

RULES AND REGULATIONS

Title 25—ENVIRONMENTAL PROTECTION

ENVIRONMENTAL QUALITY BOARD

[25 PA. CODE CH. 93]

Stream Redesignations (Fishing Creek, et al.)

The Environmental Quality Board (Board) amends §§ 93.9c, 93.9d, 93.9f, 93.9l and 93.9o.

This order was adopted by the Board at its meeting of May 18, 2011.

A. *Effective Date*

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

B. *Contact Persons*

For further information, contact Rodney A. Kime, Chief, Division of Water Quality Standards, Bureau of Water Standards and Facility Regulation, 11th Floor, Rachel Carson State Office Building, P. O. Box 8467, 400 Market Street, Harrisburg, PA 17105-8467, (717) 787-9637; or Michelle Moses, Assistant Counsel, Bureau of Regulatory Counsel, 9th Floor, Rachel Carson State Office Building, P. O. Box 8464, Harrisburg, PA 17105-8464, (717) 787-7060. Persons with a disability may use the AT&T Relay Service, (800) 654-5984 (TDD-users) or (800) 654-5988 (voice users). This final-form rulemaking is available electronically through the Department of Environmental Protection (Department) web site at <http://www.depweb.state.pa.us>.

C. *Statutory and Regulatory Authority*

This final-form rulemaking is being made under the authority of sections 5(b)(1) and 402 of The Clean Streams Law (35 P. S. §§ 691.5(b)(1) and 691.402), which authorize the Board to develop and adopt rules and regulations to implement The Clean Streams Law, and section 1920-A of The Administrative Code of 1929 (71 P. S. § 510-20), which grants to the Board the power and duty to formulate, adopt and promulgate rules and regulations for the proper performance of the work of the Department. In addition, section 303 of the Clean Water Act (33 U.S.C.A. § 1313) sets forth requirements for water quality standards.

D. *Background of the Amendments*

Water quality standards are in-stream water quality goals that are implemented by imposing specific regulatory requirements (such as treatment requirements, effluent limits and best management practices) on individual sources of pollution.

The Department may identify candidates for redesignation during routine waterbody investigations. Requests for consideration may also be initiated by other agencies. Organizations, businesses or individuals may submit a rulemaking petition to the Board.

The Department considers candidates for High Quality (HQ) or Exceptional Value (EV) Waters and all other designations in its ongoing review of water quality standards. In general, HQ and EV Waters must be maintained at their existing quality and permitted activities shall ensure the protection of designated and existing uses.

Existing use protection is provided when the Department determines, based on its evaluation of the best available scientific information, that a surface water attains water uses identified in §§ 93.3 and 93.4 (relating to protected water uses; and Statewide water uses). Examples of water uses protected include the following: Cold Water Fishes (CWF), Warm Water Fishes (WWF), HQ and EV. A final existing use determination is made on a surface water at the time the Department takes a permit or approval action on a request to conduct an activity that may impact surface water. If the determination demonstrates that the existing use is different than the designated use, the water body will immediately receive the best protection identified by either the attained uses or the designated uses. A stream will then be "redesignated" through the rulemaking process to match the existing uses with the designated uses. For example, if the designated use of a stream is listed as protecting WWF but the redesignation evaluation demonstrates that the water attains the use of CWF, the stream would immediately be protected for CWF, prior to a rulemaking. Once the Department determines the water uses attained by a surface water, the Department will recommend to the Board that the existing uses be made "designated" uses, through rulemaking, and be added to the list of uses identified in § 93.9 (relating to designated water uses and water quality criteria).

The streams in this final-form rulemaking were all evaluated in response to petitions as follows:

<i>Stream</i>	<i>County</i>	<i>Petitioner</i>
Buck Hill Creek	Monroe	Buck Hill Conservation Foundation
Lehigh River (upper)	Lackawanna, Monroe, Wayne, Luzerne	North Pocono Citizens Alert Regarding the Environment (CARE)
Little Lehigh Creek	Lehigh, Berks	Mid-Atlantic Environmental Law Center
Gallows Run	Bucks	Gallows Run Watershed Association
French Creek and Beaver Run	Chester	Green Valleys Association
Tannery Hollow Run	Cameron	Cameron County Conservation District
Fishing Creek	Lancaster	Patrick McClure
Deer Creek and Little Falls	York	Shrewsbury Township

These regulatory changes were developed as a result of aquatic studies conducted by the Bureau of Water Standards and Facility Regulation. The physical, chemical and biological characteristics and other information on these waterbodies were evaluated to determine the appropriateness of the current and requested designations using applicable regulatory criteria and definitions. In reviewing whether waterbodies qualify as HQ or EV Waters, the Department considers the criteria in § 93.4b (relating to qualifying as High Quality or Exceptional Value Waters). Based upon the data and information collected on these waterbodies, the Board has made the designations.

E. Summary of Comments and Responses on the Proposed Rulemaking

The Board approved the proposed rulemaking for the Fishing Creek, et al. package at its July 13, 2010, meeting. The proposed rulemaking was published at 40 Pa.B. 5337 (September 18, 2010) with provision for a 45-day public comment period that closed on November 2, 2010. Supportive comments were received from 162 commentators who favored the redesignation of portions of the French Creek basin to exceptional value. Commentators listed many reasons for their support of the redesignation of the French Creek basin including the natural beauty of the basin, the recreational opportunities it provides, the importance of protecting aquatic life and wildlife, the importance to the spiritual and emotional well-being of people, flood control and clean water for people, the health of local communities and the importance to preserve the basin for future generations. Additionally, the United States Environmental Protection Agency (EPA) Region 3 commended the Department on its continuing effort to upgrade streams into its highest level of the Special Protection Waters Program. The EPA also noted that, if finalized, this package will redesignate 251.35 stream miles in this Commonwealth to EV status. The EPA otherwise had no comments. No opposing comments were received during the comment period. Additional remarks were received from the Chester County Water Resources Authority and the Chester County Board of Commissioners. Both indicated strong support of the redesignation of French Creek and Beaver Run to EV, Migratory Fishes and urged the Independent Regulatory Review Commission (IRRC) to approve the upgrade of French Creek and Beaver Run as recommended by the Board and the Department. This redesignation is consistent with and will help implement “Watersheds—An Integrated Water Resources Management Plan for Chester County and its Watersheds” and “Landscapes 2.” “Watersheds” is the water resources component of Chester County’s comprehensive plan “Landscapes 2.”

On August 31, 2010, the Department submitted a copy of the proposed rulemaking to IRRC and to the Chairpersons of the Senate and House Environmental Resources and Energy Committees for review and comment in accordance with section 5(a) of the Regulatory Review Act (71 P. S. § 745.5(a)). IRRC did not raise any comments, recommendations or objections to any portion of the proposed rulemaking and changes were not made from the proposed rulemaking to this final-form rulemaking. Therefore, under section 5(g) of Regulatory Review Act, the final rulemaking will be deemed approved by IRRC.

F. Summary of Changes to the Proposed Rulemaking

Changes were not made to the redesignations recommended in the proposed rulemaking.

G. Benefits, Costs and Compliance

Benefits

Overall, the Commonwealth, its citizens and natural resources will benefit from these amendments because they provide the appropriate level of protection to preserve the integrity of existing and designated uses of surface waters in this Commonwealth. Protecting water quality provides economic value to present and future generations in the form of clean water for drinking, recreational opportunities and aquatic life protection. It is important to realize these benefits to ensure opportunity and development continue in a manner that is environmentally, socially and economically sound. Maintenance of water quality ensures its future availability for all uses.

Compliance Costs

The streams recommended for redesignation are already protected at their existing use. Therefore, the designated use revision will not impose increased compliance costs on the regulated community.

Persons conducting or proposing activities or projects shall comply with the regulatory requirements regarding designated and existing uses. Persons expanding a discharge or adding a new discharge point to a stream could be adversely affected if they need to provide a higher level of treatment or best management practices to meet the designated and existing uses of the stream. For example, these increased costs may take the form of higher engineering, construction or operating cost for point source discharges. Treatment costs and best management practices are site-specific and depend upon the size of the discharge in relation to the size of the stream and many other factors. It is therefore not possible to precisely predict the actual change in costs. Economic impacts would primarily involve the potential for higher treatment costs for new or expanded discharges to streams that are redesignated. The initial costs resulting from the installation of technologically advanced wastewater treatment processes and best management practices may be offset by potential savings from and increased value of improved water quality through more cost-effective and efficient treatment over time.

Compliance Assistance Plan

The amendments have been developed as part of an established program that has been implemented by the Department since the early 1980s. The amendments are consistent with and based on existing Department regulations. The amendments extend additional protection to selected waterbodies that exhibit exceptional water quality and are consistent with antidegradation requirements established by the Clean Water Act (33 U.S.C.A. §§ 1251—1387) and The Clean Streams Law (35 P. S. §§ 691.1—691.1001). All surface waters in this Commonwealth are afforded a minimum level of protection through compliance with the water quality standards, which prevent pollution and protect existing water uses.

