list of parties by: (1) having their attorney file with the Board on or before 4 p.m. on September 7, 2010, a notice of appearance substantially in the form prescribed by 1 Pa. Code § 31.25 (relating to form of notice of appearance); or (2) if unrepresented by counsel, filing with the Board on or before 4 p.m. on September 7, 2010, notification of their desire to be included as a party. Parties should indicate in their notices of appearance if alternate means of service, that is, e-mail or fax, are acceptable. Notices of appearance filed electronically should be directed to deberly@state.pa.us.

The parties shall observe the following requirements for advance filing of witness information and exhibits:

1. By 4 p.m. on September 9, 2010, Board Staff shall file with the Board, in person or by mail, one original and eight copies and ensure receipt by all other parties of one copy of:

a. A list of witnesses who will testify for the party, along with a statement of the subjects concerning which each witness will testify. A witness who will be offered as an expert shall be so identified, along with the witness's area or areas of proposed expertise. For expert witnesses there shall also be filed a statement of the substance of the facts and opinions to which the expert is expected to testify and a summary of the grounds for each opinion.

b. Each exhibit to be presented, including testimony to be offered in written form.

2. By 4 p.m. on September 23, 2010, each responding party shall file and serve as set forth in paragraph 1 information concerning rebuttal witnesses and copies of rebuttal exhibits.

3. By 4 p.m. on September 30, 2010, each party shall file and serve as set forth in paragraph 1 information concerning surrebuttal witnesses and copies of surrebuttal exhibits.

Parties that wish to offer in evidence documents on file with the Board, public documents, or records in other proceedings before the Board, or who wish the Board to take official notice of facts, shall comply with, respectively, 1 Pa. Code § 35.164, § 35.165, § 35.167 or § 35.173. Whenever these rules require production of a document as an exhibit, copies shall be provided to each Board member and to all other parties; in addition, at least 20 copies shall be available for distribution to nonparties attending the hearing.

Requests by parties for Board staff to provide data pertinent to the hearing shall be made in writing and received in the Board office by 1 p.m. on September 24, 2010.

The filing address for the Board is Milk Marketing Board, Room 110, Agriculture Building, 2301 North Cameron Street, Harrisburg, PA 17110.

KEITH BIERLY,
Secretary

[Pa.B. Doc. No. 10-1565. Filed for public inspection August 20, 2010, 9:00 a.m.]

PENNSYLVANIA PUBLIC UTILITY COMMISSION

Service of Notice of Motor Carrier Applications

The following temporary authority and/or permanent authority applications for the right to render service as a common carrier or contract carrier in this Commonwealth have been filed with the Pennsylvania Public Utility Commission. Formal protests and petitions to intervene must be filed in accordance with 52 Pa. Code (relating to public utilities). A protest shall indicate whether it applies to the temporary authority application, the permanent authority application, or both. Filings must be made with the Secretary, Pennsylvania Public Utility Commission, P. O. Box 3265, Harrisburg, PA 17105-3265, with a copy served on the applicant by September 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.

Application of the following for approval to begin operating as common carriers for transportation of persons as described under the application.

A-2010-2192196. Exact Care, LLC (8127 Forest Avenue, 2nd Floor, Philadelphia, PA 19150), a limited liability company of the Commonwealth—persons, in paratransit service, from points in the Counties of Bucks, Chester, Delaware, Montgomery and Philadelphia, to points in Pennsylvania, and return.

Application of the following for the approval of the right and privilege to *discontinue/abandon* operating as *contract carriers* by motor vehicle and for cancellation of the certificate of public convenience as described under the application.

A-2010-2192022. Project Street Transportation, LLC (232 East Louther Street, Carlisle, Cumberland County, PA 17013)—a limited liability company of the Commonwealth—for the discontinuance of service and cancellation of its permits: (1) as a contract carrier, by motor vehicle, persons for Cumberland Perry Mental Health/Mental Retardation, from points in the Counties of Cumberland and Perry, to points in Pennsylvania, and return; A-2009-2058514; and (2) as a contract carrier, by motor vehicle, persons for Impact Systems, Inc., and the Cumberland Perry Association for Retarded Citizens, between points in the Counties of Cumberland and Perry; A-2009-2123129. *Attorney:* Andrew Shaw, 200 South Spring Garden Street, Carlisle, PA 17013.

ROSEMARY CHIAVETTA,
Secretary

[Pa.B. Doc. No. 10-1566. Filed for public inspection August 20, 2010, 9:00 a.m.]

PUBLIC SCHOOL EMPLOYEES' RETIREMENT BOARD

Hearing Scheduled

A hearing has been scheduled, as authorized by 24 Pa.C.S. Part IV (relating to Public School Employees' Retirement Code), in connection with the Public School Employees' Retirement System's (System) denial of claimants' requests concerning the indicated accounts.

The hearing will be held before a hearing examiner at the Public School Employees' Retirement System, 5 North Fifth Street, Harrisburg, PA 17101:

November 10, 2010 Barbara A. Zaborney 1 p.m.
(Multiple Service)

Persons with a disability, who wish to attend the previously-listed hearing, and require an auxiliary aid, service or other accommodation to participate in the proceedings, should contact Barbara Flurie, Assistant to the Executive Director at (717) 720-4921 to discuss how the System may best accommodate their needs.

Parties may appear with or without counsel and offer relevant testimony or evidence to support their respective positions. The hearing will be held in accordance with the requirements of 2 Pa.C.S. §§ 501—508 and 701—704 (relating to the Administrative Agency Law). Under 22 Pa. Code § 201.1 (relating to applicability of general rules), procedural matters will be in conformance with 1 Pa. Code Part II (relating to General Rules of Administrative Practice and Procedure), unless specific exemption is granted.

JEFFREY B. CLAY,
Executive Director

[Pa.B. Doc. No. 10-1567. Filed for public inspection August 20, 2010, 9:00 a.m.]

STATE BOARD OF BARBER EXAMINERS

**Bureau of Professional and Occupational Affairs v.
Richard L. Naylor, t/d/b/a Naylor's Barber Shop;
Doc. No. 1050-42-10**

On May 11, 2010, Richard L. Naylor, t/d/b/a Naylor's Barber Shop, license no. BO107807, of Pittsburgh, Allegheny County, had his license suspended for failure to pay a civil penalty assessed by a previous State Board of Barber Examiners (Board) order.

Individuals may obtain a copy of the adjudication by writing to David Markowitz, Board Counsel, State Board of Barber Examiners, P. O. Box 2649, Harrisburg, PA 17105-2649.

This adjudication and order represents the Board's 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.

L. ANTHONY SPOSSEY,
Chairperson

[Pa.B. Doc. No. 10-1568. Filed for public inspection August 20, 2010, 9:00 a.m.]

STATE BOARD OF MEDICINE

**Bureau of Professional and Occupational Affairs v.
Hany M. Iskander, MD; Doc. No. 0291-49-10**

On July 21, 2010, Hany M. Iskander, MD, license no. MD068896L, of Powell, OH, had his Pennsylvania license revoked based on disciplinary action taken against his license by the proper licensing authority of another state.

Individuals may obtain a copy of the final order by writing to Steven R. Dade, Board Counsel, State Board of Medicine, P. O. Box 2649, Harrisburg, PA 17105-2649.

This final order represents the State Board of Medicine'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.

CAROL E. ROSE, MD,
Chairperson

[Pa.B. Doc. No. 10-1569. Filed for public inspection August 20, 2010, 9:00 a.m.]

STATE EMPLOYEES' RETIREMENT BOARD

Hearings Scheduled

The following hearings have been scheduled, as authorized by 71 Pa.C.S. Part XXV (relating to the State Employees' Retirement Code), in connection with the State Employees' Retirement System's denial of Claimants' requests concerning the indicated accounts.

The hearings will be held before a hearing examiner at the State Employees' Retirement System, 30 North Third Street, Fifth Floor, Harrisburg, PA 17101:

September 22, 2010	Sherri F. Dombroskie (Dec'd) Death Benefit	1 p.m.
October 5, 2010	Marilyn Ecoff Election of Multiple Service Credit	1 p.m.
October 21, 2010	James H. Martsolf Creditable Service	1 p.m.

Parties in each respective case may appear with or without counsel and offer relevant testimony or evidence to support their respective positions. The hearings will be held in accordance with the requirements of 2 Pa.C.S. §§ 501—508 and 701—704 (relating to the Administrative Agency Law). Under 4 Pa. Code § 250.1 (relating to applicability of general rules), procedural matters will be in conformance with 1 Pa. Code Part II (relating to General Rules of Administrative Practice and Procedure), unless specific exemption is granted.

LEONARD KNEPP,
Secretary

[Pa.B. Doc. No. 10-1570. Filed for public inspection August 20, 2010, 9:00 a.m.]

SUSQUEHANNA RIVER BASIN COMMISSION

Projects Approved for Consumptive Uses of Water

The Susquehanna River Basin Commission (Commission) has approved the following list of projects, during June 1, 2010, through June 30, 2010.

For further information contact Richard A. Cairo, General Counsel, (717) 238-0423, Ext. 306, fax (717) 238-2436, rcairo@srbc.net; or Stephanie L. Richardson, Secretary to the Commission, (717) 238-0423, Ext. 304, fax (717) 238-2436, srichardson@srbc.net; or mail inquiries to Susquehanna River Basin Commission, 1721 North Front Street, Harrisburg, PA 17102-2391.

Supplementary Information

This notice lists the projects, described as follows, receiving approval for the consumptive use of water under the Commission's approval by rule process set forth in and 18 CFR 806.22(f) (relating to standards for consumptive uses of water) for the time period specified previously:

Approvals By Rule Issued Under 18 CFR 806.22(f):

1. Chesapeake Appalachia, LLC; Pad ID: Duane, ABR-20100601, Leroy Township, Bradford County, PA; Consumptive Use of up to 7.500 mgd; Approval Date: June 2, 2010.

2. Chesapeake Appalachia, LLC; Pad ID: Finnerty, ABR-20100602, West Burlington Township, Bradford County, PA; Consumptive Use of up to 7.500 mgd; Approval Date: June 2, 2010.

3. Cabot Oil & Gas Corporation, Pad ID: OakleyJ P1, ABR-20100603, Springville Township, Susquehanna County, PA; Consumptive Use of up to 3.575 mgd; Approval Date: June 2, 2010.

4. XTO Energy Incorporated, Pad ID: Brown 8519H, ABR-20100604, Moreland Township, Lycoming County, PA; Consumptive Use of up to 4.000 mgd; Approval Date: June 2, 2010.

5. Cabot Oil & Gas Corporation, Pad ID: Post P1, ABR-20100605, Brooklyn Township, Susquehanna County, PA; Consumptive Use of up to 3.575 mgd; Approval Date: June 2, 2010.

6. Chesapeake Appalachia, LLC; Pad ID: Allen, ABR-20100606, Wysox Township, Bradford County, PA; Consumptive Use of up to 7.500 mgd; Approval Date: June 2, 2010.

7. Seneca Resources Corporation, Pad ID: Wivell Pad I, ABR-20100607, Covington Township, Tioga County, PA; Consumptive Use of up to 4.000 mgd; Approval Date: June 2, 2010.

8. Cabot Oil & Gas Corporation, Pad ID: Lauffer P1, ABR-20100608, Springville Township, Susquehanna County, PA; Consumptive Use of up to 3.575 mgd; Approval Date: June 2, 2010.

9. Cabot Oil & Gas Corporation, Pad ID: StockholmK P3, ABR-20100609, Rush Township, Susquehanna County, PA; Consumptive Use of up to 3.575 mgd; Approval Date: June 2, 2010.

10. Chesapeake Appalachia, LLC; Pad ID: Rylee, ABR-20100610, Auburn Township, Susquehanna County, PA; Consumptive Use of up to 7.500 mgd; Approval Date: June 3, 2010.

11. EXCO Resources (PA), Inc.; Pad ID: Taylor (Pad 33), ABR-20100611, Burnside Township, Centre County, PA; Consumptive Use of up to 8.000 mgd; Approval Date: June 3, 2010.

12. Cabot Oil & Gas Corporation, Pad ID: HullR P2, ABR-20100612, Springville Township, Susquehanna County, PA; Consumptive Use of up to 3.575 mgd; Approval Date: June 4, 2010.

13. Seneca Resources Corporation, Pad ID: Department of Conservation and Natural Resources Tract 007 1V, ABR-20100613, Shippen Township, Tioga County, PA; Consumptive Use of up to 4.000 mgd; Approval Date: June 4, 2010.

14. East Resources, Inc.; Pad ID: Barbine 292, ABR-20100614, Charleston Township, Tioga County, PA; Consumptive Use of up to 4.000 mgd; Approval Date: June 4, 2010.

15. East Resources, Inc.; Pad ID: Mitchell 456, ABR-20100615, Jackson Township, Tioga County, PA; Consumptive Use of up to 4.000 mgd; Approval Date: June 4, 2010.

16. Chief Oil & Gas, LLC; Pad ID: Fulmer Drilling Pad No. 1, ABR-20100616, Penn Township, Lycoming County, PA; Consumptive Use of up to 2.000 mgd; Approval Date: June 6, 2010.

17. Chesapeake Appalachia, LLC; Pad ID: Stalford, ABR-20100617, Wyalusing Township, Bradford County, PA; Consumptive Use of up to 7.500 mgd; Approval Date: June 7, 2010.

18. East Resources, Inc.; Pad ID: Erickson 423, ABR-20100618, Delmar Township, Tioga County, PA; Consumptive Use of up to 4.000 mgd; Approval Date: June 7, 2010.

19. Range Resources—Appalachia, LLC; Pad ID: Mohawk Lodge Unit, ABR-20100619, Gallagher Township, Clinton County, PA; Consumptive Use of up to 5.000 mgd; Approval Date: June 7, 2010.

20. Seneca Resources Corporation, Pad ID: Valldes Pad C, ABR-20100620, Covington Township, Tioga County, PA; Consumptive Use of up to 4.000 mgd; Approval Date: June 7, 2010.

21. Seneca Resources Corporation, Pad ID: Warren Pad B, ABR-20100621, Richmond Township, Tioga County, PA; Consumptive Use of up to 4.000 mgd; Approval Date: June 7, 2010.

22. East Resources, Inc.; Pad ID: Hege 426, ABR-20100622, Delmar Township, Tioga County, PA; Consumptive Use of up to 4.000 mgd; Approval Date: June 7, 2010.

23. East Resources, Inc.; Pad ID: Allen 620, ABR-20100623, Charleston Township, Tioga County, PA; Consumptive Use of up to 4.000 mgd; Approval Date: June 7, 2010.

24. Norse Energy Corporation USA, Pad ID: Krawiec No. 2, ABR-20100624, Smyrna Township, Chenango County, NY; Consumptive Use of up to 0.100 mgd; Approval Date: June 7, 2010.

25. Norse Energy Corporation USA, Pad ID: Mulligan No. 1, ABR-20100625, Lebanon Township, Madison County, NY; Consumptive Use of up to 0.100 mgd; Approval Date: June 7, 2010.

26. East Resources, Inc.; Pad ID: Hazelton 424, ABR-20100626, Shippen Township, Tioga County, PA; Consumptive Use of up to 4.000 mgd; Approval Date: June 8, 2010.

27. Norse Energy Corporation USA, Pad ID: Byler, R. No. 1, ABR-20100627, Lebanon Township, Madison County, NY; Consumptive Use of up to 0.150 mgd; Approval Date: June 9, 2010.

28. Chief Oil & Gas, LLC; Pad ID: Shannon Land Mining Drilling Pad No. 1, ABR-20100628, Lawrence Township, Clearfield County, PA; Consumptive Use of up to 2.000 mgd; Approval Date: June 9, 2010.

29. Talisman Energy USA, Inc.; Pad ID: Roy 03 046, ABR-20100629, Wells Township, Bradford County, PA; Consumptive Use of up to 6.000 mgd; Approval Date: June 10, 2010.

30. Talisman Energy USA, Inc.; Pad ID: Roy 03 039, ABR-20100630, Wells Township, Bradford County, PA; Consumptive Use of up to 6.000 mgd; Approval Date: June 10, 2010.

31. Anadarko E&P Company, LP; Pad ID: COP Tract 728 Pad A, ABR-20100631, Watson Township, Lycoming

County, PA; Consumptive Use of up to 3.000 mgd; Approval Date: June 10, 2010, including a partial waiver of 18 CFR 806.15.

32. EXCO Resources (PA), Inc.; Pad ID: Livergood (Pad 28), ABR-20100632, Burnside Township, Centre County, PA; Consumptive Use of up to 8.000 mgd; Approval Date: June 11, 2010.

33. Ultra Resources, Inc.; Pad ID: Pierson 810, ABR-20100633, Gaines Township, Tioga County, PA; Consumptive Use of up to 4.990 mgd; Approval Date: June 11, 2010.

34. Chesapeake Appalachia, LLC; Pad ID: Shaw, ABR-20100634, Windham Township, Wyoming County, PA; Consumptive Use of up to 7.500 mgd; Approval Date: June 11, 2010.

35. Anadarko E&P Company, LP; Pad ID: David C. Duncan Pad A, ABR-20100635, Cascade Township, Lycoming County, PA; Consumptive Use of up to 3.000 mgd; Approval Date: June 11, 2010.

36. Anadarko E&P Company, LP; Pad ID: COP Tract 289 C, ABR-20100636, McHenry Township, Lycoming County, PA; Consumptive Use of up to 3.000 mgd; Approval Date: June 11, 2010, including a partial waiver of 18 CFR 806.15.

37. Chesapeake Appalachia, LLC; Pad ID: Cannella, ABR-20100637, Auburn Township, Susquehanna County, PA; Consumptive Use of up to 7.500 mgd; Approval Date: June 11, 2010.

38. Chesapeake Appalachia, LLC; Pad ID: Towner, ABR-20100638, Rome Township, Bradford County, PA; Consumptive Use of up to 7.500 mgd; Approval Date: June 14, 2010.

39. Chesapeake Appalachia, LLC; Pad ID: Bonin, ABR-20100639, Orwell Township, Bradford County, PA; Consumptive Use of up to 7.500 mgd; Approval Date: June 14, 2010.

40. Chesapeake Appalachia, LLC; Pad ID: BDF, ABR-20100640, Smithfield Township, Bradford County, PA; Consumptive Use of up to 7.500 mgd; Approval Date: June 14, 2010.

41. XTO Energy Incorporated, Pad ID: Moser 8521H, ABR-20100641, Franklin Township, Lycoming County, PA; Consumptive Use of up to 4.000 mgd; Approval Date: June 14, 2010.

42. Chesapeake Appalachia, LLC; Pad ID: Them, ABR-20100642, Wysox Township, Bradford County, PA; Consumptive Use of up to 7.500 mgd; Approval Date: June 14, 2010.

43. Chesapeake Appalachia, LLC; Pad ID: Serengeti, ABR-20100643, Troy Township, Bradford County, PA; Consumptive Use of up to 7.500 mgd; Approval Date: June 14, 2010.

44. EOG Resources, Inc.; Pad ID: PHC Pad U, ABR-20100644, Lawrence Township, Clearfield County, PA; Consumptive Use of up to 4.999 mgd; Approval Date: June 14, 2010.

45. EOG Resources, Inc.; Pad ID: COP Pad B, ABR-20100645, Lawrence Township, Clearfield County, PA; Consumptive Use of up to 4.999 mgd; Approval Date: June 14, 2010.

46. Range Resources—Appalachia, LLC; Pad ID: Shohocken Hunt Club Unit No. 1H—No. 6H,

ABR-20100646, Cummings Township, Lycoming County, PA; Consumptive Use of up to 5.000 mgd; Approval Date: June 14, 2010.

47. Talisman Energy USA, Inc.; Pad ID: Harnish 01 032, ABR-20100647, Canton Township, Bradford County, PA; Consumptive Use of up to 6.000 mgd; Approval Date: June 14, 2010.

48. Range Resources—Appalachia, LLC; Pad ID: Ogontz Fishing Club Unit No. 12H—No. 17H, ABR-20100648, Cummings Township, Lycoming County, PA; Consumptive Use of up to 5.000 mgd; Approval Date: June 14, 2010.

49. Seneca Resources Corporation, Pad ID: Murray Pad A, ABR-20100317.1, Richmond Township, Tioga County, PA; Consumptive Use of up to 4.000 mgd; Approval Date: June 14, 2010.

50. Talisman Energy USA, Inc.; Pad ID: Wray 03 058, ABR-20100649, Wells Township, Bradford County, PA; Consumptive Use of up to 6.000 mgd; Approval Date: June 15, 2010.

51. Talisman Energy USA, Inc.; Pad ID: Roy 03 040, ABR-20100650, Wells Township, Bradford County, PA; Consumptive Use of up to 6.000 mgd; Approval Date: June 15, 2010.

52. East Resources, Inc.; Pad ID: Gilman 812, ABR-20100651, Chatham Township, Tioga County, PA; Consumptive Use of up to 1.000 mgd; Approval Date: June 16, 2010.

53. East Resources, Inc.; Pad ID: Staples 804, ABR-20100652, Clymer Township, Tioga County, PA; Consumptive Use of up to 1.000 mgd; Approval Date: June 16, 2010.

54. Southwestern Energy Production Company, Pad ID: Robinson, ABR-20100653, Stevens Township, Bradford County, PA; Consumptive Use of up to 4.999 mgd; Approval Date: June 16, 2010.

55. Talisman Energy USA, Inc.; Pad ID: Schucker 03 006, ABR-20100654, Columbia Township, Bradford County, PA; Consumptive Use of up to 6.000 mgd; Approval Date: June 16, 2010.

56. EOG Resources, Inc.; Pad ID: MATTOCKS 1V, ABR-20100655, Springfield Township, Bradford County, PA; Consumptive Use of up to 4.999 mgd; Approval Date: June 16, 2010.

57. Seneca Resources Corporation, Pad ID: Department of Conservation and Natural Resources Tract 001 1V, ABR-20100656, Sweden Township, Potter County, PA; Consumptive Use of up to 4.000 mgd; Approval Date: June 16, 2010.

58. EOG Resources, Inc.; Pad ID: HAVEN 1H, ABR-20100657, Springfield Township, Bradford County, PA; Consumptive Use of up to 1.999 mgd; Approval Date: June 16, 2010.

59. EOG Resources, Inc.; Pad ID: HAVEN 3H, ABR-20100658, Springfield Township, Bradford County, PA; Consumptive Use of up to 1.999 mgd; Approval Date: June 16, 2010.

60. East Resources, Inc.; Pad ID: Shelman 291, ABR-20100659, Charleston Township, Tioga County, PA; Consumptive Use of up to 4.000 mgd; Approval Date: June 17, 2010.

61. Chesapeake Appalachia, LLC; Pad ID: Oshea, ABR-20100660, Windham Township, Bradford County, PA; Consumptive Use of up to 7.500 mgd; Approval Date: June 17, 2010.

62. Chesapeake Appalachia, LLC; Pad ID: LRTC, ABR-20100661, Morris Township, Tioga County, PA; Consumptive Use of up to 7.500 mgd; Approval Date: June 17, 2010.

63. Chesapeake Appalachia, LLC; Pad ID: Linski, ABR-20100662, Tuscarora Township, Bradford County, PA; Consumptive Use of up to 7.500 mgd; Approval Date: June 17, 2010.

64. Cabot Oil & Gas Corporation, Pad ID: StockholmK P1, ABR-20100663, Dimock Township, Susquehanna County, PA; Consumptive Use of up to 3.575 mgd; Approval Date: June 18, 2010.

65. XTO Energy Incorporated, Pad ID: Marquardt 8534H, ABR-20100664, Penn Township, Lycoming County, PA; Consumptive Use of up to 4.000 mgd; Approval Date: June 18, 2010.

66. Talisman Energy (USA), Inc.; Pad ID: Boor 03 010, ABR-20100665, Columbia Township, Bradford County, PA; Consumptive Use of up to 6.000 mgd; Approval Date: June 18, 2010.

67. Norse Energy Corporation, Pad ID: Aarismaa, J. No. 1, ABR-20100666, Preston Township, Chenango County, NY; Consumptive Use of up to 0.150 mgd; Approval Date: June 21, 2010.

68. EnCana Oil & Gas (USA), Inc.; Pad ID: Salansky 1H, ABR-20100667, Lake Township, Luzerne County, PA; Consumptive Use of up to 1.200 mgd; Approval Date: June 21, 2010.

69. EXCO Resources (PA), Inc.; Pad ID: Confer (Pad 31), ABR-20100668, Burnside Township, Centre County, PA; Consumptive Use of up to 3.000 mgd; Approval Date: June 21, 2010.

70. EXCO Resources (PA), Inc.; Pad ID: Confer (Pad 32), ABR-20100669, Burnside Township, Centre County, PA; Consumptive Use of up to 3.000 mgd; Approval Date: June 21, 2010.

71. East Resources, Inc.; Pad ID: Doan 893, ABR-20100670, Deerfield Township, Tioga County, PA; Consumptive Use of up to 4.000 mgd; Approval Date: June 21, 2010.

72. Chesapeake Appalachia, LLC; Pad ID: Alderfer NEW, ABR-20100671, Litchfield Township, Bradford County, PA; Consumptive Use of up to 7.500 mgd; Approval Date: June 21, 2010.

73. Chesapeake Appalachia, LLC; Pad ID: Steinbright, ABR-20100672, Orwell Township, Bradford County, PA; Consumptive Use of up to 7.500 mgd; Approval Date: June 22, 2010.

74. East Resources, Inc.; Pad ID: Broadbent 466, ABR-20100673, Delmar Township, Tioga County, PA; Consumptive Use of up to 4.000 mgd; Approval Date: June 22, 2010.

75. Chief Oil & Gas, LLC; Pad ID: Castrogiovanni Drilling Pad No. 1, ABR-20100674, Elkland Township, Sullivan County, PA; Consumptive Use of up to 2.000 mgd; Approval Date: June 22, 2010.

76. Chief Oil & Gas, LLC; Pad ID: Baumunk Drilling Pad No. 1, ABR-20100675, Elkland Township, Sullivan County, PA; Consumptive Use of up to 2.000 mgd; Approval Date: June 22, 2010.

77. Chief Oil & Gas, LLC; Pad ID: McCarty Drilling Pad No. 1, ABR-20100676, Elkland Township, Sullivan County, PA; Consumptive Use of up to 2.000 mgd; Approval Date: June 22, 2010.

78. Triana Energy, LLC; Pad ID: Triana-Young Pad A, ABR-20100677, Hector Township, Potter County, PA; Consumptive Use of up to 6.000 mgd; Approval Date: June 22, 2010.

79. Carrizo Marcellus, LLC; Pad ID: Selma Stang 2H, ABR-20100678, Washington Township, Wyoming County, PA; Consumptive Use of up to 1.400 mgd; Approval Date: June 22, 2010.

80. Carrizo Marcellus, LLC; Pad ID: Sickler 5H, ABR-20100679, Washington Township, Wyoming County, PA; Consumptive Use of up to 1.400 mgd; Approval Date: June 22, 2010.

81. Chesapeake Appalachia, LLC; Pad ID: Cranrun, ABR-20100680, Leroy Township, Bradford County, PA; Consumptive Use of up to 7.500 mgd; Approval Date: June 22, 2010.

82. Chief Oil & Gas, LLC; Pad ID: Poor Shot East Drilling Pad No. 2, ABR-20100681, Anthony Township, Lycoming County, PA; Consumptive Use of up to 2.000 mgd; Approval Date: June 22, 2010.

83. East Resources, Inc.; Pad ID: Zeafra 747, ABR-20100682, Jackson Township, Lycoming County, PA; Consumptive Use of up to 4.000 mgd; Approval Date: June 22, 2010.

84. East Resources, Inc.; Pad ID: Camp Never Too Late 521, ABR-20100683, Rutland Township, Tioga County, PA; Consumptive Use of up to 4.000 mgd; Approval Date: June 22, 2010.

85. Anadarko E&P Company, LP; Pad ID: Larry's Creek F&G, ABR-20100684, Cummings Township, Lycoming County, PA; Consumptive Use of up to 3.000 mgd; Approval Date: June 22, 2010.

86. East Resources, Inc.; Pad ID: Cruttenden 846, ABR-20100685, Middlebury Township, Tioga County, PA; Consumptive use of up to 4.000 mgd; Approval Date: June 23, 2010.

87. Chesapeake Appalachia, LLC; Pad ID: Black Creek, ABR-20100686, Forks Township, Sullivan County, PA; Consumptive Use of up to 7.500 mgd; Approval Date: June 23, 2010.

88. Chesapeake Appalachia, LLC; Pad ID: Beebe, ABR-20100687, Asylum Township, Bradford County, PA; Consumptive use of up to 7.500 mgd; Approval Date: June 23, 2010.

89. East Resources, Inc.; Pad ID: Hauswirth 516, ABR-20100688, Richmond Township, Tioga County, PA; Consumptive use of up to 4.000 mgd; Approval Date: June 23, 2010.

90. Chesapeake Appalachia, LLC; Pad ID: Akita New, ABR-20100689, Smithfield Township, Bradford County, PA; Consumptive use of up to 7.500 mgd; Approval Date: June 23, 2010.

91. EOG Resources, Inc.; Pad ID: PHC Pad R, ABR-20100690, Lawrence Township, Clearfield County, PA; Consumptive use of up to 4.999 mgd; Approval Date: June 23, 2010.

92. Ultra Resources, Inc.; Pad ID: Martin 806, ABR-20100691, Gaines Township, Tioga County, PA; Consumptive use of up to 4.990 mgd; Approval Date: June 23, 2010.

93. EOG Resources, Inc.; Pad ID: Kingsley 2H, ABR-20100692, Springfield Township, Bradford County, PA; Consumptive use of up to 4.999 mgd; Approval Date: June 23, 2010.

94. Talisman Energy USA, Inc.; Pad ID: Morgan 01 073, ABR-20100693, Armenia Township, Bradford County, PA; Consumptive use of up to 6.000 mgd; Approval Date: June 24, 2010.

95. Anadarko E&P Company LP, Pad ID: COP Tr 344 Pad A, ABR-20100694, Noyes Township, Clinton County, PA; Consumptive use of up to 3.000 mgd; Approval Date: June 24, 2010, including a partial waiver of 18 CFR 806.15.

96. Anadarko E&P Company LP, Pad ID: COP Tr 342 A, ABR-20100695, Beech Creek Township, Clinton County, PA; Consumptive Use of up to 3.000 mgd; Approval Date: June 24, 2010, including a partial waiver of 18 CFR 806.15.

97. Talisman Energy USA, Inc., Pad ID: Lyon 01 078, ABR-20100696, Troy Township, Bradford County, PA; Consumptive Use of up to 6.000 mgd; Approval Date: June 24, 2010.

98. Chief Oil & Gas, LLC; Pad ID: Signore Drilling Pad No. 1, ABR-20100697, Elkland Township, Sullivan County, PA; Consumptive Use of up to 2.000 mgd; Approval Date: June 24, 2010.

99. EOG Resources, Inc.; Pad ID: Kingsley 3H, ABR-20100698, Springfield Township, Bradford County, PA; Consumptive Use of up to 4.999 mgd; Approval Date: June 24, 2010.

100. Chief Oil & Gas, LLC; Pad ID: Frey Drilling Pad No. 1, ABR-20100699, Fox Township, Sullivan County, PA; Consumptive Use of up to 2.000 mgd; Approval Date: June 25, 2010.

101. Talisman Energy USA, Inc.; Pad ID: McClure 03 053, ABR-201006100, Columbia Township, Bradford County, PA; Consumptive Use of up to 6.000 mgd; Approval Date: June 25, 2010.

102. Talisman Energy USA, Inc.; Pad ID: White 03 025, ABR-201006101, Columbia Township, Bradford County, PA; Consumptive Use of up to 6.000 mgd; Approval Date: June 25, 2010.

103. Chesapeake Appalachia, LLC; Pad ID: Hilltop New, ABR-201006102, Jessup Township, Susquehanna County, PA; Consumptive Use of up to 7.500 mgd; Approval Date: June 28, 2010.

104. Chesapeake Appalachia, LLC; Pad ID: Henderson, ABR-201006103, Fox Township, Sullivan County, PA; Consumptive Use of up to 7.500 mgd; Approval Date: June 28, 2010.

105. Chesapeake Appalachia, LLC; Pad ID: Lillie NEW, ABR-201006104, Herrick Township, Bradford County, PA; Consumptive Use of up to 7.500 mgd; Approval Date: June 28, 2010.

106. EQT Production Company, Pad ID: Phoenix F, ABR-201006105, Duncan Township, Tioga County, PA; Consumptive Use of up to 3.000 mgd; Approval Date: June 28, 2010.

107. East Resources, Inc.; Pad ID: Palmer 809, ABR-201006106, Chatham Township, Tioga County, PA; Consumptive Use of up to 1.000 mgd; Approval Date: June 28, 2010.

108. Chesapeake Appalachia, LLC; Pad ID: Kipar NEW, ABR-201006107, Auburn Township, Susquehanna County, PA; Consumptive Use of up to 7.500 mgd; Approval Date: June 28, 2010.

109. Chesapeake Appalachia, LLC; Pad ID: Kriebel NEW, ABR-201006108, Elkland Township, Sullivan County, PA; Consumptive Use of up to 7.500 mgd; Approval Date: June 28, 2010.

110. Chief Oil & Gas, LLC; Pad ID: Longmore Drilling Pad No. 1, ABR-201006109, Monroe Township, Wyoming County, PA; Consumptive Use of up to 2.000 mgd; Approval Date: June 28, 2010.

111. Chesapeake Appalachia, LLC; Pad ID: Curtin, ABR-201006110, Windham Township, Wyoming County, PA; Consumptive Use of up to 7.500 mgd; Approval Date: June 29, 2010.

112. East Resources, Inc.; Pad ID: Anthony 564, ABR-201006111, Delmar Township, Tioga County, PA; Consumptive Use of up to 4.000 mgd; Approval Date: June 29, 2010.

113. East Resources, Inc.; Pad ID: Costanzo 818, ABR-201006112, Chatham Township, Tioga County, PA; Consumptive Use of up to 1.000 mgd; Approval Date: June 29, 2010.

114. East Resources, Inc.; Pad ID: Yaggie 704, ABR-201006113, Union Township, Tioga County, PA; Consumptive Use of up to 4.000 mgd; Approval Date: June 29, 2010.

115. EQT Production Company, Pad ID: Phoenix C, ABR-201006114, Duncan Township, Tioga County, PA; Consumptive Use of up to 3.000 mgd; Approval Date: June 29, 2010.

Authority: Pub. L. No. 91-575, 84 Stat. 1509 et seq., 18 CFR Parts 806—808.

Dated: August 9, 2010.

PAUL O. SWARTZ,
Executive Director

[Pa.B. Doc. No. 10-1571. Filed for public inspection August 20, 2010, 9:00 a.m.]

RULES AND REGULATIONS

Title 25—ENVIRONMENTAL PROTECTION

ENVIRONMENTAL QUALITY BOARD

[25 PA. CODE CH. 95]

Wastewater Treatment Requirements

The Environmental Quality Board (Board) amends Chapter 95 (relating to wastewater treatment requirements) to read as set forth in Annex A. The final form rulemaking includes the elimination of a redundant provision and the establishment of new treatment requirements for new and expanding mass loadings of Total Dissolved Solids (TDS).

This final form rulemaking ensures the continued protection of this Commonwealth's water resources from new and expanded sources of TDS. Most importantly, the final-form rulemaking guarantees that waters of this Commonwealth will not exceed a threshold of 500 mg/L. In doing so, the final-form rulemaking assures the continued use and protection of drinking water intakes on streams throughout this Commonwealth, provides the required protection of our aquatic life resources and maintains continued economic viability of the current water users.

This final form rulemaking differs from the proposed rulemaking in several important respects. The differences are direct reflections of concerns raised by industries that would be impacted by this final-form rulemaking. The final-form rulemaking is responsive to those concerns, resulting in improved regulations.

The changes to the final form rulemaking are protective of water resources in this Commonwealth and are appropriately applied by industrial sector, based on the potential impact of the specific sectors to receiving streams in this Commonwealth. While many existing industries throughout this Commonwealth are of concern, the lower TDS concentrations and total loadings of most of those industries does not necessitate treatment below a 2,000 mg/L threshold. A higher standard of 500 mg/L is being applied specifically to the natural gas sector, based on several factors.

The most significant rationale for this industry standard is the fact that wastewaters resulting from the extraction of natural gas are of much higher concentration and represent higher overall loadings when compared to those from other industries. In other words, the effluent standard does not dictate the treatment technology. Instead, selection of the treatment technology is driven by the extraordinarily high raw wastewater TDS concentration. Second, treatment technologies are currently available and are being employed in this Commonwealth and other states for the treatment of these wastewaters, in contrast to other industries. Regulatory certainty provided with this final-form rulemaking will drive investment in and development of new technologies. Third, few other states allow the discharge of these treated wastewaters to their surface waters at all. Those that do allow discharge require the wastewater to be treated to standards very similar to the standards in this final-form rulemaking, dispelling any argument that the Commonwealth is creating an economic disadvantage for this industry. Fourth, this industry is new to this Com-

monwealth and without TDS controls it could impact existing industries, placing them at an economic disadvantage. The potential for growth within this sector is enormous and should that growth be realized, the potential impacts are just as massive. Finally, this industry has shown an ability to respond appropriately in addressing potential impacts to this Commonwealth's natural resources. Options currently exist for other disposal pathways, including nondischarge options and the creativity of the industry only assures that additional disposal and treatment options will flourish and allow for the continued expansion.

While the intent of both the proposed and final-form rulemakings is to address new, larger sources of TDS, the proposed rulemaking focused upon controlling new sources of "high-TDS" wastewater through defining these sources in terms of those that were to be regulated, exempting by default those that were not. To provide greater clarity to the scope of the regulations, the final-form rulemaking takes the approach of specifically exempting certain classes of TDS discharges from the application of this final-form rulemaking. This approach is designed to clearly exclude from the scope of final-form rulemaking all existing loadings of TDS authorized by the Department of Environmental Protection (Department) prior to the effective date of this final-form rulemaking, as well as new and expanding TDS sources which the Department has determined are insignificant from a loading perspective.

In addition, based on stakeholder comments received during an extensive public and stakeholder participation process, the final-form rulemaking adopts a combination of recommended approaches for addressing these larger loadings of TDS. This combination of approaches includes an industrial sector-based regulation along with a watershed-based analysis. The sector-based piece focuses on the oil and gas industry, mandating the treatment of wastewater. Treatment for wastewater that is not recycled shall be performed at a centralized wastewater treatment (CWT) facility to the standards in the proposed rulemaking. This approach sets treatment requirements for natural gas well wastewaters based on available, proven treatment technologies for this industry and takes cost into consideration. These requirements will assure that any threat of water pollution from this rapidly growing industry is prevented in accordance with the mandate of The Clean Streams Law (act) (35 P.S. §§ 691.1—691.1001).

Since there are numerous industrial categories and subcategories that include TDS as a pollutant of concern in their wastewater discharges, the watershed-based approach for industrial sectors other than oil and gas establishes an effluent standard and also provides a variance option for these discharges. Industries other than oil and gas would be subject to this standard, but could be granted a variance when assimilative capacity exists based on a watershed analysis. Further details on the watershed-based approach adopted by the final-form rulemaking follow.

This order was adopted by the Board at its meeting on May 17, 2010.

A. *Effective Date*

This final-form rulemaking will go into effect upon publication in the *Pennsylvania Bulletin*.

B. Contact Persons

For further information, contact Dana K. Aunkst, Director, Bureau of Water Standards and Facility Regulation, P. O. Box 8774, Rachel Carson State Office Building, Harrisburg, PA 17105-8774, (717) 787-8184; or Richard S. Morrison, Assistant Counsel, Bureau of Regulatory Counsel, P. O. Box 8464, Rachel Carson State Office Building, Harrisburg, PA 17105-8464, (717) 787-7060. Persons with a disability may use the Pennsylvania AT&T Relay Service, (800) 654-5988 (TDD users) or (800) 654-5988 (voice users). This final-form rulemaking is available on the Department's web site at <http://www.depweb.state.pa.us>.

C. Statutory Authority

The final-form rulemaking is adopted under the authority of sections 5 and 402 of the act (35 P. S. §§ 691.5 and 691.402), which provide for the adoption of regulations implementing the purposes and requirements of the act and for the regulation of activities which create a danger of pollution to the waters of this Commonwealth, and section 1920-A of The Administrative Code of 1929 (71 P. S. § 510-20), which authorizes the Board to promulgate rules and regulations necessary to implement the act.

D. Background of the Amendments

Need for the Final-Form Rulemaking

Many rivers and streams in this Commonwealth have remaining assimilative capacity for TDS when compared to a 500 mg/L TDS in-stream limit, but that capacity is limited. To characterize the relationship between in-stream TDS concentrations and stream flows and to predict the effect of additional TDS loadings on water quality in these waterways, regression analyses of stream flow and TDS were performed. Generally, TDS concentrations exhibit an inverse logarithmic or power relationship

with stream flow, with higher TDS concentrations observed at lower flows and lower TDS concentrations observed at higher flows. The TDS-flow regression equations were used to estimate the in-stream TDS concentration at the low-flow condition known as the Q_{7-10} flow, which is defined as the flow below which the annual 7-day minimum flow falls in 1 out of 10 years on the long-term average. The Q_{7-10} was designed to match the dose-response toxicity profile of most pollutants with the flow profile of natural free-flowing surface waters.