The redesignations will be implemented through the Department’s permit and approval actions. For example, the National Pollutant Discharge Elimination System (NPDES) permitting program bases effluent limitations on the use designation of the stream. These permit conditions are established to assure water quality criteria are achieved and designated and existing uses are protected. New and expanded dischargers with water quality based effluent limitations are required to provide effluent treatment according to the water quality criteria associated with existing uses and revised designated water uses.

Paperwork Requirements

The final-form rulemaking should not have direct paperwork impact on the Commonwealth, local governments and political subdivisions or the private sector. These amendments are based on existing Department regulations and simply mirror the existing use protection that is already in place for these streams. There may be some indirect paperwork requirements for new or expanding dischargers to streams upgraded to HQ or EV. For example, NPDES general permits are not currently available for new or expanded discharges to these streams. Thus an individual permit, and its associated paperwork, would be required. Additionally, paperwork associated with demonstrating social and economic justification may be required for new or expanded discharges to certain HQ Waters and consideration of nondischarge alternatives is required for all new or expanded discharges to EV and HQ Waters.

H. *Pollution Prevention*

The water quality standards and antidegradation program are major pollution prevention tools because the objective is to prevent degradation by maintaining and protecting existing water quality and existing uses. Although the antidegradation program does not prohibit new or expanded wastewater discharges, nondischarge alternatives are encouraged and required when environmentally sound and cost effective. Nondischarge alternatives, when implemented, remove impacts to surface water and reduce the overall level of pollution to the environment by remediation of the effluent through the soil.

I. *Sunset Review*

These regulations will be reviewed in accordance with the sunset review schedule published by the Department to determine whether the regulations effectively fulfill the goals for which they were intended.

J. *Regulatory Review*

Under section 5(a) of the Regulatory Review Act, on August 31, 2010, the Department submitted a copy of the proposed rulemaking, published at 40 Pa.B. 5337, to IRRC and the Chairpersons of the Senate and House Environmental Resources and Energy Committees for review and comment.

Under section 5(c) of the Regulatory Review Act, IRRC and the House and Senate Committees were provided with copies of the comments received during the public comment period, as well as other documentation. The Department has considered all public comments in preparing this final-form rulemaking. Comments were not received on the proposed rulemaking from IRRC or the House and Senate Committees.

Under section 5.1(j.2) of the Regulatory Review Act (71 P. S. § 745.5a(j.2)), on July 20, 2011, the final-form

rulemaking was deemed approved by the House and Senate Committees. Under section 5(g) of the Regulatory Review Act, this final-form rulemaking was deemed approved by IRRC, effective July 20, 2011.

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) This final-form rulemaking does not enlarge the purpose of the proposed rulemaking published at 40 Pa.B. 5337.

(4) This final-form rulemaking is necessary and appropriate for administration and enforcement of the authorizing acts identified in Section C of this preamble.

(5) This final-form rulemaking does not contain standards or requirements that exceed requirements of the companion Federal regulations.

L. *Order*

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

(a) The regulations of the Department, 25 Pa. Code Chapter 93, are amended by amending §§ 93.9d, 93.9f, 93.9l and 93.9o to read as set forth at 40 Pa.B. 5337 and by amending § 93.9c to read as in Annex A, with ellipses referring to the existing text of the regulations.

(b) The Chairperson of the Board shall submit this order, 40 Pa.B. 5337 and Annex A to the Office of General Counsel and the Office of Attorney General for approval and review as to legality and form, as required by law.

(c) The Chairperson shall submit this order, 40 Pa.B. 5337 and Annex A to IRRC and the Senate and House Environmental Resources and Energy Committees as required under the Regulatory Review Act.

(d) The Chairperson shall certify this order, 40 Pa.B. 5337 and Annex A and deposit them with the Legislative Reference Bureau as required by law.

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

MICHAEL L. KRANCER,
Chairperson

(Editor's Note: For the text of the order of the Independent Regulatory Review Commission relating to this document, see 41 Pa.B. 4265 (August 6, 2011).)

Fiscal Note: Fiscal Note 7-461 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 93. WATER QUALITY STANDARDS

DESIGNATED WATER USES AND WATER QUALITY CRITERIA

§ 93.9c. Drainage List C.

Delaware River Basin in Pennsylvania
Delaware River

Stream	Zone	County					Water Uses Protected	Exceptions to Specific Criteria
		*	*	*	*	*		
1—Delaware River	Main Stem, Tocks Island to Lehigh River					Northampton	WWF, MF	See DRBC regulations—Water Quality Zone 1D
2—UNTs to Delaware River	Basins, Tocks Island to Brodhead Creek					Monroe	HQ-CWF, MF	None
2—Brodhead Creek								
3—Middle Branch Brodhead Creek	Basin, source to confluence with Buck Hill Creek					Monroe	HQ-CWF, MF	None
3—Buck Hill Creek	Basin, Source to Griscom Creek					Monroe	EV	None
4—Griscom Creek	Basin					Monroe	HQ-CWF	None
3—Buck Hill Creek	Basin, Griscom Creek to Buck Hill Falls					Monroe	HQ-CWF	None
3—Buck Hill Creek	Basin, Buck Hill Falls to confluence with Middle Branch Brodhead Creek					Monroe	HQ-CWF, MF	None
2—Brodhead Creek	Mainstem, confluence of Middle Branch Brodhead Creek and Buck Hill Creek to LR 45060 (SR 2022) Bridge					Monroe	HQ-CWF, MF	None
3—UNTs to Brodhead Creek	Basins, confluence of Middle Branch Brodhead Creek and Buck Hill Creek to LR 45060 Bridge					Monroe	HQ-CWF, MF	None
3—Goose Pond Run	Basin					Monroe	HQ-CWF, MF	None

[Pa.B. Doc. No. 11-1500. Filed for public inspection September 2, 2011, 9:00 a.m.]

ENVIRONMENTAL QUALITY BOARD

[25 PA. CODE CH. 93]

Stream Redesignations (Clarks Creek, et al.)

The Environmental Quality Board (Board) amends §§ 93.9f, 93.9j, 93.9o, and 93.9r to read as set forth in Annex A.

This order was adopted by the Board at its meeting of May 18, 2011.

A. *Effective Date*

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

B. *Contact Persons*

For further information, contact Rodney A. Kime, Chief, Division of Water Quality Standards, Bureau of Water Standards and Facility Regulation, 11th Floor, Rachel Carson State Office Building, P. O. Box 8467, 400 Market Street, Harrisburg, PA 17105-8467, (717) 787-9637; or Michelle Moses, Assistant Counsel, Bureau of Regulatory Counsel, 9th Floor, Rachel Carson State Office Building, P. O. Box 8464, Harrisburg, PA 17105-8464, (717) 787-7060. Persons with a disability may use the AT&T Relay Service, (800) 654-5984 (TDD-users) or (800) 654-5988 (voice users). This final-form rulemaking is available electronically through the Department of Environmental Protection (Department) web site at <http://www.depweb.state.pa.us>.

C. Statutory and Regulatory Authority

This final-form rulemaking is being made under the authority of sections 5(b)(1) and 402 of The Clean Streams Law (35 P. S. §§ 691.5(b)(1) and 691.402), which authorize the Board to develop and adopt rules and regulations to implement The Clean Streams Law, and section 1920-A of The Administrative Code of 1929 (71 P. S. § 510-20), which grants to the Board the power and duty to formulate, adopt and promulgate rules and regulations for the proper performance of the work of the Department. In addition, section 303 of the Clean Water Act (33 U.S.C.A. § 1313) sets forth requirements for water quality standards.

D. Background of the Amendments

Water quality standards are in-stream water quality goals that are implemented by imposing specific regulatory requirements (such as treatment requirements, effluent limits and best management practices (BMPs)) on individual sources of pollution.

The Department may identify candidates for redesignation during routine waterbody investigations. Requests for consideration may also be initiated by other agencies. Organizations, businesses or individuals may submit a rulemaking petition to the Board.

The Department considers candidates for High Quality (HQ) or Exceptional Value (EV) Waters and all other designations in its ongoing review of water quality standards. In general, HQ and EV Waters must be maintained at their existing quality and permitted activities shall ensure the protection of designated and existing uses.

Existing use protection is provided when the Department determines, based on its evaluation of the best available scientific information, that a surface water attains water uses identified in §§ 93.3 and 93.4 (relating to protected water uses; and Statewide water uses). Examples of water uses protected include the following: Cold Water Fishes (CWF), Warm Water Fishes (WWF), HQ and EV. A final existing use determination is made on a surface water at the time the Department takes a permit or approval action on a request to conduct an activity that may impact surface water. If the determination demonstrates that the existing use is different than the designated use, the water body will immediately receive the best protection identified by either the attained uses or the designated uses. A stream will then be “redesignated” through the rulemaking process to match the existing uses with the designated uses. For example, if the designated use of a stream is listed as protecting WWF but the redesignation evaluation demonstrates that the water attains the use of CWF, the stream would immediately be protected for CWF, prior to a rulemaking. Once the Department determines the water uses attained by a surface water, the Department will recommend to the Board that the existing uses be made “designated” uses, through rulemaking, and be added to the list of uses identified in § 93.9 (relating to designated water uses and water quality criteria).

The following streams were evaluated in response to four petitions, as well as requests from the Department’s Southcentral Regional Office (SCRO) and the Fish and Boat Commission (FBC) and a corrective amendment by the Bureau of Water Standards and Facility Regulation (BWSFR):

<i>Stream</i>	<i>County</i>	<i>Petitioner / Requestor</i>
Pine Creek	Schuylkill	Friends of Pine Creek
Cacoosing Creek	Berks	SCRO
Unnamed Tributary (UNT) 00926 to Schuylkill River; locally Spring Mill Run	Montgomery	Steven S. Brown, Chairperson Whitemarsh Township Environmental Advisory Board
Clarks Creek	Wayne	Glen Abello
UNT 07792 to Conestoga River	Lancaster	FBC
Hammer Creek	Lebanon and Lancaster	Heidelberg Township
Toms Run	Clarion and Forest	BWSFR

The amendments included in this final-form rulemaking were developed as a result of aquatic studies conducted by the BWSFR. The physical, chemical and biological characteristics and other information on these waterbodies were evaluated to determine the appropriateness of the current and requested designations using applicable regulatory criteria and definitions. In reviewing whether waterbodies qualify as HQ or EV Waters, the Department considers the criteria in § 93.4b (relating to qualifying as High Quality or Exceptional Value Waters). Based upon the data and information collected on these waterbodies, the Board has made the designations in Annex A.

E. Summary of Comments and Responses on the Proposed Rulemaking

The Board approved the proposed rulemaking for the Clarks Creek, et al. package at its February 16, 2010, meeting. The proposed rulemaking was published at 40 Pa.B. 2122 (April 24, 2010) with provision for a 45-day

public comment period that closed on June 8, 2010. Comments were received from ten commentators during the official comment period. One commentator was discouraged that Pine Creek did not qualify for special protection. The other nine commentators were largely opposed to redesignating Hammer Creek from HQ-CWF, Migratory Fishes (MF) to CWF, MF for the portion of the basin extending from the second Rexmont Road crossing to but not including UNT 07678. These commentators included concerned residents, conservancy and watershed organizations, the Lebanon and Lancaster County Conservation Districts, the Chesapeake Bay Foundation and one Pennsylvania State Representative.

Pine Creek Comments

Friends of Pine Creek (petitioner) submitted comments expressing dissatisfaction that Pine Creek did not qualify for special protection. Along with their comments, they

submitted additional water chemistry data in hopes that the Department would evaluate it and find the additional data to be sufficient to redesignate Pine Creek as a special protection water.

The Board is encouraged that it received public support for elevated protection of Pine Creek. However, the Department examined the newly submitted data and found it was insufficient to redesignate Pine Creek. The Board's final regulation retains the designated use of Pine Creek in § 93.9f.

Hammer Creek—Supportive Comments

The Board received comments that applauded efforts to redesignate Walnut Run (a tributary to Hammer Creek in Lancaster County) to EV.

Hammer Creek—Opposing Comments

Nine commentators were largely opposed to the redesignation of Hammer Creek from HQ-CWF, MF to CWF, MF for the portion of the basin extending from the second Rexmont Road crossing to but not including UNT 07678.

The Board disagrees with the commentators assessments. The Department conducted an extensive review of historical data, recent field surveys and land use reviews. The review determined that the portion of the upper Hammer Creek basin from the second Rexmont Road crossing to but not including UNT 07678 does not now display and has not in the past displayed existing uses characteristic of special protection classification. Correctly defining the designated use based on the appropriate existing use will not have a negative impact on current water quality. The Department is required to periodically review and revise its water quality standards as necessary. This correction to Hammer Creek's designated use is an action that strives for designation accuracy, while preserving the integrity of existing and designated use classifications in this Commonwealth.

Two of the Hammer Creek commentators expressed concern for the potential degradation of downstream waters if the upstream restrictions are loosened.

Providing the appropriate (albeit less restrictive) designated use for these reaches will not adversely affect conditions in downstream waters with a more restrictive designated use. Hammer Creek basin from and including UNT 07678 to the inlet of Speedwell Forge Lake will retain its special protection designation and its water quality will be protected under the antidegradation requirements.

Comments were received that identified ongoing collaborative efforts to restore and improve the Hammer Creek watershed. These efforts include restoration by watershed associations, county conservation districts, residents, local communities and other local organizations. The work has included offering technical assistance and cost-share opportunities to watershed landowners and farmers to implement BMPs reducing sediment and nutrients to the Hammer Creek. These efforts have been bolstered by support from the United States Fish and Wildlife Service and a Growing Greener Grant which allowed the completion of 9,916 feet of stream bank fencing and the establishment of 9,916 feet of riparian buffer zone. Additional fencing and stream bank stabilization work was also completed. In addition, concern was raised that the proposed regulation did not comply with the Executive Order from President Barack Obama to accelerate improvements in the Chesapeake Bay watershed.

The Board recognizes that the Department continuously seeks to restore and improve water quality by working with watershed associations, local residents and farmers, communities and organizations and the Department is grateful for their hard work which is often conducted by volunteers and funded through donations and State funds. Defining the correct existing use will not diminish the value of these local efforts. The final regulations do not undermine the Executive Order from President Barack Obama by accurately categorizing the surface water of Hammer Creek.

Comments were received regarding whether the Department had considered the approval requirements of the Act 537 Plan for Heidelberg Township in its determination of the recommendation for Hammer Creek.

The Board acknowledges that the Department did not consider the approval requirements of the Act 537 Plan for Heidelberg Township while determining its recommendation of the existing and designated use for the Hammer Creek basin. When evaluating the correct existing use, the BWSFR considers the factors in §§ 93.4 and 93.4b. The type of sewage system needed in an area is not a factor in determining this recommendation.

Comments received suggest that with further restorative work, the stream would actually improve and could be classified as EV. The Board concurs with the Department in that restorative work completed to date has led to some water quality improvements and that additional restorative work could result in further improvements. However, past and present land use conditions and the Department's data and modeling review indicate the improvements requisite for HQ existing uses, let alone EV, are not realistically achievable without long-term changes in land use conditions. If land use changes occur in the watershed that positively affect the water quality, then the stream may be reevaluated in the future.

A commentator disputes the assertion that BMPs cannot remedy the Hammer Creek. The Board concurs with the Department's supportive attitude regarding the restorative efforts in the Hammer Creek watershed that incorporate BMPs. The improvements involving BMPs in the basin were acknowledged in the Hammer Creek report. However, the application of BMPs currently only affect a portion of the study area and on a larger scale, the watershed cannot achieve special protection unless permanent land use changes, such as forested buffers and conservation easements, are widespread. The Department continues to promote and support BMPs and this redesignation does not indicate otherwise.

Comments suggested that the model employed by the Department to study the effects of BMPs on the Hammer Creek watershed was not appropriately calibrated and that reductions of groundwater inputs of nitrogen and phosphorus were not considered.

To limit error, steps were taken by the Department to match geology and land use as closely as possible. Also, the reference watersheds were in close proximity to each other and adjustments were made in some modeling parameters to account for BMPs and animals in each watershed.

The Predict model groups BMPs into eight general types and does not model specific practices. BMP efficiencies can be adjusted to reflect what is in place or available; therefore, there is no actual limitation on the mixture of BMPs. The Department used applicable BMP efficiencies and considered all practical BMPs in its modeling analyses. Suburban or onsite septic system

BMPs were not included in the analysis because neither one would have provided any significant reduction in loadings. Suburban and urban areas accounted for only 9% of the basin area so those reductions were negligible. The assumption for onsite septic was that it would be converted to a point source discharge and the treatment system would have employed tertiary treatment resulting in very small nutrient loadings to Hammer Creek.