More specifically, the TDS-flow regressions performed by the Department were based on mean daily stream flow as recorded at United States Geological Survey (USGS) flow gauging stations and TDS samples collected at long-term monitoring stations near those flow gages. A regression equation was generated from the TDS-flow scatterplots, usually a logarithmic or power function best fit the observed TDS-flow relationships. The TDS concentration at Q_{7-10} streamflow was then estimated using the regression equation.

For example, at Water Quality Network (WQN) Station 905 (Beaver River at Beaver Falls, PA) the existing in-stream concentration at the Q_{7-10} river flow of 530 cubic feet per second is 448 mg/L, based on 10 years of data. This means that about 90% of the assimilative capacity already has been consumed and only about 10% (52 mg/L or 150,000 lb/day) of assimilative capacity remains for the entire Beaver River watershed between the existing concentration and the water quality criterion of 500 mg/L. This type of water quality analysis shows that available assimilative capacity for TDS is limited in some watersheds, especially considering that the Department should reserve assimilative capacity for future uses and also maintain a margin of safety. The following table summarizes the results of these analyses at a number of sites.

Results of TDS Assimilative Capacity Analyses

WQN Station #	Stream Name	Location	Q_{7-10} flow estimate (ft ³ /sec)	Period of record for regression	n	TDS concentration estimate (mg/L) at Q_{7-10} flow
301	Susquehanna River	Danville	1,130	1998-2007	95	255
302	Susquehanna River	Retreat	1,003	1998-2008	97	271
305	Susquehanna River	Towanda	585	1998-2008	104	211
306	Susquehanna River	Conklin, NY	178	1998-2008	55	162
323	Susquehanna River	Wilkes-Barre	748	1998-2008	57	242
401	West Branch Susquehanna River	Lewisburg	764	1998-2007	94	259
402	West Branch Susquehanna River	Williamsport	575	1998-2007	51	302
404	West Branch Susquehanna River	Karthaus	222	2004-2007	52	542
406	West Branch Susquehanna River	Bower	43	1998-2008	60	533
422	Clearfield Creek	Dimeling	42	1998-2008	60	769
448	West Branch Susquehanna River	Jersey Shore	463	2004-2008	68	319
701	Monongahela River	Braddock	905	1998-2004	33	360
702	Monongahela River	Elizabeth	651	1998-2008	60	403
714	Dunkard Creek	Shannopin	3	1998-2008	61	2,667
725	Monongahela River	Point Marion	353	1998-2008	58	346
822	Clarion River	Cooksburg	105	1998-2009	58	255
867	Allegheny River	Franklin	1,770	1998-2008	54	159

WQN Station #	Stream Name	Location	Q ₇₋₁₀ flow estimate (ft ³ /sec)	Period of record for regression	n	TDS concentration estimate (mg/L) at Q ₇₋₁₀ flow
903	Raccoon Creek	Moffatts Mill	8	1998-2010	68	1,396
905	Beaver River	Beaver Falls	530	1985-2009	58	448

In contrast to these analyses, representations of TDS assimilative capacity in surface waters that use a simple plot of TDS versus time tell very little until it is too late, when water quality violations are routine and good options do not remain. The Department is required to prevent violations of water quality standards by planning ahead and by using available data and good science. When data are lacking, a conservative approach is warranted. It is incumbent upon the Department, as well as any new proposed sources of loading, to first demonstrate that sufficient assimilative capacity is available before approving additional sources. The Department has broad experience managing the resource and is familiar with the minimum requirements that must be achieved.

The Department has already been constrained by the situation. For example, in the West Branch Susquehanna River basin, eight applications for new treated discharges were submitted for new discharges of high-TDS wastewater, totaling about 2.6 million gallons of flow, or about 3.3 million lb/day of TDS loading. But there is not assimilative capacity available above Karthaus, so discharges may not be approved above Karthaus. Less than 1 million lb/day of assimilative capacity is available between Karthaus and Lewisburg, as compared to the approximately 3.3 million lb/day in requested capacity. Further, the Department will reserve capacity for future use and also provide a margin of safety for pollutants that may be influenced by nonpoint sources; consequently, much less capacity is actually available for allocation. It is unknown how many of these new facilities will be built, but it is clear that there is a large discrepancy between the amount of proposed TDS loading and the amount of TDS loading the resource can safely accommodate. This is true even considering the reduced projections of the volume of wastewater and TDS load that may result from development of the Marcellus Shale formation in this Commonwealth.

TDS

TDS are comprised of inorganic salts, organic matter and other dissolved materials in water. They can be naturally present in water or the result of runoff, mining practices, oil and gas practices or industrial or municipal uses and treatment of water. TDS discharges contain minerals and organic molecules that can provide benefits such as nutrients, when moderately present, but also may contain contaminants such as toxic metals and organic pollutants. The moderate nutrient benefits are not likely in the case of a high TDS discharge. It is the inorganic TDS that are of concern. The concentration and composition of TDS in natural waters is determined by the geology of the drainage, atmospheric precipitation and the water balance (evaporation/precipitation).

TDS causes toxicity to water bodies through increases in salinity, changes in the ionic composition of the water and toxicity of individual ions. The composition of specific ions determines the toxicity of elevated TDS in natural waters. Also, as the hardness increases, TDS toxicity may

decrease.¹ The major concern associated with high TDS concentrations relates mostly to direct effects of increased salinity on the health of aquatic organisms.

Water quality analyses previously referenced indicate that the major watersheds of this Commonwealth have a very limited ability to assimilate increased loads of TDS, sulfates and chlorides. This phenomenon was most evident during the fall of 2008 when actual water quality issues regarding these parameters emerged in the Monongahela River basin. While river flows reached seasonal lows, the concentrations of TDS and sulfates in the river increased to historic highs, exceeding the water quality standards at all of the 13 potable water supply (PWS) intakes from the border with West Virginia to Pittsburgh. Water quality standards for TDS and sulfate were consistently exceeded in the river through November and December of 2008. Elevated chloride levels were observed on at least one major tributary, South Fork Tenmile Creek, and for the first time, elevated bromide levels were observed in these streams.

During this period, several environmental agencies performed studies on the effects of TDS, sulfate and chloride discharges on the Monongahela and some of its tributaries. A study² conducted by the United States Environmental Protection Agency (EPA), the Department and the Allegheny County Health Department also identified bromides as a key parameter of concern in these waters. The study concluded that a high percentage of the disinfection by-products (DBP) being formed in the drinking water systems were brominated DBPs, which pose a greater health risk than chlorinated DBPs; subsequent formation of brominated DBPs increases overall DBP concentrations, specifically trihalomethanes (THM). The study also concluded that based on the speciation there appears to be a strong correlation between THM formation and elevated source water bromide concentrations in the Monongahela River. As a result, the 17 PWS intakes on the Monongahela River are subject to higher levels of the more toxic brominated DBPs, which result in increased risks of bladder cancer to their consumers.

Several studies^{3,4} on the potential impacts to aquatic life from these large TDS discharges were also conducted on major tributaries flowing into the Monongahela River in Greene County. Each of these studies documents the adverse effects of discharges of TDS, sulfates and chlorides on the aquatic communities in these receiving streams. The former concludes that there is a high abundance of halophilic (salt-loving) organisms downstream from the discharges of TDS and chlorides and a clear transition of fresh water organisms to brackish water organisms in the receiving stream from points

¹ Soucek, D.J. & A.J. Kennedy. 2004. Effects of Hardness, Chloride and Acclimation on the Acute Toxicity of Sulfate to Freshwater Invertebrates.

² Handke, Paul. 2009. Trihalomethane Speciation And The Relationship To Elevated Total Dissolved Solid Concentrations Affecting Drinking Water Quality At Systems Utilizing The Monongahela River As A Primary Source During The Third And Fourth Quarters Of 2008, PA-DEP.

³ Spear, Rick and Kenderes, Gary. February 2009. Cause and Effect Survey, South Fork Tenmile Creek, PA-DEP.

⁴ Milavec, Pamela J. November 2008. Aquatic Survey of Lower Dunkard Creek, PA-DEP.

above the discharge to points below. It is evident from this study that increases in salinity have caused a shift in biotic communities.

The Monongahela River watershed is being adversely impacted by TDS discharges and many points in the watershed are already impaired, with discharges of TDS, sulfates and chlorides as the leading cause of impairment.

Although the Monongahela has received the most attention, it is not an anomalous situation. The Department studied the results of stream monitoring and conducted an analysis on the water quality of the Beaver River in western Pennsylvania. These results show upward trends in TDS concentrations. The Department also conducted similar studies on the Shenango and Neshannock Rivers, with similar upward trends in TDS concentrations. Watershed analyses conducted by the Department of the West Branch of the Susquehanna River and the Moshannon Creek watersheds also indicate that these watersheds are limited in the capacity to assimilate new loads of TDS and sulfates.

The Department received several permit applications for wastewater discharge in these areas with limited assimilative capacity. These permits, if issued, will necessarily have to impose conservative limitations on TDS loadings from the discharge due to the existing high in-stream concentrations of TDS. The Department is constrained from approving any significant portion of pending applications for new discharges of high-TDS wastewater that include sulfates and chlorides because of the threat posed by these proposed discharges to the quality of streams in this Commonwealth.

Existing practices for controlling pollutants in high TDS-containing wastewaters concentrate on the removal of heavy metals, but the processes employed generally do not actually treat for TDS, sulfates and chlorides by removing those pollutants from the wastewater. Instead, control of the effects from high amounts of TDS, chlorides and sulfates currently rely on dilution of the wastewater by the flow of the receiving stream. Dilution is not treatment. As documented by the rising levels of TDS in the waters of this Commonwealth, dilution in and of itself can no longer be considered an adequate practice to control consistently the effects of wastewaters containing substantial loadings of TDS and its components such as sulfates and chlorides. Treatment technologies such as reverse osmosis and evaporation/crystallization will have to be employed to prevent new or expanded loadings of TDS from consuming all of the remaining assimilative capacity in waterways in this Commonwealth. In addition, as the Department moves forward with watershed restoration efforts, such as treatment of abandoned mine drainage discharges and implementation of Total Maximum Daily Loads (TMDL), treatment of TDS, sulfates and chlorides will be necessary to assure that watershed restoration is accomplished and that the existing and designated uses of our streams are maintained and protected.

Public Response and Public Involvement in Development of the Final-Form Rulemaking

The proposed rulemaking was published at 39 Pa.B. 6467 (November 7, 2009). Due to a publishing error that listed an incorrect e-mail address for the Board, a correction to the proposed rulemaking was published at 39 Pa.B. 6547 (November 14, 2009). The Board advertised that the comment period for the proposed rulemaking was extended by 7 days. The public comment period officially closed on February 12, 2010. In addition, four public

hearings were held as follows: December 14, 2009, in Cranberry Township, Butler County; December 15, 2009, in Ebensburg, Cambria County; December 16, 2009, in Williamsport, Lycoming County; and December 18, 2009, in Allentown, Lehigh County.

The Board received extensive public comments regarding the proposed effluent standards for high-TDS wastewaters. A summary of the comments and responses to the proposed rulemaking appears in Section F.

Water Resources Advisory Committee Stakeholder Process

Prior to recommending that the proposed rulemaking be provided to the Board, the Water Resources Advisory Committee (WRAC) suggested that further examination be made during the comment period to address two critical areas. WRAC suggested that the Department examine the costs of the proposed rulemaking on the sectors that would be impacted, and the technologies available to treat discharges high in TDS. WRAC created the TDS Stakeholders Subcommittee to work in cooperation with the Department on these issues.

The TDS Stakeholders Subcommittee was tasked with examining the issue of cost and technology and to make recommendations to WRAC for submission to the Department in the form of formal comments on the proposed rulemaking. The TDS Stakeholders Subcommittee was made up of members of the various industries impacted as well as members of interested environmental groups. The TDS Stakeholders Subcommittee met monthly from August 2009 through March 2010; members of the Department involved in the development of the proposed rulemaking attended these meetings. During that time frame, various sector groups, as determined by TDS Stakeholders Subcommittee members, presented their findings on the impact of the proposed rulemaking on their industry or sector. Those sector groups were as follows: Drinking Water, Natural Resources, Utilities, Municipals, Industrial, Mining and Oil and Gas. All sector groups were provided with an opportunity to present their findings to the TDS Stakeholders Subcommittee and those presentations are available on the Department's web site at http://www.portal.state.pa.us/portal/server.pt/community/water_resources_advisory_committee_%28wrac%29/14017/wrac_taskforce_on_chapter_95/631764.

Following the various sector presentations, the TDS Stakeholders Subcommittee debated recommendations for alternative approaches to the draft regulations as proposed by the Department. The Department staff were involved in all of these discussions. The TDS Stakeholders Subcommittee provided a summary of the proceedings to WRAC on March 17, 2010. Those comments are available at <http://files.dep.state.pa.us/PublicParticipation/Advisory%20Committees/AdvCommPortalFiles/WRAC/WRAC-%20TDS%20Task%20Force%20Final%20Report%203-12-10.pdf>.

In summary, the TDS Stakeholders Subcommittee suggested a watershed based approach that would allow for use of assimilative capacity when it was available. Further, the TDS Stakeholders Subcommittee suggested that the Department monitor the TDS loadings in watersheds Statewide and only enact effluent limits on dischargers when the loading within the water body was nearing the limit of assimilative capacity. The TDS Stakeholders Subcommittee also suggested that the oil and gas sector be incentivized or perhaps even required to recycle or reuse some percentage of fluids captured in the initial stages of well development, the flow back water as it is

traditionally called. Finally, the TDS Stakeholders Subcommittee suggested that what wastewater could not be reused for fracturing other gas wells should be transported to treatment facilities that provide treatment to appropriate standards.

The Department endorsed the process in which these recommendations were developed and has fully considered the recommendations provided by this group. The TDS Stakeholders Subcommittee was a broad reflection of impacted stakeholders and provided invaluable input, much of which the Department applied as it moved forward in revising the proposed rulemaking.

The Department also met individually, on multiple occasions, with representatives of the Pennsylvania Coal Association (PCA), the Marcellus Shale Coalition (MSC), the Pennsylvania Chamber of Business and Industry (Chamber), Waste Management, the Electric Power Generation Association and the Allegheny Conference. The amendments being made in this final-form rulemaking directly respond to most of the recommendations made by the TDS Stakeholders Subcommittee and these other organizations. See the Summary of Changes to the Proposed Rulemaking in Section E of this preamble.

In addition, prior to presenting this regulatory package as final to the Board, the Department met with WRAC on April 14, 2010, seeking concurrence in moving forward with the revised final-form rulemaking. During this discussion, WRAC members sought further clarification on the watershed approach, the impact on conventional gas drillers and the mandatory recycling provision in the proposed rulemaking. Clarification was provided by the Department, summarizing the intent of the watershed based approach. This included an explanation of what was deemed an existing discharge and further clarification that only the additional load above baseline would be subject to the final-form rulemaking should the total loading be more than the 5,000 pounds in mass loading, the Department has determined to be de minimis.

Discussion on the impacts to the oil and gas industry, particularly the conventional well drillers, was also significant. The Department clarified its intent that existing CWT facilities, in particular those that treat conventional drilling wastewater, are considered as existing facilities and can continue to accept oil and gas wastewater at levels currently approved. Finally, discussion focused on a provision within the regulation that may require the recycling or reuse of oil and gas wastewater. WRAC members noted that this will negatively impact both conventional and Marcellus drillers and should be revised or removed from the final-form rulemaking. Specifically, the effective date of the final-form rulemaking and the subsequent impact that would have on the industry should the recycling provision remain was noted.

The Department agreed to continue working to address the concerns of WRAC members and the stakeholders they represent, including further examination of the effective date. With the expected continued efforts of the Department noted, WRAC concurred unanimously to move the revised regulation forward to the Board. The motion that carried was:

WRAC appreciates all of the Department's efforts to respond to our comments and improve the regulation. WRAC believes that the current draft of the regulation is substantially improved over the draft we reviewed in July of 2009, and we understand that additional improvements will be made based on our comments today. Although some of the individual WRAC members continue to have

significant concerns about the regulation and whether it should proceed without an advance notice of final rulemaking, in light of the progress and efforts made to date and in light of the Department's wish to proceed with the regulation, the consensus of the Committee is that the regulation should proceed for final consideration by the Board.

Sector-Based Approach for the Oil and Gas Industry

The Department reviewed the comments received and determined that a sector-by-sector approach to controlling TDS is appropriate. High-TDS wastewaters from different industries present different treatment challenges. Not all industrial wastewaters containing TDS are consistent. Based on the need for regulation of a rapidly expanding industry which generates wastewaters with extraordinarily high levels of TDS and chlorides, the readily available proven treatment technologies for this wastewater, the costs associated with treatment, and the overwhelming public comment in favor of a standard for this industry, the proposed rulemaking refined its original focus on treatment for oil and gas wastewaters. The final-form rulemaking now contains more specific treatment requirements for wastewater generated from all natural gas drilling activities.

This approach is consistent with the Federal regulatory approach that separates technology-based, end-of-pipe requirements by industry sectors. These requirements establish effluent limits based on best available technologies within an industry, and thus encourage the development and spread of these technologies. This approach further accounts for economic impacts by distinguishing between new and existing sources of pollution, recognizing that new sources can plan their operations factoring in the regulatory requirements for wastewater treatment. The Marcellus shale play has resulted in thousands, and will result in tens of thousands, of new sources of natural gas drilling wastewaters. Although the industry has shown some recent success with reduction in volumes of wastewater needing treatment through the recycling and reuse of flowback and production waters, it is clear that the future wastewater return flows and treatment needs will be substantial. It is appropriate to have a regulatory framework in place now that protects the streams in this Commonwealth under any future scenario. It is not appropriate to simply "wait and see." The Department believes that this approach will promote the reuse of flow back and production waters thus minimizing the costs of treatment. This approach will also drive methods of treatment and disposal that do not involve stream discharge, thus providing the protection for a valuable resource.

As stated throughout this preamble, as noted by the TDS Stakeholders Subcommittee, as identified in the Department's Strategy for Addressing High-TDS Wastewater and as recognized by an overwhelming majority of public comments on this final-form rulemaking, the primary threat to the quality of streams in this Commonwealth from TDS is coming from the development of the Marcellus shale play. This play, estimated to contain as much as a 500 trillion cubic feet of recoverable natural gas, could result in the development of up to 50,000 new, producing gas wells over the next 20 years.

The Department is encouraged that the industry has developed and is implementing recycling and reuse and that the play is drier than anticipated, together reducing flow back volumes significantly from the original estimates that created the initial urgency for the proposed rulemaking. The Department remains concerned, how-

ever, that development of the play is still in its infancy and as the play matures these phenomena may change significantly. Evidence from the Barnett shale experience supports this concern. As the play matured, flow back rates increased.

Second, the current Marcellus experience does not provide enough information on the long term rates of produced water to be expected to return from the formation. These wells are anticipated to produce very highly concentrated TDS wastes (over 300,000 mg/L⁵) continuously over the course of 20 to 30 years. For example, if these wells produce an average of ten barrels per week of produced water over their useful lives, a single average well could produce about 27 tons of salt per year (at 300,000 mg/L). Multiply this amount by tens of thousands of Marcellus gas wells, and the potential pollutional effects from these loadings are tremendous. Finally, not enough is known at this point about whether Marcellus wells may need to be "re-fracked" one or more times in the future, thus providing additional uncertainty regarding treatment and disposal needs for the wastewater.

The Department is responsible for assuring that future generations in this Commonwealth have the right to clean air, pure water and to the preservation of the natural, scenic, historic and esthetic values of the environment. This responsibility, along with all of the uncertainty related to the development of the Marcellus play and the potential wastewater generation, leads the Department to take a conservative, proactive approach to regulating the treated wastewater discharges from this new production.

Available Technologies

Wastewater originating in this formation presents treatment challenges due to the presence of high concentrations of chlorides, barium and strontium, and the presence of naturally-occurring radioactive radium. It is clear that technology for treating the extraordinarily high TDS wastewater from natural gas well drilling operations is both proven and widely available. The Department met with over 60 manufacturers and vendors of technologies for treating the very high levels of TDS from the oil and gas industry, specifically the Marcellus shale formation. While some of these vendors do not have actual facilities in operation and are seeking to get into the business, at least six manufacturers have either piloted the technology at full scale or have facilities currently operating in other states.

Much of the hesitancy on the part of these technology vendors is the result of uncertainty in the current regulatory framework. Companies are reluctant to move forward without a clear direction concerning required treatment levels for TDS. Implementing this final-form rulemaking will provide regulatory certainty for companies proposing treatment facilities for high TDS wastewaters.

Notably, treatment facilities for wastewater from natural gas well operations will have a positive economic impact. Investment companies have indicated that without clear direction they are less willing to provide capital for financing these types of wastewater treatment facilities. One company provided information that their treatment plant, if built and operated, could create approximately 70 to 100 short-term jobs during construction and about 12 permanent jobs during operation of their facility.

Some companies have also indicated that they may be able to produce a salable salt product after treatment of the high TDS water.

The Department issued two National Pollutant Discharge Elimination System (NPDES) permits for facilities to treat these wastewaters to the standards in the proposed rulemaking, one in the Williamsport area—Terraqua Resource Management⁶—and one in Somerset County—Somerset Regional Water Resources.⁷ The Department has at least 29 other permit applications currently under review. In addition, facilities have been constructed and are in operation in other states. AOP Clearwater⁸ recently began operation of a zero liquid discharge facility in Fairmont, West Virginia, and 212 Resources⁹ operates a treatment facility in Colorado. Integrated Water Technologies¹⁰ has recently completed full-scale pilot studies documenting that their technologies are successful in treating these wastewaters to the proposed standards or better.

The common thread with these facilities is that all employ a form of evaporation/distillation. Flow back waters from natural gas well drilling activities can generally be recycled until they reach certain very high concentrations of TDS, at which point the wastewater must be disposed because it can no longer be effectively reused. Wastewaters that are extremely high in TDS concentration, that is, greater than 30,000 mg/L, are generally not amenable to other technologies. Therefore, the very high concentrations of TDS in this industry's wastewater will necessitate treatment by evaporation/distillation technology. For example, reverse osmosis cannot economically treat the extraordinarily high levels of TDS because the membranes foul and need to be changed too often. It is also important to understand that use of evaporation/distillation technology always results in treated water with TDS concentration levels significantly lower than the 500 mg/L standard for CWT effluent in the final-form rulemaking (it can be as low as 10 mg/L). It is the extraordinarily high TDS quality of the raw wastewater that drives the treatment technology; therefore, the specific effluent standards for the natural gas industry in the proposed rule have been retained in the final-form rulemaking.

Costs of Treatment

The natural gas well drilling industry in this Commonwealth has a long and notable history. Hydraulic fracturing is not new to this Commonwealth, either. According to the Pennsylvania Oil and Gas Association (POGAM), almost every oil and gas well in this Commonwealth since the early 1960s has been hydraulically fractured in some way to enhance recovery. Handling and disposing of fracturing fluids (produced water) is an old practice. Prior to the Marcellus shale activity in this Commonwealth, oil and gas production (and its concomitant generation of produced waters) was gradually diminishing. The old practice common to this industry of addressing TDS through dilution thus posed a retreating threat to the water quality of streams in this Commonwealth. The arrival of the Marcellus play has drastically changed that paradigm.

⁶ Terraqua Resource Management, LLC, 1000 Commerce Park Drive, Williamsport, PA 17703. NPDES Permit No. PA0233650.

⁷ Somerset Regional Water Resources, Larry Mostoller, 888 Stoystown Road, Somerset, PA 15501. NPDES Permit No. PA0253987.

⁸ AOP Clearwater, Rob Bealko, Operations Manager, 168 AFR Drive, Fairmont, WV 26554.

⁹ 212 Resources. Robert Waits, Executive VP, Business and Government Affairs, 2825 E. Cottonwood Parkway, Suite 180, Salt Lake City, UT 84121.

¹⁰ Wastewater Demonstration Final Report. Integrated Water Technologies. 150 Clove Road, Little Falls, NJ 07424. Mavickar Environmental Consultants. January 2010.

⁵ STW Resources, Inc. August 26, 2008. Presentation to PA-DEP.

In the preamble to the proposed rulemaking, the Board referred to estimated costs for treating this wastewater at approximately 25¢ per gallon. Each of the manufacturers previously cited that has technology operating has verified that the true costs for treatment of this wastewater range between 12¢ and 25¢ per gallon.

The MSC provided the TDS Stakeholders Subcommittee with revised estimates of the anticipated treatment and disposal capacity need through a presentation at the November 10, 2009, subcommittee meeting. Their estimate of 2 million gallons per day is based on current flow back rates. The Department believes that this estimate may be low at this point in time, because of the infancy of Marcellus well development in this Commonwealth (see previous discussion). If the estimate were to be doubled, the annual cost of treatment for the industry Statewide could be as high as \$365 million (4 million gal/day * 25¢/gal).

The cost of wastewater treatment, when compared with estimates of the annual revenue from Marcellus Shale gas extraction, is minuscule. Using industry projections, if there are indeed 500 trillion cubic feet of gas recoverable over the next 50 years, and if the price per 1,000 cubic feet were to hold at today's levels (about \$5, which is an extremely conservative assumption), the annual revenue industry-wide could be \$50 billion. Based on the treatment needs estimates by the industry and this analysis, the cost of treatment would be 0.4% to 0.8% of annual revenue, an insignificant percentage. Moreover, this industry has shown an ability to quickly adjust and develop cost effective solutions, as evidenced by the development and embrace of techniques for reuse of fracturing fluids. Treatment to levels in the final-form rulemaking clearly can be achieved at a reasonable cost to the natural gas industry in this Commonwealth. On the other side, the benefits from preventing the rise of TDS and chloride pollution levels in this Commonwealth's water resources are significant. For example, in economic terms, the TDS Stakeholders Subcommittee noted that stream-related tourism and recreation in this Commonwealth brings in an estimated \$28 million annually.

The Marcellus Shale play is in its infancy, but the industry is clearly growing and will continue to grow for at least the next 10 years throughout the Marcellus Shale formation in this Commonwealth. The Department's aim is to ensure that future growth of this industry is considered in the rules and regulations it puts in place.

Other industries potentially impacted by this final-form rulemaking are not in a growth stage, nor on a scale as large. Part of the Department's mission is to consider the cost effectiveness of regulations, their impact on the regulated community and whether the regulated community can continue to operate should rules be enacted. This evaluation has led the Department to recognize that other industries throughout this Commonwealth could not effectively adapt to broad-based required end-of-pipe load reductions in TDS; therefore, the watershed based approach was selected for these other industries.

The Board received comments on the proposed rulemaking from over 4,220 commentators. It is important to recognize that over 90% of those comments supported the proposed rulemaking and that the overwhelming majority of the supporting comments either assumed the proposed effluent standards were for the oil and gas industry or supported the effluent standards applying only to the oil and gas industry. The Department cannot simply discount this tremendous degree of public direction.

Effective and responsible management of the very real environmental challenges involved with the natural gas industry in this Commonwealth are needed to move forward with its development. The Department must address these challenges now to provide the public and the industry with the regulatory framework to assure that the Marcellus Shale formation in this Commonwealth can be developed safely and rapidly, while protecting and preserving our other natural resources. The wealth and promise of the resource is indisputable, and appropriate environmental management will promote the development of the formation, not hinder it. The amendments to Chapter 95 in this final-form rulemaking are essential to providing needed regulatory certainty.

Watershed-Based Approach for Industries Other than Oil and Gas

The Board agrees with the comments that were received by various industries pointing out that the proposed rulemaking is a one-size-fits-all approach that may not be appropriate. Different industries have very different wastewaters, even in the composition of the TDS. There are many different technologies that would be necessary to treat these different wastewaters and the costs of treatment to a given standard could create an inequitable economic problem. For example, achieving a 500 mg/L standard for two different industries could require two different technologies, based on the type of TDS, with one technology being much more expensive than the other.

At the same time, allowing TDS discharges from all of these industrial sectors based only upon dilution, that is, controlling TDS based on water quality-based effluent limitations alone (as recommended by the Chamber), also creates an unlevel playing field. Effluent limitations would then be based on location only, and could give some competing businesses an advantage for simply being located in a watershed without a PWS intake.

Inorganic TDS is known as a conservative parameter, meaning that TDS is not subject to fate during transport in the water column. These solids are dissolved and will stay dissolved barring huge changes in stream pH. This means that a pound of TDS discharged in the headwaters of a watershed is still a pound of TDS at the mouth of the watershed, or of more concern, at the location of the PWS intake. Cumulative loadings of TDS from multiple discharges upstream of these intakes can cause violations of water quality criteria at design conditions and result in the need for an allocation strategy. Allocation strategies are inequitable unless the same requirements apply to all contributing discharges, independent of the location of each discharge in the watershed.

The Board addressed this issue and the comments received from the various potentially-affected industries in this final-form rulemaking. The approach establishes an effluent standard for sectors (other than natural gas well operations) at 2,000 mg/L, and allows a variance from this standard under certain conditions specific to the watershed in which the discharge is located. The 2,000 mg/L as a monthly average standard was selected for several reasons. First, it is the bar set in the proposed rulemaking for a high-TDS discharge, meaning that TDS-containing discharges from most industrial sectors and publicly owned treatment works (POTW) do not contain more than 2,000 mg/L TDS and thus would not be subject to this final-form rulemaking. Moreover, unless the discharge flow volume is quite low, a discharge containing greater than 2,000 mg/L will have a TDS loading rate that significantly impacts the assimilative

capacity of the receiving stream, even if that stream has substantial flow volume. Second, the final-form rule-making applies only to new and expanding loads of TDS, not the existing loads, making it more easily achieved and enabling industries that will be affected to plan their operations to meet the new standard. Finally, while the end-of-pipe 2,000 mg/L standard is less stringent than the instream water quality criterion, it is within four to five times that value, and in the Department's Best Professional Judgment assures that adequate instream dilution will be available to prevent exceeding the water quality standard.

Variances to this standard can be approved by the Department provided that the applicant can demonstrate the need for a variance. A demonstration must be based on the character of the wastewater, the availability of treatment technologies and the costs associated with meeting the standard. These variances are not without limitations. The Department will develop guidance materials to assist applicants in the completion of requests for variances prior to the effective date of this final-form rulemaking.

Under the final-form rulemaking, an upper bound that limits the degree a discharge can vary from the standard will be established based on water quality considerations. In addition, the watershed analysis must assure that the cumulative load from all sources at the next downstream PWS intake does not exceed 75% of the water quality-based assimilative capacity at design stream flow conditions, as required in § 96.3 (relating to water quality protection requirements), that is, Q_{7-10} .

The Department will closely monitor TDS levels and take steps necessary to limit increased or future discharges and prevent water quality criteria violations. When the remaining assimilative capacity of a receiving stream falls below 25%, based on analysis at design stream flow conditions, the Department will develop a wasteload allocation for all discharges of TDS that contribute to the specific water quality standards compliance point.

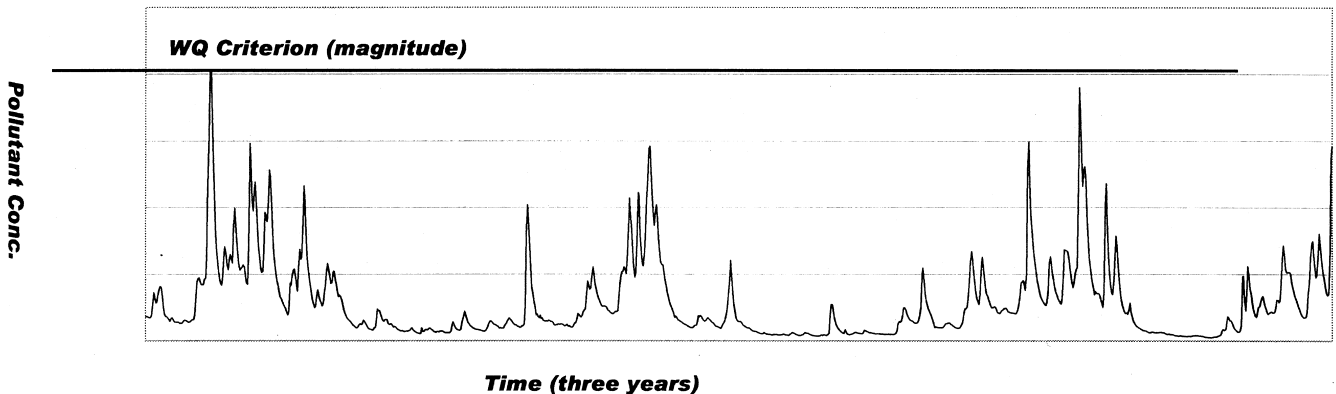
Real-Time Management or Flow Management

Throughout the comment period, the Board received recommendations that a real-time, or flow management,

approach to controlling TDS should be implemented by the Department in place of imposing treatment requirements. Specifically, the recommendation was that the Department should set aside the Chapter 96 (relating to water quality standards implementation) requirement that allocations be based on the Q_{7-10} design low-flow condition in the receiving water. Support for this position relies on a rationale that does not reflect real-world considerations or good science. This method of managing flows on a real-time basis presents many problems, most notably compliance with Federal and State regulatory water quality standards.

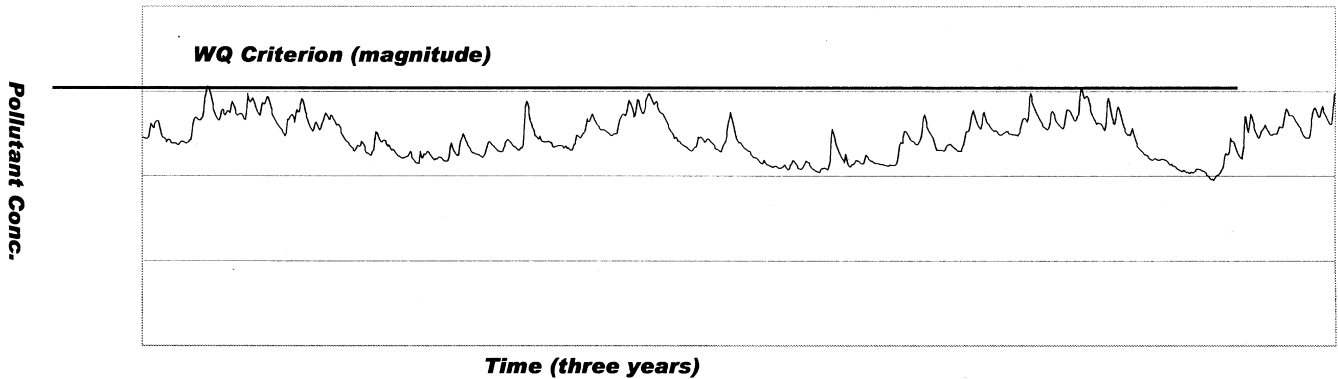
Water quality standards. The fundamental characteristic of numeric water quality criteria is that they include three components: magnitude, frequency and duration. This is especially true of water quality criteria designed to protect aquatic life. Each criterion has been substantiated and advanced based on underlying limitations and conditions that have been specified in the criteria development documentation. Implementation of these criteria is invalid unless the underlying limitations and conditions are preserved. If there is a 230 mg/L water quality criterion for chloride designed to protect aquatic life, the criterion magnitude is advanced on the basis that exposure to concentrations that high will occur rarely (in this case, a frequency of no more than once every 3 years) and for limited periods of time (a duration of no more than 4 days). For the rest of the time, the underlying requirement is that the target organism is not stressed by exposure to chloride at any significant level, that is, that exposure to elevated concentrations of chloride is a rare and isolated event. To achieve the underlying frequency and duration components of the water quality criterion, Water Quality Based Effluent Limitations (WQBEL) must be developed that limit the frequency and duration of instream concentrations of the pollutant of concern.

An example of a target distribution that would achieve the magnitude, frequency, and duration components of the water quality criteria looks something like the following chart. The criterion magnitude is challenged only rarely with near-background concentrations existing most of the time.



The effect of using real-time flow management is to allow instream concentrations to approach the criterion magnitude value more often and for longer periods of time. An example of real-time flow management, a target distribution that would achieve the magnitude component but not achieve the frequency and duration components of the water quality criterion might look more like the following chart. The criterion magnitude is challenged continually and concentrations

essentially never drop to near-background levels. The WQBEL has not been designed to achieve the frequency and duration components of the water quality criterion, even if the criterion magnitude has not been exceeded.



The Q_{7-10} design flow condition was not arbitrarily selected. It was designed to match the flow profile of natural free-flowing surface waters with the dose-response toxicity profile of the pollutant, and thereby achieve the underlying frequency and duration components of the water quality criteria. Use of the steady-state Q_{7-10} design flow condition is the standard in NPDES permitting at both the State and Federal level for most pollutants. Real-time flow management is inconsistent with the underlying frequency and duration components of the water quality criteria and violates the criterion as surely as if the instream concentration exceeds the criterion magnitude. Failure to achieve the frequency and duration components of the water quality criteria has real-world consequences in terms of biological and other impacts.

Reliance on the dose-response relationship. There are limitations inherent in the methods employed to produce water quality criteria. The normal objective is to define the dose-response relationship using one or more sensitive species. The organisms are exposed to different concentrations of the toxicant for different time periods and the resulting adverse effects are used to define the dose-response relationship. There are two important limitations of the methods. First, for practical reasons when three major variables (species, concentration and exposure time) are involved, there are limits to the number and time-length of these exposure tests. For instance, laboratory analyses may be able to expose sensitive organisms to calibrated concentrations of the pollutant for days or weeks, but not months or years. Hence, the long-term effects of continuous exposure to most toxicants typically are largely unknown. Second, there are limits to measuring toxicity. Third, toxicity alone is not necessarily the only issue. For instance, changing the hardness of water, independent of toxic effects, may have significant impacts on aquatic life. Native species that are acclimated and thrive in soft water may be at a disadvantage to species that perform better in hard water. The hard water is not toxic to the native soft-water species, they just lose out in the competition to better adapted species in the same or similar ecological niche.

The Q_{7-10} design flow reflects the limitations of laboratory dose-response toxicity testing and the underlying bases. New criteria are developed with the same underlying limitations and conditions. The Q_{7-10} design flow prevents nontoxicity effects from manifesting because it assures that the fundamental nature of the receiving

water is not changed. Reliance on other methods that allow for higher discharge loading rates moves away from the dose-response model and may pose altering the fundamental nature of the receiving water.

Pennsylvania Marcellus Shale-related solids will be present in massive quantities. The constituents of greatest concern, especially chloride, do not volatilize or degrade and would remain mostly in the dissolved, bioavailable phase. The sequential loadings of the conservative solids discharged from multiple facilities would accumulate in the receiving water, with dilution the only mitigating factor. The Q_{7-10} design flow condition is more important than ever, given the nature of TDS and its component solids, to preserve the fundamental nature of the receiving waters as freshwater streams and rivers typical of this Commonwealth.

Protection of Drinking Water

Water suppliers were generally supportive of the intent of the final-form rulemaking because it will provide more assurance that levels of TDS, a secondary maximum contaminant for drinking water, are not exceeded at the point of intake. Commentators recognized the benefits of the final-form rulemaking but did offer suggested revisions. Those suggestions included support for a watershed based approach. In addition, comments from some water suppliers also included support for technology based limits targeted toward new sources of high-TDS discharges.

Water suppliers noted that the cost of removal of TDS by water suppliers should be considered as well as additional costs such as notification requirements when secondary maximum contaminant levels (MCLs) are exceeded. There are 349 drinking water suppliers in this Commonwealth that rely on surface water or groundwater under the direct influence of surface water as their primary sources. The impact of not implementing a discharge standard that provides adequate protection to streams and downstream water suppliers would necessitate many of those suppliers to install treatment technologies for TDS removal. While it is true that this treatment may not be necessary at all times, installation for cases in which it is warranted would still be necessary and costly. These costs would be borne by the rate-payers of these water systems.

As the Department examined the cost-effectiveness of the final-form rulemaking, it was clear that good public policy dictates that the responsibility for the treatment and removal of TDS should not fall to the water suppliers and their customers. The approach the Board has taken in this final-form rulemaking ensures that this cost will not be borne by these end users.

E. Summary of Changes to the Proposed Rulemaking

§ 95.10(a)—Existing Versus New and Expanding—De minimis

Final-form § 95.10(a) (relating to treatment requirements for new and expanding mass loadings of Total Dissolved Solids (TDS)) differs from the proposed rulemaking. Specifically, this subsection of the proposed rulemaking defined “high-TDS” discharges as those discharges that did not exist on April 1, 2009, and that contain TDS concentrations greater than 2,000 mg/L or TDS loads of more than 100,000 lbs/day. The intent was to only regulate these discharges under the effluent standards proposed in § 95.10(b).

The approach in the proposed rulemaking resulted in a great deal of confusion on the part of regulated dischargers. The Department received numerous telephone calls and comments from dischargers who assumed they would be subject to the effluent standards but who had discharges that would not have been applicable to the proposed rulemaking. These dischargers knew their effluent concentrations were greater than 500 mg/L and thus assumed they would have to provide treatment, when in fact the discharge did not exceed 2,000 mg/L and the discharge would have been exempt from the final-form rulemaking.

Further, many existing dischargers assumed this exemption would only apply until the next time their permit was to be renewed. They assumed they would then be subject to the requirements for new and expanding discharges, even though they were not expanding. In addition, many dischargers assumed that moving their existing discharge from one location to another, without changing the actual TDS loading, would result in a new discharge, thus invoking the effluent standards. This was most noted by the mining industry.