The model did not account for a reduction in groundwater inputs of nitrogen and phosphorus over time. However, for nutrients to appreciably diminish, significant BMP additions and land use conversions (for example, forested buffers and cessation of agricultural uses) would need to occur. Given the long-term nutrient saturation of the soils since Hammer Creek was agriculturally developed, it would take many years before a nutrient decrease would be evident in response to BMP implementation or land use conversions. This potential delay in the remediation of water quality in response to agricultural BMPs resulting from the reserves of leachable nitrogen in heavily manured soils was recognized and addressed by Koerkle and Gustafson-Minnich, 1997 in a report titled *Surface-water Quality Changes After 5 Years of Nutrient Management in the Little Conestoga Creek Headwaters, Pennsylvania, 1989-91* (USGS: Water-Resources Investigations Report 97-4048). Another confounding factor which could contribute to the lag time between the implementation of BMPs and noted improvements in water quality is the unknown travel times for groundwater. "The time required for the effects of reduced nutrient inputs to travel from the land surface to the ground water, then to be discharged as base flow, could have exceeded the 3.5 year post-BMP monitoring period" in a study by Koerkle, et al. in 1996 report titled *Evaluation of Agricultural Best-Management Practices in the Conestoga River Headwaters, Pennsylvania: Effects of Nutrient Management on Water Quality in the Little Conestoga Creek Headwaters, 1983-89* (USGS: Water Resources Investigations Report 95-4046).

Concerns were raised that improvements through in-stream habitat restoration and the application of forested riparian buffers were not considered. The Board appreciates the Department's recognition of the ability of improved forested buffers to improve physical in-stream habitat and provide shade from the tree canopy. The benefits from improving forested buffers are vitally supportive of macroinvertebrate and fish populations. These benefits can begin and become noticeable within the first 5 to 10 years of the implementation of the improvement. Over time the tree canopy will mature and provide more shade for the aquatic habitat. It will likely take at least 20 to 25 years for the benefits of newly planted forest buffers to improve the stream quality to a level commensurate with special protection qualifications. If stream improvements are demonstrated by widespread land use conversions in the watershed, the stream may be eligible for special protection in the future.

Hammer Creek—Additional Comments

Additional remarks were received from the United States Environmental Protection Agency (EPA) Region 3 outside of the official comment period. The Department received a letter from the EPA on June 10, 2010. The EPA commended the Department on its continuing effort to evaluate and properly designate surface waters of this Commonwealth, especially protecting existing water quality and uses through its antidegradation program, but the EPA raised some questions regarding the Hammer Creek stream report. The Department replied to the specific

questions regarding the Hammer Creek stream report in a letter to the EPA Region 3.

On April 14, 2010, the Department submitted a copy of the proposed rulemaking to the Independent Regulatory Review Commission (IRRC) and to the Chairpersons of the Senate and House Environmental Resources and Energy Committees for review and comment in accordance with section 5(a) of the Regulatory Review Act (71 P. S. § 745.5(a)). IRRC did not raise any comments, recommendations or objections to any portion of the proposed rulemaking.

F. Summary of Changes to the Proposed Rulemaking

Changes were not made to the redesignations recommended in the proposed rulemaking.

G. Benefits, Costs and Compliance

Benefits

Overall, the Commonwealth, its citizens and natural resources will benefit from these amendments because they provide the appropriate level of protection to preserve the integrity of existing and designated uses of surface waters in this Commonwealth. Protecting water quality provides economic value to present and future generations in the form of clean water for drinking, recreational opportunities and aquatic life protection. It is important to realize these benefits to ensure opportunity and development continue in a manner that is environmentally, socially and economically sound. Maintenance of water quality ensures its future availability for all uses.

Compliance Costs

The streams recommended for redesignation are already protected at their existing use. Therefore, the designated use revision will not impose increased compliance costs on the regulated community.

Persons conducting or proposing activities or projects shall comply with the regulatory requirements regarding designated and existing uses. Persons expanding a discharge or adding a new discharge point to a stream could be adversely affected if they need to provide a higher level of treatment or BMPs to meet the designated and existing uses of the stream. For example, these increased costs may take the form of higher engineering, construction or operating cost for point source discharges. Treatment costs and BMPs are site-specific and depend upon the size of the discharge in relation to the size of the stream and many other factors. It is therefore not possible to precisely predict the actual change in costs. Economic impacts would primarily involve the potential for higher treatment costs for new or expanded discharges to streams that are redesignated. The initial costs resulting from the installation of technologically advanced wastewater treatment processes and BMPs may be offset by potential savings from and increased value of improved water quality through more cost-effective and efficient treatment over time.

Compliance Assistance Plan

The amendments have been developed as part of an established program that has been implemented by the Department since the early 1980s. The amendments are consistent with and based on existing Department regulations. The amendments extend additional protection to selected waterbodies that exhibit exceptional water quality and are consistent with antidegradation requirements established by The Clean Water Act (33 U.S.C.A. §§ 1251—1387) and The Clean Streams Law (35 P. S.

§§ 691.1—691.1001). All surface waters in this Commonwealth are afforded a minimum level of protection through compliance with the water quality standards, which prevent pollution and protect existing water uses.

The redesignations will be implemented through the Department's permit and approval actions. For example, the National Pollutant Discharge Elimination System (NPDES) permitting program bases effluent limitations on the use designation of the stream. These permit conditions are established to assure water quality criteria are achieved and designated and existing uses are protected. New and expanded dischargers with water quality based effluent limitations are required to provide effluent treatment according to the water quality criteria associated with existing uses and revised designated water uses.

Paperwork Requirements

The final-form rulemaking should not have direct paperwork impact on the Commonwealth, local governments and political subdivisions or the private sector. These amendments are based on existing Department regulations and simply mirror the existing use protection that is already in place for these streams. There may be some indirect paperwork requirements for new or expanding dischargers to streams upgraded to HQ or EV. For example, NPDES general permits are not currently available for new or expanded discharges to these streams. Thus an individual permit, and its associated paperwork, would be required. Additionally, paperwork associated with demonstrating social and economic justification may be required for new or expanded discharges to certain HQ Waters and consideration of nondischarge alternatives is required for all new or expanded discharges to EV and HQ Waters.

H. Pollution Prevention

The water quality standards and antidegradation program are major pollution prevention tools because the objective is to prevent degradation by maintaining and protecting existing water quality and existing uses. Although the antidegradation program does not prohibit new or expanded wastewater discharges, nondischarge alternatives are encouraged and required when environmentally sound and cost effective. Nondischarge alternatives, when implemented, remove impacts to surface water and reduce the overall level of pollution to the environment by remediation of the effluent through the soil.

I. Sunset Review

These regulations will be reviewed in accordance with the sunset review schedule published by the Department to determine whether the regulations effectively fulfill the goals for which they were intended.

J. Regulatory Review

Under section 5(a) of the Regulatory Review Act, on April 14, 2010, the Department submitted a copy of the proposed rulemaking, published at 40 Pa.B. 2122, to IRRC and the Chairpersons of the Senate and House Environmental Resources and Energy Committees for review and comment.

Under section 5(c) of the Regulatory Review Act, IRRC and the House and Senate Committees were provided

with copies of the comments received during the public comment period, as well as other documentation. The Department has considered all public comments in preparing this final-form rulemaking. Comments were not received on the proposed rulemaking from IRRC or the House and Senate Committees.

Under section 5.1(j.2) of the Regulatory Review Act (71 P.S. § 745.5a(j.2)), on July 20, 2011, the final-form rulemaking was deemed approved by the House and Senate Committees. Under section 5.1(e) of the Regulatory Review Act, IRRC met on July 21, 2011, 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) This final-form rulemaking does not enlarge the purpose of the proposed rulemaking published at 40 Pa.B. 2122.

(4) This final-form rulemaking is necessary and appropriate for administration and enforcement of the authorizing acts identified in Section C of this preamble.

(5) This final-form rulemaking does not contain standards or requirements that exceed requirements of the companion Federal regulations.

L. Order

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

(a) The regulations of the Department, 25 Pa. Code Chapter 93, are amended by amending §§ 93.9f, 93.9j, 93.9o and 93.9r 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 submit this order and Annex A to the Office of General Counsel and the Office of Attorney General for approval and review as to legality and form as required by law.

(c) The Chairperson shall submit this order and Annex A to IRRC and the Senate and House Environmental Resources and Energy Committees as required under the Regulatory Review Act.

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

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

MICHAEL L. KRANCER,
Chairperson

(Editor's Note: For the text of the order of the Independent Regulatory Review Commission relating to this document, see 41 Pa.B. 4265 (August 6, 2011).)

Fiscal Note: Fiscal Note 7-438 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 93. WATER QUALITY STANDARDS
DESIGNATED WATER USES AND WATER QUALITY CRITERIA

§ 93.9f. Drainage List F.

Delaware River Basin in Pennsylvania
Schuylkill River

Stream	Zone	County					Water Uses Protected	Exceptions to Specific Criteria
		*	*	*	*	*		
5—Plum Creek	Basin, UNT at RM 0.45 to Mouth	Berks					CWF, MF	None
4—Cacoosing Creek	Basin, Source to Little Cacoosing Creek	Berks					CWF, MF	None
5—Little Cacoosing Creek	Basin	Berks					WWF, MF	None
4—Cacoosing Creek	Little Cacoosing Creek to Mouth	Berks					CWF, MF	None
3—Tulpehocken Creek	Basin, T 921 to Mouth	Berks					WWF, MF	None
		*	*	*	*	*		
3—Valley Creek	Basin	Montgomery— Chester					EV, MF	None
3—UNTs to Schuylkill River	Basins, Valley Creek to UNT 00926 at RM 18.9	Montgomery					WWF, MF	None
3—Trout Creek	Basin	Montgomery					WWF, MF	None
		*	*	*	*	*		
3—Arrowmink Creek	Basin	Montgomery					WWF, MF	None
3—UNT 00926 at RM 18.9 (locally Spring Mill Run)	Basin	Montgomery					CWF, MF	None
3—UNTs to Schuylkill River	Basins, UNT 00926 downstream to Head of Tide	Montgomery— Philadelphia					WWF, MF	None
3—Sawmill Run	Basin	Montgomery					WWF, MF	None
		*	*	*	*	*		

§ 93.9j. Drainage List J.

Susquehanna River Basin in Pennsylvania
Lackawanna River

Stream	Zone	County					Water Uses Protected	Exceptions to Specific Criteria
		*	*	*	*	*		
2—Lackawanna River	Main Stem, Confluence East and West Branches to SR 0347 Bridge at Dickson City	Lackawanna					HQ-CWF, MF	None
3—UNTs to Lackawanna River	Basins, Confluence of East and West Branches to Clarks Creek	Susquehanna— Wayne					CWF, MF	None
3—Brace Brook	Basin	Susquehanna					CWF, MF	None
3—UNT 28600 at RM 35.54 (locally Clarks Creek)	Basin	Wayne					EV, MF	None

Stream	Zone	County	Water Uses Protected	Exceptions to Specific Criteria
3—UNTs to Lackawanna River	Basins, Clarks Creek to SR 0347 Bridge at Dickson City	Wayne—Lackawanna	CWF, MF	None
3—Wilson Creek	Basin	Lackawanna	CWF, MF	None
		* * * * *		

§ 93.9o. Drainage List O.

Susquehanna River Basin in Pennsylvania
Susquehanna River

Stream	Zone	County	Water Uses Protected	Exceptions to Specific Criteria
		* * * * *		
2—Wilson Run	Basin	York	WWF, MF	None
2—Conestoga River	Basin, Source to UNT 07792 at RM 43.05	Lancaster	WWF, MF	None
3—UNT 07792 to Conestoga River at RM 43.05	Basin	Lancaster	CWF, MF	None
2—Conestoga River	Main Stem, UNT 07792 at RM 43.05 downstream to Mouth	Lancaster	WWF, MF	None
3—UNTs to Conestoga Rivers	Basins, UNT 07792 to Mouth	Berks—Lancaster	WWF, MF	None
3—Muddy Creek	Main Stem, Source to Little Muddy Creek	Lancaster	TSF, MF	None
		* * * * *		
4—Middle Creek	Basin, Furnace Run to Mouth	Lancaster	WWF, MF	None
4—Hammer Creek	Basin, Source to second Rexmont Road crossing (downstream of the two former water supply reservoirs)	Lebanon	HQ-CWF, MF	None
4—Hammer Creek	Basin, second Rexmont Road crossing to but not including UNT 07678 at RM 14.2	Lebanon	CWF, MF	None
4—Hammer Creek	Basin, from and including UNT 07678 downstream to Walnut Run	Lancaster	HQ-CWF, MF	None
5—Walnut Run	Basin	Lancaster	EV, MF	None
4—Hammer Creek	Basin, Walnut Run to inlet of Speedwell Forge Lake	Lancaster	HQ-CWF, MF	None
4—Hammer Creek	Basin, Inlet of Speedwell Forge Lake to UNT 07671 at RM 8.8	Lancaster	WWF, MF	None
5—UNT 07671	Basin	Lancaster	HQ-CWF, MF	None
4—Hammer Creek	Basin, UNT 07671 downstream to Speedwell Forge Lake Dam	Lancaster	WWF, MF	None
4—Hammer Creek	Basin, Speedwell Forge Lake Dam to Mouth	Lancaster	TSF, MF	None
		* * * * *		

§ 93.9r. Drainage List R.

Ohio River Basin in Pennsylvania
Clarion River

Stream	Zone	County					Water Uses Protected	Exceptions to Specific Criteria
		*	*	*	*	*		
4—Henry Run	Basin						CWF	None
4—Toms Run	Basin, Source to Little Hefren Run						EV	None
5—Little Hefren Run	Basin						CWF	None
4—Toms Run	Basin, Little Hefren Run to Mouth						EV	None
4—Cather Run	Basin						HQ-CWF	None
		*	*	*	*	*		

[Pa.B. Doc. No. 11-1501. Filed for public inspection September 2, 2011, 9:00 a.m.]

ENVIRONMENTAL QUALITY BOARD
[25 PA. CODE CHS. 121 AND 127]
New Source Review

The Environmental Quality Board (Board) amends Chapters 121 and 127 (relating to general provisions; and construction, modification, reactivation and operation of sources) to read as set forth in Annex A.

This order was adopted by the Board at its meeting of May 18, 2011.

A. *Effective Date*

This final-form rulemaking is effective upon publication in the *Pennsylvania Bulletin*.

This final-form rulemaking will be submitted to the United States Environmental Protection Agency (EPA) as a revision to the Pennsylvania State Implementation Plan (SIP) upon publication.

B. *Contact Persons*

For further information, contact Krishnan Ramamurthy, Chief, Division of Permits, Bureau of Air Quality, 12th Floor, Rachel Carson State Office Building, P. O. Box 8468, Harrisburg, PA 17105-8468, (717) 783-9476; or Robert “Bo” Reiley, Assistant Counsel, Bureau of Regulatory Counsel, 9th Floor, Rachel Carson State Office Building, P. O. Box 8464, Harrisburg, PA 17105-8464, (717) 787-7060. 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 electronically through the Department of Environmental Protection’s (Department) web site at www.depweb.state.pa.us (Keyword: Public Participation).

C. *Statutory Authority*

This final-form rulemaking is being made under the authority of section 5(a)(1) of the Air Pollution Control Act (APCA) (35 P. S. § 4005(a)(1)), which grants to the Board the authority to adopt regulations for the prevention, control, reduction and abatement of air pollution.

D. *Background and Summary*

On July 18, 1997, the EPA revised the National Ambient Air Quality Standard (NAAQS) for particulate matter

(PM) to add a new standard for fine particles, using fine particulates equal to and less than 2.5 micrometers in diameter (PM_{2.5}) as the indicator. The EPA set the health-based (primary) and welfare-based (secondary) PM_{2.5} annual standard at a level of 15 micrograms per cubic meter (µg/m³) and the 24-hour standard at a level of 65 µg/m³ at 62 FR 38652 (July 18, 1997). The health-based primary standard is designed to protect human health from elevated levels of PM_{2.5}, which have been linked to premature mortality and other important health effects. The secondary standard is designed to protect against major environmental effects of PM_{2.5} such as visibility impairment, soiling and materials damage. In December 2004, the EPA designated all or portions of the following counties in this Commonwealth as nonattainment areas for the 1997 fine PM annual NAAQS: Allegheny (partial), Armstrong (partial), Beaver, Berks, Bucks, Butler, Cambria, Chester, Cumberland, Dauphin, Delaware, Greene (partial), Indiana (partial), Lancaster, Lawrence (partial), Lebanon, Montgomery, Philadelphia, Pittsburgh/Liberty-Clairton (partial), Washington, Westmoreland and York. See 70 FR 944, 999 (January 5, 2005). No counties were designated nonattainment for the 1997 24-hour standard.

Subsequently, at 71 FR 61144 (October 17, 2006), the EPA lowered the primary and secondary 24-hour NAAQS for PM_{2.5} to 35 µg/m³ from 65 µg/m³. The following counties or portions thereof have been designated by the EPA as nonattainment for the 2006 fine PM 24-hour NAAQS: Allegheny (partial), Armstrong (partial), Beaver, Bucks, Butler, Cambria, Chester, Cumberland, Dauphin, Delaware, Greene (partial), Indiana (partial), Lancaster, Lawrence (partial), Lebanon, Lehigh, Montgomery, Northampton, Philadelphia, Pittsburgh/Liberty-Clairton (partial), Washington, Westmoreland and York. See 74 FR 58688, 58758 (November 13, 2009).