From the inception of the rule, the intent of the Board was to exempt existing discharges, and insignificant discharges, from the effluent standards aimed at controlling the new, larger source of TDS. The majority of watersheds in this Commonwealth did not exhibit violations of water quality criteria and Department analyses showed that even with these existing discharges assimilative capacity remained. It was the threat to this available assimilative capacity from new loads of TDS, most notably from the new Marcellus shale gas operations (see discussion of § 95.10(b)) that prompted the Department to take a proactive step to prevent future compromises to water quality standards through the proposed rulemaking.

Therefore, the final-form rulemaking changes the approach for identifying those larger, new and expanding loads of TDS that would be subject to this regulation. Instead of defining those discharges that are to be included by defining “high-TDS,” this final-form rulemaking specifically identifies those existing and smaller discharges of TDS that are not subject to this regulation. The Board believes that this approach provides clarity and improves the regulation.

§ 95.10(a)(1). This section makes it clear that discharge loads of TDS authorized by the Department, under

NPDES permits or other authority that were issued or reissued prior to the effective date of this final-form rulemaking, are exempt from the regulation until the net load is to be increased. It is important to note that only an increase in net TDS load is considered to be a new or expanding discharge loading.

Discharge loads of TDS may be authorized by the Department without actual effluent limitations or monitoring requirements having been placed in an NPDES permit. In most cases, discharge TDS data (or in the case of mining operations, specific conductivity and sulfates data) are submitted with the sample results required for permit applications. Upon review of those data, the Department may determine that these loads do not pose a threat to receiving water quality and thus limitation are not needed. In these cases, the TDS discharge has been authorized, but not limited. Therefore, if TDS (or conductivity) data have been reviewed by the Department as part of an application for an authorized discharge, the discharge load of TDS has been authorized upon issuance of the permit (or other vehicle), regardless of whether there is an actual limitation or monitoring requirement.

Further, the Board also recognizes that discharges from industries are production-based. A currently-authorized discharge load may not reflect past authorizations due to changes in product lines or current economic conditions. Therefore, the regulation identifies the existing discharge load of TDS as the maximum daily discharge load authorized “prior to” the effective date of the final-form rulemaking. This provision allows a discharger to have past authorized, or preexisting, TDS loads considered as existing loads.

Currently, authorized loadings of TDS, and its components such as sulfates and chlorides, are considered to be the existing discharge loads, even if the facility has in fact typically discharged at a lower load than that authorized by its permit. If a facility applies for a net increase in its authorized TDS loading rate, only the amount of the net increase in its authorized TDS loading will be considered as a new and expanding discharge of TDS subject to the requirements in this rule. The section also clarifies that authorized loads are not subject to the rule if they are merely being combined or relocated from one point in a watershed to another, so long as net mass loadings are not increased by the combination or relocation activity. This section also clarifies that existing waste treatment facilities, such as POTWs and CWTs, that accept and treat wastes from other industries or sources under existing permit authorizations are not subject to this rule, so long as net mass loadings accepted and treated are not increased.

The Department also received inquiries regarding the proper method for establishing existing discharge loads for the purpose of separating them from proposed load expansions. Guidance materials will be developed to accompany this regulation and will be completed prior to the rule becoming effective. When an expansion is contemplated, the existing discharge loads can be established through sampling of the existing discharge. At least ten daily composite samples, representative of the discharge during normal operations and taken at least 1 week apart, should be adequate to characterize the existing discharge load. These samples can then be averaged to determine the average daily load. Note that this is a mass loading, thus flow measurements at the time of sampling are necessary.

Finally, it should be noted that the requirements in § 95.10 are expected to be implemented through the

Department's administration of the NPDES permitting program. Section 95.10 sets forth treatment requirements which will be implemented in accordance with the framework established by § 92.2a (relating to treatment requirements).

§ 95.10(a)(2). This section clarifies that abandoned mine sites eligible for funding under sections 101, 102, 201 and 401—415 of the Surface Mining Control and Reclamation Act of 1977 (SMCRA) are not considered new and expanding loadings of TDS. Sections 402(g)(4) and 404 of the SMCRA (30 U.S.C.S. §§ 1232(g)(4) and 1234) describe eligible abandoned mine lands; these include lands and water affected by mining and abandoned or left in an inadequate reclamation status prior to August 1977 when the SMCRA was enacted, and sites for which an inadequate bond was forfeited after 1977 and prior to July 1982 when the Commonwealth obtained primary jurisdiction over surface coal mining operations within this Commonwealth. These discharges are clearly not new or expanding loadings of TDS. Moreover, while the Board recognizes that existing discharges from abandoned mine lands substantially contribute to TDS loadings in surface waters, treatment facilities for these discharges are constructed, operated and maintained by the Department itself or by nonprofit watershed groups working in conjunction with the Department. Title IV grants, and other grant funds, are used for this purpose, and the remediation of the legacy of abandoned mine drainage in this Commonwealth is an enormous project which will take many years to accomplish. The Department will retain flexibility to direct scarce Commonwealth resources to treat abandoned mine discharges in a manner which is both cost-effective and achieves the best overall pollution prevention within a watershed.

§ 95.10(a)(3). This section clarifies that surface coal mining operations engaged in remining, with preexisting discharges of TDS covered by the remining regulations in Chapters 87, 88 and 90 (relating to surface mining of coal; anthracite coal; and coal refuse disposal), are not considered new and expanding sources of TDS. Based on sampling data, the Board generally expects that discharges of TDS from erosion and sediment control facilities at surface mining operations will be de minimis. However, preexisting abandoned discharges can contain somewhat higher loadings of TDS. An exception for preexisting discharges covered by remining regulatory requirements is being included to assure that remining operations are not discouraged by this regulation. Because these are preexisting discharges of abandoned mine drainage, they are already contributing TDS and sulfates to the receiving stream. More importantly, the remining operation is expected to abate or reduce the pollutant load of these existing abandoned discharges, thereby resulting in an overall improvement to water quality in the watershed. The mining regulations in Chapter 87, Subchapter F, Chapter 88, Subchapter G, and Chapter 90, Subchapter F (relating to surface coal mines: minimum requirements for remining areas with pollutional discharges; anthracite surface mining activities and anthracite bank removal and reclamation activities: minimum requirements for remining areas with pollutional discharges; and coal refuse disposal activities on areas with preexisting pollutional discharges) will continue to provide the applicable criteria for permitting preexisting discharges on remining areas.

§ 95.10(a)(4). This section clarifies that active surface coal mining operations with an open pit dimension of less than 450,000 square feet exposed at any time are exempt

from this regulation. Discharge loads of TDS from these activities are considered to be insignificant.

§ 95.10(a)(5). This section clarifies that TDS discharges from erosion and sediment control facilities used at surface mining activities, which are defined in § 86.1 (relating to definitions), are exempt from this regulation. Discharge loads of TDS from these activities are considered to be insignificant.

§ 95.10(a)(6). This section clarifies that existing mine drainage that is directed to mine pools for further treatment through the pool are exempt from this rule. The mine pool water must be undergoing treatment in accordance with Chapters 91—96. Like the exception for remining, this provision is being included to assure that certain projects involving reclamation of unreclaimed coal refuse piles with existing mine drainage are not discouraged by this regulation.

§ 95.10(a)(7). This section establishes a de minimis loading for new and expanding discharges, exempting small discharges and small increases in discharges from this regulation. New or increased net loads of TDS that total less than 5,000 lbs/day as an annual average daily load are considered to be de minimis and exempt.

§ 95.10(a)(8). This section exempts those dischargers of TDS for which Federal regulations have established effluent limitation guidelines (ELGs) for TDS, chlorides or sulfates. This regulation is not intended to supersede requirements the EPA establishes, or has established, in the form of Best Available Treatment Technology economically achievable (BAT), Best Available Control Technology (BCT) or new source performance standards for a specific industrial subcategory for any of these three parameters. These discharges will be exempt from this regulation.

The Board recognizes that there are industries for which the EPA has determined, as part of the ELG development process, that BAT, BCT and new source standards for TDS, chlorides or sulfates are not necessary. Discharges of TDS from these sources may be exempt from this rule, depending on the EPA reasoning for not establishing a technology-based limitation. These situations will be reviewed by the Department upon formal written request on a case-by-case basis.

§ 95.10(b)—*Sector-Based Approach for the Oil and Gas Industry*

§ 95.10(b)(1). This section prohibits discharges to waters of this Commonwealth of wastewater resulting from fracturing, production, field exploration, drilling or well completion of natural gas wells. This section is consistent with the Federal ELG for the on-shore oil and gas industrial subcategory in 40 CFR Part 435 (relating to oil and gas extraction point source category).

§ 95.10(b)(2). In response to concerns raised by WRAC and by the natural gas industry itself, the Board modified the recycling mandate that was contained in the draft final version of the regulation presented to WRAC at its April 14, 2010, meeting. The language in the regulation was changed to promote recycling and requires the development of a waste reduction strategy. The purpose of this change is to drive maximum recycling and reuse of these wastewaters to reduce treatment and disposal threats to streams, treatment and disposal costs to the industry and costs to the industry and taxpayers in the form of wear and tear on state and local highways.

Concern was voiced that the application of the new TDS standards to conventional shallow gas operations may force the premature abandonment of shallow gas

production in this Commonwealth because this section required operators to recycle those wastewaters. By removing the mandate to recycle, the Board believes it has addressed this concern. The Board fully understands that conventional gas well operators confront economic concerns unlike those faced by the new Marcellus operators. Many of these smaller, conventional operators will be unable to recycle their wastewaters because of the marginal economics of the wells. The operators will still have the disposal at existing treatment facilities option available to manage their wastewaters.

In addition, the concern that conventional brine treatment facilities cannot operate under the proposed rule is without basis. Wastewaters may continue to be sent to existing brine treatment facilities that have historically accepted and treated them. These existing facilities may continue to operate under their existing permits and are not necessarily required to install new treatment. A new or "expanding mass loading" of TDS from these existing facilities would require them to comply with the new TDS standards in this regulation. Contrary to misperception, this new requirement does not apply to existing facilities simply when the current NPDES permit term expires. Section 95.10(a)(1) was amended to add further clarity in this regard.

§ 95.10(b)(3). This section provides that new or expanding treated discharges of wastewaters resulting from natural gas well operations may be authorized under an NPDES permit under specific conditions:

§ 95.10(b)(3)(i). The wastewater is hauled to and treated at a permitted CWT facility as this term is defined in 40 CFR 437.2(c) (relating to general definitions). A CWT means any facility that treats for disposal, recycling or recovery of material, hazardous or nonhazardous industrial wastes, hazardous or nonhazardous industrial wastewater, or used material received from offsite. Notably, the definition for CWT facility in 40 CFR 437.2(c) states that the term includes both a facility that treats waste received exclusively from offsite and a facility that treats wastes generated onsite as well as waste received from offsite. This allows for a range of industrial waste treatment facilities to take gas drilling wastewater for treatment, so long as the facility meets the effluent requirements in § 95.10(b).

§ 95.10(b)(3)(ii). The wastewater may not be discharged directly to a POTW without first receiving pretreatment at a permitted CWT. The final rule governing natural gas industry wastewater disposal at POTWs is different than the proposed rule and the April 2009 TDS permitting strategy. Under that strategy, the Department would have allowed POTWs to discharge high TDS wastewaters provided they obtained EPA approval of a pretreatment program under 40 CFR Part 403 (relating to general pretreatment regulations for existing and new sources of pollution) and install appropriate pretreatment facilities. The strategy also would have allowed acceptance of these wastewaters by POTWs only if they met all applicable effluent limits and treatment requirements necessary to protect downstream water supply intakes.

The final rule is aimed at discouraging POTWs that are not currently approved to accept these wastes from doing so. POTWs do not provide treatment of TDS. They merely pass TDS through their treatment process by means of a dilution. Accepting these high-TDS loads has the very real potential to ruin the POTW's biological treatment process, causing significant noncompliance. Therefore, the final rule establishes that POTWs may accept these wastewaters only if the wastes are first treated at a CWT

facility and meet the end-of-pipe effluent standards imposed by the rule. In effect, the final rule regulates these indirect discharges in a manner consistent with direct discharges of these wastes. Again, it is important to note that the majority of other gas-producing states do not allow the surface water discharge of this wastewater at all. Underground injection and nondischarge options are the norm in those states. This rule encourages those options in this Commonwealth.

§ 95.10(b)(3)(iii)—(vii). CWTs treating this wastewater must meet the effluent requirements contained in these subparagraphs.

§ 95.10(b)(4). This section specifies that when these wastewaters are hauled to sites for deep underground injection in this Commonwealth, the sites shall comply not only with the Federal underground injection control requirements but also with § 78.18 (relating to disposal and enhanced recovery well permits), when applicable.

§ 95.10(c)—*Effluent Standards for Other than Oil and Gas*

This section establishes the effluent standard of 2,000 mg/L for TDS for all industrial sectors other than oil and gas and provides an optional variance provision, which is detailed in the following section. As previously stated, inorganic TDS is known as a conservative parameter, meaning that TDS is not subject to fate during transport in the water column. Cumulative loadings of TDS from multiple discharges upstream of these intakes can cause violations of water quality criteria at design conditions and result in the need for an allocation strategy. These allocation strategies are inequitable unless the same requirements apply to all contributing discharges, independent of the location of each discharge in the watershed.

The Board addressed this issue and the comments received from the various potentially-affected industries in this final rule. The approach establishes an effluent standard for sectors (other than natural gas well operations) at 2,000 mg/L and allows a variance from this standard under certain conditions specific to the watershed in which the discharge is located. The 2,000 mg/L as a monthly average standard was selected for several reasons. First, it is the bar set in the proposed regulation for a high-TDS discharge, meaning that TDS-containing discharges from most industrial sectors and POTWs do not contain more than 2,000 mg/L TDS and thus would not be subject to this rule. Moreover, unless the discharge flow volume is quite low, a discharge containing greater than 2,000 mg/L will have a TDS loading rate that significantly impacts the assimilative capacity of the receiving stream, even if that stream has substantial flow volume. Second, the rule applies only to new and expanding loads of TDS, not the existing loads, making it more easily achieved and enabling industries that will be affected to plan their operations to meet the new standard. Finally, while the end-of-pipe 2,000 mg/L standard is less stringent than the instream water quality criterion, it is within four to five times that value and in the Department's Best Professional Judgment assures that adequate instream dilution will be available to prevent exceeding the water quality standard.

§ 95.10(d)—*Variance Provision*

Variances to this standard can be approved by the Department provided that the applicant can demonstrate the need for a variance. The demonstration shall be based on the character of the wastewater, the availability of treatment technologies and the costs associated with

meeting the standard. These variances are not without limitations. The Department will develop guidance materials to assist applicants in the completion of requests for variances prior to the effective date of this regulation.

§ 95.10(e)—*Variance Request Subject to Public Notice*

This provision establishes that a request for a variance submitted to the Department in accordance with § 95.10(c) will be required to comply with the public notice provisions applicable to NPDES permit applications in § 92.61 (relating to public notice of permit application and public hearing). The basic contents for the variance request are stated in § 95.10(d) and the Department will develop forms to be used when submitting a variance request. However, given that a variance will generally be included as part of an NPDES permit, this section makes clear that the variance request shall comply with public notice procedures used for NPDES permit applications.

§ 95.10(f)—*Department Approval of Variances*

Under the rule, an upper bound that limits the degree a discharge can vary from the standard will be established based on water quality considerations. This upper bound is set to assure that at the point of discharge existing uses are maintained and water quality standards, both numeric and narrative, are not compromised.

In addition, a watershed analysis must assure that the cumulative TDS load from all sources at the next downstream PWS intake does not exceed 75% of the water quality-based assimilative capacity at design stream flow conditions, as required in § 96.3, that is, Q_{7-10} . The Department will closely monitor TDS levels and take steps necessary to limit increased or future discharges and prevent water quality criteria violations. When the remaining assimilative capacity of a receiving stream falls below 25%, based on analysis at design stream flow conditions, the Department will develop a wasteload allocation for discharges of TDS that contribute to the specific water quality standards compliance point. For this evaluation, a watershed will consist of that area that drains to a PWS, which also is the water quality standards compliance point.

§ 95.10(g)—*Compliance Date for Coal-Fired Electric Steam Generating Units*

Coal-fired electric steam generating units have expressed concern over the timing of compliance with the requirements in this regulation and difficulties in planning, designing and constructing the necessary treatment equipment on account of an overlap with new air pollution control requirements, and the pending issuance of an ELG for TDS for this industrial category (that is, subject to 40 CFR Part 423 (relating to steam electric power generating point source category)). Two new EPA regulations—the Clean Air Interstate Rule (CAIR), see 70 FR 25162 (May 12, 2005), and the Clean Air Mercury Rule (CAMR), see 70 FR 28606 (May 18, 2005)—will require these facilities to install scrubbers or other air pollution control equipment which will ultimately generate wastewater with high TDS loadings. These regulations have not yet been finalized. The EPA is also currently developing an ELG for TDS for this industrial subcategory which is scheduled for completion by March 2014 (Docket No. EPA-HQ-OW-2009-0819). The industry has provided estimates of the time needed (approximately 3 years) to plan, design and construct treatment facilities for wastewater from the new air pollution control equipment installed to meet the CAIR.

The overlap of the wastewater treatment requirements in this regulation with the air pollution control requirements in the CAIR and the CAMR and the development of an ELG for TDS by the EPA scheduled for issuance in March 2014, necessitates establishment of a later compliance date for these industrial facilities. This section provides that coal-fired electric steam generating units will have additional time to come into compliance with the wastewater treatment requirements in § 95.10(c). These facilities shall comply with the requirements in § 95.10(c) by December 31, 2018. This section also recognizes that discharges from these facilities may still qualify for exemptions established by § 95.10(a), such as those in subsection (a)(1) for existing mass loadings of TDS authorized prior to the effective date of this regulation or for new and expanding loadings less than 5,000 lbs/day as an annual average daily load in subsection (a)(7). Finally, if an applicable effluent limit guideline is established by the EPA for this industrial subcategory, as is currently expected in March 2014, discharges from these facilities may qualify for the exemption in subsection (a)(8).

F. *Summary of Comments and Responses on the Proposed Rulemaking*

The Board approved publication of the proposed rulemaking at its meeting on August 18, 2009. The proposed rulemaking was published at 39 Pa.B. 6467 with a 90-day comment period. Due to a publishing error in the proposed rulemaking that listed an incorrect e-mail address for the Board, a correction to the proposed rulemaking was published at 39 Pa.B. 654. The Board advertised that the comment period for the proposed rulemaking was extended by 7 days. The public comment period officially closed on February 12, 2010. In addition, four public hearings were held as follows: December 14, 2009, in Cranberry Township, Butler County; December 15, 2009, in Ebensburg, Cambria County; December 16, 2009, in Williamsport, Lycoming County; and December 18, 2009, in Allentown, Lehigh County.

During the comment period, the Allegheny Conference, the PCA, the MSC and the Chamber submitted comments that questioned the need for the regulation based on their review of watershed data. The Board's response to these comments follows. Responses are also in the Background section of this preamble.

Allegheny Conference

The Allegheny Conference provided two major comments:

- There was an absence of scientific data to support the regulation.
- There was the potential for the proposed rule to seriously damage the economy of southwestern Pennsylvania and this Commonwealth.

The final-form rulemaking has been amended to address many of the issues identified in regard to economic effects by clarifying the misunderstanding of many industries as to how this rule would impact them, especially in the Monongahela River watershed. In the Monongahela, TDS levels have already exceeded water quality criteria. This means that allocations of TDS loads must be made for all dischargers in the watershed to bring the river back to compliance. The Department will be listing the Monongahela as impaired on its upcoming impaired waters list as required by the Clean Water Act (33 U.S.C.A. §§ 1251—1376).

In other watersheds, the Board recognizes that high-TDS wastewaters from different industries present differ-

ent treatment challenges. Not all industrial wastewaters containing TDS are consistent. Based on the need for regulation of a rapidly expanding industry which generates wastewaters with extraordinarily high levels of TDS and chlorides, the readily available proven treatment technologies for this wastewater, the low costs associated with treatment and the overwhelming public comment in favor of a standard for this industry, the proposed rulemaking refined its original focus on treatment for oil and gas wastewaters. The final-form rulemaking now contains more specific treatment requirements for wastewater generated from all natural gas drilling activities and provides exemptions and an option variance provision for non-natural gas industries designed in part to address economic issues identified.

With regard to their comment on the lack of scientific data to support the regulation, the Allegheny Conference unfortunately discounted important evidence. Their analysis used a simple frequency analysis, but the Department's WQN data set contains an adequate number of independent observations that allow more powerful statistical distribution tests, as outlined in the 2009 Assessment and Listing Methodology (http://www.portal.state.pa.us/portal/server.pt/community/water_quality_standards/10556/2009_assessment_methodology/666876). The Department's analyses of watersheds across this Commonwealth were conducted using these more rigorous methods. When the Department's analyses of WQN data showed the potential for water quality criteria violations, detailed studies were conducted in those watersheds.

First, conductivity is highly correlated with TDS and conductivity can be monitored continuously using probes. Although discrete TDS samples at the WQN sites in the Monongahela River may not fully elucidate the problem of increasing TDS, the continuous monitoring of conductivity is convincing. This increase in conductivity prompted the Department to conduct chemical grab sampling in various pools in the Monongahela in 2008 and 2009. Careful analysis of these samples, taking into consideration both the frequency and duration components of water quality criteria, showed they exceeded the 500 mg/L PWS TDS criteria in pools with drinking water intakes.

The Allegheny Conference comments that "The spikes recorded in 2007-2009, after a decade of readings below 500 parts per million, indicate a condition worth studying to understand its nature and severity, but a handful of samples is not enough to justify a new set of regulations for the entire state." The spikes in fact did elicit more study as the Department began systematically collecting additional grab samples in the Monongahela. The result was the discovery of a severe TDS problem in the river leading to an impairment listing. Uncovering the severity of this problem prompted the Department to recognize the need to deploy more continuous conductivity probes in other waters to learn whether the TDS problem is more widespread than just the Monongahela.

The assessment process by the Department in the Beaver River watershed is the same as that in the Monongahela. The potential for a TDS problem has been identified from WQN data, and the Department is responding by collecting grab samples and deploying conductivity probes. It takes time to collect the data, but when an adequate number of samples become available the Department will not simply rely upon a WQN frequency analysis, as suggested, but must consider the entire weight of evidence. Similar assessments of WQN data were made for the West and North Branches of the Susquehanna River, the Clarion River and Moshannon Creek, which were previously discussed.

Allegheny Conference omits any mention of the environmental disaster in Dunkard Creek that devastated 26 miles of that stream. The problem was high TDS concentrations leading to colonization and growth of golden algae, as well as osmotic pressure exceeding the regulatory numeric criterion. Dunkard Creek is a good example of what can happen if TDS is not controlled, and the loss of this important public resource was an environmental tragedy, documented by the loss of aquatic life, including endangered mussels.

Allegheny Conference's analysis of the WQN data can in no way be considered a risk assessment with any merit. Based on their simple frequency analysis the Conference suggests that the Board should delay any regulations because their analysis does not show many 500 mg/L exceedance at WQN sites. As previously documented, the WQN data can be used to calculate the background TDS concentration at each site and from that determine how much additional TDS load can be added before there is environmental harm. This is done by computing the assimilative capacity at Q_{7-10} design flow, and is a much more robust risk assessment.

PCA

The Board received significant comments from the PCA. In addition, the PCA participated in the TDS Stakeholders Subcommittee and provided a detailed presentation of how the PCA believed this regulation would affect their industry. Finally, the PCA also submitted comments to the Independent Regulatory Review Committee (IRRC), which were in turn submitted to the Board.

The PCA comments opposed the regulation for several reasons. First, the PCA assumed that at some point in time the Board would regulate all sources of high-TDS as new or expanding discharges, thus negating any exemptions. Second, the large volumes of mine drainage would be considered high-TDS, not because of their concentrations but because of the TDS loadings, and that all discharges from mining activities would eventually be regulated. The PCA added together the cumulative costs across the industry for treating TDS for all of its activities and discharges, including legacy operations for which their membership is currently responsible, and developed an estimate of the total industry costs to comply. Needless to say, when estimated in this manner, that cost was astronomical.

Upon Board review of the PCA comments, the IRRC comments and the PCA presentation to the TDS Stakeholders Subcommittee, it was apparent that the Board's intent to exempt existing loads of TDS from mining activities was not clearly discernable in the proposed rule as written. It was never the intention of the Board to capture these existing discharge loads of TDS from this industry in this regulation. The regulation was intended only to capture new loadings of high-TDS wastewater.

Therefore, in this final-form rulemaking the Board restructured the proposed rule to include § 95.10(a), intended to more clearly define those existing sources of TDS that are not subject to the rule. Specific concerns identified by the PCA are addressed in § 95.10(a)(1)–(6). Further details on the intent of these sections are described later in this preamble.

MSC

The Board also received comments from the MSC. In addition, the MSC and the POGAM were represented on the TDS Stakeholders Subcommittee. The new Marcellus shale play in this Commonwealth and the projected

wastewater treatment and disposal needs from that new industry was the primary impetus for the Board's proposing this new rule.

In these TDS Stakeholders Subcommittee meetings, the MSC and POGAM provided data, arguments and a presentation aimed at convincing the Board that, with a drier Marcellus formation than anticipated and new recycle and reuse practices, the projected need for treatment and disposal was an order of magnitude less than original projections. These groups representing the oil and gas industry in this Commonwealth argued that there was not a need for this regulation and that real-time flow management practices, which simply allow dilution of TDS loads in streams in this Commonwealth, were adequate to manage these new loads. They also proposed that increased energy demand from the limited treatment technologies would create worse pollution effects in media other than water, for example, air.

Further, the industry argues both that technology has not been fully developed to treat these wastes, and that the "significant" costs associated with the technology may inhibit the development of the new Marcellus gas play in this Commonwealth. The industry disputes the Board's treatment cost estimate, provided in the preamble for the proposed rule at approximately 25¢ per gallon, saying that the actual costs will be much higher.

The MSC was opposed to the proposed regulation as unnecessary. The Department conducted a thorough review of the information and the data presented by this industry, by treatment manufacturers and vendors, from existing treatment operations in this Commonwealth and other states and from full-scale pilot treatment studies. Based on this review, the Board does not agree that real-time flow management complies with water quality standards requirements, that there is no longer a need for this regulation, that technology has yet to be developed or that its original cost estimate of approximately 25¢ per gallon is either inaccurate or prohibitive.

This final-form rulemaking includes new § 95.10(b) that is specific to the oil and gas industrial category, which continues to include effluent standards designed to drive treatment of the wastewater to be disposed by this industry. At the recommendation of the TDS Stakeholders Subcommittee, this final-form rulemaking also includes incentives for recycling and reuse of these flow back wastewaters intended to minimize the amount of wastewater to be disposed. Further discussion on real-time flow management, wastewater treatment and disposal needs, potential multimedia pollution, treatment technologies and treatment costs can be found in this preamble.

Chamber

After considerable review of the comments from the Chamber, the Board agrees that a different path forward is warranted. The Chamber accurately pointed out that the rule as proposed captures a very broad and varied spectrum of industries across this Commonwealth. As noted by the Chamber, these industries produce a wide array of different wastewaters containing TDS, and that a sector-by-sector approach to controlling TDS is likely the best option. The Department has heeded that recommendation and the final rule reflects a change in approach.

In addition, the Chamber also noted that TDS cannot simply be ignored, recognizing that if not addressed or controlled in some manner, certain watersheds could exceed water quality standards, adversely affecting drinking water supplies and aquatic life. The Chamber recommends a watershed-by-watershed approach be pursued by the Board to avoid this potential problem.

The Chamber provided comments similar to the Allegheny Conference, PCA and the MSC regarding the degree to which our watersheds are in jeopardy from TDS. In addition, the Chamber recommends a form of flow management as a potential solution for controlling TDS. Analyses by the Department, addressed in this preamble, are real, accurate and based on compliance with State and Federal standards. These analyses document that in many watersheds the assimilative capacity is much closer to being exceeded, at design stream flow conditions, than is evidenced by a simplistic plot of monthly sample results and spikes over time. Further, at the initial meeting of the TDS Stakeholders Subcommittee, the Department presented statistical and scientific reasoning rejecting flow management as an option.

In this final-form rulemaking the Board restructured the proposed rule to include § 95.10(a) intended to more clearly define those existing sources of TDS that are not subject to the rule. Specific concerns identified by the PCA are addressed in § 95.10(a)(1)–(6). In addition, the Board recognized that different industries have different wastewaters. However, as described in the discussion regarding § 95.10(c), not establishing some level of performance for addressing TDS from these industries (other than oil and gas) results in significant economic inequities between industrial sectors. The final rule proposes a Statewide standard of 2,000 mg/L for these industries, with a variance provision that is based on a watershed assimilative capacity analysis. Further details on the intent of these sections are described in this preamble.

The following is a summary of other comments received during the public comment period, organized according to subject matter.

Drilling-Related Comments

Drilling-related comments are those comments that seemed to be targeted at the natural gas industry and, in some cases, more specifically the drilling and hydraulic fracturing of gas wells. Since this final-form rulemaking is primarily to establish wastewater treatment requirements for wastewaters containing TDS, many of the comments in this category were not applicable to the rule. They are listed here to demonstrate that much of the public comment focused on regulating the natural gas industry.

Comment: The fracking industry uses poisonous cocktails of contaminants. The Commonwealth and its citizens have a right to know and the drilling companies have an obligation to tell us what they are putting into the ground when they perform hydrofrack activities regardless of whether the chemicals are corporate secrets. Our groundwater and streams need to be protected from these chemicals. Set health-based standards for all contaminants that may be found in wastewater gas drilling including arsenic, benzene, radium, magnesium, volatile organic compounds, and radioactivity. The proposed standards are not stringent enough to protect our streams and additional steps need to be taken by PA DEP now to prevent further degradation of the State's waterways and water resources.

Response: The Department knows what additives are used in the fracturing process and sampled flow back waters to determine the relative quantities of these constituents. The Department has posted a list of these chemicals on its web site at <http://www.dep.state.pa.us/dep/deputate/minres/oilgas/FractListing.pdf>.

Current well construction standards are designed to protect groundwater resources from any contamination

that could result from drilling and fracturing wells and the Department has recently taken steps through new regulations to make those standards even more protective.

The Commonwealth currently has health-based standards in place for arsenic, benzene, radium exposure to radiation and volatile organic compounds. These standards are found in the drinking water MCLs and the water quality standards for surface waters in this Commonwealth. These standards are based on sound science and are as stringent as they need to be to protect the public health and streams in this Commonwealth.

Comment: The high pressure hydraulic fracturing technology invented by Halliburton, now located in Dubai, has been used in TX, WY, western PA, and CO with disastrous consequences. There have been fires, explosions, and other “accidents” in all of these other places around the country, making many farms, ranches, and homesteads uninhabitable. There should be mandated buffer zones between well site and drinking water sources, wetlands, or streams.

Response: This final-form rulemaking addresses effluent standards for the treatment of wastewaters containing TDS. This comment is not applicable to this final-form rulemaking.

Comment: Opening land to drilling has the potential to pollute surface and ground water resources. Enact a moratorium on leasing public land for gas drilling until an impact analysis can be done. Severely limit the number of wells in one area. Drilling the number of wells that they are drilling significantly dilutes the environmental quality of these pristine lands. Once damaged, it may take decades or centuries for them to return to their former state, if ever.

Response: This final-form rulemaking addresses effluent standards for the treatment of wastewaters containing TDS. This comment is not applicable to this rulemaking.

Comment: We need to make sure especially that our very best waterways, those designated as Exceptional Value or High Quality, as well as all sources of our public and private drinking water, are fully protected. Prohibit O&D drilling in EV watersheds. Testing water quality before, during, and after drilling should be mandatory, not voluntary. Require individual permits for gas development in HQ watersheds. Inspect each well during each phase—siting, drilling, casing, connecting, altering, and stimulating. Must consider cumulative impacts of drilling in watersheds.

Response: This final-form rulemaking addresses effluent standards for the treatment of wastewaters containing TDS. This comment is not applicable to this rulemaking.

Comment: Demand safe and biodegradable fracking chemicals in PA. Many people in Dimrock have already had their wells contaminated. Use the methods of the offshore oil and gas drilling in European waters where chemicals must be nontoxic in case of spills into the waters. Use less toxic “fracing” chemicals by implementing best practices identified by researchers at Texas A&M University’s Global Petroleum Research Institute, as a start.

Response: The final-form rulemaking promotes reuse of fracturing fluids as suggested.

Comment: Require recycling and reuse of hydrofracking wastewater. Create regulations to oversee the reuse of

drilling wastewater. There is little oversight over the reuse of drilling wastewater and whether in fact this is a waste disposal method as opposed to closed loop water recycling. Mandate closed-loop systems for managing wastewater, as well as steel tanks to contain the concentrated leftovers.

Response: The final-form rulemaking promotes reuse of fracturing fluids as suggested.

Comment: Require “cradle-to-grave” tracking of wastewater from drilling sites from generation through treatment and disposal. Do not allow the use of brine for dust control on dirt roads, since many of these roads are used for recreational purposes. No frackwater treated or untreated should go into our streams. Marcellus “frackwater” should not be left in lined lagoons during any stage of the process.

Response: This type of tracking is already required under Chapters 287—299, regarding residual waste. The final-form rulemaking establishes treatment standards for this wastewater that shall be met, which are protective of the uses of receiving streams, prior to discharge to surface water, as suggested.

Comment: We should be vigilant to threats to the quality of our waters. We also should learn from past mistakes: we are still paying to clean up acid mine drainage and other water pollution left as a legacy of lax regulation of the coal industry in times past. With the expansion of Marcellus gas drilling in Pennsylvania, we need to have strong protective measures in place before another disaster like the 2009 Dunkard Creek incident occurs.

Response: The final-form rulemaking establishes treatment standards for this wastewater that shall be met, which are protective of the uses of receiving streams, prior to any discharge to surface water, as suggested.

Comment: The proposed new regulations on TDS have already had a very positive result. The gas drilling industry has quickly moved to develop wastewater management strategies that rely on recycling. The gas exploration industry is very well funded and technically based. They have the means, as they already have proven, to respond to the challenges of their own wastewater. Put to the task, this industry is developing strategies that other industries can follow. These new technologies will translate into good, home grown jobs. Please hold the line on the proposed new standards. They are not perfect, but they are a very good start.

Response: The Board appreciates this comment.

Comment: These drillers need to be strictly regulated and they need to be taxed. This is no fledgling industry. With the good people of Pennsylvania already taxed to the gills, it makes no sense to have these well-organized predatory energy companies lobbying themselves into a free ride.

Response: This final-form rulemaking addresses effluent standards for the treatment of wastewaters containing TDS. This comment is not applicable to this final-form rulemaking.

Comment: We are concerned that that the projected discharges from drilling operations are greatly overstated and the ability to reuse flow back water has been underestimated.

Response: This final-form rulemaking takes a proactive approach to controlling TDS from the natural gas industry. The Marcellus Shale play is indeed in its infancy. The

industry does not yet have answers to most of the questions about the play and, in particular, about the impacts the play could have on the waters of this Commonwealth. The Board's aim is to ensure that future growth of this industry is considered in the rules and regulations it puts in place now.

Comment: Streamline residual waste regs for the handling of brines after they have left a production site. Allow the ability for brine transfer stations or transfer operations to operate with streamlined regulations.

Response: This final-form rulemaking addresses effluent standards for the treatment of wastewaters containing TDS. This comment is not applicable to this final-form rulemaking.

Comment: The targets of this regulation appear to be one-time dischargers, such as the hydrofacking industry. Refocus the regulation to apply to the oil and gas industry only.

Response: Based on stakeholder comments received during an extensive public participation process, the final-form rulemaking adopts a combination of recommended approaches for addressing these larger loadings of TDS. This combination of approaches includes an industrial sector-based regulation along with a watershed-based analysis. The sector-based piece focuses on the natural gas industry.

Comments: After four decades of demonstrable improvement in water quality, the US Army Corps of Engineer's data shows that conditions are reversing on Pennsylvania's rivers. It is becoming apparent that the assimilative capacity of some rivers to receive TDS, if not already exceeded, is close to being exceeded, and simply cannot sustain the additional loading projected as a result of natural gas exploration activities. In the last two years, evidence of degradation, based on elevated specific conductivity readings recorded at water quality monitors located on the Monongahela River at Elizabeth, OA, the Casselman River at Markelton, PA, and the Conemaugh Dam, in addition to the recent Dunkard Creek aquatic kill, demonstrates that high TDS wastewaters threaten to undermine historical water quality improvements, posing a genuine and extreme threat to regional water quality.

Response: The Board agrees, and these facts support the need for this final-form rulemaking.

Mining-Related Comments

Mining-related comments are those comments that were from the mining industry or were in support of the mining industry. This final-form rulemaking is primarily to establish wastewater treatment requirements for wastewaters containing TDS; however, many believed that it could affect mining operations. The final-form rulemaking has been revised to make it clear that it does not apply to most mining operations.

Comment: The lack of regulation and insufficient bonding in the early years of coal mining have caused major environmental damage, requiring years and much money to clean up. Over 3,000 miles of streams are still impaired from that irresponsible behavior. We need to prevent this from happening in the future by regulating discharges of high TDS wastewater.

Response: The Board agrees, and this final-form rulemaking takes a proactive approach to controlling TDS from the natural gas industry.

Comment: The proposed standards are not based on sound science, are costly, burdensome, unworkable and

therefore, threaten the vitality of the mining industry. Placing obstacles such as this does nothing to retain the jobs we have.

Response: From the inception of the final-form rulemaking, the intent of the rule was to exempt existing discharges, and insignificant discharges, from the effluent standards aimed at controlling the new, larger source of TDS. The provisions specifically allow for continued discharges of TDS wastewaters at authorized TDS loading levels and are designed to lessen the effects on existing and small discharges of TDS in this Commonwealth through the exemption and variance provisions. This new regulation will not impact reclamation activities at abandoned mines frequently operated by local watershed groups.

Comment: Current discharges from existing waste coal sites that are conducted in an environmentally sound manner should continue to be regulated under existing requirements. We believe that the proposed regulations could prevent remining and reclamation of waste coal sites.

Response: The final-form rulemaking exempts discharge loads of TDS authorized prior to August 21, 2010.

Comment: Revise 95.10(b)(5) to exempt discharges into mine pools that are permitted under Chapters 87, 88, 89, or 90.

Response: The regulation has been changed accordingly.

Health Based Comments

These were comments regarding the effects on public health that could be impacted by the final-form rulemaking. Most of the comments regarding the protection of drinking water. Most relate to fracking chemicals, but others related to the brominated disinfection byproducts that occurred in the Monongahela River.

Comment: There are no currently operating facilities capable of removing TDS. Since public water suppliers cannot treat this type of polluted water, the wastewater should be treated to a degree that would be protective of drinking water prior to discharge. Maintain the proposed treatment standards of 500 mg/L for TDS, and 250 mg/L for sulfates and chlorides.

Response: There are technologies that are capable of meeting these standards as noted in this preamble. The standards referenced were maintained for high-TDS wastewaters associated with the natural gas industry. For other industries, a different standard was set, but a variance from that standard can be granted when local streams are able to assimilate the loads without violating water quality standards.

Comment: Studies have shown that disinfection byproducts resulting from chemical reactions between disinfectants and organic materials present health risks to humans. The worst of these is brominated water, which has been shown to cause bladder cancer in humans. At present, the Monongahela River, with high concentrations of TDS presents higher levels of several of these contaminants.

Response: The Board agrees and cites one of these studies as a reference.

Environmental Comments

These were comments regarding the effects on the environment that could be impacted by the final-form rulemaking. Many related to harmful effects from an inadequately regulated mining industry. Others are con-

cerned about the quality of streams in this Commonwealth and with aquatic life protection.

Comment: The Dunkard Creek tragedy is a good indicator of the consequences of high TDS wastewater discharges into our fresh water streams. The discharge of high TDS wastewater into the stream completely damaged the biological community in the stream by allowing the growth of toxic algae, which can only survive in salt water. The algae was responsible for the destruction of 43 miles of stream, including 161 species of fish, 14 species of freshwater mussels, and other aquatic creatures such as salamanders by dissolving exposed cells, including gills.

Response: The Board agrees and this incident was considered in the analysis and the need for the final-form rulemaking.

Comment: Watershed analyses conducted by the PA DEP indicate that several rivers are severely limited in their capacity to assimilate new loads of TDS and sulfates—primarily due to acid mine drainage from long-abandoned coal mines—a legacy of Pennsylvania's last energy rush. Increased TDS and sulfate loading would reverse years of hard-won progress by PA DEP in improving water quality in these watersheds.

Response: The Board agrees and these facts formed part of the basis for the final-form rulemaking.

Comment: DEP has not shown, by monitoring or sampling data, that water resources are at any sustainable risk from TDS concentrations.

Response: The Board does not agree. Studies described and others cited in this preamble provide more than a sufficient basis for this final-form rulemaking.

Comment: Research in 1997 states that TDS over 400 mg/L has a direct negative affect on the diversity of fish populations. Additional research in 2007 confirms this. It is recommended that the TDS standard be lowered to 400 mg/L.

Response: The recommended 400 mg/L standard is an "instream" number that would have to be achieved after mixing and dilution of the discharge with the receiving stream. The Department has reviewed the relevant data and determined that the current osmotic pressure criterion in water quality standards regulations provide protection for aquatic life at the point of discharge. The 500 mg/L standard proposed for the natural gas industry wastewaters is more stringent, as it would be applied at the end of the discharge pipe.