The EPA published its final rule for the “Implementation of the New Source Review (NSR) Program for Particulate Matter Less Than 2.5 Micrometers (PM_{2.5})” at 73 FR 28321 (May 16, 2008). This Federal regulation requires states with PM_{2.5} nonattainment areas to submit revised nonattainment NSR programs to the EPA for SIP approval within 3 years from the date of publication of the final rule or by May 16, 2011.

Scientific research has shown that various precursor pollutants participate in secondary particle formation and

contribute significantly to ambient $PM_{2.5}$ concentrations, producing approximately half of the $PM_{2.5}$ concentration Nationally. Precursor pollutants to particle formation include the following: sulfur dioxide (SO_2); nitrogen oxides (NO_x); volatile organic compounds (VOC); and ammonia. Given the complexity of PM formation processes, new information from the scientific community continues to emerge to improve our understanding of the relationship between sources of PM precursors and secondary particle formation. The final Federal rule requires that SO_2 be regulated as a $PM_{2.5}$ precursor; NO_x is presumed regulated; VOC and ammonia are presumed not regulated. See 73 FR 28321, 28325. This final-form State rulemaking is consistent with the Federal rule in how these pollutants are to be treated.

Section 173 of the Clean Air Act (CAA) (42 U.S.C.A. § 7503) subjects major stationary sources located in nonattainment areas to the NSR permit program, which the Commonwealth is responsible for implementing through its SIP. The NSR special permit requirements include emission offsets for proposed emission increases and a demonstration that the new source will comply with the "lowest achievable emission rate" (LAER) for each regulated pollutant.

The final-form rulemaking, which limits the emissions of $PM_{2.5}$ and precursors including SO_2 and NO_x for new or modified major sources in nonattainment areas, amends the existing nonattainment NSR requirements in Chapter 127, Subchapter E (relating to new source review) to incorporate the EPA's May 2008 requirements for $PM_{2.5}$ and precursor emissions. Clarifying amendments for Chapter 127 are also made in the final-form rulemaking.

The final-form rulemaking applies to construction of major stationary sources and major modifications at major stationary sources. A stationary source is a "major source" if its actual emissions or its potential to emit (PTE) for a specific pollutant equals or exceeds the major source threshold for that pollutant. The $PM_{2.5}$ threshold for new sources is 100 tons per year (TPY) of $PM_{2.5}$. The $PM_{2.5}$ threshold for major modifications at existing sources is 10 TPY of $PM_{2.5}$.

The final-form rulemaking assures that the citizens and environment of this Commonwealth will benefit from reduced PM and precursor emissions from regulated sources. The health effects associated with exposure to elevated levels of $PM_{2.5}$ are significant. Epidemiological studies have shown a significant correlation between elevated $PM_{2.5}$ levels and premature mortality. Other important health effects associated with exposure to particle pollution include aggravation of respiratory and cardiovascular disease (as indicated by increased hospital admissions, emergency room visits, absences from school or work and restricted activity days), lung disease, decreased lung function, asthma attacks and certain cardiovascular problems. Individuals particularly sensitive to $PM_{2.5}$ exposure include older adults, people with heart and lung disease and children. Environmental effects of particle pollution include visibility impairment, soiling and materials damage. Attaining and maintaining levels of $PM_{2.5}$ below the health- and welfare-based NAAQS is important to reduce premature mortality and other health and environmental effects associated with $PM_{2.5}$ exposure. This control measure is reasonably necessary to attain and maintain the 1997 annual and 2006 24-hour $PM_{2.5}$ NAAQS.

The owners and operators of new or modified major facilities will be affected by the final-form rulemaking.

There are approximately 887 major facilities in this Commonwealth that may be subject to the existing NSR rules if major modifications to those facilities are proposed. The majority of those facilities affected by this final-form rulemaking are already subject to the existing NSR provisions in Chapter 127, Subchapter E and also to the requirements in 40 CFR Part 51, Appendix S (relating to emission offset interpretative ruling). This final-form rulemaking will provide increased flexibility for the owners and operators of affected facilities by allowing exchanges of interpollutant offsets.

Under section 4.2(b) of the APCA (35 P. S. § 4004.2(b)), control measures, in general, shall be no more stringent than those required under the CAA unless the Board determines that those measures are reasonably necessary to achieve or maintain ambient air quality standards. The final-form rulemaking is more stringent than Federal regulations since it includes fugitive emissions for certain pollutants, including $PM_{2.5}$, from all sources when determining whether a source is defined as a "major facility" under § 121.1.

The major facility definition was included in the final-form rulemaking published at 24 Pa.B. 443 (January 15, 1994). The 1994 final-form rulemaking was approved by the EPA as a revision to the SIP at 62 FR 64722 (December 9, 1997), and is codified in 40 CFR 52.2020 (relating to identification of plan), regarding the Pennsylvania SIP. The SIP-approved major facility provision includes fugitive emissions from all sources when determining the status of a major facility, rather than considering fugitives for just the 28 source categories listed in the Federal definition of "major stationary source" in 40 CFR 51.165(a)(1)(iv)(A) (relating to permit requirements).

Another area of difference between the existing EPA and Commonwealth nonattainment NSR programs relates to the treatment of projected actual emissions related to a project. Under the EPA's approach, owners or operators of a facility shall track their projected actual emissions against the facility's post-change emissions for 5 years following resumption of regular operations. The EPA presumes that any increases that occur after 5 years are not associated with the physical or operational changes. Under the Commonwealth's approach specified in § 127.203a(a)(5)(iii)(A) (relating to applicability determination) of the final-form NSR amendments published at 37 Pa.B. 2365 (May 19, 2007), the projected actual emissions for the regulated NSR pollutant, including $PM_{2.5}$, must be incorporated into the required plan approval or operating permit as an emission limit. According to the Board findings in the final-form rulemaking, the May 2007 NSR amendments are "necessary to achieve and maintain ambient air quality standards and to satisfy related CAA requirements." The Board also found that "the final-form rulemaking is necessary for the Commonwealth to avoid sanctions under the CAA."

To attain and maintain the NAAQS in this Commonwealth, as required under the CAA, the Board has relied on the 1994 and 2007 rulemakings. The only change being made in this final-form rulemaking is to include $PM_{2.5}$ as a regulated NSR pollutant. Consequently, the "no more stringent than" provision under section 4.2(b) of the APCA is satisfied because the Board has determined that this approach is reasonably required to achieve or maintain the $PM_{2.5}$ NAAQS. Moreover, these provisions must be maintained to satisfy the antibacksliding provisions in sections 110 and 193 of the CAA (42 U.S.C.A. §§ 7410 and 7515).

The Department met with the Air Quality Technical Advisory Committee (AQTAC) on September 15, 2010, and the Citizens Advisory Council (CAC) Air Committee on October 18, 2010, to discuss the final-form rulemaking. The AQTAC and CAC both concurred with the Department's recommendation to move the final-form rulemaking forward to the Board.

E. Summary of Comments and Responses

A commentator understands that the proposed rulemaking would amend the existing requirements in Chapter 127, Subchapter E to incorporate recently promulgated Federal requirements for $PM_{2.5}$ and $PM_{2.5}$ precursors and insists that the proposed changes mirror the new Federal requirements to the extent practicable. The Board agrees with the commentator that there should be consistency between the Federal requirements and the Commonwealth's regulations.

A commentator believes that a fundamental difficulty with the proposed NSR amendments is the Board's attempt to meet the requirements of the Federal NSR $PM_{2.5}$ rule by applying the Commonwealth's existing NSR provisions to $PM_{2.5}$. Because the Commonwealth's existing NSR rules were developed specifically to address particular issues regarding the ozone nonattainment areas in this Commonwealth and have been amended many times over many years, the rules are not suited in many respects to also address $PM_{2.5}$. The Board clarifies that it did not propose amendments at 40 Pa.B. 703 (February 6, 2010) to many existing provisions of the NSR requirements in Chapter 127, Subchapter E, which were published at 24 Pa.B. 443. The 1994 final-form rulemaking was approved by the EPA as a revision to the SIP published at 62 FR 64722 and codified in 40 CFR 52.2020. Subsequent to the 1994 final-form rulemaking, the EPA initiated a number of changes to the Federal requirements for NSR which are discussed in the preamble to the Board's final-form rulemaking published at 37 Pa.B. 2365. Amendments to Chapter 127, Subchapter E published at 37 Pa.B. 2365 were effective May 19, 2007. The 2007 amendments were submitted to the EPA on August 9, 2007, as an equivalency demonstration and revision to the SIP. However, in light of the concerns raised during the public comment period about the aggregation of de minimis emissions for $PM_{2.5}$ and $PM_{2.5}$ precursors and the limited availability of $PM_{2.5}$ emission reduction credits (ERCs) for emission offsets for new or modified major source projects, this final-form rulemaking does not require the aggregation of de minimis emissions for $PM_{2.5}$ and $PM_{2.5}$ precursors. Section 127.203a(a)(2) is revised in the final-form rulemaking to specifically exclude $PM_{2.5}$ and $PM_{2.5}$ precursors.