Economic Comments

These were comments regarding the effects on the economy that could be impacted by the final-form rulemaking, whether large-scale or small-scale. Some commentators felt that the Department did not understand the economic impact of the regulation and some believed that small oil and gas producers would be the hardest hit. Others commented that the regulation would discourage investment in this Commonwealth.

Comment: DEP does not fully understand, and has not evaluated, the economic impact this regulation has on industries in PA. The statewide impact will be in the billions of dollars to comply and will put companies of the Commonwealth at a disadvantage with its competitors.

Response: The Board does understand and has evaluated, through the TDS Stakeholders Subcommittee process, the rule's effect on a very large cross section of industries in this Commonwealth. To provide greater

clarity to the scope of the regulation, the final-form rulemaking specifically exempts certain classes of TDS discharges from the application of the rule. This approach is designed to clearly exclude from the scope of this regulation all existing loadings of TDS authorized by the Department prior to the effective date of this final-form rulemaking, as well as new and expanding TDS sources, which the Department has determined are insignificant from a loading perspective.

Further, the Board agrees with the comments that were received by industries other than the oil and gas sector that point out that the proposed rulemaking was a one-size-fits-all approach that may not be appropriate. Different industries have vastly different wastewaters, even in the composition of the TDS. There are many different technologies that would be necessary to treat these different wastewaters, and the costs of treatment to a given standard could create an inequitable economic problem.

The Board addressed this issue and the comments received from the industries other than oil and gas in this final-form rulemaking. The approach establishes an effluent standard for these sectors at 2,000 mg/L and allows a variance from this standard under certain conditions specific to the watershed in which the discharge is located. The rule applies only to new and expanding loads of TDS, not the existing loads, making it more easily achieved.

Comment: The proposed regulations will limit the availability of commercial treatment of brine. The proposed regulations will essentially eliminate much of the current capacity to take brines to municipal treatment plants for disposal.

Response: The Board does not agree. The final-form rulemaking will provide regulatory certainty. The Department met with over 60 manufacturers and vendors of technologies for treating the very high levels of TDS from the natural gas industry, specifically the Marcellus shale formation. While many of these vendors do not have actual facilities in operation and are seeking to get into the business, at least six manufacturers have either piloted the technology at full scale or have facilities currently operating in other states.

Much of the hesitancy on the part of these technology vendors is the uncertainty regarding this rule. The companies are reluctant to move forward without a clear direction in regulation concerning what levels they will need to treat to for TDS. Implementing this final-form regulation will provide certainty to the companies proposing treatment facilities and give a clear guidance on what their facility will need to treat to regarding high TDS wastewaters.

In addition, investment companies have indicated that without clear direction they are less willing to provide capital for financing these types of wastewater treatment facilities. One company provided information that their treatment plant, if built and operated, could create approximately 70 to 100 short-term jobs during construction and about 12 permanent jobs during operation of their facility.

Finally, these highly-concentrated TDS wastewaters pose a great threat to the biological treatment processes at municipal sewage treatment plants and the final-form rulemaking prohibits that without adequate pretreatment facilities.

Comment: Each treatment option leaves a residual waste product which required further disposal adding to

the cost of treatment for an issue that has not been identified as a Statewide or even prevalent concern. In addition, other environmental concerns associated with TDS reduction, such as energy consumption, air emissions, landfill capacity, and disposal costs have not been addressed.

Response: The Board appreciates this comment; however, based on the collective comments received determined that a sector-by-sector approach to controlling TDS is appropriate. High-TDS wastewaters from different industries present different treatment challenges. Not all industrial wastewaters containing TDS are consistent. Based on the need for regulation of a rapidly expanding industry which generates wastewaters with extraordinarily high levels of TDS and chlorides, the readily available proven treatment technologies for this wastewater, the low costs associated with treatment and the overwhelming public comment in favor of a standard for this industry, the final-form rulemaking focuses on treatment for oil and gas wastewaters. The final-form rulemaking now contains more specific treatment requirements for wastewater generated from all natural gas drilling activities.

New technologies are being developed that treat this wastewater without using large amounts of energy or emitting large quantities of air pollutants and the Board believes that this final-form rulemaking will continue to move that industry in that direction. In fact, the Board believes that the certainty provided by this rule will accelerate the development of more efficient treatment technologies, zero discharge technologies and also drive conservation and pollution prevention through reuse of the wastewater.

This industry will generate the residual solids as suggested. The Department continues to work with treatment technology providers to develop reusable end products from these materials to reduce waste and costs associated with this treatment.

Comment: The concerns of industry and environment are not mutually exclusive. Industry should be held to a high standard. Well run businesses know that it is much easier and less expensive to do job right first time, rather than clean up mistakes later.

Response: The Board appreciated these comments.

Legal Comments

These were comments regarding the legal concerns of the final-form rulemaking. For example, some stated that the Department failed to adequately consider statutory elements for rulemaking.

Comment: Environmental justice communities have been targeted for disposal of toxic wastewater. DELCORA had been permitted to receive, treat, and dispose of toxic wastewater into the Delaware River, even though the sewage treatment plant would not adequately treat the wastewater. Although the permit was rescinded due to community outrage, significant concern exists that it will happen in the future.

Response: DELCORA's permit to receive this wastewater was rescinded at the request of DELCORA. Regardless, all permit applications for treatment of this type of wastewater will be reviewed in accordance with existing Department regulations and, when effective, this final-form rulemaking. This final-form rulemaking requires adequate pretreatment of the natural gas wastewater to the specified standards.

Comment: The proposed rulemaking fails to adequately consider statutory elements, including the consideration of water quality management and pollution control in the watershed as a whole and the immediate and long-range economic impact upon the Commonwealth and its citizens.

Response: As stated in this preamble, this final-form rulemaking differs from the proposed rulemaking in several important respects. To provide greater clarity to the scope of the regulation, the final-form rulemaking specifically exempts certain classes of TDS discharges from the application of this final-form rulemaking. In addition, based on stakeholder comments received, the final-form rulemaking adopts a combination of recommended approaches for addressing these larger loadings of TDS. This combination of approaches includes an industrial sector-based regulation along with a watershed-based analysis. Since there are numerous industrial categories and subcategories that include TDS as a pollutant of concern in their wastewater discharges, the watershed-based approach for all industrial sectors other than oil and gas establishes an effluent standard, but also provide a variance option for these discharges. Further, the combination of these approaches does indeed consider the long-term economic impacts, as discussed throughout this preamble.

Comment: Definitions are overbroad and vague, and do not identify who is covered by the regulation and who is not.

Response: The Board agrees that the scope section should be revised. To provide greater clarity to the scope of the regulation, the final-form rulemaking specifically exempts certain classes of TDS discharges from the application of this rule. This approach is designed to clearly exclude from the scope of this regulation all existing loadings of TDS authorized by the Department prior to the effective date of this final-form rulemaking, as well as new and expanding TDS sources, which the Department has determined are insignificant from a loading perspective.

Comment: Chapter 95 should not replace Effluent Limitation Guidelines (ELGs) or Best Professional Judgment in the writing of permits.

Response: The final rulemaking does not do either. When ELGs exist, they are used to set effluent limitations. Best Professional Judgment is used by Department staff as a general rule in writing permits. The requirements of § 95.10 will be implemented in accordance with the framework established under § 92.2a (relating to treatment requirements).

Comment: DEP authority under state law is unclear or not clearly stated.

Response: The final-form rulemaking is adopted specifically under the authority of sections 5 and 402 of the act, which provide for the adoption of regulations implementing the purposes and requirements of the act and for the regulation of activities which create a danger of pollution to the waters of this Commonwealth, and section 1920-A of The Administrative Code of 1929, which authorizes the Board to promulgate rules and regulations necessary to implement the provisions of the act. In addition, section 304 of the act (35 P. S. § 691.304) authorizes the Department to adopt regulations necessary for the protection of the purity of the waters of this Commonwealth. Section 501 of the act (35 P. S. § 691.501) authorizes the protection of domestic water supplies. Notably, one of the fundamental policy objectives of the act, in section 4 (35 P. S. § 691.4) is "to prevent further pollution of the waters of the Commonwealth."

Technical Comments

These were comments regarding the technical aspects of the proposed rulemaking. Some were concerned with the perceived limited technical justification of the final-form rulemaking and others stated that the regulation does not offer a solution that addresses the problem.

Comment: The proposed rulemaking does not explain the problem nor does it offer a solution that addresses the problem. This proposed rulemaking has offered no scientific data or justification for imposing such severe limits. The proposed rulemaking is predicated on very limited sampling in the Monongahela River between October and December 2008 when river levels were at historical lows and there were high dissolved solids concentrations entering the Commonwealth from West Virginia.

Response: The Board disagrees with this comment. Neither the proposed rulemaking nor the final rulemaking is based on the conditions that are occurring in the Monongahela watershed. In the Monongahela, TDS levels have already exceeded water quality criteria. This means that allocations of TDS loads must be made for all dischargers in the watershed to bring the river back to compliance. The Department will be listing the Monongahela as impaired on its upcoming impaired waters list as required by the Federal Clean Water Act. The final-form rulemaking is intended to prevent other watersheds from becoming impaired, like the Monongahela.

The Board disagrees with the commentator's suggestions that the proposed rulemaking is not based on sufficient scientific data. The Department's analyses of watersheds across this Commonwealth were conducted using rigorous statistical methods. When the Department's analyses of WQN data showed the potential for water quality criteria violations, detailed studies were conducted in those watersheds.

The assessment process by the Department in the Beaver River watershed is the same as occurred in the Monongahela. The potential for a TDS problem has been identified from WQN data, and the Department is responding by collecting grab samples and deploying conductivity probes. It takes time to collect the data, but when an adequate number of samples become available, the Department will not simply rely upon a WQN frequency analysis, as suggested. It will consider the entire weight of evidence. Similar assessments of WQN data were made for the West and North Branches of the Susquehanna River, the Clarion River and Moshannon Creek, which were previously discussed.

A glaring omission by those who question the scientific need for the rule is any mention of the environmental disaster in Dunkard Creek that destroyed 26 miles of stream. The problem was high TDS concentrations leading to colonization and growth of golden algae, as well as osmotic pressure exceeding the regulatory numeric criterion. Dunkard Creek is a good example of what can happen if TDS is not controlled, and the loss of this important public resource was an environmental tragedy, documented by the loss of aquatic life, including endangered mussels.

Comment: The fact that the proposed rule focuses on a statewide limit, as opposed to being imposed on a watershed specific basis like other wastewater discharge requirements, will not result in an efficient use of resources.

Response: The Board agreed and revised its approach in the final-form rulemaking to include a watershed-by-watershed analysis as suggested, to more efficiently use its limited resources.

Comment: The health of aquatic organisms is protected by the current osmotic pressure water quality standard.

Response: The Board agrees to the extent that the effects of individual discharges on receiving streams are evaluated at the point of discharge; however, TDS is a conservative parameter, meaning that TDS is not subject to fate during transport in the water column. This means that a pound of TDS discharged in the headwaters of a watershed is still a pound of TDS at the mouth of the watershed. Osmotic pressure is not an effective measure of water quality from cumulative loadings of TDS from multiple discharges that can cause violations of water quality criteria at design conditions.

Comment: The number of NPDES permit applications should not be used as a basis for further regulation since these applications are speculative in nature.

Response: The Board disagrees and notes that the Department will treat these applications as authentic, each requesting a part of any available assimilative capacity, unless they are formally withdrawn.

Comment: The criteria for TDS, sulfates and chlorides are based on secondary maximum containment levels and are not a risk to human health.

Response: The Board does not necessarily agree with this suggestion. While TDS and sulfate concentrations manifest as secondary contaminants at the levels established as MCLs, they are toxic to both humans and aquatic life at higher concentrations. For example, sulfates begin to exhibit a laxative effect on humans at concentrations between 500 mg/L and 750 mg/L, while the secondary MCL is 250 mg/L.

Administrative Comments

These were comments regarding administrative aspects of the rulemaking, especially as it relates to the scope of the regulation. Many comments stated that the final-form rulemaking should be implemented immediately, some wanted elimination of the threshold for large sources, others wanted whole effluent toxicity requirements and others wanted regulation of the reuse of fracking wastewater.

Comment: Implement these proposed standards immediately. Do not postpone the effective date until 2011.

Response: The final-form rulemaking will become effective August 21, 2010.

Comment: The time frame of January 1, 2011 is an unrealistic goal for the implementation of this proposed rulemaking. The time required for design, permitting, ordering, construction, and final testing will not be possible sooner than 30-36 months.

Response: The Permitting Strategy for High-TDS Wastewaters (April 2009) establishes two dates-April 1, 2009, when the strategy became effective and January 1, 2011, when compliance with effluent standards was expected. In this final-form rulemaking, both the April 1, 2009, and January 1, 2011, have been changed to August 21, 2010. Prior to August 21, 2010, facilities are considered to be existing. After August 21, 2010, they will be new or expanding loads.

The final-form rulemaking only applies to new and expanding facilities, meaning facilities that will not have been constructed by August 21, 2010. These new facilities

literally will not be able to accept wastewater and discharge until they are constructed. Until these new facilities are constructed, wastewater can continue to be treated and disposed at existing facilities. There is currently no shortage of treatment capacity. Therefore, it appears that this argument is without merit.

Comment: The limits should be applicable to all treatment plants. New sources should be covered immediately, and existing sources of large TDS discharges should be covered through the NPDES renewal process.

Response: From the inception of the final-form rulemaking, the intent of the Board was to exempt existing discharges, and insignificant discharges, from the effluent standards aimed at controlling the new, larger source of TDS. The provisions specifically allow for continued discharges of TDS wastewaters at current loads and are designed to lessen the effects on existing and small discharges of TDS in this Commonwealth through the exemption and variance provisions.

Comment: Minimize impacts to existing operating facilities; including POTWs which receive trucked in wastewaters and septage, which often contains in excess of 2,000 mg/L.

Response: From the inception of the final-form rulemaking, the intent of the Board was to exempt existing discharges, and insignificant discharges, from the effluent standards aimed at controlling the new, larger source of TDS. The provisions specifically allow for continued discharges of TDS wastewaters at current loads and are designed to lessen the effects on existing and small discharges of TDS in this Commonwealth through the exemption and variance provisions.

Comment: The standards for TDS and the threshold concentration should be stated as daily maximum, not a monthly average.

Response: The Board does not agree with this suggestion. The 500 mg/L standard as a monthly average allows for effluent variability from treatment facility operations, and is more in line with the instream standard and MCL for TDS, which are both monthly averages.

Comment: There should be a minimum requirement that all discharges not cause background in-stream concentrations of TDS to rise above 133% of background levels (the Delaware River Basin Commission standard).

Response: The Board included this provision in the final-form rulemaking.

Comment: Due to the highly varying toxicity of both TDS discharges and especially Marcellus wastewater, Whole Effluent Toxicity (WET) testing should be required utilizing both an acute and chronic toxicity standard.

Response: If TDS are controlled to less than 500 mg/L, no WET is necessary.

Comment: Consideration should be given for the implementation of seasonal or flow-based TDS limits, with the intent of restricting TDS mass discharges during periods of low flow. Consideration should be given to the implementation of a TDS trading system, which could effectively address legacy TDS contributors in return for higher discharge limits for municipalities and industry.

Response: Real-time management is discussed in great detail in this preamble. Support for this position relies on a certain rationale that does not reflect real-world considerations or good science. This method of managing flows

on a real-time basis presents many problems, most notably compliance with Federal and State regulatory water quality standards.

Comment: The regulation penalizes water reuse and recycling. Reduction in water use will result in a higher concentration for the same mass loading. Change "2000 mg/L or 100,000 lbs/day" to "100,000 lbs/day and 2000 mg/L" in applicability criteria.

Response: The final-form rulemaking promotes reuse of natural gas industry wastewater. The final-form rulemaking no longer defines high-TDS wastewater in the manner cited in this comment.

Comment: Sampling done by DEP and posted on the SWRO web site used an inappropriate testing method, drying the samples at 105 Deg, rather than at 180, which is required by EPA and USGS test methods, which could result in higher TDS concentrations due to the inclusion of water in the results.

Response: This comment is not accurate. Both laboratory methods are correct. In fact, the method used by the Department may be "more correct" in measuring "total" dissolved solids, as it measures both the organic and inorganic components of the TDS.

Comment: Since changes are inevitable, you should republish as proposed or advanced notice of final rulemaking.

Response: The Board did not publish an advanced notice of final rule making. Issuing an advanced notice of final rulemaking is discretionary and, given the extensive public outreach for this regulation, including the cooperative work by the Department with the TDS Stakeholders Subcommittee, and the fact that the final-form rulemaking incorporates many of the recommendations of the stakeholders, the Board does not believe an advanced notice of final rulemaking will result in additional value, but rather would only lead to unnecessary delay.

Comment: Consider separate standards for estuaries and other high naturally-occurring TDS waters.

Response: The watershed-based approach contained in the final-form rulemaking accomplishes this.

G. Benefits, Costs and Compliance

Benefits

Promulgation and implementation of this final-form rulemaking will assure that watersheds in this Commonwealth will not exceed 500 mg/L of TDS in stream, protecting aquatic life and drinking water. This added level of protection will prevent impairment of watersheds and prevent existing and new dischargers of TDS from having to make large investment in treatment technologies resulting from Federally-mandated TMDL allocations.

This final-form rulemaking exempts many small dischargers that are not a part of the projected problem, such as sewage treatment plants, abandoned mine discharge treatment plants, surface mining, small food processors, and the like. The final-form rulemaking allows these existing dischargers to continue operating under current scenarios.

The final-form rulemaking addresses the overwhelming public comments in support of a 500 mg/L standard for the oil and gas industry. The final-form rulemaking focuses more precisely on the specific pollution prevention problem that needs to be addressed so that the regulatory requirement is reasonable.

The final-form rulemaking is consistent with the Federal approach by separating industry sectors and requirements for “new” versus “existing” sources. It also assures the public that the Marcellus Industry in this Commonwealth will not harm streams. It accomplishes this through requiring treatment, promoting the reuse of flowback and production waters, driving methods of treatment and disposal that do not involve stream discharge and encouraging treatment technology expansion and development for future sources of high TDS, in turn creating new jobs for residents in this Commonwealth.

Finally, it employs the approach preferred by most members of industry. The final-form rulemaking addresses the difficulty from setting an end-of-pipe effluent limitation applicable to numerous industry sectors because of differences in feasible technology and costs across industries affected. This final-form rulemaking is fair to existing operations and industries.

Compliance Costs

The final-form rulemaking could present new costs for treatment if an existing industrial facility wishes to expand, or a new industry wishes to start, and is unable to obtain a variance.

The final-form rulemaking will present treatment costs to the oil and gas industry, which may be minimized through recycling and reuse, zero discharge treatment technologies or underground injection options. However, this industry should be very capable of absorbing these costs as minimal when compared to the expected revenues from the Marcellus shale formation in this Commonwealth.

Compliance Assistance Plan

The Department will provide written notification of the changes to the industrial categories that may be affected.

Paperwork Requirements

There are no paperwork requirements imposed by this final-form rulemaking.

H. Pollution Prevention

The matters affected by this final-form rulemaking promote pollution prevention and control.

I. Sunset Review

This final-form rulemaking will be reviewed in accordance with the sunset review schedule published by the Department to determine whether the final-form rulemaking effectively fulfills the goals for which it was intended.

J. Regulatory Review

Under section 5(a) of the Regulatory Review Act (71 P. S. § 745.5(a)), on October 28, 2009, the Department submitted a copy of the notice of proposed rulemaking, published at 39 Pa.B. 6467, to IRRC and the Chairpersons of the Senate and House Environmental Resources and Energy Committees (Committee) for review and comment.

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

Under section 5.1(j.2) of the Regulatory Review Act (71 P. S. § 745.5a(j.2)), on June 8, 2010, the Senate Commit-

tee notified IRRC of its intent to review the final-form rulemaking. Under section 5.1(j.2) of the Regulatory Review Act, on July 2, 2010, after the conclusion of the additional review period requested, the final-form rulemaking was deemed approved by the Senate Committee. Under section 5.1(j.2) of the Regulatory Review Act, on June 16, 2010, this final-form rulemaking was deemed approved by the House Committee. Under section 5.1(e) of the Regulatory Review Act, IRRC met on June 17, 2010, and approved the final-form rulemaking.

K. Findings

The Board finds that:

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

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

(3) The regulations do not enlarge the purpose of the proposed rulemaking published at 39 Pa.B. 6467 with a correction published at 39 Pa.B. 6547.

(4) These regulations are necessary and appropriate for administration and enforcement of the authorizing acts identified in Section C.

L. Order

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

(a) The regulations of the Department, 25 Pa. Code Chapter 95, are amended by amending § 95.2 and by adding § 95.10 to read as set forth in Annex A.

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

(c) The Chairperson of the Board shall submit this order and Annex A to IRRC and the Committees as required by the Regulatory Review Act.

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

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

JOHN HANGER,
Chairperson

(*Editor's Note:* For the text of the order of the Independent Regulatory Review Commission relating to this document, see 40 Pa.B. 3753 (July 3, 2010).)

Fiscal Note: Fiscal Note 7-446 remains valid for the final adoption of the subject regulations.

Annex A

TITLE 25. ENVIRONMENTAL PROTECTION

PART I. DEPARTMENT OF ENVIRONMENTAL PROTECTION

Subpart C. PROTECTION OF NATURAL RESOURCES

ARTICLE II. WATER RESOURCES

CHAPTER 95. WASTEWATER TREATMENT REQUIREMENTS

§ 95.2. Effluent standards for industrial wastes.

Industrial wastes must meet the following effluent standards:

(1) Wastes must have a pH of not less than 6 and not greater than 9, except where:

(i) The wastes are discharged to an acid stream, in which case the pH may be greater than 9.

(ii) The discharger affirmatively demonstrates, in writing, to the Department that biological respiration in the wastewater treatment system will cause the discharge to exceed the limits in this paragraph and that exceeding these limits will not result in a violation of applicable water quality standards or of the applicable treatment requirements and effluent limitations to which a discharge is subject under the Federal Act, in which case the Department may grant a variance, in writing, from the limitation set forth in this paragraph.

(2) Oil-bearing wastewaters, except those subject to paragraph (3), must comply with the following:

(i) At no time cause a film or sheen upon or discoloration of the waters of this Commonwealth or adjoining shoreline.

(ii) At no time contain more than 15 milligrams of oil per liter as a daily average value nor more than 30 milligrams of oil per liter at any time, or whatever lesser amount the Department may specify for a given discharge or type of discharge as being necessary for the proper protection of the public interest or to meet any requirements based upon the State Act or the Federal Act, as defined in § 92.1 (relating to definitions).

(3) Petroleum marketing terminals must:

(i) Be provided with facilities to remove oil from waters, including stormwater runoff, before discharge into waters of this Commonwealth. Compliance with this paragraph constitutes compliance with paragraph (2)(i) except to the extent that the State Act or Federal Act or regulations promulgated thereunder impose a more stringent requirement.

(ii) Develop, implement and keep up to date pollution incident prevention plans as described in § 91.34 (relating to activities utilizing pollutants).

(iii) Design, maintain and utilize oil removal facilities that consist of an American Petroleum Institute (A.P.I.) listed oil separator, unless the person operating the facility can demonstrate to the Department that an alternate design is equivalent or better in removing oil from water to maintain and protect the waters of this Commonwealth, including all existing and designated uses established under Chapter 93 (relating to water quality standards).

(4) Waste may not contain more than 7 milligrams per liter of dissolved iron.

(5) When surface waters are used in the industrial plant, the quality of the effluent need not exceed the quality of the raw water supply if the source or supply would normally drain to the point of effluent discharge, unless otherwise required under the act or Federal Act or regulations promulgated thereunder.

§ 95.10. Treatment requirements for new and expanding mass loadings of Total Dissolved Solids (TDS).

(a) The following are not considered new and expanding mass loadings of TDS and are exempt from the treatment requirements in this section:

(1) Maximum daily discharge loads of TDS or specific conductivity levels that were authorized by the Depart-

ment prior to August 21, 2010. These discharge loads will be considered existing mass loadings by the Department.

(i) Relocation or combination of existing discharge points of existing mass loadings of TDS do not constitute a new or expanding mass loading unless total mass loadings are increased.

(ii) Existing publicly owned treatment works (POTW) as defined in § 92.1 (relating to definitions) and industrial waste treatment facilities authorized prior to August 21, 2010, under permits authorizing the acceptance, treatment and discharge of TDS do not constitute a new or expanding mass loading unless total mass loadings accepted, treated and discharged are to be increased. Only the net increase in TDS mass loadings from these facilities will be considered a new and expanding mass loading of TDS.

(2) Facilities treating postmining pollutional discharges from abandoned mine sites. For purposes of this section, abandoned mine sites include all lands and water eligible for reclamation or drainage abatement or treatment expenditures under section 402(g)(4) or section 404 of the Surface Mining Control and Reclamation Act of 1977 (30 U.S.C.A. §§ 1232(g)(4) and 1234).

(3) Surface mining activities with preexisting discharges subject to Chapter 87, Subchapter F or Chapter 88, Subchapter G (relating to surface coal mines: minimum requirements for remining areas with pollutional discharges; and anthracite surface mining activities and anthracite bank removal and reclamation activities: minimum requirements for remining areas with pollutional discharges) and preexisting discharges subject to Chapter 90, Subchapter F (relating to coal refuse disposal activities on areas with preexisting pollutional discharges).

(4) Discharges from active surface coal mining operations with an open pit dimension of less than 450,000 square feet exposed at any time.

(5) Discharges from erosion and sediment control facilities used at surface mining activities as defined in § 86.1 (relating to definitions).

(6) Existing mine drainage directed to a mine pool where the mine pool is being treated in accordance with applicable requirements in Chapters 91—96.

(7) New and expanding discharge loadings of TDS equal to or less than 5,000 pounds per day, measured as an average daily discharge over the course of a calendar year, otherwise known as the annual average daily load.

(8) Discharges of wastewater produced from industrial subcategories with applicable effluent limit guidelines for TDS, chlorides or sulfates established as best available technology economically achievable (BAT), best conventional pollutant control technology (BCT) or new source standards of performance, by the administrator of the EPA under sections 303(b) and 306 of the Federal Act (33 U.S.C.A. §§ 1314(b) and 1316).

(b) Operations with wastewater resulting from fracturing, production, field exploration, drilling or completion of natural gas wells shall comply with the following requirements:

(1) Except as provided in paragraph (3), there may be no discharge of wastewater into waters of this Commonwealth from any source associated with fracturing, production, field exploration, drilling or well completion of natural gas wells.

(2) A wastewater source reduction strategy shall be developed by the well operator by August 22, 2011, and

submitted to the Department upon request. The source reduction strategy must identify the methods and procedures the operator shall use to maximize the recycling and reuse of flow back or production fluid either to fracture other natural gas wells, or for other beneficial uses approved under Chapter 287 (relating to residual waste management—general provisions). The strategy shall be updated annually and include, at a minimum, the following information:

(i) A complete characterization of the operator's wastewater stream including chemical analyses, TDS concentrations and monthly generation rate of flowback and production fluid at each natural gas well.

(ii) A description and evaluation of potential wastewater source reduction options through recycling, reuse or other beneficial uses.

(iii) The rationale for selecting the source reduction methods to be employed by the operator.

(iv) Quantification of the flowback and production fluid generated by each well which is recycled or reused either to fracture other natural gas wells or for other approved beneficial uses.

(3) New and expanding treated discharges of wastewater resulting from fracturing, production, field exploration, drilling or well completion of natural gas wells may be authorized by the Department under Chapter 92 (relating to National Pollutant Discharge Elimination System permitting, monitoring and compliance) provided that the following requirements are met:

(i) Discharges may be authorized only from centralized waste treatment facilities (CWT), as defined in 40 CFR 437.2(c) (relating to general definitions).

(ii) Discharges may not be authorized from a POTW, as defined in § 92.1, unless treatment at a CWT meeting all of the requirements of this chapter precedes treatment by the POTW.

(iii) The discharge may not contain more than 500 mg/L of TDS as a monthly average.

(iv) The discharge may not contain more than 250 mg/L of total chlorides as a monthly average.

(v) The discharge may not contain more than 10 mg/L of total barium as a monthly average.

(vi) The discharge may not contain more than 10 mg/L of total strontium as a monthly average.

(vii) The discharge complies with the performance standards in 40 CFR 437.45(b) (relating to new source performance standards (NSPS)).

(4) Deep well injection of wastewater resulting from fracturing, production, field exploration, drilling or well completion of natural gas wells shall comply with § 78.18 (relating to disposal and enhanced recovery well permits).

(c) New and expanding mass loadings of TDS not addressed in subsections (a) and (b) may not contain more than 2,000 mg/L of TDS as a monthly average, unless a variance is approved by the Department under this section. For purposes of this subsection, any net increase in existing TDS loadings authorized after August 21, 2010, will be considered a new and expanding mass loading of TDS.

(d) A request for a variance to subsection (c) shall be submitted to the Department and be accompanied by the following information:

(1) An analysis of the applicant's existing discharge loads of TDS, and the projected new discharge loads associated with the proposed new and expanding mass loadings of TDS.

(2) An analysis of the applicant's existing treatment facilities and the ability of those facilities to meet the requirement in subsection (c).

(3) An analysis of upgrades necessary to bring the applicant's existing facility into compliance with subsection (c) and the estimated costs associated with the upgrades.

(4) An analysis of the receiving stream's water quality for TDS at, or upstream from, the proposed point of discharge.

(e) A request for a variance to subsection (c) will be subject to the public notice requirements for permit applications in § 92.61 (relating to public notice of permit application and public hearing).

(f) A variance to subsection (c) may be approved by the Department only under the following conditions:

(1) A watershed analysis conducted by the Department determines that a variance will not result in a reduction of available assimilative capacity for TDS to less than 25% of the total available assimilative capacity at the next downstream point of water quality standards compliance. Available assimilative capacity will be calculated using design flow conditions under § 96.4(g) (relating to TMDLs and WQBELs).

(2) The resulting instream concentration of TDS at the point of discharge from the new or expanding loading will not violate water quality standards in Chapter 93 (relating to water quality standards).

(g) Coal-fired electric steam generating units subject to effluent limitations in 40 CFR Part 423 (relating to steam electric power generating point source category), including TDS effluent limitations created by the EPA rule-making on effluent limitations scheduled for completion by March 2014 (Docket No. EPA-HQ-OW-2009-0819), must comply with subsection (c) by December 31, 2018, unless exempted by subsection (a).

[Pa.B. Doc. No. 10-1572. Filed for public inspection August 20, 2010, 9:00 a.m.]

RULES AND REGULATIONS

Title 25—ENVIRONMENTAL PROTECTION

ENVIRONMENTAL QUALITY BOARD

[25 PA. CODE CH. 102]

Erosion and Sediment Control and Stormwater Management

The Environmental Quality Board (Board) amends Chapter 102 (relating to erosion and sediment control and stormwater management). The final-form rulemaking incorporates the Federal Clean Water Act "Phase II" National Pollutant Discharge Elimination System (NPDES) permit requirements for stormwater discharges associated with construction activities, codifies post construction stormwater management (PCSM) requirements, including long-term operation and maintenance requirements of PCSM best management practices (BMPs), include specific antidegradation implementation provisions, updates agricultural planning and implementation requirements, update erosion and sediment (E&S) control requirements, and establishes riparian buffer and riparian forest buffer provisions.

The significant revisions to the final-form rulemaking in response to comments include the following: the removal of the proposed permit-by-rule, which was opposed as drafted by most commentators, including the United States Environmental Protection Agency (EPA); the addition of exemptions and waivers from the mandatory riparian buffer requirements, as requested by various sectors of the regulated community; and the addition of grandfathering provision for NPDES permit renewals regarding PCSM as requested by the builders.

This order was adopted by the Board at its meeting of May 17, 2010.

A. *Effective Date*

This final-form rulemaking will go into effect November 19, 2010.

B. *Contact Persons*

For further information, contact Kenneth F. Murin, Chief, Division of Waterways, Wetlands, and Stormwater Management, P. O. Box 8775, Rachel Carson State Office Building, Harrisburg, PA 17105-8775, (717) 787-6827; or Margaret O. Murphy, Assistant Counsel, Bureau of Regulatory Counsel, P. O. Box 8464, Rachel Carson State Office Building, Harrisburg, PA 17105-8464, (717) 787-7060. Persons with a disability may use the Pennsylvania AT&T Relay Service, (800) 654-5984 (TDD users) or (800) 654-5988 (voice users). This final-form rulemaking is available on the Department of Environmental Protection's (Department) web site at <http://www.depweb.state.pa.us>.

C. *Statutory Authority*

The final-form rulemaking is being made under the authority of sections 5 and 402 of The Clean Streams Law (act) (35 P. S. §§ 691.5 and 691.402), which authorize the Department and the Board to formulate, adopt and promulgate rules and regulations that are necessary to implement the provisions of the act; section 1917-A of The Administrative Code of 1929 (71 P. S. § 510-17), which authorizes the Department to prevent the occur-

rence of a nuisance and requires the Department to protect the people of this Commonwealth from unsanitary conditions and other nuisances, including any condition declared to be a nuisance by any law administered by the Department; section 1920-A of The Administrative Code of 1929 (71 P. S. § 510-20), which authorizes the Board to promulgate rules and regulations that may be determined by the Board to be for the proper performance of the work of the Department; and section 11(2) of the Conservation District Law (3 P. S. § 859(2)). Specifically, under these authorities, the Department and the Board are authorized to adopt regulations that will protect, maintain, reclaim and restore waters of this Commonwealth. Under these authorities, Chapter 102 regulates accelerated erosion, sedimentation and stormwater runoff regarding earth disturbance activities. Specifically, accelerated erosion and sedimentation must be minimized during earth disturbance activities and the associated change in the volume, rate and quality of post construction stormwater runoff must be controlled to prevent pollution and protect, maintain, reclaim and restore waters of this Commonwealth.

D. *Background and Purpose of the Final-Form Rulemaking*

The purpose of this final-form rulemaking is to amend the existing E&S control regulations in Chapter 102. Since 1972, earth disturbance activities regarding agricultural plowing and tilling, as well as nonagricultural earth disturbance activities have been regulated under Chapter 102 by requiring persons to develop, implement and maintain BMPs. These regulations were last amended in 2000. The major amendments incorporate the Federal Clean Water Act "Phase II" NPDES permit requirements for stormwater discharges associated with construction activities, codify PCSM requirements, including long-term operation and maintenance requirements of PCSM BMPs, include specific antidegradation implementation provisions, update agricultural planning and implementation requirements, update E&S control requirements and establish riparian buffer and riparian forest buffer provisions. Additional revisions were made to clarify requirements and address identified gaps in regulatory authority important to protecting the waters of this Commonwealth.

Public and advisory committee participation played a substantial role in shaping the final form of this final-form rulemaking. During the 90-day public comment period, the Board heard from over 1,300 commentators. This includes citizens (86%), environmental groups, non-governmental groups and academia (3%), industry (8%), government (Federal, State agencies, municipalities and conservation districts (CD)) (3%), State legislators (31 legislators from the House and Senate) and the Independent Regulatory Review Commission (IRRC).

After review of the comments, the Department met with the legislative committees, numerous stakeholder representatives, the Department of Transportation (DOT), the Department of Conservation and Natural Resources and various technical experts. The Department met with the Agricultural Advisory Board on February 17, 2010, to summarize the revisions being considered for final-form rulemaking. The Department also met with the Water Resources Advisory Committee (WRAC) on February 19, 2010, and again on March 17, 2010, to present the draft final-form rulemaking. After extensive discussion, WRAC

voted to approve the final-form rulemaking subject to the Department clarifying several provisions of the final-form rulemaking.

In response to comments, the input from advisories committees and IRRC, the changes to the final-form rulemaking include revisions to the following area: 1) definitions; 2) agriculture; 3) permit fees; 4) PCSM operation and maintenance; 5) antidegradation implementation; 6) riparian buffer requirements; and 7) permit-by-rule. Specifically, in § 102.1 (relating to definitions), several definitions were revised or deleted; the agricultural provisions in § 102.4(a) (relating to erosion and sediment control requirements) were revised and clarified; the permit fee was restructured to include an administrative fee and a fee based on acreage was added to § 102.6 (relating to permit applications and fees); PCSM provisions in § 102.8 (relating to PCSM requirements) regarding long-term operation and maintenance were consolidated into subsection (m) and clarified; § 102.14 (relating to riparian buffer requirements) was reorganized and refined, subsection (d) was added to address exemptions, subsection (e) was added to address antidegradation presumption and offset and trading; and proposed § 102.15 regarding permit-by-rule was withdrawn.

E. Summary of Comments and Responses on the Proposed Rulemaking and Changes to the Proposed Rulemaking

In response to recommendations from commentators, several changes were made in the final-form rulemaking. A summary of the comments received and the changes made are listed by section and described as follows.

§ 102.1. Definitions.

The following definitions were added to § 102.1 in the proposed rulemaking and retained in the final-form rulemaking: "Act 167," "Agricultural operation," "Along," "Intermittent stream," "Normal pool elevation," "Oil and gas activities," "Perennial stream," "Pollutant," "Post construction stormwater," "PCSM," "Stormwater," "Surface waters" and "Top of streambank." The definition of "Riparian buffer," not included in the proposed rulemaking, was added to the final-form rulemaking.

The following existing definitions in § 102.1 were amended in the proposed rulemaking and retained in the final-form rulemaking: "Agricultural plowing or tilling activity," "BMPs—Best management practices," "County conservation district" was changed to "Conservation district," "Conservation Plan," "Earth disturbance activity," "Erosion and Sediment Control Permit" was changed to "E&S Permit—Erosion and Sediment Control Permit," "Erosion and Sediment Control Plan" was changed to "E&S Plan—Erosion and Sediment Control Plan," "Municipality," "NOI—Notice of Intent," "NPDES—National Pollutant Discharge Elimination System," "NPDES Permit for Stormwater Discharges Associated With Construction Activities," "Operator," "Person," "Project site," "Road maintenance activities," "Sediment" and "Stabilization."

The following existing definitions were added or modified in proposed rulemaking and were further amended in the final-form rulemaking: "ABACT—Antidegradation best available combination of technologies," "Animal heavy use area," "Nondischarge alternative," "Notice of termination," "PCSM Plan," "PPC Plan—Preparedness, Prevention and Contingency Plan," "Riparian forest buffer," and "Soil loss tolerance (T)."

The following existing definitions in § 102.1 were deleted in the proposed rulemaking and in the final-form rulemaking: "Collector," "Dewatering zone" and "Diversion."

IRRC questioned the need, reasonableness and clarity of the following definitions: "Agricultural plowing or tilling activity," "Animal heavy use area," BMPs—Best management practices," "Diversion," "E&S Plan—Erosion and Sediment Control Plan," "Intermittent stream," "Licensed professional," "Nondischarge alternative," "Perennial stream," "Point source," "PPC Plan—Preparedness, Prevention and Contingency Plan," "Riparian forest buffer," "Road maintenance activities" and "Surface waters."

The rationale for changes to definitions, as included in the final form rulemaking, is as follows.

The definition of "ABACT—Antidegradation best available combination of technologies" was modified as follows: 1) to include the terms "environmentally sound and cost effective" as used in Chapter 93 (relating to water quality standards); and 2) to more clearly state the comparison of pre- to post earth disturbance activities regarding differences in the stormwater runoff rate, volume and quality. The changes were made based on comments received during the public comment period. The effect of the changes provides more clarity to the antidegradation requirements that apply under this chapter.

The definition of "Agricultural plowing or tilling activity" was modified to clarify that the term "no-till cropping methods" is the practice of planting crops with minimal mechanical tillage. The changes were made based on comments received during the public comment period. The effect of the change is to provide clarity on no-till cropping methods.

The definition of "Animal heavy use area" was modified to clarify that the term does not include entrances, pathways and walkways where animals are housed. The changes were made based on comments received during the public comment period. The effect of the change is to provide clarity on animal heavy use areas.

The definition of "Forest stewardship plan" was deleted in this final-form rulemaking due to public comments.

The definition of "Intermittent stream" was added to the proposed rulemaking and is consistent with the definition currently used in Chapter 92 (relating to National Pollutant Discharge Elimination System permitting, monitoring and compliance). The PA Homebuilders were concerned that drainage ditches or swales that transport water during storm events may be interpreted as intermittent streams. It is not the intent of the Department to treat these storm conveyances as intermittent streams. The definition as written applies to those channels with substrate associated with flowing water. The word "substrate" used in the definition means the area of the stream base on which an aquatic organism lives and is a commonly used term. The language in the proposed rulemaking was retained in the final-form rulemaking.

The definition of "K factor" is not used in the final-form rulemaking and has been deleted from Annex A.

A definition of "Long-term operation and maintenance" has been added in response to comments. The inclusion of this term and definition is necessary because it clarifies that long-term operation is the routine inspection, maintenance, repair or replacement of a BMP to ensure proper function for the duration of time that the BMP is needed.

The definition of “NPDES Permit for Stormwater Discharges Associated With Construction Activities” been modified based on public comments. The amount of disturbed acreage has been changed to 1 acre or more of earth disturbance activities to be consistent with Federal requirements and the permit requirement section of this chapter.

The definition of “Nondischarge alternative” has been modified to more clearly state the comparison of pre- to post earth disturbance activities regarding differences in the stormwater runoff rate, volume and quality, and to be consistent with the “ABACT” definition. The changes were made in response to public comments. The effect of the changes provides more clarity to the antidegradation requirements that apply under this chapter.

The definition of “Road maintenance activities” has been modified in response to comments to include references to railroad right of way maintenance activities and in response to comments requesting clarity regarding what actions and procedures constitute road maintenance activities.

The definition of “Riparian buffer” has been added and the term is defined as a BMP that includes an area of permanent vegetation along surface waters. The Board added the definition of “Riparian buffer” as it relates to amendments made to § 102.14, which provides an alternative to riparian forest buffer implementation in response to public comments.

The definition of “Riparian forest buffer” has been modified to state that it is a type of riparian buffer. This change is in response to amendments made to § 102.14, which now provides an additional alternative to riparian forest buffer implementation in response to public comments.

§ 102.2. *Scope and purpose.*

The proposed rulemaking expanded this section to reflect the inclusion of PCSM requirements. The language in the proposed rulemaking was retained in the final-form rulemaking. IRRC suggested revisions to this section to clarify the scope of PCSM when the project is restored to preconstruction conditions. Section 102.2 (relating to scope and purpose) in the final-form rulemaking was not revised; however, § 102.8 regarding PCSM was revised in the final-form rulemaking to provide the clarity that IRRC and other commentators suggested.

§ 102.4. *Erosion and sediment control requirements.*

Subsection (a)—Earth disturbance activities regarding agricultural activities

In the proposed rulemaking, this section was modified to require written E&S Plans for animal heavy use areas that disturb 5,000 square feet (464.5 meters) or more of land, in addition to agricultural plowing or tilling activities of that same size. The final-form rulemaking was modified to clarify that agricultural plowing or tilling activities and animal heavy use areas should be examined as two separate activities in calculating the threshold for the E&S Plan requirement under § 102.4, rather than combining them to determine whether they disturb 5,000 square feet (464.5 meters) or more of land. The Board received comments requesting clarification. IRRC asked the Board to explain the need to regulate animal heavy use areas and the reasonableness of this requirement. The final-form rulemaking was modified to clarify that written E&S Plans are required for both agricultural plowing and tilling activities and animal heavy use areas.

The Board included these provisions to address sediment discharges from animal heavy use areas which are not currently regulated by other existing Department regulations. It is important to retain the animal heavy use area provisions to protect waters of this Commonwealth from continued sediment pollution from these activities. These provisions will also assist the Commonwealth in achieving Chesapeake Bay goals regarding sediment reductions through the requirements imposed in § 102.4.

The Department’s 2010 Pennsylvania Integrated Water Quality Monitoring and Assessment Report lists agriculture as the second leading cause of impairment of streams in this Commonwealth. Agricultural animal heavy use areas are a significant source of this sediment and can negatively affect downstream uses. The agricultural E&S Plan is the most appropriate mechanism to address the control of accelerated erosion from these areas.

Comments were received from the Pennsylvania Farm Bureau concerning possible duplicative provisions in Chapter 102 regarding animal heavy use areas and Chapter 83 (relating to State Conservation Commission), regarding animal concentration areas. The Board believes that this final-form rulemaking is complimentary rather than duplicative to the current Chapter 83 nutrient management regulations in that reducing accelerated erosion (sediment) from animal heavy use areas under this chapter will also help to reduce nutrients attached to that sediment which is the focus of the Chapter 83 regulations. Also, the Chapter 83 and Chapter 102 regulations are implemented by the same local agency CDs.

In § 102.4(a)(4), language was added to the proposed rulemaking to include cost-effective and reasonable BMPs in the E&S Plan to minimize accelerated erosion and sedimentation from agricultural plowing or tilling or animal heavy use areas. Also, language was added to the proposed rulemaking to state that the E&S Plan must limit soil loss from accelerated erosion to the soil loss tolerance (T) over the planned crop rotation. The Board received comments that supported implementing BMPs that minimize accelerated erosion and sedimentation for agricultural plowing or tilling activities or animal heavy use areas. The language in the proposed rulemaking was retained in the final-form rulemaking.

The proposed rulemaking also stated in § 102.4(a)(4)(i) that additional BMPs are required when located within 100 feet of a river or perennial or intermittent stream on fields with less than 25% cover. Several commentators requested clarification on the type of cover. Therefore, in response to comments, the type of crop cover for fields with less than 25% cover was clarified in the final-form rulemaking as “plant cover or crop residue” cover.

The proposed rulemaking stated in § 102.4(a)(5) that the E&S Plan must show the location of surface waters, field and property boundaries, structures, animal heavy use areas, roads and crossroads, BMPs and soil maps. The final-form rulemaking was revised to clarify that the E&S Plan must address “surface waters of this Commonwealth.” “Waters of this Commonwealth” had been proposed to be deleted; however, the Board received comments that supported using this wording. The existing reference to “waters of this Commonwealth” was retained in the final-form rulemaking as modified by the addition of the word “surface” so that it is clear that the E&S Plan must identify all surface waters of this Commonwealth rather than the more narrow list provided in the definition of “Surface waters.” Also, in § 102.4(a)(6) and (7) in

the proposed rulemaking, an implementation schedule was added as well as the ability to utilize a conservation plan that identifies BMPs that minimize accelerated erosion and sedimentation in the place of an E&S Plan. This language was retained in the final-form rulemaking.

Subsection (b)—Earth disturbance activities other than agricultural plowing or tilling or animal heavy use areas

Minor revisions to § 102.4(b)(3) were made from the proposed rulemaking to the final-form rulemaking. The Board received comments stating that many E&S Plans are submitted to the Department and CDs that are administratively incomplete and that time and expense are wasted while permit review staff wait for additional information. The final-form rulemaking has been revised to add language regarding the training and experience of the person preparing the E&S Plan to the size and scope of the project being designed.

Section 102.4(b)(4) in the proposed rulemaking included general guidelines for the planning and implementation of E&S control measures. IRRC and several commentators expressed concern about the “protect, maintain, reclaim and restore” language and recommended amending § 102.4(b)(4)(v). In response to comments, the Board removed this subparagraph from the final-form rulemaking. Amending this section does not relieve a person’s responsibility to utilize BMPs that will “protect, maintain, reclaim and restore,” as this provision is also in the existing definition of “BMPs—Best management practices” in §§ 102.1 and 102.2(b) and § 102.11(a)(1) (relating to general requirements).

In § 102.4(b)(5)(x), the Board revised the requirement from the current regulation to the proposed in response to industry concerns of the term “measurable rainfall.” The revision was made to replace “measurable rainfall event” with “stormwater event.” IRRC and other commentators stated that “measurable rainfall” is more easily understood and requested an explanation for the amendment. The Board utilized the term “stormwater event” because it provides clarity for situations where there is minimal precipitation or rainfall that does not result in runoff. The key word in the definition of “Stormwater” is runoff. The intent of the Board is to capture any event that generates runoff. The term “measurable rainfall” failed to include situations when there was no immediate or recent precipitation, but warmer temperatures caused melting of snow which results in a runoff condition.

Identification of potential thermal impacts that may be created or result from earth disturbance activity was added to § 102.4(b)(5)(xiii) in the proposed rulemaking. IRRC recommended that the regulation clearly state what type of evaluation of thermal impacts would be acceptable. Commentators requested additional guidance regarding this evaluation. In response to comments, this subparagraph has been revised and clarified in the final-form rulemaking. The Department will also provide additional guidance through outreach, trainings and the Erosion and Sediment Control Manual Document Number 363-2134-008. Because each site is different, the design professional needs to have some flexibility to develop an appropriate response to thermal impact concerns. In addition to identifying the potential for thermal impacts, appropriate BMPs should be designed to avoid, minimize or mitigate those impacts.

A requirement for the E&S Plan to be consistent with a PCSM Plan was added to § 102.4(b)(5)(xiv) in the proposed rulemaking. The language in the proposed rule-

making was retained in the final-form rulemaking. The intent of this requirement is for the BMPs implemented as part of the E&S Plan during the temporary construction phase to easily transition with minimal disturbance into the BMPs that will be part of the PCSM Plan. Likewise, the E&S Plan should reflect consideration of the PCSM Plan. For example, areas to be utilized for infiltration should be protected from compaction during construction, which should be noted in the E&S Plan.

A provision for identifying existing and proposed riparian forest buffers in the E&S Plan was added to § 102.4(b)(5)(xv) in the proposed rulemaking. The Board has made minor modifications in response to comments.

Section 102.4(b)(6) of the proposed rulemaking included antidegradation implementation provisions. This final-form rulemaking specifically incorporates antidegradation implementation requirements as a result of several Environmental Hearing Board (EHB) cases. The antidegradation provisions primarily in revised §§ 102.4(b)(6) and 102.8(h) and in the definitions of “ABACT” and “Nondischarge alternative” in § 102.1.

By way of background regarding inclusion of antidegradation implementation requirements, the Clean Water Act (33 U.S.C.A. §§ 1251—1376) requires states to develop and implement “antidegradation” requirements, which are found in Chapter 93. In the EHB decisions in *Zlomsowitch v. DEP*, 2004 EHB 756, *Blue Mountain Preservation Association v. DEP and Alpine Rose Resorts*, 2006 EHB 589, and *Crum Creek Neighbors v. DEP and Pulte Homes of PA, LP*, EHB Docket No. 2007-287-L, October 22, 2009 Adjudication, the EHB overturned the Department’s current implementation of antidegradation requirements in the NPDES permits issued under this chapter. The cases confirm that Chapter 102 did not currently provide an adequate regulatory framework for the compliance with Chapter 93.

Under the current regulations, the Department and regulated community have unsuccessfully tried to reconcile the Chapter 102 regulatory program with antidegradation implementation requirements and specifically the alternatives analysis process in § 93.4c(b) (relating to implementation of antidegradation requirements). Section 93.4c(b) utilizes language and approaches based upon NPDES programs that regulate continuous flow such as traditional industrial discharges flowing out of pipes, whereas the discharges regulated under Chapter 102 involve wet weather driven, primarily overland diffuse runoff that is controlled with BMPs rather than numeric effluent limitations. Further, the § 93.4c(b) stated preference for “nondischarge” alternatives is confusing and when applied literally in the stormwater context is problematic. A literal read of this section could require no discharge from a site which would in fact be inimical to the health of waters of this Commonwealth. Simply put, there are existing stormwater discharges that occur at sites before any earth disturbance activity occurs that are the basis of the hydrologic cycle on which stream baseflow and quality is dependent. To protect and maintain waters of this Commonwealth, this preexisting stormwater discharge will be maintained. The cornerstone of antidegradation then in this program is the preservation of that existing stormwater regime. The Department has therefore included specific antidegradation implementation provisions in the proposed rulemaking to provide the missing regulatory framework that is needed for appropriate evaluation of compliance with the antidegradation requirements for this program.

A number of members of the regulated community specifically requested that the Board clarify the antidegradation implementation provisions in the final-form rulemaking to more definitively link the antidegradation implementation requirements included in this final-form rulemaking with Chapter 93 and to provide a framework that can be relied upon to demonstrate compliance with antidegradation requirements therein. The revisions in the final-form rulemaking to these sections have provided this additional clarification.

An important aspect of the antidegradation provisions included in this final-form rulemaking and regarding § 102.4(b)(6) are the definitions of “ABACT” and “Nondischarge alternative.” These terms were defined in response to suggestions of the members of WRAC during the development of the regulation prior to the proposed rulemaking. These terms are defined specifically for the purposes of this chapter and articulate the performance standards to be used for purposes of the comparison of preconstruction stormwater discharges to post construction stormwater discharges. Importantly, the nondischarge alternative in this program does not equal to discharge, but rather equals no net change from preconstruction discharge volume, rate and water quality, and recognizes the need to preserve the preexisting stormwater discharges to protect and maintain waters of this Commonwealth. The 2-year/24-hour storm event is the storm event to be utilized to demonstrate antidegradation compliance. See the discussion regarding this storm event in response to § 102.8.

The new Federal effluent limitation guidelines (ELG) also references the 2-year/24-hour event as the design storm. In addition, the key components of the EPA’s ELG are non-numeric effluent limitations in the form of BMPs that require persons engaged in construction activities to minimize discharges of pollutants in stormwater discharges using appropriate E&S controls and stormwater control measures that reflect best engineering practices.

A requirement was added in § 102.4(b)(8) in the proposed rulemaking that stated that the E&S Plan, inspection reports and monitoring reports should be available for review at the project site. IRRC asked for an explanation of why records are needed onsite and to consider allowing electronic records offsite. The language in the proposed rulemaking was retained in the final-form rulemaking. Further clarification has been provided in the comment and response document that inspection reports and monitoring records may be maintained electronically as long as a copy can be produced when requested by the Department or the CD. Records are needed onsite to implement Federal requirements of routine monitoring and reporting. Also, the Department must be able to determine that the permittee is in compliance.

§ 102.5. Permit requirements.

In the proposed rulemaking, § 102.5(a)(1) (relating to permit requirements) included language requiring an NPDES Permit for Stormwater Discharges Associated With Construction Activities for certain earth disturbance activities between 1 acre and 5 acres with a point source discharge to a surface water of this Commonwealth. Section 102.5(a)(2) of the proposed rulemaking included language that retained the requirement for an NPDES Permit for Stormwater Discharges Associated With Construction Activities for certain earth disturbance activities 5 acres or greater. EPA Region 3 required, and several commentators requested, that this subsection be revised to require an NPDES permit for any earth disturbance

activity that disturbs 1 acre or greater, regardless of whether the activity resulted in a point source discharge to a surface water.

In § 102.5(a)(3) of the proposed rulemaking, the Board added language regarding compliance with the antidegradation requirements in Chapter 93 for projects that require NPDES permit coverage when the earth disturbance activity is proposed to be located in a special protection watershed. In response to public comments and comments from IRRC regarding confusion by the building industry over whether a permit is required and if so what type of permit is required, the Board revised the final-form rulemaking by identifying that the specified earth disturbance activities disturbing 1 acre or more require an NPDES Permit for Stormwater Discharges Associated With Construction Activities, and clarifying that the antidegradation requirements regarding NPDES Permits for Stormwater Discharges Associated With Construction Activities are established in §§ 102.4(b)(6) and 102.8(h). IRRC also questioned why the exemptions at the beginning of subsections (a)(1) and (2) and (d) in the proposed rulemaking do not include the oil and gas related earth disturbance activities. In the comment and response document, the Department noted that oil and gas activities are exempt from NPDES permitting requirements but still must meet State water quality requirements. Section 102.5(c) states that “A person proposing oil and gas activities that involve 5 acres (2 hectares) or more of earth disturbance over the life of the project shall obtain an E&S Permit under this chapter prior to beginning the earth disturbance activity.”

In § 102.5(b) of the proposed rulemaking, the Board maintained existing language except for a minor editorial revision. The Board received comments recommending that the permit acreage threshold be reduced to 5 acres for timber harvesting and road maintenance activities and other comments requesting that the Board retain the existing threshold of 25 acres for the same activities. The Board evaluated the comments and determined that the proposed language including the acreage threshold for requiring a permit would be retained.

Section 102.5(c) of the proposed rulemaking maintained existing language but restructured the location of this requirement to § 102.5(g). The proposed language for subsection (c) established the E&S Permit requirement for persons proposing an earth disturbance activity regarding oil and gas development that involves 5 acres or greater of earth disturbance activity. This regulatory requirement is a codification of existing practices and permit requirements in response to the Energy Policy Act of 2005 (42 U.S.C.A. §§ 15801—16524) and the subsequent Federal rule promulgated by the EPA exempting oil and gas activities from NPDES Permits for Stormwater Discharges Associated With Construction Activities. The Board retained the proposed language in the final-form rulemaking.

Section 102.5(d) of the proposed rulemaking clarified that earth disturbance activities, other than earth disturbances regarding agricultural plowing and tilling, animal heavy use areas, timber harvesting or road maintenance activities, and activities requiring permit coverage under previous § 102.5(a)—(c), would require an E&S Permit when there is an earth disturbances of 5 acres or more. The Board retained the proposed language in the final-form rulemaking.

New § 102.5(e) required a preconstruction meeting for activities authorized by a permit under this chapter, unless it is determined by the Department or CD that a

preconstruction meeting is not necessary and the permittee is notified in writing. The proposed subsection also identified specific entities that are required to attend the meeting. Comments from IRRC and other commentators on this subsection recommended clarifications regarding the entities required, time period for the notice, whether Department or CD staff attendance is mandatory and whether this requirement may overload Department staff and delay projects. The Board clarified the final-form rulemaking by adding language that attendance at the preconstruction meeting is required by specific entities that have a role in the design or implementation of the E&S or PCSM Plans. Additional clarification was provided by requiring the permittee to invite the Department or CD to attend the preconstruction meeting and requiring at least 7 days notice of the preconstruction meeting to invited attendees. The proposed language was retained requiring the Department or CD to provide written notice to the permittee that a preconstruction meeting will not be required.

New § 102.5(f) provided that a person conducting earth disturbance activities that requires a permit under this chapter shall ensure implementation and long-term operation and maintenance of a PCSM Plan. The majority of comments received regarding this subsection requested clarification on the responsibility of the permittee for long-term operation and maintenance. IRRC also questioned who specifically is “a person proposing earth disturbance activity.” The Board believes that § 102.1 clearly states the definitions of “person” and “earth disturbance activity.” In addition, the permittee designates who is responsible for the PCSM BMPs, under § 102.7 (relating to permit termination) and § 102.8(f)(11), “Identification of the persons responsible for long-term operation and maintenance of the PCSM BMPs.” IRRC also commented that this provision is vague and potentially unreasonable and cost prohibitive. The Board revised the final-form rulemaking by deleting the reference to the long-term operation and maintenance requirement in this subsection. Additional clarifying language regarding these issues has been consolidated in § 102.8(m) of the revised final-form rulemaking.

Section 102.5(g) of the proposed rulemaking maintained existing language formerly in § 102.5(c), which was moved to § 102.5(g). The majority of comments received regarding this subsection requested clarification on the applicability in relationship with other permits under Chapter 92 and the authorizations needed. The Board has not revised this subsection in the final-form rulemaking. A comprehensive list of Department permits can be provided in guidance. The requirements in this final-form rulemaking are intended to reference both Chapters 92 and 102 when these requirements are included in other Department regulations and permit requirements that are reviewed during the other Department permit application process. As a result, these other Department permits provide sufficient authorization, so a separate authorization under permits identified in this chapter would be duplicative.

New § 102.5(h) specifies that when a person other than the permittee is an operator, the other operator is required to become a copermittee under this chapter. A few commentators made some minor requests for clarification regarding application of this requirement. Revisions were not made in the final-form rulemaking as a result of the comments, but clarification has been provided in the comment and response document.

New § 102.5(i) provides that a separate NPDES Permit for Stormwater Discharges Associated With Construction

Activities is not required for activities covered by a Clean Water Act Section 404 dredge and fill permit. IRRC and other commentators supported this provision but requested further clarification on the applicability in context of various scenarios that may occur. EPA Region 3 also requested clarification. As a result, the Department provided clarifying responses to the comments in the comment and response document included as part of this final-form rulemaking. When an activity is authorized under Chapter 404 of the Clean Water Act for example, that activity does not require a separate E&S or NPDES permit for the activity covered by the 404 Permit so long as the project is a single and complete project, includes an E&S Plan meeting the requirements of this chapter and the earth disturbance work does not exceed the footprint of the activities authorized by the 404 Permit. In addition, the E&S Plan would also be approved as part of the 401 Water Quality Certification. Other activities would need E&S or NPDES permit coverage. Revisions to this subsection in the final-form rulemaking were not necessary.

Section 102.5(j) of the proposed rulemaking maintained existing language formerly located in § 102.5(d). The Board received a few comments questioning the permit exemption for agricultural plowing and tilling activities or animal heavy use areas. The Board retained this language in the final-form rulemaking.

Section 102.5(k) of the proposed rulemaking maintained existing language formerly in § 102.5(e). Revisions were not made to the final-form rulemaking.

Section 102.5(l) was added in the final-form rulemaking to identify requirements for a Preparedness, Prevention and Contingency (PPC) Plan, moved from § 102.6(a)(3) of the proposed rulemaking. The Board received comments from IRRC and the public that the PPC Plan requirement was more appropriate to have in this section (as a requirement of the permit) rather than § 102.6, regarding permit applications and fees.

Section 102.5(m) was added in this final-form rulemaking in response to recommendations of commentators. This subsection authorizes the Department to issue general permits (GP) for activities not subject to NPDES requirements and sets forth the process for issuance under this chapter.

§ 102.6. Permit applications and fees.

Section 102.6(a) of the proposed rulemaking added language for this subsection identifying the appropriate permit references, PCSM references, changing in subsection (a)(2) to the program name from the Pennsylvania Natural Diversity Inventory (PNDI) to Pennsylvania Natural Heritage Program (PNHP), and adding subsection (a)(3) referencing requirements to PPC Plans. IRRC and members of the public commented that the Board should explain why this amendment included the reference to PNHP, why PNHP is the best resource for this information and questioning whether the inclusion of the PPC Plan requirement is not appropriate as an application requirement. The inclusion of PNDI, now PNHP, is an existing requirement to which the Board only proposed minor modifications including updating the program name. The Department utilizes PNHP because it is a comprehensive database of resource information that both the public and resource agencies can access for threatened and endangered species and critical habitat for those species. It is the only known database of this type for use in this Commonwealth and is the one recognized by the resource agencies. This is particularly useful for the

regulated community in that they can identify potential species or habitat conflicts that shall be minimized or avoided prior to final plan development and permit application. There were not revisions to § 102.6(a) in the final-form rulemaking and minor revisions were made to the remainder of the subsection in response to comments. Section 102.6(a)(1) in the final-form rulemaking was revised to remove the reference to the permit-by-rule registration of coverage to reflect removal of that section of the regulations in the final-form rulemaking. A minor grammatical revision was made to § 102.6(a)(2). In response to comments regarding § 102.6(a)(3), the proposed rulemaking was revised in the final-form rulemaking by moving the location of this requirement to permit requirements in § 102.5(l).

In § 102.6(b) of the proposed rulemaking, new language was added that identified specific permit fees for the various GPs and individual permits (IP) required under this chapter. Also, language was added that would require the Department to review the adequacy of the fees established at least once every 3 years and report their findings to the Board. Additionally, a reference to the authority of CDs under the Conservation District Law (3 P. S. §§ 849—864) to charge additional fees was added in this subsection. Some of the public comments received by the Board supported the fee increases while other commentators and IRRC indicated that the fees were excessive and recommended that an explanation should be provided on how the fees were calculated and that a tiered approach based on the size of the earth disturbance be established.

In response to the comments received, the Board revised the proposed permit fees in the final-form rulemaking to establish an administrative filing or “base” fee dependent on the type of permit needed (\$500 for a GP and \$1,500 for an IP) and a tiered fee approach based on acreage (\$100 for each disturbed acre). The acreage fee is to be added to the base fee for projects of 1 acre or greater of earth disturbance activity that requires permit coverage. This approach would allow smaller projects to pay a lower fee than larger projects, which can also correspond to the complexity and time investment needed to review the permit application. This fee structure is based upon a cost analysis using estimated program costs for the Department and CDs to implement the program, based upon a review of past permits issued between 2006 and 2008. Amendments to Chapter 92 in 1999 and Chapter 102 in 2000 included modifications to permit fees, but these were administrative filing fees and did not cover cost of program operations. The proposed and final-form rulemakings were the first effort by the Department to cover the Chapter 102 program costs through permit fees. The Department completed an evaluation of program costs and estimated revenue as part of this final-form rulemaking package.

In § 102.6(b)(2) of the proposed rulemaking, language was added that would require the Department to review the adequacy of the fees established at least once every 3 years and report the findings to the Board. Comments received on draft § 102.6(b)(2) questioned what criteria would be used for the evaluation of the fees and requested clarification how the Department will use the criteria to determine the adequacy of the fees. Revisions were not made to the final-form rulemaking. However, clarification is provided in the comment and response document developed for this final-form rulemaking.

Section 102.6(b)(2) was also revised in response to comments from CDs to clarify that the fees in this section

are all “administrative” fees. How the fees will be dispersed between the Department and CDs will be outlined in guidance or through the delegation agreements.

In § 102.6(b)(3) of the proposed rulemaking, new language was added that identified that CDs may charge additional fees in accordance with the Conservation District Law. A few public comments were received that requested clarification from the Board on whether the fees are in addition to the fees established in § 102.6(b)(1). The Board confirms that the fees are additional to the fees of the referenced section. The amount of these CD fees may vary between CDs and is based upon the additional costs to the district to implement the previous program requirements and beyond the fee established by the Board. CD authority to charge additional fees under the Conservation District Law is referenced to support this requirement. Revisions were not made to the final-form rulemaking. However, the Board provided clarification in the comment and response document.

Section 102.6(b)(4) was added to the final-form rulemaking in response to recommendations of commentators. This paragraph provides a fee exemption for Federal or State agencies or independent State commissions that shall enter into agreements with the Department and when the agreement identifies that the agency will provide funding to the Department for program support.

Section 102.6(c)(2) of the proposed rulemaking added new language identifying the expectations for a complete application or notice of intent, and what actions the Department or CD would take regarding incomplete submissions. IRRC recommended that a time frame be included for the Department to determine that an application is complete. IRRC also recommend that the regulation should specify what happens if the Department does not meet that time frame. Additionally, in the proposed rulemaking, § 102.6(c)(2) only authorized the Department to make the completeness determination. In their comments, IRRC asked whether this function may also be performed by a CD. The Board amended this section to clarify that CDs do perform this function as well. The Board does not agree that specific time frames for completeness determinations by the Department or CD need to be added to this subsection. In the comment and response document, the Department refers to the money-back guarantee policy and the policy with CDs as part of a delegation agreement. Both of these documents establish time frames for various items during the application review process including administrative completeness, technical and decision reviews. The Board added § 102.6(c) to address an ongoing problem with applicants not responding to requests for additional information and extending the time it takes to make a timely decision on the application. This lack of response has led to applications being open or under review for extensive periods of time. Adding this requirement to the regulation authorizes the Department or CD to close a permit application after 60 days of nonresponse by the applicant. The Board understands that there may be some instances when an applicant may need additional time to provide the requested information.

In response, the final-form rulemaking allows for a request of extension. The Board clarified in the final-form rulemaking that the CDs are also authorized to perform this function.

Section 102.6(c)(3) of the proposed rulemaking included new language identifying that the fees associated with returned or withdrawn applications would not be refunded. In response to public comment, the Board revised

the final-form rulemaking to clarify that this requirement refers to a withdrawn application determination under § 102.6(c)(2).

§ 102.7. *Permit termination.*

The proposed rulemaking added new language requiring the identification of the person responsible for operation and maintenance of the PCSM BMPs and PCSM Plans and clarified the obligation of the permittee to operate and maintain the PCSM BMPs and PCSM Plan until the Notice of Termination is acknowledged. Commentators requested clarification with regard to the permittees and co-permittees responsibility for long-term operation and maintenance of PCSM BMPs. In addition, IRRC and several commentators recommended that a time limit be added for the Department or CD to respond to the submission of a Notice of Termination. In response to these comments, in the final-form rulemaking, the Board revised this section to clarify that upon permanent site stabilization and installation of BMPs in accordance with E&S and PCSM Plan requirements, the permittee or co-permittee shall submit a Notice of Termination that identifies the person who agreed to be responsible for the long-term operation and maintenance and added a time limit of 30-days for the Department or CD to conduct a final inspection and approve or deny the request for termination of the permit.

§ 102.8. *PCSM requirements.*

One of the major substantive additions to this chapter in the proposed rulemaking was the inclusion of post construction stormwater discharge requirements that are detailed in § 102.8. The proposed rulemaking established the requirements for PCSM planning utilizing a structure that parallels the E&S planning requirements in § 102.4(b). The provisions in the proposed rulemaking are a codification and refinement of the existing PCSM requirements that the Department has implemented since 2002.

Based upon public comments received, this section has been revised and clarified in the final-form rulemaking. In the final-form rulemaking, the Board added headers for each subsection and clarified requirements for roadways or rail lines, and PCSM implementation for special protection waters. Additionally, in the final-form rulemaking, the Board also consolidated the long-term operation and maintenance requirements into one subsection.

The inclusion of the PCSM requirements in this final-form rulemaking codifies the PCSM requirements the Department has been implementing since 2002 to address EHB decisions discussed as follows and to facilitate implementation of the Federal stormwater construction and Municipal Separate Storm Sewer System (MS4) NPDES requirements regarding PCSM.

Since 2002, the Department has required applicants for NPDES Permits for Discharges Associated With Construction Activities to address post construction stormwater discharges and, in addition to E&S Plans, to develop and implement a PCSM Plan. Since 2002, a PCSM Plan must include information to demonstrate compliance with the antidegradation requirements in Chapter 93, including a comparison of preconstruction stormwater runoff to post construction stormwater runoff of the 2-year/24-hour storm event, and a description of the PCSM BMPs that will be utilized to prevent pollution. See Comprehensive Stormwater Management Policy (DEP No. 392-0300-002). In 2006, the Department finalized the Pennsylvania Stormwater BMP Manual (DEP No. 363-0300-002), which provided technical guidance and standardized methodolo-

gies. Section 102.8 codifies the existing specifications and performance standards that have been relied on and proven in the development of PCSM Plans in this Commonwealth since that time. These standards satisfy State law that has evolved through decisions of the EHB and also facilitate compliance with the related Federal NPDES MS4 programs.

This inclusion of PCSM requirements is in part a response to EHB decisions. In 1999, the EHB ruled that “post construction” stormwater was potential pollution which the Department should evaluate along with the stormwater discharges that occur during construction activities. *Valley Creek Coalition v. DEP*, 1999 EHB 935. This holding has been confirmed in subsequent decisions including *Blue Mountain Preservation Association v. DEP and Alpine Rose Resorts*, 2006 EHB 589 and *Crum Creek Neighbors v. DEP and Pulte Homes of PA, LP*, EHB Docket No. 2007-287-L, October 22, 2009 Adjudication. Today, PCSM requirements are an established counterpart to the activities already expressly regulated under this chapter. The amendments regarding PCSM will provide needed regulatory framework and clarity for the administration of, compliance with and the legal evaluation of the PCSM requirements.

Section 102.8(a) in the proposed rulemaking established who is required to develop, implement, operate and maintain a written PCSM Plan. IRRC and other commentators expressed concern that the wording was too broad. The Board did not amend this section in the final-form rulemaking but did amend § 102.8(n). This revision provides that for minor projects when there is little or no change in the runoff characteristics from the site, the PCSM Plan can be brief, only be a sentence or two, and still meet the requirements of § 102.8(a). Also, the term “NPDES” has been removed from the final-form rulemaking to allow inclusion of a PCSM Plan for permits other than NPDES.

A number of commentators, notably the builders and the House legislative committee members, requested that the final-form rulemaking include a grandfathering provision for NPDES permit renewals. The builders are particularly concerned about having to revise PCSM Plans for permitted projects that require renewal. In response to these comments, § 102.8(a) has been amended in the final-form rulemaking to provide that “a person conducting earth disturbance activities under a permit issued before November 19, 2010, and renewed prior to January 1, 2013, shall implement, operate and maintain the PCSM requirements in accordance with the terms and conditions of the existing permit. After January 1, 2013, the renewal of a permit issued before November 19, 2010, shall comply with the requirements of this section.”

General requirements for planning and design of PCSM were included in § 102.8(b)(1)–(8) of the proposed rulemaking. Commentators and IRRC expressed concern about the vagueness of terms “minimize” and “maximize” as they relate to planning and design. The final-form rulemaking retained the language from the proposed rulemaking and additional minor edits were made for clarification. These terms have been historically utilized in Chapter 102 to guide the design of projects that vary in size, scope and other details. The Board utilized these words to provide flexibility to the applicant when designing the BMPs for their projects.

IRRC and several commentators expressed concern about the “protect, maintain, reclaim and restore” language and recommended amending § 102.8(b)(9). In response to comments, the Board deleted this subsection

from the final-form rulemaking. Amending this section does not negate a person's responsibility to utilize BMPs that will "protect, maintain, reclaim and restore" as this provision is also in the existing definition of "BMPs—Best management practices" in §§ 102.1, 102.2(b) and 102.11(a)(1).

The proposed rulemaking included § 102.8(c) and (d) to ensure consistency with the E&S Plan and to specify that the PCSM Plan shall be a separate plan unless otherwise approved by the Department. The language in the proposed rulemaking was retained in the final-form rulemaking. The intent of this requirement is for the BMPs implemented as part of the E&S Plan during the temporary construction phase to easily transition with minimal disturbance into the BMPs that will be part of the PCSM Plan. Likewise, the E&S Plan should reflect consideration of the PCSM Plan. For example, areas to be utilized for post construction infiltration should be protected from compaction during construction, which should be noted in the E&S Plan.

In the proposed rulemaking, § 102.8(e) listed the requirements of the individual tasked with preparing the PCSM Plan. IRRC commented that this section did not impose a definable level of expertise and that the Board should delete the subsection or replace it with specific credentials. The language in § 102.8(e) is similar to the E&S portion of § 102.4(b)(3) and has been in use for many years. More specific credentials may exclude designers who are not licensed by the Commonwealth and potentially increase development costs. The language was retained in the final-form rulemaking, but the Board did include additional language to qualify that the level of expertise needed is relative to the size and scope of the project being designed.

Section 102.8(f) listed PCSM Plan requirements in the proposed rulemaking. IRRC and several commentators expressed concern about "other supporting documentation" language, and requested that the Board provide more detail. That language has been removed from the final-form rulemaking and minor edits were made to provide clarity.

IRRC and commentators requested additional clarity and guidance on the requirements in § 102.8(f)(1)—(10). Many of the requirements found in these paragraphs are currently required including the listing of soil types/limitations and plan calculations. The PCSM Plan must identify the BMPs used and the appropriate calculations that demonstrate that the BMPs will perform under those conditions. The language from the proposed rulemaking was retained in the final-form rulemaking with minor edits made for clarification.

In the proposed rulemaking, § 102.8(g)(1) and (2) listed the stormwater analysis required in the PCSM Plan. IRRC, PennDOT and several commentators expressed concern with the costs for this analysis and asked the Board to consider amendments to decrease costs and assist in compliance. The Board revised these sections in the final-form rulemaking in response to comments. Allowance for an alternative approach to PCSM methodologies was added in the final-form rulemaking for use when there are public health and safety limitations or existing site conditions. Specifically, in the final-form rulemaking, additional language has been added in § 102.8(g)(2)(iii) and (iv) and (3)(iii) to allow other approaches that may be more protective or that will maintain and protect existing water quality. Also, references to pipelines or other utilities that restore or reclaim a site back to natural conditions have been added to the final-form rulemaking.

Section 102.8(g)(2)(ii) and (iii) have been revised in the final-form rulemaking to provide more clarity and to provide more flexibility. The intent in these subparagraphs is to require stormwater controls on property that was previously developed with little or no stormwater management. Also in response to comments, § 102.8(g)(2)(i), (ii) and (iii) were modified in the final-form rulemaking to exclude repair or reconstruction of roadways or rail lines, and to consider public health, safety and environmental limitations.

Regardless of the type of earth disturbance activity that occur, the impervious surfaces, the changes in vegetation and the soil compaction associated with that activity will result in increases in runoff volume and rate. When the site is cleared of existing vegetation, graded and recompacted, it produces an increase in stormwater volume and rate. If the original vegetation were replaced with natural vegetation, the stormwater runoff characteristics would be considered to be equivalent to the original natural vegetation. The volume control, water quality and rate requirements focus on providing stream channel protection and protection from the frequent rainfalls that comprise a major portion of stormwater runoff events in any part of this Commonwealth. On the basis of these factors, the 2-year/24-hour storm event has been chosen as the stormwater management design storm for volume control.

A volume control requirement is essential to mitigate the consequences of increased stormwater runoff. To accomplish this, the volume reduction BMP must do the following: protect stream channel morphology; maintain groundwater recharge; prevent downstream increases in flooding; and replicate the natural hydrology onsite before development to the greatest extent possible.

The volume control and water quality requirements included in the proposed rulemaking and retained in the final-form rulemaking are necessary to maintain and protect natural hydrology including velocity, current, cross-section, runoff volume, infiltration volume and aquifer recharge volume. These requirements will sustain stream base flow and prevent increased frequency of damaging bank full flows. The requirements will also help prevent increases in peak runoff rates for larger events (2-year—100-year) on both a site-by-site and watershed basis. A volume control requirement is protective of water quality and also provides the benefits listed as follows.

Protect stream channel morphology. Increased volume of stormwater runoff results in an increase in the frequency of bank full or near bank full flow conditions in stream channels. The increased presence of high flow conditions in riparian sections has a detrimental effect on stream shaping, including stream channel and overall stream morphology. Stream bank erosion is greatly accelerated. As banks are eroded and undercut and as stream channels are gouged and straightened; meanders, pools, riffles and other essential elements of habitat are lost or greatly diminished. Increases in impervious surfaces can cause the natural bankfull stream flows to occur more often. The final-form rulemaking includes a combination of volume reduction, water quality and peak rate controls to reduce the bankfull flow occurrences.

Maintain groundwater recharge. Over 80% of the annual precipitation infiltrates into the soil mantle in watersheds in this Commonwealth under natural conditions. More than half of this is taken up by vegetation and transpired. Part of this infiltrated water moves down gradient to emerge as springs and seeps, feeding local

wetlands and surface streams. The rest enters deep groundwater aquifers that supply drinking water wells. Without groundwater recharge, surface stream flows and supplies of groundwater for wells will diminish or disappear during drought periods. Certain land areas recharge more groundwater than others; therefore, protecting the critical recharge areas is important in maintaining the water cycle's balance.

Prevent downstream increases in runoff volume and flooding. Although site-based rate control measures may help protect the area immediately downstream from a development site, the increased volume of stormwater runoff and the prolonged duration of runoff from multiple development sites can increase peak flow rates and duration of flooding from stormwater runoff caused by relatively small rain events. Replicating predevelopment stormwater runoff volumes for small storms, up to and including the 2-year/24-hour storm event, will substantially reduce the problem of frequent flooding that plague many communities. Although control of runoff volumes from small storms almost always helps to reduce flooding during large storms, additional measures are necessary to provide adequate relief from the serious flooding that occurs during these events.

Replicate the surface water hydrology on-site before development. The objective for stormwater management is to develop a program that replicates the natural hydrologic conditions of watersheds to the maximum extent practicable. However, the very process of clearing the existing vegetation from the site removes the single largest component of the natural hydrologic regime, evapotranspiration (ET). Unless the ET component is replaced, the runoff increase will be substantial. Several BMPs, such as riparian buffers, riparian forest buffers, tree planting, infiltration, vegetated roof systems and rain gardens, are critical to adequate stormwater management because they serve to replace a portion of the ET and other functions.

The scientific basis for using a 2-year/24-hour storm event is as follows:

- The 2-year/24-hour event provides stream channel protection and water quality protection for the relatively frequent runoff events across this Commonwealth.
- Volume reduction BMPs based on this standard will provide a storage capacity to help reduce the increase in peak flow rates for larger runoff events.
- In a natural stream system in mid-Atlantic states, the bank full stream flow occurs with a period of approximately 1 1/2 years. If the stormwater runoff volume from storms less than the 2-year/24-hour event are not increased, the fluvial impacts on streams will be reduced.
- The 2-year/24-hour storm is well defined and data are readily accessible for use in stormwater management calculations.

Research has demonstrated that bank-full stream flow typically occurs between the 1-year and the 2-year storm event (approximately the 1 1/2-year storm). Use of the 2-year/24-hour storm for purposes of comparing the pre- to poststormwater runoff provides a margin of safety with flows in an out of bank condition. The 2-year/24-hour storm can also be determined from data that is readily available. The final-form rulemaking retained the 2-year/24-hour storm as the storm event to be used for the pre- to postcomparison. The 2-year/24-hour storm is the event that should be utilized to meet antidegradation requirements (see definitions for "nondischarge alternative" and "ABACT"). In addition, the new Federal ELG also sup-

ports the 2-year/24-hour event as the design storm. Additional discussion is provided in the comment and response document.

On the other hand, it is considered unreasonable to design a PCSM BMP for volume or water quality for storm events greater than a 2-year/24-hour event. The stormwater runoff volume from the 100-year rainfall naturally is so large and insignificantly different when compared to developed areas that it is impractical to require management for volume or water quality. During extreme events, the runoff simply overwhelms the natural systems as well as human-made conveyance elements of pipes and stream channels. This, however, does not mean that these large storm events do not need to be managed. These large events need to be evaluated for peak rate control and implementation of flood control and retention BMPs.

Peak rate control for large storms, up to the 100-year event, is essential to protect against immediate downstream erosion and flooding. Most designs achieve peak rate control through the use of detention structures. Peak rate control can also be integrated into volume control BMPs in ways that eliminate the need for additional peak rate control detention systems.

Section 102.8(h) of the proposed rulemaking, which provided for the antidegradation implementation process for permit applications for projects in Special Protection Waters, is related to provisions in § 102.4(b)(6) and also relies on the definitions of "ABACT" and "nondischarge alternative" in § 102.1.