The Independent Regulatory Review Commission (IRRC) stated that there appears to be some inconsistency between the Regulatory Analysis Form and preamble of the proposed rulemaking as to whether the proposed regulation is consistent with or more stringent than Federal regulations. The Board clarifies that the proposed rulemaking is more stringent than Federal regulations in three ways—de minimis aggregation, fugitive emissions and the contemporaneous period provisions which were approved by the EPA as a revision to the SIP and implemented by the Department for at least 15 years. As a result, the preamble to the proposed rulemaking is correct. The final-form rulemaking deletes the de minimis aggregation provision for $PM_{2.5}$ and precursor emissions.

IRRC commented further that the information in the preamble to the proposed rulemaking and the accompanying materials did not provide information on whether the

Department has identified areas where NO_x emissions are not a significant contributor to $PM_{2.5}$ concentrations. IRRC requested that this information be provided with the final-form rulemaking. To this end, the Board responds that the final-form rulemaking definition of "regulated NSR pollutant" has been amended as follows: "Nitrogen oxides are presumed to be precursors to $PM_{2.5}$ in $PM_{2.5}$ nonattainment areas unless the Department demonstrates to the satisfaction of the Administrator of the EPA or the Administrator of the EPA determines that NO_x emissions from a source in a specific area are not a significant contributor to that area's ambient $PM_{2.5}$ concentrations." The Department has not done a study to identify areas where NO_x emissions are not a significant contributor to $PM_{2.5}$ concentrations.

IRRC is concerned about the impact the final rule will have on Commonwealth industry with respect to competitiveness with industry in neighboring states. The Board responds that the Department conferred with neighboring states in April and November, 2010 concerning the status of their NSR $PM_{2.5}$ rulemakings. A number of neighboring states are still working on $PM_{2.5}$ amendments to their NSR programs to meet the Federal $PM_{2.5}$ requirements and develop SIP revisions by May 2011. West Virginia finalized NSR requirements for $PM_{2.5}$ on June 1, 2010. Delaware expects to propose its rulemaking by May 1, 2011, and finalize its rulemaking by July 1, 2011. All states must submit SIP revisions that, at a minimum, will implement the EPA's $PM_{2.5}$ requirements for nonattainment areas. It is not anticipated that the final-form rulemaking will place the owners of affected sources in this Commonwealth at a competitive disadvantage; the final-form rulemaking does not include $PM_{2.5}$ de minimis aggregation requirements because of the limited availability of emission offsets.

A commentator questioned the testing procedures and listed offset ratio relationships and wondered how it was calculated, where the ratios came from and exact dates for early ERC credit calculations. The Board responds that EPA-established trading ratios for $PM_{2.5}$ and $PM_{2.5}$ precursors for nonattainment NSR $PM_{2.5}$ emissions were specified in the proposed rulemaking and these ratios are retained in the final-form rulemaking. The Board did not propose to amend the existing requirements in § 127.207(1) (relating to creditable emissions decrease or ERC generation and creation).

A commentator stated that enactment of the proposed rulemaking would result in two distinct and different sets of definitions for some parameters of interest (for example, two different definitions for a "regulated NSR pollutant" and "significant," with the definitions depending on the attainment status of the pollutant of interest). The Board responds that the definitions and requirements for the state-specific NSR and prevention of significant deterioration (PSD) programs mirror the applicable Federal NSR and PSD regulations.

The commentator requested that the Department's definition of "significant" in § 121.1 (relating to definitions) be consistent and verbatim with the EPA's definition of the term in 40 CFR 52.21(b)(23) (relating to prevention of significant deterioration of air quality). The Board disagrees. The EPA's definition of "significant" in 40 CFR 52.21(b)(23) applies to PSD requirements for attainment and unclassifiable areas, not to nonattainment NSR, and is adopted by reference under Chapter 127, Subchapter D (relating to prevention of significant deterioration of air quality) to support the Department's PSD program. The definition of "significant" in § 121.1 supports existing

requirements in Chapter 127, Subchapter E for nonattainment NSR and is consistent with the EPA's definition of the term "significant" in 40 CFR 51.165(a)(1)(x)(A) for nonattainment NSR programs.

A commentator requested that the Department's definition of "regulated NSR pollutant" in § 121.1 be consistent and verbatim with the EPA's definition in 40 CFR 52.21(b)(50). The Board disagrees. The EPA's definition of "regulated NSR pollutant" in 40 CFR 52.21(b)(50) applies to PSD requirements for attainment and unclassifiable areas, not to nonattainment NSR, and is adopted by reference under Chapter 127, Subchapter D to support the Department's PSD program. The definition of "regulated NSR pollutant" in § 121.1 supports existing requirements in Chapter 127, Subchapter E for nonattainment NSR and is consistent with the EPA's definition of "regulated NSR pollutant" in 40 CFR 51.165(a)(1)(xxxvii) for nonattainment NSR programs.

A commentator stated that the proposed NSR amendments require clarification with respect to the manner in which NSR will be applied to PM_{2.5} and its precursors. The Board clarifies that the definitions of the terms "major facility" and "net emissions increase" in § 121.1 are similar to the EPA's definition of the term "major stationary source" in 40 CFR 51.165(a)(1)(iv)(A). During the implementation of the NSR PM_{2.5} provisions, the Department will follow the EPA's policies and interpretations provided for nonattainment NSR for regulating emissions of PM_{2.5} and its precursors SO₂ and NO_x.

A commentator stated that the definition of "maximum allowable emissions" should be verbatim with the definition of the term "allowable emissions" in 40 CFR 52.21(b)(16), regarding PSD of air quality. The Board proposed deletion of the term "maximum allowable emissions" and its definition, as denoted by bold brackets and text in the proposed rulemaking, since the term is no longer used to support existing regulations and this term is not used in the Federal NSR regulations under 40 CFR 51.165. This deletion is retained in the final-form rulemaking.

Several commentators stipulated that the aggregation of de minimis emission increases is inappropriate for PM_{2.5}, indicating that the proposed amendments would make de minimis emissions of PM_{2.5} subject to the 10-year aggregation provisions in § 127.203a and potentially to the provisions in § 127.203 (relating to facilities subject to special permit requirements). The final-form rulemaking does not require de minimis aggregation for PM_{2.5} and precursor emissions.

A commentator stated that the rule should clearly indicate that offsets shall be provided only once for a particular pollutant. For example, a facility located in the Ozone Transport Region that triggers NSR for NO_x and PM_{2.5} should only provide offsets for either NO_x or NO_x as a precursor for PM_{2.5}, but not for both. The Board agrees with the commentator. Emissions only need to be offset once. Therefore, if NO_x emissions offsets are provided as an ozone precursor, these offsets can also serve as PM_{2.5} precursor offsets.

A commentator expressed concern that § 127.210 (relating to offset ratios) does not recognize the interpollutant trading that has already been approved by the EPA for NO_x and VOC ERCs in the five-county Philadelphia area. These NSR regulations should be amended to either include this interpollutant trading or as to not exclude this approved ERC trading mechanism. The Board is not changing the EPA's previously approved interpollutant

trading of VOC ERCs for NO_x ERCs using a substitution ratio in the Philadelphia ozone nonattainment area. However, due to concerns raised by the commentators, the Board is clarifying § 127.206(o) (relating to ERC general requirements) in the final-form rulemaking as follows: "Except as provided under § 127.210 (relating to offset ratios), an ERC created for a regulated criteria pollutant shall only be used for offsetting or netting an emissions increase involving the same criteria pollutant unless approved in writing by the Department and the EPA."

Three commentators suggested that the proposed NSR amendments should be revised to exclude fugitive emissions in the context of major source determinations for PM_{2.5}, except for source categories specifically listed in the Federal regulations. Further, the Department should follow the Federal rule (as it continues to be developed) with respect to the consideration of fugitive emissions in the evaluation of emission increases caused by modification projects. The Board did not propose amendments at 40 Pa.B. 703 to amend the aggregation of de minimis emissions of VOCs and NO_x specified in § 127.203(b)(1). In January 1994, the Board adopted, at 24 Pa.B. 443, a major facility provision for new source review (NSR) purposes that includes fugitive emissions from all sources when determining NSR applicability for a major facility, rather than considering fugitives for just the 28 source categories listed in the Federal definition of "major stationary source" in 40 CFR 51.165(a)(1)(iv)(A). The more stringent than provisions were determined by the Board to be reasonably necessary to attain and maintain the NAAQS. To attain and maintain the NAAQS, the Department has relied since January 15, 1994, on these SIP-approved requirements for the inclusion of fugitive emissions of all criteria pollutants, including PM, CO and ozone and its precursors, VOC and NO_x, from all sources for major facility determinations. These provisions shall be maintained to satisfy the anti-backsliding provisions of sections 110 and 193 of the CAA.