The proposed rulemaking in § 102.8(i) listed requirements for a complaint or site inspection and § 102.8(j) listed requirements for PCSM reporting and recordkeeping. IRRC commented that § 102.8(i) was redundant with § 102.8(j) and recommended deleting the subsection. Subsections (i) and (j) cover two different situations. Subsection (i) requires that upon inspection the PCSM Plan may need to be submitted for review and approval. This is to ensure the activity is not causing stream degradation. Subsection (j) requires that the PCSM Plan and reports or records be available for review and inspection by the Department or CDs regardless of the existence of a complaint. The language from the proposed rulemaking was retained in the final-form rulemaking and headers for each subsection were added.

Requirements for a licensed professional or designee to be present onsite during critical stages of construction were included in § 102.8(k) and (l) of the proposed rulemaking. IRRC and several commentators expressed concern about the cost of this requirement. The Board revised this subsection in the final-form rulemaking to provide clarity regarding what constitutes a critical stage of implementation. Subsection (k) lists several items considered critical stages and the licensed professional may determine whether additional activities are also critical so that the licensed professional should be onsite. The Board also amended this subsection to clarify that a CD as well as the Department can identify a critical stage of construction. This duty may only be performed by a CD with delegated authority for the PCSM portion of the program.

The Board made clarifying revisions to these subsections in the final-form rulemaking to reflect the intent of the provision to ensure that the plan is implemented properly and the Department will be able to confirm proper implementation. IRRC requested clarification regarding when certification of the PCSM Plan and record

drawings are required. Certification and record drawings are required for all permitted projects, depicting what was actually constructed onsite.

Section 102.8(m) of the proposed rulemaking included a brief paragraph regarding the responsibility for long-term operation and maintenance. Several commentators requested better organization and clarification to the operation and maintenance requirements. In response to comments, § 102.8(m) has been revised in the final-form rulemaking to consolidate the requirements for operation and maintenance.

IRRC commented that the Board should explain the need to regulate PCSM activity to such a degree as to require deed amendments and covenants and how this is a viable way to protect the environment given the inherent presumption that all landowners can afford to maintain and rectify any failure of a BMP for perpetuity. Subsection (m) requires the applicant to designate a responsible party for operation and maintenance. Under existing provisions in the act, absent a designation, the landowner could have sole responsibility if the permittee disappears or ceases to exist. The operation and maintenance requirement is for the PCSM BMPs that are installed as part of the PCSM management plan. For these BMPs to function efficiently, they must be maintained in perpetuity or until the land use changes. This maintenance responsibility would remain if the property transfers, therefore justifying the need for a covenant that runs with the land.

In response to comments, the Board clarified the requirements in § 102.8(n) regarding regulated activities that require a site restoration or reclamation plan. When a site is fully restored or reclaimed, or the permitted activity involves earth disturbance of less than 1 acre, the obligation of long-term PCSM operation and management may not be necessary. The revisions to the final-form rulemaking were included for this reason. The obligation for long-term operation and maintenance has been met if the site is restored and there are no permanent structures or impervious surfaces.

§ 102.11. General requirements.

This section was revised in the proposed rulemaking to include several new provisions regarding the PCSM and riparian forest buffer BMP and design standards.

Section 102.11(a)(2) was added to the proposed rulemaking to provide reference to the Pennsylvania Stormwater Best Management Practices Manual (Doc. No. 363-0300-002) for assistance in complying with § 102.8 PCSM requirements and other references to PCSM.

Section 102.11(a)(3) was added to the proposed rulemaking to provide reference to the Riparian Forest Buffer Guidance (Doc. No. 394-5600-001) for assistance in complying with § 102.14 riparian buffer requirements.

Section 102.11(a)(4) was added in the final-form rulemaking to provide reference to the Guidelines for the Development and Implementation of Environmental Emergency Response Plans (Doc. No. 400-2200-001) in response to public comments requesting clarification and a reference to guidelines and requirements related to PPC Plans.

Section 102.11(c) was added to the final-form rulemaking to incorporate by reference the Federal ELG and standards regarding NPDES permits for construction activities recently passed by the EPA. IRRC requested

that specific language be used to cite this incorporation and the language in the final-form rulemaking reflect their comments.

Section 102.11(d) was added to the final-form rulemaking to provide that the effective date of this final-form rulemaking is 90 days after the publication *Pennsylvania Bulletin*.

§ 102.14. Riparian buffer requirements.

As a threshold matter, IRRC questioned why riparian forest buffers were included in this regulation. Staff of the Department has evaluated extensive research and investigations regarding riparian buffers. This information is included in this section, as well as Section F of this preamble.

Land development activities change natural features and alter stormwater runoff characteristics. The resulting alterations of stormwater runoff volume, rate and water quality can cause stream bank scour, stream destabilization, sedimentation, reductions in groundwater recharge and base flow, localized flooding, habitat modification and water quality and quantity impairment, which constitute pollution as that term is defined in section 1 of the act (35 P. S. § 691.1). Riparian buffers play a vital role in mitigating the effects of stormwater runoff from land development activities.

Riparian buffers are useful in mitigating or controlling point and nonpoint source pollution by both keeping the pollutants out of the waterbody and increasing the level of instream pollution processing. Used as a component of an integrated management system including nutrient management along with E&S control practices, riparian buffers can produce a number of beneficial effects on the quality of water resources. Riparian buffers can be effective in removing excess nutrients and sediment from surface runoff and shallow groundwater, stabilizing streambanks and shading streams and rivers to optimize light and temperature conditions for aquatic plants and animals. Riparian buffers provide significant flood attenuation and storage functions within the watershed. They prevent pollution both during and after earth disturbance activities and provide natural, long-term sustainability for aquatic resource protection and water quality enhancement.

A riparian forest buffer is a specialized type of riparian buffer. Scientific literature supports the riparian forest buffer (with stormwater entering the buffer as sheet flow or shallow concentrated flow) as the only BMP that can do all of the following: capture and hold stormwater runoff from the majority of storms in this Commonwealth in a given year; infiltrate most of that water or transport it, or both, as shallow flow through the forest buffer soils where contaminate uptake and processing occurs; release excess storm flow evenly further processing dissolved and particulate substances associated with it; sequester carbon at significant levels; and improve the health of the stream and increase its capacity to process organic matter and nutrients generated on the site or upstream of the site.

The PCSM provisions, to a large extent, are a codification of the existing program in this Commonwealth mandated by Federal requirements as well as adverse case law. In administering this program, the Department has observed that the riparian forest buffers are one of the most cost effective stormwater management BMPs. Therefore, under the Department's authority under section 402 of the act, the Department has determined that riparian forest buffers are necessary to protect Except-

tional Value (EV) and High Quality (HQ) waters of this Commonwealth from land development activities.

In addition to Department observation, numerous studies demonstrate that riparian forest buffers are particularly effective in mitigating adverse impacts, due to their proximity immediately adjacent to the surface water and their function as a physical buffer to that surface water. Specifically, riparian forest buffers protect surface waters from the effects of runoff by providing filtration of pollutants, bank stability, groundwater recharge, rate attenuation and volume reduction. Riparian forest buffers reduce soil loss and sedimentation/nutrient and other pollution from adjacent upslope flow. (Dosskey et al., 2002). Riparian forest buffers also remove, transform and store nutrients, sediments and other pollutants from sheet flow and shallow subsurface flow and have the potential to remove substantial quantities of excess nutrients through root-zone uptake. (Desbonnet et al., 1994; Lowrance et al., 1997; Mayer et al., 2007; and Newbold et al., 2010). Nitrates can be significantly elevated when adjacent land uses are urban/suburban. Further, the buffer's tree canopy shades and cools water temperature, which is especially critical to support high quality species/cold water species—a function not as effectively provided by any other BMP. (Jones, 2006.)

Other neighboring states have also recognized the value of riparian buffers. For example, New Jersey requires buffers along all streams with increased widths along trout streams and special protection waters. Virginia requires riparian buffers to implement the Chesapeake Bay Preservation Act. Maryland has buffer regulations to protect tidal waters, tidal wetlands and streams tributary to the Chesapeake Bay. Riparian forest buffers provide other economic benefits and intrinsic value to land.

There are many existing provisions in the regulations in 25 Pa. Code (relating to environmental protection) that limit the extent of activities that can occur along streams and wetlands as a means of protecting water quality. A number of these types of controls are in the form of “setbacks.” Although riparian forest buffers also have additional BMP functions, riparian forest buffers are like other regulatory setbacks in that they are a project or facility siting limitation that is included in the regulations as an environmental control. This type of environmental control mechanism is found in numerous other environmental regulations, including: surface and underground coal mining: general, § 86.102(12) (relating to areas where mining is prohibited or limited), “mining prohibited within 100 feet of a perennial or intermittent stream;” noncoal mining, § 77.504 (relating to distance limitations and areas designated as unsuitable for mining), “mining prohibited within 100 feet of a perennial or intermittent stream;” water resources: general provisions, §§ 91.36 and 92.5a(e)(1)(i) (relating to wastewater impoundments; and CAFOs), “stream setbacks and or buffers required for land application of animal manure;” nutrient management, § 83.351(a)(1)(v) (relating to minimum standards for the design, construction, location, operation, maintenance and removal from service of manure storage facilities), “surface water and wetland setbacks for manure storage facilities;” municipal waste landfills, § 273.202 (relating to areas where municipal waste landfills are prohibited), “100 foot surface water and 300 foot exceptional value wetland setbacks for municipal waste landfills;” municipal waste: land application of sewage sludge, § 275.202 (relating to areas where the land application of sewage sludge is prohibited), “land application of sewage sludge prohibited within 100 feet of a perennial or intermittent stream or exceptional value

wetland;” municipal waste: construction/demolition waste landfills, § 277.202 (relating to areas where construction/demolition waste landfills are prohibited), “flood plain and wetland setbacks;” municipal waste: resource recovery facilities, 25 Pa. Code § 283.202 “flood plain and wetland setbacks;” oil and gas wells, § 78.63 (relating to disposal of residual waste—land application), “100 foot setbacks for land application of residual waste from oil and gas well development;” and hazardous waste management: siting, § 269a.29 (relating to exceptional value waters), “hazardous waste treatment and disposal facilities may not be sited in watersheds of exceptional value waters.”

This is a new section that was added in the proposed rulemaking with the intent of establishing criteria for riparian buffers and establishing mandatory provisions for the use of riparian buffers as a stormwater BMP. Extensive public comments were received on this proposed section. The Board made a number of substantive revisions to this section in response to comments in the final-form rulemaking, including the addition of subsections regarding exceptions, a presumption of antidegradation compliance and provisions regarding trading or off-setting credits. In addition, the final-form rulemaking also clarifies the requirements for composition and width of mandatory riparian forest buffers and management plans, and guidance on voluntarily establishing riparian forest buffers.

Section 102.14(a) in the proposed rulemaking listed requirements for incorporating riparian forest buffers. The proposed rulemaking included requirements for mandatory 150-foot wide riparian forest buffers on EV waters and a minimum of 100-foot wide riparian forest buffer on all other waterbodies in § 102.14(a). IRRC and several commentators commented that the wording was vague. Members of the public commented that the requirement for mandatory buffers should be expanded to all waters of this Commonwealth with riparian forest buffers of at least 100 feet on both sides of every stream in this Commonwealth, with 150 feet on small headwater streams and 300 feet on EV and HQ streams. In contrast, the Board also received comments from IRRC and other commentators that the requirement for mandatory buffers is burdensome and that the section on buffers is confusing. In response to comments from IRRC and other commentators, the Board amended § 102.14 to require that a project requiring a permit and located in an EV or HQ watershed which is attaining its designated use, shall not conduct earth disturbance activities within 150 feet of a perennial or intermittent river, stream, creek, lake, pond or reservoir, and must protect existing riparian buffer. Additionally, if the project site requires a permit and is located in an EV or HQ watershed failing to attain one or more of its designated uses the person proposing the project must not conduct earth disturbance activities within 150 feet of a perennial or intermittent river, stream, creek, lake, pond or reservoir, and protect an existing riparian forest buffer, convert an existing riparian buffer to a forest riparian buffer, or establish a new riparian forest buffer.

The Department notes that only 26,215 miles (roughly 30%) of Commonwealth stream miles are classified as special protection (EV or HQ). Further, only 714 miles (0.8%) of all stream miles are presently classified as special protection and designated as “impaired.” Under the final-form rulemaking revisions, for the vast majority of projects—because they will not be located adjacent to impaired special protection waters—riparian forest buffers will not be mandatory, but rather will be an optional BMP that the applicant may choose to manage their post

construction stormwater. In addition, the Board recognizes that there may be circumstances under which a riparian buffer may not be feasible. The final-form rulemaking allows for the consideration of alternative BMPs to be considered in accordance with § 102.14(d)(2)(vi) in these circumstances.

Section 102.14(b) of the proposed rulemaking listed the composition requirements of a riparian forest buffer and a “zoned” approach to composition was included. Scientific literature supports a “zoned” approach to the composition of newly established riparian forest buffers. Zone 1, being directly adjacent to the waterbody and consisting primarily of native trees, is most critical to the ecological health of the waterbody by providing bank stability, thermal moderation, aquatic and terrestrial habitat, and an energy source to maintain a stable ecological community. Zone 2, consisting of native trees and shrubs, provides opportunity for significant sequestration and trapping of overland and subsurface pollutants as well as maximizing habitat potential for a variety of aquatic and terrestrial species. The Board received comments that requested timber management be allowed within the zones. The language from the proposed rulemaking allowing for timber management has been retained in the final-form rulemaking.

The proposed rulemaking included requirements for mandatory 150-foot wide riparian forest buffers on EV waters and a minimum of 100-foot wide riparian forest buffers on all other waters in § 102.14(d) regarding average minimum widths. The minimum width of 100 feet and the type of vegetation, primarily native trees and shrubs, has been firmly established by scientific studies as providing substantial ecological benefit. Additional riparian forest buffer width in special protection and impaired waters provides added protection and maximizes the benefits to existing water quality. This subsection in the final-form rulemaking has been revised and moved to § 102.14(b)(2). Also, in the final-form rulemaking, the width of Zone 1 or, at a minimum, the first 50 feet of a riparian forest buffer, directly adjacent to the waterbody should remain essentially “untouched.” The width of Zone 2 has been enlarged to 100 feet in the final-form rulemaking. Therefore, the area where timber harvesting is permitted (with a riparian forest buffer management plan and 60% of the canopy cover is maintained) has been expanded. Some limited management of forest resources is allowed in Zone 2. Activities within the riparian forest buffer are limited so as to maintain its integrity and functions.

The proposed rulemaking contained requirements for enhancing existing buffers to establish a riparian forest buffer that included additional plantings and removal or control of noxious and invasive species in § 102.14(a). The Board received comments from IRRC and members of the public requesting clarification on the requirements for enhancement. The final-form rulemaking has been revised and clarified. Section 102.14(a) lists the requirements for when a mandatory buffer is required. Specific requirements regarding converting a buffer are clarified in § 102.14(b) of the final-form rulemaking regarding criteria, composition, zones and management requirements.

In the proposed rulemaking, noxious weeds and invasive species were required to be removed or controlled to the extent possible in existing and established riparian forest buffers in § 102.14(a)(4). IRRC and members of the public commented that the section should be amended to clarify these provisions. Minor edits were

made and this section was moved to § 102.14(b)(1)(i) in the final-form rulemaking to provide clarity. Invasive plants have characteristics that make them extremely threatening to the survival of a new riparian forest buffer. Noxious weeds are not necessarily invasive plants; they are plants that have proved to be a significant threat to agriculture, human health or the environment, thereby earning the designation of noxious weed from the Department of Agriculture.

Invasive plants and noxious weeds need to be controlled because they pose a threat due to their ability to spread aggressively, reproduce prolifically and are very difficult to control once established. Invasive plants can overrun native vegetation and prevent the long-term sustainability of native riparian vegetation. Nonnative species can degrade the habitat for wildlife and diminish the pollution prevention capacity of a vegetated riparian forest buffer significantly. Controlling noxious weeds and invasive plants as soon as the plants are noticed (preferably before they bloom and the seeds are released) can be more cost effective than waiting 1 year or more when the invasive plants and noxious weeds are already established. The Department anticipates issuing further guidance on the control of noxious weeds and invasive species concurrently with the final-form rulemaking.

There was a requirement in the proposed rulemaking for riparian forest buffers to be established along both sides of the stream in § 102.14(d)(1)—(3). IRRC and members of the public commented that this would require permittees to purchase adjacent property. The term “both sides” has been removed from the final-form rulemaking. Section 102.14(b)(2)(iii) of the final-form rulemaking clarifies that a riparian buffer would be required on both sides of the stream if the stream transects a project site controlled by the applicant and would not be required on adjacent property.

Section 102.14(e)(2) of the proposed rulemaking included a requirement for newly established and existing riparian forest buffers to be managed for at least 5 years. IRRC and members of the public commented that specific standards should be set for management of riparian forest buffers. In the final-form rulemaking, the management of a riparian forest buffer is described in § 102.14(b)(3). The language states that riparian forest buffers shall be managed for 5 years, during which time the following are used: a planting plan that identifies the number, density and species of native trees and shrubs that are appropriate to the geographic location and will achieve 60% uniform canopy cover; measures to ensure protection from competing plants and animals including noxious weeds and invasive species; and an inspection schedule with measures identified and implemented to ensure proper functioning of the riparian forest buffer. The 5-year period begins when planting is complete and ends when 60% uniform canopy cover is achieved which should be within 5 years of establishment. The riparian forest management plan should continue to be implemented until 60% uniform canopy cover is achieved. Sixty percent uniform canopy cover is achieved when an area of ground shaded by a vertical projection of the leafy crown of predominantly native shrubs and trees reaches 60% throughout the riparian forest buffer. A sample riparian forest buffer management plan, agreement and techniques to determine the 60% canopy cover can be found in the Department’s Riparian Forest Buffer Guidance (Doc. No. 394-5600-001). After 5 years, the riparian forest buffer will be managed as needed according to the riparian forest buffer management plan. Active management is absolutely critical during the first 5 years of

establishing a new riparian forest buffer or enhancing an existing buffer to meet riparian forest buffer standards. Management would be focused on ensuring survivability of the young trees and shrubs. Once the new trees and shrubs are established by the end of the 5-year period, management activities become less active and focus more on long-term operation and maintenance needs as described in the riparian forest buffer management plan. Active management of an existing riparian forest buffer is not required; however, § 102.14(f)(3)(i) allows activities or practices to maintain the riparian buffer.

In § 102.14(a)(8) of the proposed rulemaking, applicants were required to submit a plan for riparian forest buffer management that would describe how management requirements would be met. IRRRC commented that the regulation should set forth what an acceptable plan must include. In the final-form rulemaking, the requirements for a riparian forest buffer management plan have been added in § 102.14(b)(4).

Section 102.14(a) of the proposed rulemaking listed mandatory requirements for riparian buffers. IRRRC commented that while riparian forest buffers may present a very good solution from an environmental perspective, these buffers clearly raise many issues of cost, reasonableness and practicality as proposed. The Board received comments that requested flexibility and asked to delete the mandatory obligation. In addition, the Board received comments that supported a mandatory riparian buffer program, as well as comments that supported mandatory 100 feet stream buffers program on all streams. In response to comments, the final-form rulemaking has been revised. Requirements for management of stormwater into riparian buffers, protection of wetlands located in the riparian buffer and standards for measurement of riparian buffers have been placed into § 102.14(c) for clarity. Stormwater must discharge into the buffer with a sheet or shallow concentrated flow. This type of discharge will protect the integrity of the buffer and will maximize the opportunity for the discharge to eventually enter into the groundwater.

Wetlands within the buffer should be protected and maintained consistent with Chapter 105 (relating to dam safety and waterway management). It is not the intention of the Department to replace any existing functioning wetlands with riparian forest buffers.

IRRC and members of the public commented that there may be circumstances under which a riparian buffer may not be feasible. In the final-form rulemaking, the Board includes exemptions and waivers in § 102.14(d).

The proposed rulemaking did not include a presumption for antidegradation in the riparian forest buffer section. The Board received comments that requested flexibility in the final-form rulemaking by relying on riparian forest buffers as a preferred BMP option for meeting the nondischarge or ABACT requirements in a Special Protection watershed. In response to comments, the final-form rulemaking includes an antidegradation presumption in § 102.14(e)(1). This paragraph provides a presumption of compliance with antidegradation requirements when a permittee includes a riparian forest buffer meeting the requirements of § 102.14.

The Board received comments that requested an offsetting option. The final-form rulemaking has been revised in § 102.14(e)(2) to allow a permittee who includes a riparian forest buffer meeting the requirements of § 102.14 to be eligible for trading or offsetting credits.

The proposed rulemaking did not list specific requirements for crossings through riparian forest buffers. Com-

ments were received that requested clarity regarding crossings through riparian buffers. The final-form rulemaking has been revised to clarify that, in accordance with § 102.14(f)(2)(ii), crossings over riparian buffers are activities that are allowed when authorized by the Department.

The proposed rulemaking included requirements for the permanent protection of riparian forest buffers. IRRRC and members of the public expressed concern about this requirement. In the final-form rulemaking, the requirement is maintained and applies to all riparian buffers. Riparian buffers utilized to manage stormwater provide physical, chemical and biological protection to the receiving water as well as benefits to the aquatic ecosystem and should be protected in perpetuity. Similar to § 102.8(m), riparian buffers are BMPs that require long-term protection and maintenance to ensure their continued functioning as part of PCSM. The Board has added clarification to this section to provide examples of a variety of mechanisms (deed restriction, conservation easement, local ordinance or permit conditions) to ensure the long-term functioning and integrity of the riparian buffer.

Section 102.14(g) of the proposed rulemaking listed a requirement for the permittee to complete a data form provided by the Department as part of the PCSM Plan. Members of the public expressed doubt that these forms would be utilized. This section has been moved to § 102.14(h) in the final-form rulemaking and minor edits for clarifications were made. This reporting has been required by the Department for more than 10 years when buffers are established through a Growing Greener grant from the Department. Reporting can be completed online through the Department's web site at ww.depweb.state.pa.us (DEP Keyword "Stream Releaf").

§ 102.15. Permit-by-rule for low impact projects with riparian forest buffers.

The final-form rulemaking does not include the permit-by-rule that was included in the proposed rulemaking. In response to recommendations from commentators, this section in its entirety has been removed from the final-form rulemaking.

§ 102.22. Site stabilization.

In the proposed rulemaking, § 102.22 (relating to site stabilization) was retitled "site stabilization" to reflect the addition of temporary stabilization standards in § 102.22(b) that if earth disturbance will cease for a period of 3 days or more that the site shall be seeded, mulched or otherwise protected. During the public comment period, several commentators and IRRRC commented that the requirement of 3 days for temporary stabilization could be impractical and costly and could be problematic because of holiday weekends. In response to these comments, the Board revised the final-form rulemaking so that the amount of days of cessation of earth disturbance activities that would require temporary site stabilization was changed from 3 to 4 days. This change will address the concerns regarding 3-day holiday weekends.

§ 102.31. Applicability.

There were not revisions to proposed in § 102.31 from the current regulations.

§ 102.32. Compliance and enforcement provisions.

In the proposed rulemaking, the Board revised this section to add subsection (c), which states that a person aggrieved by an action of a CD may request an informal hearing with the Department, and subsection (d), which

allows the Department or a CD to collect and recover from the responsible party the costs and expenses involved in taking an enforcement action. Several commentators requested additional details regarding the informal hearing process and how it would work. The Department revised the regulations between the proposed and final-form rulemaking to replace the word “may” with “shall” and added language that “the Department will schedule the informal hearing and make a final determination within 30 days of the request.”

§ 102.41. *Administration by conservation districts.*

The only revision made from the existing regulation was to delete the word “county” from “county conservation districts” to be consistent with the rest of the regulations. There were no other changes between the proposed and final-form rulemaking for this section.

§ 102.42. *Notification of application for permits.*

The only revision made to the proposed rulemaking was to delete “5 acres” and insert “1 acre.” This revision was proposed to be consistent with the change in § 102.5. There were no other changes proposed between the proposed and final-form rulemaking for this section.

§ 102.43. *Withholding permits.*

In the proposed rulemaking, the Board inserted the phrase at the start of the first sentence “With the exception of local stormwater approvals or authorizations a.” This was added to clarify that a municipality or county may approve and issue stormwater approvals or authorizations but may not issue building permits or final approvals until the appropriate Department permit coverage is obtained. A commentator submitted comments that the use of the word “final” in this section may be problematic as municipalities may issue preliminary approvals. The Board agreed that removing the word “final” would clarify that municipalities must not issue any authorization that would allow for earth disturbance activity to occur prior to the necessary Chapter 102 permit approval. Therefore, the word “final” was removed between the proposed and final-form rulemaking for this section.

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- *Crum Creek Neighbors v. DEP and Pulte Homes of PA, LP*, EHB Docket No. 2007-287-L, October 22, 2009 Adjudication, <http://ehb.courtapps.com/corpus/50306392007287.pdf>.

F. Benefits, Costs and Compliance

The final-form rulemaking provides benefits to the health and safety of the citizens of this Commonwealth. The provisions will improve water quality and mitigate flooding potential by controlling increases in sediment and other pollutant discharges during and after earth disturbance activities. Controlling discharges through this final-form rulemaking will limit the risk for increased pollutant levels to waters of this Commonwealth and protect against adverse impacts on aquatic ecosystems. To ensure protection against adverse impacts from stormwater runoff, the final-form rulemaking includes provisions for long-term operation and maintenance of PCSM facilities. In support of the Federal NPDES stormwater construction rulemakings, the EPA cited benefits including the benefits to navigational operations regarding the reduced sediment loads requiring dredging, the benefits of water storage in reservoirs with regained water capacity from reduced sediment build-up and the

benefits to drinking water treatment with reduced costs for treatment of sediment in turbidity.

The revisions will also provide benefits through the restructuring and clarification of planning and permit application requirements, as well as the codification of the existing PCSM requirements. This final-form rule-making reflects a continuing commitment to integrate regulatory obligations for stormwater management including requirements under the Storm Water Management Act (Act 167) (32 P.S. §§ 680.1—680.17), the NPDES MS4 program and permitting of earth disturbance activities. Local governments with Act 167 or NPDES MS4 regulatory obligations may rely on the regulatory structure provided by this final-form rule-making. This reliance on existing State stormwater programs represents a significant cost savings to local governments.

§ 102.6—Benefits of permit fee structure

The citizens of this Commonwealth, the regulated community and State and local governments will benefit from this final-form rulemaking because surface waters will be protected, maintained and improved through requirements that minimize accelerated erosion and sedimentation and strengthen PCSM.

The Commonwealth will benefit from increased permit fees that are based on the estimated cost of administering the program. Amendments to Chapter 92 in 1999 and Chapter 102 in 2000 included modifications to permit fees, but these were administrative filing fees and did not cover cost of program operations. This final-form rule-making is the first effort by the Department to cover the Chapter 102 program costs through permit fees.

<i>Benefactor</i>	<i>Benefit</i>	<i>Annual Approx. Value</i>	<i>Source</i>
Department	Revenue to operate the 102 program	\$7,573,200	Permits and other associated review fees

Finally, this final-form rulemaking is beneficial because it continues to support the delegation of the E&S control and stormwater management programs to local county CDs. CDs and the Department have had a successful and effective partnership that allows the Commonwealth to meet the Federal requirements of the NPDES program. Additionally, the delegation to the local government provides more accessibility to the community and regulated parties and ensures local involvement in oversight of the program.

§ 102.8—Benefits of post construction stormwater management

Economic impacts of PCSM design and implementation

The costs associated with contemporary stormwater strategies cannot be judged without the context of benefits, particularly the benefits of low impact development, better site design and environmental site design approaches, collectively referred to as LID. It is more cost-effective to prevent the pollutants from entering the stormwater or into waters of this Commonwealth than it is to remove the pollutants once they are in the system or in the waters.

A partial list of the additional benefits for developers, communities and municipalities includes the following: downstream economic benefits (reduced flooding damages, reduced treatment costs, increased property values, and

the like); reduced needs for infrastructure; higher property values (increased sales, higher sale/resale prices and shorter on-market time); increased tax revenue; increased tourism and recreation; and reduced performance bonding for infrastructure (local/municipal requirements).

A comparative cost-benefit study of different technologies used in the management of urban stormwater consistently raised examples of how LID methods save money in both construction and long-term operation and maintenance, from the broad metropolitan scale down to the site level and further down to a comparison of specific stormwater technologies (Urban Stormwater Economics, Appendix D).

The summary of conclusions include the following:

- At the site level, significant cost savings can be achieved from cluster development, including costs for clearing and grading, stormwater and transportation infrastructure, and utilities.
- Installation costs can be between \$4,400 and \$8,850 cheaper per acre for natural, native landscaping than for turf grass approaches.
- Better site design can reduce paving costs.
- While conventional paving materials are less expensive than conservation alternatives, porous materials can help total development costs go down, sometimes as much as 30%, by reducing stormwater conveyance and detention needs.
- Swale conveyance and naturalized BMPs are less costly than pipe systems, as much as 80%.
- Costs of stormwater retention or detention cannot be examined in isolation, but must instead be analyzed in combination with conveyance costs (pipe, inlets and curb), at which point low impact methods have a cost advantage, by eliminating these facilities. The cost saving is two-fold. One from the cost of design and implementation and second from the reduction of impervious surface that these conveyances cause.
- Infiltration strategies and water conservation measures, in combination with landscape planning methods, usually require less space, when fully accounted for, than traditional end-of-pipe infrastructure.
- Public infrastructure costs are higher when a development is built within the context of urban sprawl, as compared to compact growth patterns that conserve land.

In addition to preserving agricultural land, open space is now expected to serve important ecological roles by providing natural habitat, reducing runoff volumes, limiting landscaping and lawn maintenance, and providing natural cooling. These ecological benefits in turn translate into higher levels of residential satisfaction (Urban Stormwater Economics, Appendix D).

A study by the EPA of 17 case studies of developments across the country that used LID practices (infiltration, ET and reuse of rainwater) found that these practices could save money for developers, property owners and communities. Most of the cost reductions were in the 25% to 35% range. In addition, there are many amenities and associated economic benefits that go beyond actual cost saving, such as enhanced property values, improved habitat, aesthetic amenities and improved quality of life. In all cases, LID provided other benefits that were not monetized and factored into the project bottom line. These benefits include improved aesthetics, expanded recreational opportunities, increased property values due to the desirability of the lots and their proximity to open space, increased total number of units developed, in-

creased marketing potential and faster sales. The case studies also provided environmental benefits such as reduced runoff volumes and pollutant loadings to downstream water, and reduced incidences of combined sewer overflows.

Failure to enact these changes to the proposed rule-making will allow increases in stormwater runoff to occur. Increases in stormwater causes degradation of lakes, streams and wetlands and reduces property values, raises our public water utility bills and reduces tourism and related business income. These negative impacts will cause an increase in costs for local municipalities and this Commonwealth. Comments from the Philadelphia Water Department indicated that the proposed changes will improve water quality and reduce illnesses from drinking water and reduce their treatment costs.

Preventing contamination of raw drinking water supplies is more efficient than trying to identify and remove that contamination from the water stream at the treatment plant. By dedicating funds to restore and protect source water areas, communities are saving tremendous

amounts of money over the long-term. The survey in Table 1 regarding water treatment and chemical costs based on percent of watershed that is forested indicates that operating treatment costs decreases as forest cover in a source area increases (Urban Stormwater Economics, Appendix D). For every 10% increase in forest cover in the source area (up to 60% forest cover), treatment and chemical costs decreased approximately 20%. Approximately 50% to 55% of the variation in operating treatment costs can be explained by the percent of forest cover in the source area. Not enough data were obtained on suppliers that had more than 65% forest cover in their watersheds to draw conclusions; however, the researchers believe that treatment costs level off when forest cover is between 70% and 100%. The remaining 45% to 50% variation in treatment costs that cannot be explained by the percent forest cover in the watershed is likely due to varying treatment practices, economies of scale, the location and intensity of development or row crops, or both, in the watershed, and the prevalence of agricultural, urban and forestry BMPs.

Table 1. Water treatment and chemical costs based on percent of watershed that is forested

% of Watershed Forested	Treatment and Chemical Costs per million gallons	% Change in Costs	Average Treatment Costs (at 22 mgd)	
			Per Day	Per Year
10%	\$115	19%	\$2,530	\$923,450
20%	\$93	20%	\$2,046	\$746,790
30%	\$73	21%	\$1,606	\$586,190
40%	\$58	21%	\$1,276	\$465,740
50%	\$46	21%	\$1,012	\$369,380
60%	\$37	19%	\$814	\$297,110

Economic impacts of PCSM operation and maintenance

- Delaware Natural Resources identified that routine stormwater maintenance range from \$100 to \$500 per acre of drainage area (low to highly intensive maintenance).

- Maintenance cost savings range between \$3,950 and \$4,583 per acre per year over 10 years for native landscaping approaches over turf grass approaches (Urban Stormwater Economics, Appendix D).

- A study by North Carolina State University estimated annual maintenance costs for a 10-acre project: ponds, \$4,000 +; wetland treatment, \$750; bioretention, \$600; and other natural systems equated to normal landscaping maintenance costs.

§ 102.14—Benefits of riparian buffers

Economic benefits of riparian forest buffers

Savings to the Commonwealth, its political subdivisions and the private sector will be realized because of the value of the many services that riparian buffers provide such as the following:

- *Stormwater treatment.* Stormwater treatment systems that integrate natural areas, like riparian forest buffers, are less expensive to construct than storm drain systems and provide better environmental results. Costs of engineered stormwater BMPs range from \$500 to \$10,000 per acre and will cost that much again in 20 to 30 years when the structures need to be replaced. It is

much more cost effective to manage storm water by including the preservation and maintenance of riparian forests in the stormwater management plan. The cost of preserving or replanting riparian forest buffers ranges from \$0 to \$4,723 per acre and can be relatively cost free once established. (Department's Draft Riparian Forest Buffer Guidance (Document 394-5600-001, 2009).)

- *Maintenance of optimal water quality.* This would include protection of water quality for activities such as boating, swimming and wildlife viewing. Riparian forest buffers also protect areas for fishing, hunting and other outdoor recreational activities. Trout require the cold waters enhanced by the shading provided by forest buffers (Jones et al., 2006). Fishing contributes over \$2 billion to this Commonwealth's economy with close to 1 million anglers (Southwick, 2007).

- *Flood control.* Riparian buffers moderate floodwaters and are a tool to protect human land use and investments from localized and flashy events and hazards associated with stream dynamics and shore erosion. Riparian buffers protect investments from hazards associated with stream flooding and erosion by providing a critical right-of-way for streams and rivers during large floods and storms. When riparian forest buffers contain the entire 100-year floodplain, they are extremely cost-effective in flood damage prevention for both communities and individual property owners (Burby, 1988).

- *Passive recreational activities.* Riparian buffers provide natural surroundings for relaxation, observation of

wildlife, photography, hunting, fishing and other activities important to the people of this Commonwealth. Pervious paths that are cut through riparian areas and can be used for hiking, bicycling, jogging, bird watching and leisurely walks.

- *Intrinsic and aesthetic values.* Mature riparian forest buffers composed of predominantly native vegetation enhance the preservation of natural functioning ecosystems and biological diversity. The aesthetic values associated with greenways, which include riparian forest buffers, have economic benefits and can increase property values as well as contribute to a sense of pride and well being for communities and property owners. These greenways can also have a positive impact on the value of surrounding property nearby. Pennypack Park, a managed greenway along Pennypack Creek in Philadelphia, has been credited with a 33% increase in the value of adjacent property (Chesapeake Bay Foundation, 1996).

- *Ice damage control.* The trees in Zone 1 of a mature riparian forest buffer insulate and warm the waters on the near shoreline/streambank area. This protects human land use and investments from ice damage on the near shoreline/streambank and from affects of ice jamming and subsequent upstream flooding (Abernathy et al., 1998).

Ecological benefits of riparian buffers

Land development activities change natural features of the land and alter stormwater runoff characteristics. The resulting alterations by stormwater runoff on volume, rate and water quality can cause stream bank scour, stream destabilization, sedimentation, reduction of groundwater recharge and loss of base flow, localized flooding, habitat modification and water quality and quantity impairment, which constitute pollution as that term is defined in section 1 of the act.

Riparian buffers, which are areas of permanent vegetation along surface waters, play a vital role in mitigating the effects of stormwater runoff from land development activities. They are useful in mitigating or controlling point and nonpoint source pollution by both keeping the pollutants out and increasing the level of instream pollution processing. Used as a component of an integrated management system including nutrient management along with E&S control practices, riparian buffers can produce a number of beneficial effects on the quality of water resources. Riparian buffers can be effective in removing excess nutrients and sediment from surface runoff and shallow groundwater, stabilizing streambanks and shading streams and rivers to optimize light and temperature conditions for aquatic plants and animals. Riparian buffers provide significant flood attenuation and storage functions within the watershed. They prevent pollution both during and after earth disturbance activities, and provide natural, long-term sustainability for aquatic resource protection and water quality enhancement.

A riparian forest buffer is a type of riparian buffer that consists of permanent vegetation that is predominantly native trees and shrubs and along surface waters. The riparian forest buffer, when mature, will provide a minimum of 60% canopy cover and may have forbs in the understory.

The efficacy of riparian forest buffers in reducing the quantities of nonpoint source pollutants found in stormwater entering streams has been well established by hundreds of reports published in the peer-reviewed scientific literature (Mayer et al., 2007; and Wenger et al., 1999). Scientific literature also supports the riparian

forest buffer (with stormwater entering the buffer as sheet flow or shallow concentrated flow) as the only BMP that can provide all of the following benefits:

- *Reduced effects of storm events.* Mature riparian forest buffers that are sufficiently wide can slow the speed and reduce the volume of surface runoff from upland areas. The spongy floor of a riparian forest buffer along a pond, lake or reservoir slows the affect of direct precipitation and runoff from areas adjacent to the riparian forest buffers. This protects stream channel beds and banks from powerful flash flooding that can scour and erode the channel. It also protects lake shorelines from erosive forces during large storms events and flooding.

- *Infiltration and maintenance of streamflow.* Riparian forest buffers slow overland runoff allowing for infiltration of surface water that helps to maintain base flow in streams and rivers.

- *Filtration and processing of pollutants in runoff.* Runoff containing pollutants such as sediments, nutrients, pathogens and toxics from rooftops, streets, lawns, farm fields and parking lots can flow into a riparian forest buffer from the area up grade and be considerably cleaner when it enters the perennial or intermittent stream, lake, pond or reservoir (Mayer et al., 2007; Peterjohn and Correll, 1984; Lowrance et al., 1984; Jordan et al., 1993; Clement et al., 2003; and Vidon and Hill, 2004). The floor of the riparian forest buffer soaks up the water and makes pollutants contained in it available for processing into less harmful forms. Trees in a riparian forest buffer, their fallen leaves and the plants and animals that live on, in and under the trees form an ecosystem that is capable of processing pollutants such as sediments, nutrients and toxics in the water that passes through the riparian forest buffer as sheet flow. The tree roots can also remove pollutants from shallow groundwater flowing beneath the forest floor to the waterbody. The leaves of native trees in the riparian forest buffer that wash into the stream serve as a rich food source for benthic macroinvertebrates which are capable of in-stream pollutant processing (Sweeny et al., 2007).

- *Streambank and shoreline stabilization.* The canopy of a mature riparian forest buffer collects water and protects the ground below in storm events. The rain water also tracks along the trunk of the large trees before reaching the ground. This reduces the force of the water as it reaches the forest floor. The root network of the riparian forest buffer is tightly intertwined and binds soil particles together increasing the strength of the soil matrix, securing against the forces of both direct precipitation and stormwater runoff from areas surrounding the riparian forest buffer. This enhances streambank and lake shoreline stability, which are important for reducing soil and property loss from the bank or shore, reducing sediment input to the waterbody and maintaining overall channel stability. Mature trees also protect lakeshores from wave action (Wenger et al., 1999).

- *Light control and water temperature moderation.* A riparian forest buffer lowers light levels in the streambank or shoreline area of a waterbody that inhibits the growth and production of harmful algae and helps maximize stream width by shading out grasses. The shading that a riparian forest buffer provides helps to lower water temperatures in summer and moderates harsh winter temperatures by trapping back-radiation. Both light control and water temperature moderation maximize dissolved oxygen content in lake and stream waters and increase the amount of in-stream pollutant processing (Sweeney et al., 1993).

- *Flood attenuation.* Riparian forest buffers provide space for channel meanders, stream movement and floodwaters to spread out horizontally. This dissipates stream energy and protects channel stability and shoreline integrity in receiving waterbodies. The spongy floor of a riparian forest buffer along a pond, lake or reservoir slows the affect of direct precipitation and runoff from areas adjacent to the riparian forest buffers and protects shorelines during floods.

- *Ice damage control.* Riparian forest buffers along streams and rivers trap ice slabs during spring breakup, reducing the potential of jamming at downstream constrictions. Jamming can result in backwater and flooding upstream, which can lead to channel instability. Mature riparian forest lakeshore buffer zones are able to absorb the pressures of midwinter ice push, protecting upland development from ice damage (Northwest Regional Planning Commission, 2004).

Further, a review of scientific literature on the subject emphasizes that many site specific factors influence the efficiency of a riparian forest buffer in providing the benefits previously outlined, but there is general agreement that wider buffers are more effective. A minimum width of 150 feet and the type of vegetation, primarily native trees and shrubs, has been firmly established by scientific studies as providing substantial ecological benefit (Mayer et al., 2007; and Wenger, 1999).

Scientific literature also supports a “zoned” approach to the composition of newly established riparian forest buffers (Palone et al., 1997; and Welsch, 1991). Zone 1, being directly adjacent to the waterbody and consisting primarily of native trees, is most critical to the ecological health of the waterbody by providing bank stability, thermal moderation, aquatic and terrestrial habitat, and an energy source to maintain a stable ecological community. Zone 2, consisting of native trees and shrubs, provides opportunity for significant sequestration and trapping of overland and subsurface pollutants as well as maximizing habitat potential for a variety of aquatic and terrestrial species.

Zone 1 or, at a minimum, the first 50 feet of a riparian forest buffer, directly adjacent to the stream, river lake, pond, reservoir or impoundment should remain essentially “untouched.” Some limited management of forest resources may occur in Zone 2. Activities within the riparian forest buffer must be limited so as to maintain its integrity and functions.

Newly established riparian forest buffers will be managed for a period of at least 5 years, during which time the following are used: a planting plan that identifies the number, density and species of native trees and shrubs that are appropriate to the geographic location and will achieve 60% uniform canopy cover; measures to ensure protection from competing plants and animals including noxious weeds and invasive species; and an inspection schedule with measures identified and implemented to ensure proper functioning of the riparian forest buffer.

Management involves the maintenance and monitoring of a newly established or existing riparian forest buffer. The most critical period after establishing a riparian forest buffer is the time spent maintaining the trees until their growth gives adequate shade to control weed competition. Ongoing maintenance and monitoring practices are necessary for at least 5 years to ensure establishment of a thriving riparian forest buffer, especially if smaller seedling plant material has been used. Even when large plants are involved, deer browse, invasion by exotic plant

species and competition by forbs will be a continuing problem. Maintenance and monitoring plans should be written for the specific site.

Invasive plants have characteristics that make them extremely threatening to the survival of a new riparian forest buffer. Noxious weeds are not necessarily invasive plants; they are plants that have proved to be a significant threat to agriculture, human health or the environment, thereby earning the designation of noxious weed from the Department of Agriculture.

Invasive plants and noxious weeds need to be controlled because they pose a threat due to their ability to spread aggressively, reproduce prolifically and are very difficult to control once established. Invasive plants can overrun native vegetation and prevent the long-term sustainability of native riparian vegetation. Non-native species can diminish the pollution prevention capacity of a vegetated riparian forest buffer significantly and also degrade the habitat for wildlife (Sweeney et al., 1993).

Controlling noxious weeds and invasive plants as soon as the plants are noticed (preferably before they bloom and the seeds are released) can be more cost effective than waiting one or more years when the invasive plants and noxious weeds are already established.

The 5-year management period begins when planting of a riparian forest buffer is complete and ends when 60% uniform canopy cover is achieved which should be within 5 years of establishment. The riparian forest management plan should continue to be implemented until 60% uniform canopy cover is achieved. Sixty percent uniform canopy cover is achieved when an area of ground shaded by a vertical projection of the leafy crown of predominantly native shrubs and trees reaches 60% throughout the riparian forest buffer.

A sample riparian forest buffer management plan and methodology for determining percent canopy cover can be found in the Department’s Riparian Forest Buffer Guidance (Doc. No. 394-5600-001).

Compliance Costs

Note: When possible, the Department attempted to determine, quantify and calculate the dollar value for the costs, savings and benefits attributable to the final-form rulemaking based on available information on the environmental impacts, social costs, economic impact analysis and benefit analyses. However, not all of the costs, savings and benefits can be readily quantified.

Note: To estimate the potential cost to the regulated community, local and State governments, the total number of permits processed by the Department over the 3 year period of 2006-2008 was examined and broken into each of the three categories. It was determined that over that 3-year sample, the regulated community performed 80%, local governments 12% and State government 8% of the permitted earth disturbance activities in this Commonwealth.

This final-form rulemaking should not result in significant increased compliance costs for persons proposing or conducting earth disturbance activities. Moderate increased costs may be incurred due to the following: increased permit application fees for activities requiring permits; PCSM Plan licensed professional oversight and preparation of record drawings; and long-term operation and maintenance of PCSM facilities.

Generally, there will be cost savings as a result of eliminating outdated and unnecessary requirements, while increasing the protection of valuable water re-

sources in this Commonwealth. Additionally, the emphasis in the final-form rulemaking on nonstructural “low-impact” stormwater management approaches should result in lower construction costs and long-term operation and management costs.

The final-form rulemaking will apply to individuals or entities seeking authorization to perform activities regulated under Chapter 102.

Existing regulations

<i>Cost-bearer</i>	<i>Expenditures</i>	<i>Annual Approx Value</i>	<i>Source</i>
Municipalities	Administrative	\$24,720	NPDES IP GPs
		\$79,110	
	<i>Total</i>	\$103,830	
Private	Administrative	\$164,800	NPDES IP GPs
		\$527,400	
	<i>Total</i>	\$692,200	
Commonwealth	Administrative	\$16,480	NPDES IP GPs
		\$52,740	
	<i>Total</i>	\$69,220	
	Total	\$219,375	

The annual approximate value for NPDES stormwater construction permits noted in the previous chart is based on a 3-year (2006-2008) average of permit fees collected and reported in eFACTS and by CDs.

Proposed rulemaking

<i>Cost-bearer</i>	<i>Expenditures</i>	<i>Annual Approx Value</i>	<i>Source</i>
Municipalities	Administrative	\$74,160	NPDES IP GPs Disturbance Fee
	Administrative	\$158,220	
	Administrative	\$676,400	
	<i>Total</i>	\$908,784	
Private	Administrative	\$494,400	NPDES IP GPs Disturbance Fee
	Administrative	\$1,054,800	
	Administrative	\$4,509,400	
	<i>Total</i>	\$6,058,560	
Commonwealth	Administrative	\$49,440	NPDES IP GPs Disturbance Fee
	Administrative	\$105,480	
	Administrative	\$450,900	
	<i>Total</i>	\$605,856	
	Total	\$7,573,200	

The additional costs in the final-form rulemaking are for increased permitting fees and the addition of a disturbance fee. The annual approximate value noted in the previous chart is based on an average of 3 years (2006-2008) of activities performed by the Department and the new fee applied to each activity.

Commonwealth

The final-form rulemaking may add approximately \$605,856 in additional costs but will provide revenue of \$7,573,200 for State government annually associated with the Chapter 102 E&S Control Program. These estimates were calculated utilizing a 3-year average of activities conducted by the Chapter 102 E&S Control Program and projecting these averages with an associated activity cost due to the final-form rulemaking.

The final-form rulemaking ensures protection and maintenance of environmental quality and should reduce costs to the State and local governments as a result of savings from reduced sediment loadings, reduced in-stream pollutant concentrations and reduced pollution associated with changes to stream flow volume and velocity. The final-form rulemaking will also result in savings from BMPs that reduce flooding potential and associated flood damage.

It is difficult to assess the ultimate cost of compliance because projects vary greatly in size, scope and purpose. Additionally, land developers have discretion when choosing BMPs to control stormwater both during and after construction. The choices include fairly high cost traditional BMPs as well as lower cost “low-impact” BMPs, which are encouraged in this final-form rulemaking. The choice remains with the land developer.

Municipal

This final-form rulemaking is a codification of existing requirements and therefore only minimal costs associated with increased permit fees are anticipated for local government.

The final-form rulemaking will add approximately \$804,954 in additional costs associated with the Chapter 102 E&S Control Program which is the difference between \$103,830 (\$24,720 NPDES IP plus \$79,110 NPDES GP) and the increase of fees to \$908,784 (\$74,160 base NPDES Stormwater Construction IP fee plus \$158,220 NPDES GP plus \$676,400 disturbance fee) to local governments annually. The Department does not anticipate that CDs delegated the administration of the program will experience any decrease in revenue based from fees under this final-form rulemaking. In addition, CDs could supplement these revenues with their own review fees. The Conservation District Fund Allocation Program also provides revenue to CDs to partially cover the cost of technical positions to implement the program.

Local governments may realize reduced water treatment costs (as a result of reduced sediment and in-stream pollutant loadings), reduced infrastructure maintenance costs (due to reduced stormwater volumes) and reduced costs associated with flooding potential (due to

stormwater management practices that reduce or eliminate flood potential). However, specific cost savings to be realized as a result of this final-form rulemaking are difficult to establish with any certainty and are therefore not identified in this analysis.

This final-form rulemaking reflects a continuing commitment to integrate regulatory requirements with other stormwater management obligations including requirements under Act 167 and the NPDES MS4 program. Local governments with State Act 167 or NPDES MS4 regulatory obligations may rely on the regulatory structure for baseline requirements provided by this final-form rulemaking. This reliance on existing State stormwater programs can represent a significant cost savings to local governments in the form of baseline requirements for E&S control, PCSM and riparian buffer implementation.

Private sector

The cost/benefit to the five largest affected industries with the new Chapter 102 E&S control regulations cannot be addressed since E&S and NPDES are not reoccurring authorizations, nor are they limited to a certain type of industry or project and identifying affected corporations is not possible.

This final-form rulemaking is primarily a codification of existing requirements and therefore costs associated with increased permit fees, as-built drawings and onsite licensed professionals have been considered as potential new costs. Sustainable, natural BMP options that provide lower costs for the regulated community are encouraged. Ultimately, the costs and impacts associated with this final-form rulemaking are decided by the person undertaking the activity and their design professional through the design choices they make. The final-form rulemaking requires that a licensed professional regularly inspect the implementation of critical stages of BMP construction and submit a certification that the BMP is properly constructed. This certification will acknowledge that the BMPs have been properly constructed and are in working order and therefore there will be an improved expectation of optimal performance for the long-term operation. As every project varies in size, scope and design choice, it is difficult for the Department to calculate what a definitive cost will be to the regulated community. The Department is providing the following estimates for time and costs associated with record drawings (2–16 hours) and licensed professional monitoring of critical stages of construction (0–70 hours). The Department calculated the cost for inspection of critical stages and certification of BMP implementation by simply using an average cost for monitoring and certification of \$80 per hour for routine monitoring by a designee of a licensed professional and a cost of \$115 per hour for the licensed professional services. These services were multiplied by the average of the estimated number of hours for each of the services provided—35 hours for oversight and 8 hours for certification. The resulting value of \$2,800 for monitoring and \$920 for certification was then multiplied by the average number of permitted activities (2,463 per year) which was derived from program data. The result for average estimated cost for the regulated community is \$9,162,360. Again, the costs incurred by a permittee for these new requirements are in direct relation to the type of design chosen for the project. While this is a cost to the regulated community, it also provides benefits of increased assurance that the BMPs will perform as designed thereby providing the desired level of environmental protection or improvement.

The final-form rulemaking will add approximately \$5,366,360 in additional costs associated with the Chapter 102 E&S Control and NPDES Stormwater Construction Programs which is the difference between \$692,200 (\$164,800 NPDES IP plus \$527,400 NPDES GP) and the increase of fees to \$6,058,560 (\$494,400 base NPDES stormwater construction IP fee plus \$1,0547,800 NPDES GP plus \$4,509,400 disturbance fee) to the private sector annually. The new fees for the Chapter 102 E&S Control Program will close the cost deficit for the administration of the program. Fee schedules have not been updated since 2000 when there was not a per acre of earth disturbance fee for NPDES stormwater construction permits and fees were \$250 per permit for GPs and IP fees were \$500 per permit. In an effort to reduce the deficit between funds generated and expenditures required to manage the program, this final-form rulemaking sets permit fees as follows: a base administration fee for GPs of \$500 per permit or an IP fee of \$1,500 per permit, plus a per acre earth disturbance fee of \$100 for all permit applications. The fees were developed based on the number of permits issued and number of acres disturbed per permit over the last 3 years. In addition, implementation costs were calculated based upon projected administration, review and implementation time for the program. A more detailed analysis can be found in the fee report form. It should be noted that even though these increases will affect the regulated community, they still will not cover the total Department expenditures required to implement the program.

Potential Riparian Forest Buffer Costs

Land development activities change natural features of the land and alter stormwater runoff characteristics. The resulting alterations of stormwater volume, rate and water quality which can cause stream bank scour, stream destabilization, sedimentation, loss of groundwater recharge, loss of base flow, localized flooding, habitat modification and water quality and quantity impairment, which constitute pollution as that term is defined in section 1 of the act. Riparian buffers, particularly riparian forest buffers, play a vital role in mitigating the effects of stormwater runoff from land development activities. The Department proposes to revise the riparian buffer section to expand riparian buffers in all special protection watersheds and to restore water quality in impaired waters. The final-form rulemaking includes mandatory riparian buffers for activities permitted under Chapter 102 when the project is located along EV or HQ waters. Specifically, protection of existing riparian buffers along EV and HQ waters when the waters are attaining their designated uses and riparian forest buffers where EV or HQ waters are impaired. The mandatory obligation to maintain and protect a 150-foot riparian buffer will be required when the project site contains, is along or within 150 feet of a river, stream, creek, lake, pond or reservoir, and located in either of the following: an EV watershed meeting its designated use at the time of application; or a HQ watershed meeting its designated use at the time of application.

In addition, a mandatory obligation to establish and protect a new riparian forest buffer when the project site contains, is along or within 150 feet of a river, stream, creek, lake, pond or reservoir, when a riparian forest buffer does not currently exist and is located in either of the following: an EV watershed that is listed as impaired at the time of the application; or an HQ watershed that is listed as impaired at the time of application.

EV and HQ waters are afforded the greatest degree of protection under the Department's existing regulations in

Chapter 93. Based on the scientific data, riparian buffers are one of the most effective stormwater management BMPs for protecting aquatic resources.

The potential costs regarding the riparian forest buffer requirements in the final-form rulemaking have been calculated by considering how much it could cost to establish a new riparian buffer when a riparian buffer does not exist as well as enhancing or maintaining an existing riparian buffer. Recognizing that a number of possibilities need to be considered when quantifying total costs that may be experienced when establishing riparian forest buffers throughout this Commonwealth, dollars per acre of riparian forest acre established can range from \$385 to \$4,723 per acre. The minimum estimate is based on the cost of planting 110 (12-inch to 18-inch) hardwood trees spaced 20 feet apart at \$3.50 per tree as a minimum to establish a riparian forest buffer. The maximum potential cost is based on planting 435 (12-inch to 18-inch) hardwood trees ten feet apart at \$3.50 per tree as well as removal of invasive species (\$200 per acre), reinforcement planting (\$175 per acre), seedling protection (\$2,175 per acre), competition control such as herbicides and mowing (\$650 per acre) altogether could cost as much as \$4,723 per acre. However, it is most likely that actual establishment of riparian forest buffers will be less than the maximum estimate due to the variety of conditions in the field. It is also possible that riparian forest buffers already exist when projects may fall within the requirements of this part of the final-form rulemaking. The cost would be \$0 per acre when this is the case. The Department estimated potential cost to establish riparian forest buffers on a per acre basis. However, it is nearly impossible to determine the number and size of projects that will occur within impaired HQ and EV watersheds requiring establishment of riparian forest buffers, therefore estimates of total acres are not included.

Potential Riparian Forest Buffer Savings

The potential savings that will result from the development of riparian forest buffers are likely to be experienced through the increase of property values resulting from riparian forest buffers being installed in this Commonwealth along impaired EV and HQ streams as a result of this final-form rulemaking. Establishing a riparian forest buffer is expected to increase property values at least \$19,104 per acre (adjusted for inflation). This estimate is based on the 1988 Burby study which examined ten programs throughout the United States that diverted development away from flood-prone areas.

Although the mandatory riparian forest buffer requirement for permitted projects located in EV and HQ watersheds is new, this requirement should not necessarily result in substantial new or increased costs to the regulated community.

Riparian forest buffers may result in a savings when compared to structurally engineered nondischarge BMPs. Additionally, the installation of riparian forest buffers has been shown to increase property values by 5% to 25%, increase and protect water quality and decrease the necessity and cost of restoring impaired waters.

According to EPA estimates, available data regarding post construction stormwater can be found in National studies developed by the EPA and others; however, it would not be accurate to infer potential costs and savings for this Commonwealth based on National studies due to the extreme variability of conditions, size of projects and State requirements. According to EPA estimates published in *Federal Register* on December 8, 1999, estimated

post construction costs were \$56,122,317 to \$227,040,284 (adjusted for inflation) Nationwide annually. This estimate was based on an average costs for PCSM BMPs on project sites of 1, 3, 5 and 7 acres. Annual benefits of the PCSM requirements by the EPA published in *Federal Register* on December 8, 1999, indicate a potential annual benefit of the Phase II Storm Water Rule to be approximately \$131 million to \$410,200,000 Nationally, after E&S control benefits were removed from the EPA total benefit estimate.

Assumptions

If the average of the estimated activities performed by the Department exceeds the estimated numbers, the Commonwealth could have a significant benefit to the new regulations because the fees collected will be more than the estimated values. If the average of the estimated activities performed by the Department does not exceed the estimated numbers, the Commonwealth could have a significant loss to the new regulations because the fees collected will not be more than the estimated values.

The final-form rulemaking will result in moderate compliance costs for persons proposing or conducting earth disturbance activities. Moderate increased costs may be incurred due to the following: increased permit application fees for activities requiring permits; PCSM Plan licensed professional oversight and preparation of record drawings; and long-term operation and maintenance of PCSM facilities.

Generally, there is an anticipated cost savings as a result of the eliminating outdated and unnecessary requirements, while increasing the protection of valuable water resources in this Commonwealth. Additionally, the emphasis in the final-form rulemaking on nonstructural "low-impact" stormwater management approaches should result in lower long-term operation and management costs.

Compliance Assistance Plan

The regulated community will be notified of fee changes by notice in the *Pennsylvania Bulletin*.

The Department assists the regulated community in complying with this final-form rulemaking through technical and educational assistance, largely provided in partnership with county CDs. These efforts have resulted in local community based initiatives that stimulate awareness and achieve regulatory compliance. Department staff has worked with CDs to develop and enhance their professional abilities for effective administration of the program. The development of compliance strategies that focus on negotiation, total quality management, mediation and professional development has greatly enhanced the Department's ability to protect this Commonwealth's water resources. County CD staff provide an efficient and effective local source of assistance as well as an efficient mechanism for the protection of valuable resources. Evaluations of district performance have shown that district staff can provide a quick response to process, review and acknowledge permit applications.

By involving advisory committees in the development of this final-form rulemaking, and pursuing initiatives with the regulated community and various other stakeholders, the Department's outreach efforts have allowed stakeholders to work together with regulators to work towards the goal of protecting water quality and the aquatic environment through E&S and stormwater management efforts. Involvement of the public and the regulated community in the development of this final-form rulemaking fosters subsequent compliance with standards

and practices developed as a result of these efforts, and are an important form of compliance assistance.

The Department assists the regulated community with compliance by its development of technical guidance documents, standard checklists, worksheets and permit review letters to aid persons responsible for earth disturbance activities and their plan designers in developing sound pollution prevention plans. The Department also assists compliance by assuring that Department and CD reviews are timely, effective and consistent. Finally, the final-form rulemaking incorporates a performance-based approach, which allows persons conducting earth disturbance broad latitude and flexibility in designing BMPs to achieve compliance.

Finally, the effective date of this final-form rulemaking is November 19, 2010 so that the Department may provide the necessary training, compliance assistance, guidance and other information necessary to comply with the final-form rulemaking.

Paperwork Requirements

The majority of the final-form rulemaking codifies existing requirements; therefore, only minor changes to forms, fact sheets and technical guidance are anticipated.

G. Pollution Prevention

Chapter 102 prevents sediment and stormwater pollution to surface waters of this Commonwealth from earth disturbance activities through a tiered regulatory framework built upon BMP requirements. This chapter covers both agricultural and nonagricultural earth disturbance activities, with distinct regulatory requirements for these two broad categories. Regardless of the category, earth disturbance activities shall utilize BMPs to minimize accelerated erosion and sedimentation for the duration of earth disturbance activities. Additionally, some earth disturbance activities require preparation of a written E&S Plan. Finally, earth disturbance activities exceeding specified acreage thresholds may trigger the requirement to obtain permit coverage, which in turn includes the obligation to prepare and implement a written PCSM Plan.

The final-form rulemaking will improve protection from earth disturbance activities not only through the inclusion of PCSM requirements, but also through the addition of the riparian forest buffer provisions, which are one of the most effective and sustainable BMPs for protecting, maintaining, reclaiming and restoring surface waters of this Commonwealth.

Effective pollution prevention also requires robust inspection, oversight and enforcement authority, which are retained and enhanced in this final-form rulemaking. The final-form rulemaking adds requirements such as mandatory preconstruction meetings, and licensed professional documentation requirements.

H. Sunset Review

This final-form rulemaking will be reviewed in accordance with the sunset review schedule published by the Department to determine whether the regulations effectively fulfill the goals for which they were intended.

I. Regulatory Review

Under section 5(a) of the Regulatory Review Act (71 P. S. § 745.5(a)), on August 19, 2009, the Department submitted a copy of the notice of proposed rulemaking, published at 39 Pa.B. 5131 (August 29, 2009), to IRRC and the Chairpersons of the Senate and House Environmental Resources and Energy Committees (Committee) for review and comment.

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

Under section 5.1(j.2) of the Regulatory Review Act (71 P. S. § 745.5a(j.2)), on June 8, 2010, the Senate Environmental Resources and Energy Committee and on June 15, 2010, the House Environmental Resources and Energy Committee notified IRRC of their intent to review the final-form rulemaking.

Under section 5.1(j.2) of the Regulatory Review Act (71 P. S. § 745.5a(j.2)), on July 2, 2010, after the conclusion of the additional review period requested by the Committees, the final-form rulemaking was deemed approved by the Committees. Under section 5.1(e) of the Regulatory Review Act, IRRC met on June 17, 2010, and approved the final-form rulemaking.

J. Findings

The Board finds that:

(1) Notice of proposed rulemaking was given under sections 201 and 202 of the act of July 31, 1968 (P. L. 769, No. 240) and regulations promulgated thereunder, 1 Pa. Code §§ 7.1 and 7.2.

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

(3) This final-form rulemaking does not enlarge the purpose of the proposed rulemaking published at 39 Pa.B. 5131.

(4) This final-form rulemaking is necessary and appropriate for administration and enforcement of the authorizing acts identified in Section C of this preamble.

K. Order

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

(a) The regulations of the Department, 25 Pa. Code, Chapter 102, are amended by amending §§ 102.1, 102.2, 102.4—102.7, 102.11, 102.22, 102.31, 102.32 and 102.41—102.43 and adding §§ 102.8 and 102.14 to read as set forth in Annex A.

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

(c) The Chairperson of the Board shall submit this order and Annex A to IRRC and the Committees as required by the Regulatory Review Act.

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

(e) This order shall take effect on November 19, 2010.

JOHN HANGER,
Chairperson

(Editor's Note: The proposal to add § 102.15, included in the proposed rulemaking published at 39 Pa.B. 5131, has been withdrawn by the Board.)

(Editor's Note: For the text of the order of the Independent Regulatory Review Commission relating to this document, see 40 Pa.B. 3753 (July 3, 2010).)

Fiscal Note: Fiscal Note 7-440 remains valid for the final adoption of the subject regulations.

Annex A

TITLE 25. ENVIRONMENTAL PROTECTION

PART I. DEPARTMENT OF ENVIRONMENTAL PROTECTION

Subpart C. PROTECTION OF NATURAL RESOURCES

ARTICLE II. WATER RESOURCES

**CHAPTER 102. EROSION AND SEDIMENT CONTROL AND STORMWATER MANAGEMENT
GENERAL PROVISIONS**

§ 102.1. Definitions.

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

ABACT—Antidegradation best available combination of technologies—Environmentally sound and cost effective treatment, land disposal, pollution prevention and stormwater reuse BMPs that individually or collectively manage the difference in the net change in stormwater volume, rate, and quality for storm events up to and including the 2-year/24-hour storm when compared to the stormwater rate, volume and quality prior to the earth disturbance activities to maintain and protect the existing quality of the receiving surface waters of this Commonwealth.

Accelerated erosion—The removal of the surface of the land through the combined action of human activities and the natural processes, at a rate greater than would occur because of the natural process alone.

Act 167—The Storm Water Management Act (32 P. S. §§ 680.1—680.17)

Agricultural operation—The management and use of farming resources for production of crops, livestock, or poultry, or for equine activity.

Agricultural plowing or tilling activity—

(i) Earth disturbance activity involving the preparation and maintenance of soil for the production of agricultural crops.

(ii) The term includes no-till cropping methods, the practice of planting crops with minimal mechanical tillage.

Along—Touching or contiguous; to be in contact with; to abut upon.

Animal heavy use area—

(i) Barnyard, feedlot, loafing area, exercise lot, or other similar area on an agricultural operation where due to the concentration of animals it is not possible to establish and maintain vegetative cover of a density capable of minimizing accelerated erosion and sedimentation by usual planting methods.

(ii) The term does not include entrances, pathways and walkways between areas where animals are housed or kept in concentration.

BMPs—Best management practices—Activities, facilities, measures, planning or procedures used to minimize accelerated erosion and sedimentation and manage stormwater to protect, maintain, reclaim, and restore the quality of waters and the existing and designated uses of waters within this Commonwealth before, during, and after earth disturbance activities.

Channel—A natural or manmade water conveyance.

Conservation district—A conservation district, as defined in section 3(c) of the Conservation District Law (3 P. S. § 851(c)), which has the authority under a delegation agreement executed with the Department to administer and enforce all or a portion of the erosion, sediment, and stormwater management program in this Commonwealth.

Conservation plan—A plan that identifies conservation practices and includes site specific BMPs for agricultural plowing or tilling activities and animal heavy use areas.

Disturbed area—Unstabilized land area where an earth disturbance activity is occurring or has occurred.

Earth disturbance activity—A construction or other human activity which disturbs the surface of the land, including land clearing and grubbing, grading, excavations, embankments, land development, agricultural plowing or tilling, operation of animal heavy use areas, timber harvesting activities, road maintenance activities, oil and gas activities, well drilling, mineral extraction, and the moving, depositing, stockpiling, or storing of soil, rock or earth materials.

Erosion—The natural process by which the surface of the land is worn away by water, wind or chemical action.

E&S Permit—Erosion and Sediment Control Permit—A permit required for earth disturbance activities where the earth disturbance is associated with timber harvesting, road maintenance activities, or oil and gas activities.

E&S Plan—Erosion and Sediment Control Plan—A site-specific plan consisting of both drawings and a narrative that identifies BMPs to minimize accelerated erosion and sedimentation before, during and after earth disturbance activities.

Intermittent stream—A body of water flowing in a channel or bed composed primarily of substrates associated with flowing water, which, during periods of the year, is below the local water table and obtains its flow from both surface runoff and groundwater discharges.

Licensed professional—Professional engineers, landscape architects, geologists and land surveyors licensed to practice in this Commonwealth.

Long-term operation and maintenance—The routine inspection, maintenance, repair or replacement of a BMP to ensure proper function for the duration of time that the BMP is needed.

Municipality—A county, city, borough, town, township, school district, institution or authority or another public body created by or pursuant to State law. For purposes of this definition, town includes an incorporated town.

NOI—Notice of Intent—A request, on a form provided by the Department, for coverage under a General NPDES Permit for Stormwater Discharges Associated With Construction Activities or an E&S Permit.

NPDES—National Pollutant Discharge Elimination System—The National system for the issuance of permits under section 402 of the Federal Clean Water Act (33 U.S.C.A. § 1342) including a state or interstate program

which has been approved in whole or in part by the EPA, including the regulations codified in Chapter 92 (relating to National Pollutant Discharge Elimination System permitting, monitoring and compliance), and as specified in this chapter.

NPDES Permit for Stormwater Discharges Associated With Construction Activities—A permit required for the discharge or potential discharge of stormwater into waters of this Commonwealth from construction activities, including clearing and grubbing, grading and excavation activities involving 1 acre (0.4 hectare) or more of earth disturbance activity or an earth disturbance activity on any portion, part, or during any stage of, a larger common plan of development or sale that involves 1 acre (0.4 hectare) or more of earth disturbance activity over the life of the project.

Nondischarge alternative—Environmentally sound and cost-effective BMPs that individually or collectively eliminate the net change in stormwater volume, rate and quality for storm events up to and including the 2-year/24-hour storm when compared to the stormwater rate, volume and quality prior to the earth disturbance activities to maintain and protect the existing quality of the receiving surface waters of this Commonwealth.

Normal pool elevation—

(i) For bodies of water which have no structural measures to regulate height of water, the height of water at ordinary stages of low water unaffected by drought.

(ii) For structurally regulated bodies of water, the elevation of the spillway, outlet control, or dam crest which maintains the body of water at a specified height.

(iii) The term does not apply to wetlands.

Notice of termination—A request, on a form provided by the Department, to terminate coverage under a General or Individual NPDES Permit for Stormwater Discharges Associated With Construction Activities or other permits under this chapter.

Oil and gas activities—Earth disturbance associated with oil and gas exploration, production, processing, or treatment operations or transmission facilities.

Operator—A person who has one or more of the following:

(i) Oversight responsibility of earth disturbance activity on a project site or a portion thereof who has the ability to make modifications to the E&S Plan, PCSM Plan or site specifications.

(ii) Day-to-day operational control over earth disturbance activity on a project site or a portion thereof to ensure compliance with the E&S Plan or PCSM Plan.

PCSM—Post construction stormwater management.

PCSM plan—A site-specific plan consisting of both drawings and a narrative that identifies BMPs to manage changes in stormwater runoff volume, rate and water quality after earth disturbance activities have ended and the project site is permanently stabilized.

PPC plan—Preparedness, Prevention and Contingency Plan—A written plan that identifies an emergency response program, material and waste inventory, spill and leak prevention and response, inspection program, house-keeping program, security and external factors, and that is developed and implemented at the construction site to control potential discharges of pollutants other than sediment into waters of this Commonwealth.

Perennial stream—A body of water flowing in a channel or bed composed primarily of substrates associated with flowing waters and capable, in the absence of pollution or other manmade stream disturbances, of supporting a benthic macro-invertebrate community which is composed of two or more recognizable taxonomic groups of organisms which are large enough to be seen by the unaided eye and can be retained by a United States Standard No. 30 sieve (28 meshes per inch, 0.595 mm openings) and live at least part of their life cycles within or upon available substrates in a body of water or water transport system.

Perimeter BMPs—BMPs placed or constructed along the perimeter of an earth disturbance area to prevent runoff from entering the disturbed area, or to capture and treat sediment runoff prior to leaving a disturbed area.

Permanent stabilization—Long-term protection of soil and water resources from accelerated erosion.

Person—Any operator, individual, public or private corporation, partnership, association, municipality or political subdivision of this Commonwealth, institution, authority, firm, trust, estate, receiver, guardian, personal representative, successor, joint venture, joint stock company, fiduciary; Department, agency or instrumentality of State, Federal or local government, or an agent or employee thereof; or any other legal entity.

Pollutant—Any contaminant or other alteration of the physical, chemical, biological or radiological integrity of surface water which causes or has the potential to cause pollution as defined in section 1 of The Clean Streams Law (35 P. S. § 691.1).

Post construction stormwater—Stormwater associated with a project site after the earth disturbance activity has been completed and the project site is permanently stabilized.

Project site—The entire area of activity, development, lease or sale including:

(i) The area of an earth disturbance activity.

(ii) The area planned for an earth disturbance activity.

(iii) Other areas which are not subject to an earth disturbance activity.

Riparian buffer—A BMP that is an area of permanent vegetation along surface waters.

Riparian forest buffer—A type of riparian buffer that consists of permanent vegetation that is predominantly native trees, shrubs and forbs along surface waters that is maintained in a natural state or sustainably managed to protect and enhance water quality, stabilize stream channels and banks, and separate land use activities from surface waters.

Road maintenance activities—

(i) Earth disturbance activities within the existing road cross-section or railroad right-of-way including the following:

(A) Shaping or restabilizing unpaved roads.

(B) Shoulder grading.

(C) Slope stabilization.

(D) Cutting of existing cut slopes.

(E) Inlet and endwall cleaning.

(F) Reshaping and cleaning drainage ditches and swales.

(G) Pipe cleaning.

(H) Pipe replacement.

(I) Support activities incidental to resurfacing activities such as minor vertical adjustment to meet grade of resurfaced area.

(J) Ballast cleaning.

(K) Laying additional ballast.

(L) Replacing ballast, ties and rails.

(M) Other similar activities.

(ii) The existing road cross-section consists of the original graded area between the existing toes of fill slopes and tops of cut slopes on either side of the road and any associated drainage features.

Sediment—Soils or other erodible materials transported by stormwater as a product of erosion.

Sedimentation—The action or process of forming or depositing sediment in waters of this Commonwealth.

Soil loss tolerance (T)—The maximum amount of soil loss, in tons/acre/year, that a given soil type can tolerate and still permit a high level of crop production to be sustained economically and indefinitely. T values for various soil types may be obtained from the *Pennsylvania Soil and Water Conservation Technical Guide*, USDA NRCS, 1991 (as amended and updated).

Stabilization—The proper placing, grading, constructing, reinforcing, lining, and covering of soil, rock or earth to ensure their resistance to erosion, sliding or other movement.

Stormwater—Runoff from precipitation, snowmelt, surface runoff and drainage.

Surface waters—Perennial and intermittent streams, rivers, lakes, reservoirs, ponds, wetlands, springs, natural seeps, and estuaries, excluding water at facilities approved for wastewater treatment such as wastewater treatment impoundments, cooling water ponds, and constructed wetlands used as part of a wastewater treatment process.

Timber harvesting activities—Earth disturbance activities including the construction of skid trails, logging roads, landing areas and other similar logging or silvicultural practices.

Top of streambank—First substantial break in slope between the edge of the bed of the stream and the surrounding terrain. The top of streambank can either be a natural or constructed (that is, road or railroad grade) feature, lying generally parallel to the watercourse.

Waters of this Commonwealth—Rivers, streams, creeks, rivulets, impoundments, ditches, watercourses, storm sewers, lakes, dammed water, wetlands, ponds, springs and other bodies or channels of conveyance of surface and underground water, or parts thereof, whether natural or artificial, within or on the boundaries of this Commonwealth.

§ 102.2. Scope and purpose.

(a) This chapter requires persons proposing or conducting earth disturbance activities to develop, implement and maintain BMPs to minimize the potential for accelerated erosion and sedimentation and to manage post construction stormwater.

(b) The BMPs shall be undertaken to protect, maintain, reclaim and restore water quality and the existing and designated uses of waters of this Commonwealth.

§ 102.4. Erosion and sediment control requirements.

(a) For agricultural plowing or tilling activities or for animal heavy use areas, the following erosion and sediment control requirements apply:

(1) The implementation and maintenance of erosion and sediment control BMPs are required to minimize the potential for accelerated erosion and sedimentation, including for those activities which disturb less than 5,000 square feet (464.5 square meters).

(2) Written E&S Plans are required for the following activities that disturb 5,000 square feet (464.5 square meters) or more of land:

(i) Agricultural plowing or tilling activities.

(ii) Animal heavy use areas.

(3) The landowner, and any lessee, renter, tenant or other land occupier, conducting or planning to conduct agricultural plowing or tilling activities, or operating an animal heavy use area, are jointly and individually responsible for developing a written E&S Plan and implementing and maintaining BMPs, including those identified in the E&S Plan.

(4) The E&S Plan must include cost-effective and reasonable BMPs designed to minimize the potential for accelerated erosion and sedimentation from agricultural plowing or tilling activities and animal heavy use areas.

(i) For agricultural plowing or tilling activities, the E&S Plan must, at a minimum, limit soil loss from accelerated erosion to the soil loss tolerance (T) over the planned crop rotation.

(ii) For agricultural plowing and tilling activities that will occur on fields with less than 25% plant cover or crop residue cover and within 100 feet of a river, or perennial or intermittent stream, additional BMPs shall be implemented to minimize accelerated erosion and sedimentation.

(iii) For animal heavy use areas, the E&S Plan must identify BMPs to minimize accelerated erosion and sedimentation. BMPs and their design standards are listed in the current amended and updated version of the appropriate National Resources Conservation Service conservation practice standards such as Heavy Use Area Protection, Critical Area Planting, Fencing, Wastewater Treatment Strip, Constructed Wetland, Use Exclusion, Animal Trails and Walkways, Diversions and Roof Runoff Structure.

(5) The E&S Plan must contain plan maps that show the location of features including surface waters of this Commonwealth, and drainage patterns, field and property boundaries, buildings and farm structures, animal heavy use areas, roads and crossroads, and BMPs; soils maps; and a description of BMPs including animal heavy use area practices and procedures, tillage systems, schedules, and crop rotations. The plan must be consistent with the current conditions and activities on the agricultural operation.

(6) The E&S Plan must contain an implementation schedule. The plan shall be implemented according to the schedule, and the BMPs shall be operated and maintained as long as there are agricultural plowing or tilling activities or animal heavy use areas, on the agricultural operation.

(7) The portion of a conservation plan that identifies BMPs utilized to minimize accelerated erosion and sedi-

mentation from agricultural plowing or tilling activities, or from operation of animal heavy use areas, may be used to satisfy the E&S Plan requirements of this subsection if it meets the requirements of paragraphs (4)—(6).

(8) The E&S Plan shall be available for review and inspection at the agricultural operation.

(9) Nothing in this section negates the requirements under other provisions of this chapter, such as those applicable to construction activities.

(b) For earth disturbance activities other than agricultural plowing or tilling or animal heavy use areas, the following erosion and sediment control requirements apply:

(1) The implementation and maintenance of E&S BMPs are required to minimize the potential for accelerated erosion and sedimentation, including those activities which disturb less than 5,000 square feet (464.5 square meters).

(2) A person proposing earth disturbance activities shall develop and implement a written E&S Plan under this chapter if one or more of the following criteria apply:

(i) The earth disturbance activity will result in a total earth disturbance of 5,000 square feet (464.5 square meters) or more.

(ii) The person proposing the earth disturbance activities is required to develop an E&S Plan under this chapter or under other Department regulations.

(iii) The earth disturbance activity, because of its proximity to existing drainage features or patterns, has the potential to discharge to a water classified as a High Quality or Exceptional Value water under Chapter 93 (relating to water quality standards).

(3) The E&S Plan shall be prepared by a person trained and experienced in E&S control methods and techniques applicable to the size and scope of the project being designed.

(4) Unless otherwise authorized by the Department or conservation district after consultation with the Department, earth disturbance activities shall be planned and implemented to the extent practicable in accordance with the following:

(i) Minimize the extent and duration of the earth disturbance.

(ii) Maximize protection of existing drainage features and vegetation.

(iii) Minimize soil compaction.

(iv) Utilize other measures or controls that prevent or minimize the generation of increased stormwater runoff.

(5) The E&S Plan must contain drawings and narrative which describe the following:

(i) The existing topographic features of the project site and the immediate surrounding area.

(ii) The types, depth, slope, locations and limitations of the soils.

(iii) The characteristics of the earth disturbance activity, including the past, present and proposed land uses and the proposed alteration to the project site.

(iv) The volume and rate of runoff from the project site and its upstream watershed area.

(v) The location of all surface waters of this Commonwealth which may receive runoff within or from the project site and their classification under Chapter 93.

(vi) A narrative description of the location and type of perimeter and onsite BMPs used before, during and after the earth disturbance activity.

(vii) A sequence of BMP installation and removal in relation to the scheduling of earth disturbance activities, prior to, during and after earth disturbance activities that ensure the proper functioning of all BMPs.

(viii) Supporting calculations and measurements.

(ix) Plan drawings.

(x) A maintenance program which provides for the operation and maintenance of BMPs and the inspection of BMPs on a weekly basis and after each stormwater event, including the repair or replacement of BMPs to ensure effective and efficient operation. The program must provide for completion of a written report documenting each inspection and all BMP repair, or replacement and maintenance activities.

(xi) Procedures which ensure that the proper measures for the recycling or disposal of materials associated with or from the project site will be undertaken in accordance with this title.

(xii) Identification of the naturally occurring geologic formations or soil conditions that may have the potential to cause pollution during earth disturbance activities and include BMPs to avoid or minimize potential pollution and its impacts from the formations.

(xiii) Identification of potential thermal impacts to surface waters of this Commonwealth from the earth disturbance activity including BMPs to avoid, minimize or mitigate potential pollution from thermal impacts.

(xiv) The E&S Plan shall be planned, designed and implemented to be consistent with the PCSM Plan under § 102.8 (relating to PCSM requirements). Unless otherwise approved by the Department, the E&S Plan must be separate from the PCSM Plan and labeled "E&S" or "Erosion and Sediment Control Plan" and be the final plan for construction.

(xv) Identification of existing and proposed riparian forest buffers.

(6) To satisfy the antidegradation implementation requirements in § 93.4c(b) (relating to implementation of antidegradation requirements), for an earth disturbance activity that requires a permit under this chapter and for which any receiving surface waters of this Commonwealth is classified as High Quality or Exceptional Value under Chapter 93, the person proposing the activity shall, in the permit application, do the following:

(i) Evaluate and include nondischarge alternatives in the E&S Plan, unless a person demonstrates that nondischarge alternatives do not exist for the project.

(ii) If the person makes the demonstration in subparagraph (i) that nondischarge alternatives do not exist for the project, the E&S Plan must include ABACT, except as provided in § 93.4c(b)(1)(iii).

(iii) For purposes of this chapter, nondischarge alternatives and ABACT and their design standards are listed in the *Erosion and Sediment Pollution Control Program Manual*, Commonwealth of Pennsylvania, Department of Environmental Protection, No. 363-2134-008 (April 2000), as amended and updated.

(7) The Department may approve alternative BMPs which will maintain and protect existing water quality and existing and designated uses.

(8) The E&S Plan, inspection reports and monitoring records shall be available for review and inspection by the Department or the conservation district at the project site during all stages of the earth disturbance activity.

(9) Upon complaint or site inspection, the Department or conservation district may require that the E&S Plan be submitted for review and approval to ensure compliance with this chapter.

(c) The Department may require, or the conservation district after consultation with the Department may require, other information necessary to adequately review a plan, or may require alternative BMPs, on a case-by-case basis, when necessary to ensure the maintenance and protection of water quality and existing and designated uses.

(d) A person proposing or conducting an earth disturbance activity shall obtain the other necessary permits and authorizations from the Department or conservation district, related to the earth disturbance activity, before commencing the earth disturbance activity.

(e) Persons proposing an earth disturbance activity that requires permit coverage under § 102.5 (relating to permit requirements) shall have permit coverage prior to commencing the earth disturbance activity.

§ 102.5. Permit requirements.

(a) Other than agricultural plowing or tilling activities, animal heavy use areas, timber harvesting activities or road maintenance activities, a person proposing an earth disturbance activity that involves equal to or greater than 1 acre (0.4 hectare) of earth disturbance, or an earth disturbance on any portion, part, or during any stage of, a larger common plan of development or sale that involves equal to or greater than 1 acre (0.4 hectare) of earth disturbance, shall obtain an individual NPDES Permit or coverage under a general NPDES permit for Stormwater Discharges Associated With Construction Activities prior to commencing the earth disturbance activity. In addition to other applicable requirements, persons required to obtain an Individual NPDES Permit for Stormwater Discharges Associated With Construction Activities for projects proposed in special protection watersheds shall evaluate and use BMPs in accordance with antidegradation requirements in §§ 102.4(b)(6) and 102.8(h) (relating to erosion and sediment control requirements; and PCSM requirements) regardless of whether the discharge is new, additional or increased.

(b) A person proposing a timber harvesting or road maintenance activity involving 25 acres (10 hectares) or more of earth disturbance shall obtain an E&S Permit under this chapter prior to commencing the earth disturbance activity.

(c) A person proposing oil and gas activities that involve 5 acres (2 hectares) or more of earth disturbance over the life of the project shall obtain an E&S Permit under this chapter prior to commencing the earth disturbance activity.

(d) Other than agricultural plowing or tilling activities, animal heavy use areas, timber harvesting or road maintenance activities, a person proposing earth disturbance activities that involve 5 acres (2 hectares) or more of earth disturbance over the life of the project that do not require a permit under subsections (a), (b), and (c), shall obtain an E&S Permit under this chapter prior to commencing the earth disturbance activity.

(e) For earth disturbance activities authorized by a permit under this chapter, a preconstruction meeting is

required unless the permittee has been notified otherwise in writing by the Department or conservation district. The permittee shall invite the Department or conservation district to attend the preconstruction meeting and provide at least 7 days notice of the preconstruction meeting to all invited attendees. Permittees, co-permittees, operators, and licensed professionals or designees responsible for the earth disturbance activity, including implementation of E&S and PCSM Plans and critical stages of implementation of the approved PCSM Plan, shall attend a preconstruction meeting.

(f) A person proposing earth disturbance activities requiring a permit or permit coverage under this chapter shall be responsible to ensure implementation of the PCSM Plan.

(g) A person proposing or conducting an earth disturbance activity approved under a Department permit issued under a chapter other than Chapter 92 (relating to National Pollutant Discharge Elimination System permitting, monitoring and compliance) or this chapter, which includes requirements to comply with Chapter 92 and this chapter, need not obtain an additional E&S Permit or NPDES Permit for Stormwater Discharges Associated With Construction Activities.

(h) Operators who are not the permittee shall be co-permittees.

(i) A person proposing or conducting an earth disturbance activity associated with discharging dredged or fill material to waters of the United States which is required to obtain a permit or coverage under a permit under section 404 of the Federal Clean Water Act (33 U.S.C.A. § 1344) need not obtain an additional E&S Permit or NPDES Permit for Stormwater Discharges Associated With Construction Activities for the area of disturbance covered by the Clean Water Act section 404 permit.

(j) A person proposing or conducting agricultural plowing or tilling activities or animal heavy use areas is not required to obtain an E&S Permit, or an NPDES Permit for Stormwater Discharges Associated With Construction Activities, for these activities under this chapter.

(k) A person proposing or conducting an earth disturbance activity who is not required to obtain a permit under this chapter shall comply with the other provisions of this chapter.

(l) A person shall prepare and implement a PPC Plan when storing, using or transporting materials including: fuels, chemicals, solvents, pesticides, fertilizers, lime, petrochemicals, wastewater, wash water, core drilling wastewater, cement, sanitary wastes, solid wastes or hazardous materials onto, on or from the project site during earth disturbance activities. The PPC Plan shall be available upon request by the Department or conservation district.

(m) The Department may issue general permits for activities not subject to NPDES requirements.

(1) *Authorization.* The Department may issue a general permit on a regional or Statewide basis or limited to specific watersheds, particular categories of streams or designated geographic regions, for a category of activities not subject to the NPDES requirements, but regulated under this chapter, if the Department determines the following:

(i) The projects in the category are similar in nature.

(ii) The projects in the category can be adequately regulated utilizing standardized specifications and condi-

tions, including reference to specific criteria and requirements adopted by another Federal or State agency which adequately regulate the particular category of activities.

(iii) The projects which are in the category and meet the specifications and conditions will comply with this chapter.

(iv) The projects which are in the category in the opinion of the Department are more appropriately controlled under a general permit than under individual permits.

(v) The projects which are in the category individually and cumulatively do not have the potential to cause significant adverse environmental impact.

(2) *Contents of general permits.* Each general permit issued by the Department will include the following contents:

(i) A concise description of the category of activity covered by the general permit, including exceptions to that category.

(ii) A specification of the watersheds, streams or geographic areas where the general permit is effective.

(iii) A set of standardized specifications for the particular category of activity or a reference to specific criteria and requirements adopted by another Federal or State agency which adequately regulates the particular category of activity.

(iv) A set of conditions governing the activities, operation, maintenance, inspection and monitoring of the projects covered by the general permit as are necessary to assure compliance with this chapter and with other laws administered by the Department.

(v) A specification of the process for obtaining coverage under and authorization to use the general permit.

(3) *Procedure for issuance.*

(i) At least 30 days prior to issuance of a general permit, the Department:

(A) Will publish notice in the *Pennsylvania Bulletin* of intent to issue a general permit, including the text of the proposed general permit.

(B) Will provide an opportunity for interested members of the public, Federal and State agencies to provide written comments on a proposed general permit.

(C) May, at its discretion, hold a public hearing on a proposed general permit for the purposes of gathering information and comments.

(ii) Upon issuance of a general permit, the Department will place a notice in the *Pennsylvania Bulletin* of the availability of the general permit.

(4) *Compliance with permit conditions, regulations and laws.* A person who conducts an activity under a general permit issued under this subsection shall comply with the terms and conditions of the general permit, with this chapter and other applicable laws.

(5) *Administration of general permits.* General permits may be issued, amended, suspended, revoked, reissued or terminated under this chapter. Issuance of a general permit does not exempt a person from compliance with this title.

(6) *Denial of coverage.* The Department may deny, revoke, suspend or terminate coverage under a general permit for failure to comply with The Clean Streams Law (35 P. S. §§ 691.1—691.1001), this chapter or the condi-

tions of the general permit and the Department may require the person to apply for an individual permit.

§ 102.6. Permit applications and fees.

(a) *Permit requirements.* A person proposing or conducting an earth disturbance activity which requires a permit under § 102.5 (relating to permit requirements) shall:

(1) Submit to the Department or a conservation district a complete application or NOI, an E&S Plan meeting the requirements of § 102.4 (relating to erosion and sediment control requirements), a PCSM Plan meeting the requirements of § 102.8 (relating to PCSM requirements), and other information the Department may require. Unless otherwise specified in this chapter, for NPDES permits, the application or NOI must also meet the requirements in Chapter 92 (relating to National Pollutant Discharge Elimination System permitting, monitoring and compliance).

(2) Provide proof of consultation with the Pennsylvania Natural Heritage Program (PNHP) regarding the presence of a State or Federal threatened or endangered species on the project site. If the Department or conservation district determines, based upon PNHP data or other sources, that the proposed earth disturbance activity may adversely impact the species or critical habitat, the person proposing the earth disturbance activity shall consult with the Department or conservation district to avoid or prevent the impact. If the impact cannot be avoided or prevented, the person proposing the activity shall demonstrate how the impacts will be minimized in accordance with State and Federal laws pertaining to the protection of threatened or endangered flora and fauna and their habitat.

(b) *Permit fees.*

(1) A person submitting a permit application or NOI shall submit a fee as follows: a \$500 administrative filing fee for general permits and a \$1,500 administrative filing fee for individual permits. In addition, \$100 for each disturbed acre is required to be added to the base administrative filing fee for projects of 1 acre or greater of disturbance. The fees will be calculated based upon the following formula: base fee plus \$100 for each disturbed acre. For fractional acreage, the acreage shall be rounded to the closest whole number.

(2) The Department will review the adequacy of the fees established in this section at least once every 3 years and provide a written report to the EQB. The report will identify any disparity between the amount of program income generated by the fees and the costs to administer these programs, and contain recommendations to adjust fees to eliminate the disparity, including recommendations for regulatory amendments.

(3) Conservation districts may charge additional fees in accordance with section 9(13) of the Conservation District Law (3 P. S. § 857(13)).

(4) A Federal or State agency or independent State commission that provides funding for program administration by the Department through terms and conditions of a mutual agreement may be exempt from the fees in this section.

(5) Fees collected by the Department or conservation district under this chapter will be deposited into a restricted revenue account known as the Clean Water Fund and utilized to offset the operating costs to administer the program.

(c) *Complete applications or NOI.*

(1) An application or NOI for a permit is not complete until the necessary information and requirements under The Clean Streams Law (35 P. S. §§ 691.1—691.1001) and this chapter have been satisfied by the applicant.

(2) When the Department or conservation district determines that an application or NOI is incomplete or contains insufficient information to determine compliance with this chapter, it will notify the applicant in writing. The applicant shall have 60 days to provide the information necessary to complete the application or NOI, or the Department or conservation district will consider the application to be withdrawn by the applicant. Requests for a specific extension may be sought by the applicant in writing. The applicant will be notified in writing when an application or NOI is considered withdrawn. When an application or NOI is considered withdrawn, the Department or conservation district will close the application file and take no action to review the file.

(3) If the application has been withdrawn in accordance with subsection (c)(2), the fees associated with filing the application will not be refunded.

§ 102.7. Permit termination.

(a) Upon permanent stabilization of the earth disturbance activity under § 102.22(a)(2) (relating to permanent stabilization), and installation of BMPs in accordance with an approved plan prepared and implemented in accordance with §§ 102.4 and 102.8 (relating to erosion and sediment control requirements; and PCSM requirements), the permittee or co-permittee shall submit a notice of termination to the Department or conservation district.

(b) The notice of termination must include:

- (1) The facility name, address and location.
- (2) The operator name and address.
- (3) The permit number.
- (4) The reason for permit termination.

(5) Identification of the persons who have agreed to and will be responsible for long-term operation and maintenance of the PCSM BMPs in accordance with § 102.8(m) and proof of compliance with § 102.8(m)(2).

(c) Until the permittee or co-permittee has received written approval of a notice of termination, the permittee or co-permittee will remain responsible for compliance with the permit terms and conditions including long-term operation and maintenance of all PCSM BMPs on the project site and is responsible for violations occurring on the project site. The Department or conservation district will conduct a final inspection and approve or deny the notice of termination within 30 days.

§ 102.8. PCSM requirements.

(a) *PCSM applicability.* After November 19, 2010, a person proposing a new earth disturbance activity that requires permit coverage under this chapter or other new Department permit that requires compliance with this chapter shall be responsible to ensure that a written PCSM Plan is developed, implemented, operated and maintained in accordance with this section. A person conducting earth disturbance activities under a permit issued before November 19, 2010, and renewed prior to January 1, 2013, shall implement, operate and maintain the PCSM requirements in accordance with the terms and conditions of the existing permit. After January 1,

2013, the renewal of a permit issued before November 19, 2010, shall comply with this section.

(b) *General PCSM planning and design.* The management of post construction stormwater shall be planned and conducted to the extent practicable in accordance with the following:

- (1) Preserve the integrity of stream channels and maintain and protect the physical, biological and chemical qualities of the receiving stream.
- (2) Prevent an increase in the rate of stormwater runoff.
- (3) Minimize any increase in stormwater runoff volume.
- (4) Minimize impervious areas.
- (5) Maximize the protection of existing drainage features and existing vegetation.
- (6) Minimize land clearing and grading.
- (7) Minimize soil compaction.
- (8) Utilize other structural or nonstructural BMPs that prevent or minimize changes in stormwater runoff.

(c) *Consistency with E&S Plan.* The PCSM Plan shall be planned, designed and implemented to be consistent with the E&S Plan under § 102.4(b) (relating to erosion and sediment control requirements).

(d) *Separate plan.* Unless otherwise approved by the Department, the PCSM Plan must be separate from the E&S Plan and labeled “PCSM” or “Post Construction Stormwater Management Plan” and be the final plan for construction.

(e) *PCSM Plan preparer requirements.* The PCSM Plan shall be prepared by a person trained and experienced in PCSM design methods and techniques applicable to the size and scope of the project being designed.

(f) *PCSM Plan contents.* The PCSM Plan must contain drawings and a narrative consistent with the requirements of this chapter. The PCSM Plan shall be designed to minimize the threat to human health, safety and the environment to the greatest extent practicable. PCSM Plans must contain at a minimum the following:

- (1) The existing topographic features of the project site and the immediate surrounding area.
- (2) The types, depth, slope, locations and limitations of the soils and geologic formations.
- (3) The characteristics of the project site, including the past, present and proposed land uses and the proposed alteration to the project site.
- (4) An identification of the net change in volume and rate of stormwater from preconstruction hydrology to post construction hydrology for the entire project site and each drainage area.
- (5) An identification of the location of surface waters of this Commonwealth, which may receive runoff within or from the project site and their classification under Chapter 93 (relating to water quality standards).

(6) A written description of the location and type of PCSM BMPs including construction details for permanent stormwater BMPs including permanent stabilization specifications and locations.

(7) A sequence of PCSM BMP implementation or installation in relation to earth disturbance activities of the project site and a schedule of inspections for critical stages of PCSM BMP installation.

- (8) Supporting calculations.
- (9) Plan drawings.
- (10) A long-term operation and maintenance schedule, which provides for inspection of PCSM BMPs, including the repair, replacement, or other routine maintenance of the PCSM BMPs to ensure proper function and operation. The program must provide for completion of a written report documenting each inspection and all BMP repair and maintenance activities and how access to the PCSM BMPs will be provided.
- (11) Procedures which ensure that the proper measures for recycling or disposal of materials associated with or from the PCSM BMPs are in accordance with Department laws, regulations and requirements.
- (12) An identification of naturally occurring geologic formations or soil conditions that may have the potential to cause pollution after earth disturbance activities are completed and PCSM BMPs are operational and development of a management plan to avoid or minimize potential pollution and its impacts.
- (13) An identification of potential thermal impacts from post construction stormwater to surface waters of this Commonwealth including BMPs to avoid, minimize or mitigate potential pollution from thermal impacts.
- (14) A riparian forest buffer management plan when required under § 102.14 (relating to riparian buffer requirements).
- (15) Additional information requested by the Department.

(g) *PCSM Plan stormwater analysis.* Except for regulated activities that require site restoration or reclamation, and small earth disturbance activities identified in subsection (n), PCSM Plans for proposed activities requiring a permit under this chapter require the following additional information:

- (1) Predevelopment site characterization and assessment of soil and geology including appropriate infiltration and geotechnical studies that identify location and depths of test sites and methods used.
- (2) Analysis demonstrating that the PCSM BMPs will meet the volume reduction and water quality requirements specified in an applicable Department approved and current Act 167 stormwater management watershed plan; or manage the net change for storms up to and including the 2-year/24-hour storm event when compared to preconstruction runoff volume and water quality. The analysis for the 2-year/24-hour storm event shall be conducted using the following minimum criteria:
- (i) Existing predevelopment nonforested pervious areas must be considered meadow in good condition or its equivalent except for repair, reconstruction or restoration of roadways or rail lines, or construction, repair, reconstruction or restoration of utility infrastructure when the site will be returned to existing condition.
- (ii) When the existing project site contains impervious area, 20% of the existing impervious area to be disturbed must be considered meadow in good condition or better, except for repair, reconstruction or restoration of roadways or rail lines, or construction, repair, reconstruction, or restoration of utility infrastructure when the site will be returned to existing condition.
- (iii) When the existing site contains impervious area and the existing site conditions have public health, safety or environmental limitations, the applicant may demonstrate to the Department that it is not practicable to

satisfy the requirement in subparagraph (ii), but the stormwater volume reduction and water quality treatment will be maximized to the extent practicable to maintain and protect existing water quality and existing and designated uses.

(iv) Approaches other than that required under paragraph (2) may be proposed by the applicant when the applicant demonstrates to the Department that the alternative will either be more protective than required under paragraph (2) or will maintain and protect existing water quality and existing and designated uses by maintaining the site hydrology, water quality, and erosive impacts of the conditions prior to initiation of any earth disturbance activities.

(3) Analysis demonstrating that the PCSM BMPs will meet the rate requirements specified in an applicable Department approved and current Act 167 stormwater management watershed plan; or manage the net change in peak rate for the 2-, 10-, 50-, and 100-year/24-hour storm events in a manner not to exceed preconstruction rates.

(i) Hydrologic computations or a routing analysis are required to demonstrate that this requirement has been met.

(ii) Exempt from this requirement are Department-approved direct discharges to tidal areas or Department-approved no detention areas.

(iii) Approaches other than that required under paragraph (3) may be proposed by the applicant when the applicant demonstrates to the Department that the alternative will either be more protective than required under paragraph (3) or will maintain and protect existing water quality and existing and designated uses by maintaining the preconstruction site hydrologic impact.

(4) Identification of the methodologies for calculating the total runoff volume and peak rate of runoff and provide supporting documentation and calculations.

(5) Identification of construction techniques or special considerations to address soil and geologic limitations.

(6) The Department may require, or after consultation with the Department a conservation district may require additional information necessary to adequately review a PCSM Plan or may require additional BMPs, on a case-by-case basis, when necessary to ensure the restoration, maintenance and protection of water quality and existing and designated uses.

(h) *PCSM implementation for special protection waters.* To satisfy the antidegradation implementation requirements in § 93.4c(b) (relating to implementation of antidegradation requirements), an earth disturbance activity that requires a permit under this chapter and for which any receiving water that is classified as High Quality or Exceptional Value under Chapter 93, the person proposing the activity shall, in the permit application, do the following:

(1) Evaluate and include nondischarge alternatives in the PCSM Plan unless a person demonstrates that nondischarge alternatives do not exist for the project.

(2) If the person makes the demonstration in paragraph (1) that nondischarge alternatives do not exist for the project, the PCSM Plan must include ABACT, except as provided in § 93.4c(b)(1)(iii).

(3) For purposes of this chapter, nondischarge alternatives and ABACT and their design standards are listed in the *Pennsylvania Stormwater Best Management Practices*

Manual Commonwealth of Pennsylvania, Department of Environmental Protection, No. 363-0300-002 (December 2006), as amended and updated.

(i) *Complaint or site inspection.* Upon complaint or site inspection, the Department or conservation district may require that the PCSM Plan be submitted for review and approval to ensure compliance with this chapter.

(j) *PCSM reporting and recordkeeping.* The PCSM Plan, inspection reports and monitoring records shall be available for review and inspection by the Department or the conservation district.

(k) *Licensed professional oversight of critical stages.* A licensed professional or a designee shall be present onsite and be responsible during critical stages of implementation of the approved PCSM Plan. The critical stages may include the installation of underground treatment or storage BMPs, structurally engineered BMPs, or other BMPs as deemed appropriate by the Department or the conservation district.

(l) *Final certification.* The permittee shall include with the notice of termination "Record Drawings" with a final certification statement from a licensed professional, which reads as follows:

"I (name) do hereby certify pursuant to the penalties of 18 Pa.C.S.A. § 4904 to the best of my knowledge, information and belief, that the accompanying record drawings accurately reflect the as-built conditions, are true and correct, and are in conformance with Chapter 102 of the rules and regulations of the Department of Environmental Protection and that the project site was constructed in accordance with the approved PCSM Plan, all approved plan changes and accepted construction practices."

(1) The permittee shall retain a copy of the record drawings as a part of the approved PCSM Plan.

(2) The permittee shall provide a copy of the record drawings as a part of the approved PCSM Plan to the person identified in this section as being responsible for the long-term operation and maintenance of the PCSM BMPs.

(m) *PCSM long-term operation and maintenance requirements.*

(1) The permittee or co-permittee shall be responsible for long-term operation and maintenance of PCSM BMPs unless a different person is identified in the notice of termination and has agreed to long-term operation and maintenance of PCSM BMPs.

(2) For any property containing a PCSM BMP, the permittee or co-permittee shall record an instrument with the recorder of deeds which will assure disclosure of the PCSM BMP and the related obligations in the ordinary course of a title search of the subject property. The recorded instrument must identify the PCSM BMP, provide for necessary access related to long-term operation and maintenance for PCSM BMPs and provide notice that the responsibility for long-term operation and maintenance of the PCSM BMP is a covenant that runs with the land that is binding upon and enforceable by subsequent grantees, and provide proof of filing with the notice of termination under § 102.7(b)(5) (relating to permit termination).

(3) For Commonwealth owned property, a covenant that runs with the land is not required until the transfer of the land containing a PCSM BMP occurs. Upon

transfer of the Commonwealth-owned property containing a PCSM BMP, the deed must comply with this subsection.

(4) The person responsible for performing long-term operation and maintenance may enter into an agreement with another person including a conservation district, nonprofit organization, municipality, authority, private corporation or other person, to transfer the responsibility for PCSM BMPs or to perform long-term operation and maintenance and provide notice thereof to the Department.

(5) A permittee or co-permittee that fails to transfer long-term operation and maintenance of the PCSM BMP or otherwise fails to comply with this requirement shall remain jointly and severally responsible with the landowner for long-term operation and maintenance of the PCSM BMPs located on the property.

(n) *Regulated activities that require site restoration or reclamation, and small earth disturbance activities.* The portion of a site reclamation or restoration plan that identifies PCSM BMPs to manage stormwater from oil and gas activities or mining activities permitted in accordance with Chapters 78 and 86—90; timber harvesting activities; pipelines; other similar utility infrastructure; Department permitted activities involving less than 1 acre of earth disturbance; or abandoned mine land reclamation activities, that require compliance with this chapter, may be used to satisfy the requirements of this section if the PCSM, reclamation or restoration plan meets the requirements of subsections (b), (c), (e), (f), (h), (i) and (l) and, when applicable, subsection (m).

EROSION AND SEDIMENT CONTROL AND POST CONSTRUCTION STORMWATER MANAGEMENT BMPs

§ 102.11. General requirements.

(a) *BMP and design standards.* A person conducting or proposing to conduct an earth disturbance activity shall:

(1) Design, implement and maintain E&S BMPs to minimize the potential for accelerated erosion and sedimentation to protect, maintain, reclaim and restore water quality and existing and designated uses. Various E&S BMPs and their design standards are listed in the *Erosion and Sediment Pollution Control Program Manual (Manual)*, Commonwealth of Pennsylvania, Department of Environmental Protection, No. 363-2134-008 (April 2000), as amended and updated.

(2) If required to develop a PCSM Plan, design, implement and maintain PCSM BMPs to mimic preconstruction stormwater runoff conditions to protect, maintain, reclaim and restore water quality and existing and designated uses. Various PCSM BMPs and their design standards are listed in the *Pennsylvania Stormwater Best Management Practices Manual (Stormwater BMP Manual)*, Commonwealth of Pennsylvania, Department of Environmental Protection, No. 363-0300-002 (December 2006), as amended and updated.

(3) If required to develop a riparian forest buffer, design, implement and maintain the buffer in accordance with § 102.14 (relating to riparian buffer requirements). Various design, construction and maintenance standards are listed in the *Riparian Forest Buffer Guidance, (Buffer Guidance)*, Commonwealth of Pennsylvania, Department of Environmental Protection, No. 395-5600-001 (2009), as amended and updated.

(4) If required to develop a PPC Plan, the person shall design, implement, and maintain the PPC Plan to protect

waters of this Commonwealth from discharges of pollutants from accidental spills, releases or other activities and meet the requirements identified in Chapter 91 (relating to general provisions). Guidance for PPC Plans is included in the *Guidelines for the Development and Implementation of Environmental Emergency Response Plans*, Commonwealth of Pennsylvania, Department of Environmental Protection, No. 400-2200-001, as amended and updated.

(b) *Alternative BMP and design standards.* BMPs and design standards other than those listed in the manuals or *Buffer Guidance* may be used when a person conducting or proposing to conduct an earth disturbance activity demonstrates to the Department that the alternate BMP or design standard minimizes accelerated erosion and sedimentation or manages stormwater during and after the completion of earth disturbance activities to achieve the regulatory standards in subsection (a).

(c) *Incorporation of Federal effluent limitation guidelines and standards for the construction and development point source category, 40 CFR Part 450.* Activities requiring an NPDES permit under this chapter must also comply with 40 CFR Part 450 (relating to construction and development point source category), including all appendices thereto, which are incorporated by reference to the extent that these provisions are applicable and not contrary to Pennsylvania law. In the event of any conflict between Federal and Pennsylvania regulatory provisions, the provision expressly set out in this chapter shall be utilized unless the Federal provision is more stringent.

(d) *Effective date.* The amendments to this chapter adopted by the EQB on May 17, 2010, are effective November 19, 2010.

§ 102.14. Riparian buffer requirements.

(a) *General requirements for mandatory riparian buffers.*

(1) Except as in accordance with subsection (d), persons proposing or conducting earth disturbance activities when the activity requires a permit under this chapter may not conduct earth disturbance activities within 150 feet of a perennial or intermittent river, stream, or creek, or lake, pond or reservoir when the project site is located in an exceptional value or high quality watershed attaining its designated use as listed by the Department at the time of application and shall protect any existing riparian buffer in accordance with this section.

(2) Where the project site is located in an Exceptional Value or High Quality watershed where there are waters failing to attain one or more designated uses as listed in Category 4 or 5 on Pennsylvania's Integrated Water Quality Monitoring and Assessment report, as amended and updated, at the time of the application, and the project site contains, is along or within 150 feet of a perennial or intermittent river, stream, or creek, lake, pond or reservoir shall, in accordance with the requirements of this section do one of the following as applicable:

- (i) Protect an existing riparian forest buffer.
- (ii) Convert an existing riparian buffer to a riparian forest buffer.
- (iii) Establish a new riparian forest buffer.

(b) *Riparian forest buffer criteria.* To qualify as a riparian forest buffer under this chapter, an existing, converted or newly established riparian forest buffer, whether mandatory or voluntary, must meet the following requirements related to composition, width and management:

(1) *Composition.* A riparian forest buffer is a riparian buffer that consists predominantly of native trees, shrubs and forbs that provide at least 60% uniform canopy cover. An existing riparian forest buffer does not have to be altered to establish individual Zones 1 and 2 under subparagraph (iii). At a minimum, it must have a total aggregate width of the combined zones under paragraph (2).

(i) *Existing riparian buffer conversion to a riparian forest buffer.* Riparian buffers that consist predominantly of native woody vegetation that do not satisfy the composition of this paragraph or the width requirements in paragraph (2) shall be enhanced or widened, or both, by additional plantings in open spaces around existing native trees and shrubs that provide at least 60% uniform canopy cover. An existing riparian forest buffer does not have to be altered to establish individual Zones 1 and 2 under subparagraph (iii). At a minimum, it must be a total aggregate width of the combined zones under paragraph (2). Noxious weeds and invasive species shall be removed or controlled to the extent possible.

(ii) *Riparian forest buffer establishment.* On sites without native woody vegetation, a riparian forest buffer shall be established and be composed of zones in accordance with subparagraph (iii), and meet the width requirements in paragraph (2). Noxious weeds and invasive species shall be removed or controlled to the extent possible.

(iii) *Zones.*

(A) *Zone 1.* Undisturbed native trees must begin at the top of the streambank or normal pool elevation of a lake, pond or reservoir and occupy a strip of land measured horizontally on a line perpendicular from the top of streambank or normal pool elevation of a lake, pond or reservoir. Predominant vegetation must be composed of a variety of native riparian tree species.

(B) *Zone 2.* Managed native trees and shrubs must begin at the landward edge of Zone 1 and occupy an additional strip of land measured horizontally on a line perpendicular from the top of streambank or normal pool elevation of a lake, pond or reservoir. Predominant vegetation must be composed of a variety of native riparian tree and shrub species.

(2) *Average minimum widths.*

(i) *Waters other than special protection.* A total of 100 feet (30.5 meters), comprised of 50 feet (15.2 meters) in Zone 1 and 50 feet (15.2 meters) in Zone 2 for newly established riparian forest buffers established under subsection (e)(3) along all rivers, perennial or intermittent streams, lakes, ponds or reservoirs.

(ii) *Special protection waters.* A total of 150 feet (45.7 meters), comprised of 50 feet (15.2 meters) in Zone 1 and 100 feet (30.5 meters) in Zone 2 on newly established riparian forest buffers along all rivers, perennial or intermittent streams, lakes, ponds or reservoirs in special protection waters (high quality and exceptional value designations).

(iii) *Average riparian forest buffer width.* The average riparian forest buffer width shall be calculated based upon the entire length of streambank or shoreline that is located within or along the boundaries of the project site. When calculating the buffer length the natural streambank or shoreline shall be followed.

(3) *Management requirements.* Existing, converted and newly established riparian forest buffers shall be managed in accordance with a riparian forest buffer manage-

ment plan in paragraph (4) and will be protected in accordance with subsection (g).

(4) *Management plan.* The riparian forest buffer management plan shall be a part of the PCSM Plan and include, at a minimum, the following:

(i) A planting plan for converted or newly established riparian forest buffers that identifies the number, density and species of native trees and shrubs appropriate to geographic location that will achieve 60% uniform canopy cover.

(ii) A maintenance schedule and measures for converted or newly established riparian forest buffers to ensure survival and growth of plantings and protection from competing plants and animals including noxious weeds and invasive species over a 5-year establishment period including activities or practices used to maintain the riparian forest buffer including the disturbance of existing vegetation, tree removal, shrub removal, clearing, mowing, burning or spraying in accordance with long-term operation and maintenance.

(iii) An inspection schedule and measures to ensure long-term maintenance and proper functioning of riparian forest buffers meeting the requirements in paragraph (1), including measures to repair damage to the buffer from storm events greater than the 2-year/24-hour storm.

(c) *Mandatory requirements for all riparian buffers.*

(1) *Management of stormwater into the riparian buffer.* Stormwater and accelerated erosion and sedimentation shall be managed in accordance with §§ 102.4(b)—(e) and 102.8 (relating to erosion and sediment control requirements; and PCSM requirements) to ensure that stormwater enters the area upgrade and along the riparian buffer as sheet flow or shallow concentrated flow during storm events up to and including the 2 year/24 hour storm.

(2) *Wetlands.* Wetlands located in the riparian buffer shall be protected and maintained consistent with Chapter 105 (relating to dam safety and waterway management).

(3) *Measurements.* Riparian buffers must be measured horizontally and perpendicularly to the bank with no more than a 10% variation below the minimum width from the normal pool elevation for lake, pond or reservoir and from top of streambank.

(d) *Exceptions.*

(1) Subsection (a) does not apply for earth disturbance activities associated with the following:

(i) A project site located greater than 150 feet (45.7 meters) from a river, stream, creek, lake, pond or reservoir.

(ii) Activities involving less than 1 acre (0.4 hectare) of earth disturbance.

(iii) Activities when permit coverage is not required under this chapter.

(iv) Activities when a permit or authorization for the earth disturbance activity required under this chapter was obtained, or application submitted prior to November 19, 2010.

(v) Road maintenance activities so long as any existing riparian buffer is undisturbed to the extent practicable.

(vi) The repair and maintenance of existing pipelines and utilities so long as any existing riparian buffer is undisturbed to the extent practicable.

(vii) Oil and gas, timber harvesting, or mining activities for which site reclamation or restoration is part of the permit authorization in Chapters 78 and 86—90 and this chapter so long as any existing riparian buffer is undisturbed to the extent practicable.

(viii) A single family home that is not part of a larger common plan of development or sale and the parcel was acquired by the applicant prior to November 19, 2010.

(ix) Activities authorized by a Department permit under another chapter of this title which contains setback requirements, and the activity complies with those setback requirements.

(2) For earth disturbance activities associated with the following, the Department, or the conservation district after consultation with the Department, may grant a waiver from any of the requirements of subsections (a) and (b) upon a demonstration by the applicant that there are reasonable alternatives for compliance with this section, so long as any existing riparian buffer is undisturbed to the extent practicable and that the activity will otherwise meet the requirements of this chapter:

(i) The project is necessary to abate a substantial threat to the public health or safety.

(ii) Linear projects which may include pipelines, public roadways, rail lines or utility lines.

(iii) Abandoned mine reclamation activities that are conducted under Department authorization or permit.

(iv) Projects of a temporary nature where the site will be fully restored to its preexisting condition during the term of the permit under this chapter.

(v) Redevelopment projects which may include brownfields or use of other vacant land and property within a developed area for further construction or development.

(vi) Projects for which compliance with subsection (a) or (b) is not appropriate or feasible due to site characteristics, or existing structures at the project site.

(3) The applicant shall submit a written request for a waiver to the Department or the conservation district as part of the application for a permit under this chapter.

(4) An applicant requesting a waiver may propose and the Department may allow offsite protection, conversion or establishment of riparian forest buffers or provide compensation to fund riparian forest buffer protection, enhancement or establishment.

(5) Projects qualifying for an exception under this subsection are not relieved from compliance with other applicable requirements of this chapter or other laws administered by the Department.

(e) *Utilization of riparian forest buffers.*

(1) *Antidegradation presumption.* Except for riparian buffers protected under subsection (a)(1) or (d), a riparian forest buffer meeting the requirements of this section will prevent thermal impacts and is a nondischarge alternative. When included in an E&S Plan or PCSM Plan meeting the requirements of this chapter, the proposed earth disturbance activity will satisfy §§ 102.4(b)(6) and 102.8(h), unless data or information provided or available to the Department during the permit application or authorization review process shows that the proposed earth disturbance activity will degrade water quality.

(2) *Trading or offsetting credits.* Except for riparian buffers protected under subsection (a)(1) or (d) when protection of existing, or conversion, or the establishment

of a riparian forest buffer which meets the requirements of this section and is above baseline regulatory requirements, credits may be available for trading or offsets in accordance with any procedures established by the Department or any regulations related to trading or offsetting developed under this title.

(3) *Voluntary riparian forest buffer.* Persons that protect, convert or establish a new riparian forest buffer meeting the requirements of this section, may qualify for benefits under paragraph (1) or (2).

(f) *Activities within a riparian buffer.*

(1) The following practices and activities are prohibited within the riparian buffer:

(i) Soil disturbance by grading, stripping of topsoil, plowing, cultivating or other practices except as allowed in paragraph (3)(i).

(ii) Draining by ditching, underdrains or other drainage systems.

(iii) Housing, grazing or otherwise maintaining animals for agricultural or commercial purposes.

(iv) Storing or stockpiling materials.

(v) Off-road vehicular travel.

(2) The following practices and activities are allowable in the riparian buffer when authorized by the Department:

(i) Construction or placement of roads, bridges, trails, storm drainage, utilities or other structures.

(ii) Water obstructions or encroachments.

(iii) Restoration projects.

(3) The following practices and activities are allowed within the riparian buffer:

(i) Activities or practices used to maintain the riparian buffer including the disturbance of existing vegetation, and tree and shrub removal, as needed to allow for natural succession of native vegetation and protection of public health and safety.

(ii) Timber harvesting activities in accordance with the riparian forest buffer management plan as part of the PCSM Plan.

(iii) Passive or low impact recreational activities so long as the functioning of the riparian buffer is maintained.

(iv) Emergency response and other similar activities.

(v) Research and data collection activities, which may include water quality monitoring and stream gauging.

(g) *Permanent protection of riparian buffers.*

(1) Existing, converted and newly established riparian buffers including access easements must be protected in perpetuity through deed restriction, conservation easement, local ordinance, permit conditions or any other mechanisms that ensure the long-term functioning and integrity of the riparian buffer.

(2) For any existing or newly established riparian buffer, the boundary limits of the riparian buffer must be identified and clearly marked.

(h) *Reporting.* Persons who protect an existing riparian buffer or convert or establish a riparian buffer in accordance with this section shall complete data forms provided by the Department and submit the forms to the Department or conservation district within 1 year of establishment or protection.

§ 102.22. Site stabilization.

(a) *Permanent stabilization.* Upon final completion of an earth disturbance activity or any stage or phase of an activity, the site shall immediately have topsoil restored, replaced, or amended, seeded, mulched or otherwise permanently stabilized and protected from accelerated erosion and sedimentation.

(1) E&S BMPs shall be implemented and maintained until the permanent stabilization is completed. Once permanent stabilization has been established, the temporary E&S BMPs shall be removed. Any areas disturbed in the act of removing temporary E&S BMPs shall be permanently stabilized upon completion of the temporary E&S BMP removal activity.

(2) For an earth disturbance activity or any stage or phase of an activity to be considered permanently stabilized, the disturbed areas shall be covered with one of the following:

(i) A minimum uniform 70% perennial vegetative cover, with a density capable of resisting accelerated erosion and sedimentation.

(ii) An acceptable BMP which permanently minimizes accelerated erosion and sedimentation.

(b) *Temporary stabilization.*

(1) Upon temporary cessation of an earth disturbance activity or any stage or phase of an activity where a cessation of earth disturbance activities will exceed 4 days, the site shall be immediately seeded, mulched, or otherwise protected from accelerated erosion and sedimentation pending future earth disturbance activities.

(2) For an earth disturbance activity or any stage or phase of an activity to be considered temporarily stabilized, the disturbed areas shall be covered with one of the following:

(i) A minimum uniform coverage of mulch and seed, with a density capable of resisting accelerated erosion and sedimentation.

(ii) An acceptable BMP which temporarily minimizes accelerated erosion and sedimentation.

ENFORCEMENT

§ 102.31. Applicability.

The Department or a conservation district may enforce this chapter under The Clean Streams Law (35 P. S. §§ 691.1—691.1001).

§ 102.32. Compliance and enforcement provisions.

(a) Compliance and enforcement actions under this chapter which may be pursued include the following. The actions listed are cumulative and the exercise of one action does not preclude the exercise of another. The failure to exercise an action will not be deemed to be a waiver of that action:

(1) Investigations and inspections.

(2) Response to complaints.

(3) Orders (including orders to remediate or restore).

(4) Civil penalty proceedings, except as provided in subsection (b).

(5) Summary proceedings.

(6) The suspension, revocation, withholding or denial of permits or approvals.

(7) Notices of violation.

(8) Actions in a court of competent jurisdiction, including requests for injunctive relief.

(9) Other administrative, civil, criminal or equitable action authorized by law.

(b) If the Department finds that pollution or a danger of pollution results from an act of God in the form of sediment from land for which a complete Conservation Plan has been developed by the conservation district and the Natural Resource Conservation Service, and the plan has been fully implemented and maintained, the landowner shall be excluded from the penalties of The Clean Streams Law (35 P. S. §§ 691.1—691.1001).

(c) A person aggrieved by an action of a conservation district under this chapter shall request an informal hearing with the Department within 30 days following the notice of the action. The Department will schedule the informal hearing and make a final determination within 30 days of the request. Any final determination by the Department under the informal hearing may be appealed to the EHB in accordance with established administrative and judicial procedures.

(d) For enforcement action taken under this subchapter, the Department or conservation district may collect or recover, from the responsible party, costs and expenses involved in taking enforcement action in accordance with this subchapter and initiating cost recovery actions under this subchapter. The Department or conservation district may collect the amount in the same manner as civil penalties are collected under section 605 of The Clean Streams Law (35 P. S. § 691.605).

**RESPONSIBILITIES OF
LOCAL GOVERNING BODIES**

§ 102.41. Administration by conservation districts.

(a) The Department may delegate by written agreement the administration and enforcement of this chapter to conservation districts if they have adequate and qualified staff, and are, or will be, implementing the program identified in the delegation agreement.

(b) An acceptable program shall have the concurrence and approval of the governing body of the county in which the conservation district operates.

(c) The Department will retain program administration and enforcement over projects which cross the political boundaries of conservation districts unless otherwise authorized by the Department.

§ 102.42. Notification of application for permits.

A municipality or county which issues building or other permits shall notify the Department or conservation district within 5 days of receipt of an application for a permit involving an earth disturbance activity consisting of 1 acre (0.4 hectare) or more.

§ 102.43. Withholding permits.

With the exception of local stormwater approvals or authorizations, a municipality or county may not issue a building or other permit or approval to those proposing or conducting earth disturbance activities requiring a Department permit until the Department or a conservation district has issued the E&S or individual NPDES Permit, or approved coverage under the general NPDES Permit for Stormwater Discharges Associated With Construction Activities under § 102.5 (relating to permit requirements).

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