Two commentators indicated that the proposed language in § 127.203(b)(2) and (3) would add ambiguous language that could render these provisions more stringent than the present requirements. The Board agrees. The final-form rulemaking deletes the proposed clarifying language, "including the emissions from the proposed project," in § 127.203(b)(2) and (3). However, the emissions from the proposed project must be included with the existing facility PTE to determine whether the facility emissions are more than 100 TPY for consideration of the applicability of control technology requirements such as best available control technology or LAER under § 127.203(b)(2) and (3).

Two commentators stated that the proposed NSR amendments would add a sentence to § 127.203(b)(1)(i) stating that "the aggregated VOC or NO_x emissions must meet the applicability requirements of paragraph (2) or (3)." The commentators indicated that when evaluated in the context of subparagraphs (2) and (3), use of the phrase "aggregated emissions" is ambiguous, especially in light of the language previously discussed regarding inclusion of the "emissions of the proposed project" in the source's PTE. The Board disagrees. This language clarifies that the applicant needs to use the provisions in § 127.203(b)(2) or (3) for a determination of control technology requirements when the net emissions increase is equal to or exceeds the applicable emissions rate that is significant (25 TPY of NO_x or VOCs). Section 127.203(b)(2) and (3) does not require aggregation of emissions; therefore, there is no double-counting of emissions toward

the source's PTE as indicated by the commentators. The final-form rulemaking retains the proposed language.

A commentator stated that the Board should clarify the provisions in § 127.203(b)(1) that 5-year contemporaneous aggregation is required only for proposed emission increases that exceed the significant emission rate for a pollutant and that 10-year contemporaneous aggregation is required only for proposed emission increases that are de minimis. The Board disagrees. The Board did not propose amendments to § 127.203(b)(1) at 40 Pa.B. 703. The current requirements in § 127.203 were published at 37 Pa.B. 2365. The 2007 amendments were submitted to the EPA on August 9, 2007, as an equivalency demonstration and revision to the SIP. The requirements in § 127.203(b)(1)(i) and (ii) specify that the net emissions increase be calculated using 5-year and 10-year contemporaneous aggregation provisions. First, the owner or operator needs to calculate the net emissions increase using 5-year contemporaneous aggregation provisions in § 127.203(b)(1)(i). If the net emissions increase is equal to or exceeds the applicable emissions rate that is significant (25 TPY of NO_x or VOCs), the owner or operator needs to use the provisions in § 127.203(b)(2) or (3) for the applicability of control technology requirements. If the emissions increase due to the project does not exceed the listed applicable rate, then the owner or operator needs to use the de minimis emissions increase calculation for the 10-year period aggregation of § 127.203(b)(1)(ii) to calculate the net emissions increase.

The commentator requested that the Department issue guidance or amend the language in § 127.203a(a)(5)(iii) that if the projected actual emissions for a regulated NSR pollutant are in excess of the baseline actual emissions and the project results in a net emissions increase which equals or exceeds the applicable significant emissions rate, then the projected actual emissions for the regulated NSR pollutant must be incorporated into the required plan approval or the operating permit as an emission limit. The Board clarifies in the final-form rulemaking that the projected actual emissions are incorporated as a permit limit when the projected actual emissions minus the excludable emissions (emissions following completion of the project that the existing unit could have accounted for prior to the change and that are also unrelated to the change) exceed the baseline actual emissions.

The commentator requested that § 127.201(g) (relating to general requirements) be deleted or suggested that the requirements be modified for consistency with the Federal regulation. The Board amended § 127.201(g) to include condensable emissions in determining whether a source is subject to the major source NSR program beginning January 1, 2011, or earlier date established by the EPA. After January 1, 2011, all sources need to include PM_{2.5} condensable emissions in applicability determinations.

F. *Summary of Final-form Rulemaking and Changes from Proposed to Final-form Rulemaking*

Summary of Final-form Rulemaking

The final-form rulemaking amends § 121.1 to add a definition of "PM_{2.5}" and amend the definitions of existing terms "regulated NSR pollutant" and "significant" to include the requirements for PM_{2.5} to support the amendments to Chapter 127. The final-form rulemaking deletes the definition of "maximum allowable emissions" because this term is no longer needed to support the existing requirements in Chapter 127, Subchapter E and this term is not used in the Federal NSR rules under 40 CFR 51.165

Section 127.201 is amended to add subsection (g). Under subsection (g), gaseous emissions that condense to form PM at ambient temperatures will be included in PM_{2.5} and PM-10 emissions in accordance with the following requirements: beginning January 1, 2011, or earlier date established by the Administrator, condensable PM shall be accounted for in applicability determinations for PM_{2.5} and PM-10 emission limitations established in a plan approval or operating permit issued under this chapter; compliance with emissions limitations for PM_{2.5} and PM-10 issued prior to January 1, 2011, or earlier date established by the Administrator, shall not be based on condensable PM unless required by the terms and conditions of a plan approval, operating permit or the SIP; and applicability determinations made prior to January 1, 2011, or earlier date established by the Administrator, without accounting for condensable PM shall not be considered in violation of this subchapter unless the applicable plan approval, operating permit or SIP includes requirements for condensable PM.

Section 127.201a (relating to measurements, abbreviations and acronyms) is amended to include "PM_{2.5}" and "PM-10." In addition, other minor editorial changes are finalized for this section.

Section 127.202 (relating to effective date) is amended to include references to PM_{2.5}.

Section 127.203(b)(1)(i) is amended to provide that the aggregated VOC or NO_x emissions shall meet the applicability requirements in paragraph (2) or (3).

Section 127.203a is amended to include the following requirements under subsection (a): the owner or operator of the facility shall include in the plan approval application the estimate of an emissions increase in a regulated NSR pollutant from the project; the owner or operator shall calculate an emissions increase in a regulated NSR pollutant from a project in accordance with paragraph (1); if the emissions increase from a project equals or exceeds the applicable emissions rate that is significant, the owner or operator shall calculate a net emissions increase in accordance with paragraph (1)(ii); and if the emissions increase from a project does not exceed the listed applicable emissions rate that is significant, the owner or operator shall calculate the net emissions increase in accordance with paragraph (2). In addition, minor editorial changes are finalized for this section as well.

Section 127.204 (relating to emissions subject to this subchapter) is amended to include some minor editorial changes.

Section 127.206(o) is amended to provide that except as provided under § 127.210, an ERC created for a regulated criteria pollutant shall only be used for offsetting or netting an emissions increase involving the same criteria pollutant unless approved in writing by the Department and the EPA. The "amnesty period" dates under § 127.206(r) regarding when emission reductions may be used to generate ERCs are amended to specify that emission reductions occurring at a facility after April 5, 2005, but prior to September 3, 2011, may be used to generate ERCs in accordance with this subchapter, if a complete ERC registry application is submitted to the Department by September 3, 2012. In addition, minor editorial changes are finalized for this section.

Section 127.210 is amended to remove interpollutant trading for PM_{2.5} and PM_{2.5} precursors in the final-form rulemaking due to the EPA's reconsideration of specific provisions of the final rule published at 73 FR 28321. Among other things, the amended provision provides that

the Department may, based on a technical assessment, establish interpollutant trading ratios for offsetting PM_{2.5} emissions or PM_{2.5} precursor emissions in a specific nonattainment area or geographic area in this Commonwealth. The interpollutant trading ratios shall be subject to public review and comment for at least 30 days prior to submission to the EPA for approval as a SIP revision. Section 127.210 of the final-form rulemaking is further amended to provide that if the EPA promulgates PM_{2.5} interpollutant trading ratios in 40 CFR Part 51 (relating to requirements for preparation, adoption, and submittal of implementation plans), the ratios shall be adopted and incorporated in the final-form regulation by reference.

Changes from Proposed to Final-form Rulemaking

In final-form § 121.1, the definition of “regulated NSR pollutant” has been modified between proposed and final-form rulemaking to add subparagraph (iii)(C) to provide that NO_x are presumed to be precursors to PM_{2.5} in PM_{2.5} nonattainment areas unless the Department demonstrates to the satisfaction of the Administrator of the EPA or the Administrator of the EPA determines that NO_x emissions from a source in a specific area are not a significant contributor to that area’s ambient PM_{2.5} concentrations.

The definition of “significant” has been modified between proposed and final-form rulemaking under PM_{2.5} emission rate to provide that 10 TPY of PM_{2.5}, 40 TPY of SO₂ and 40 TPY of NO_x are the applicable rates unless the Department demonstrates to the EPA’s satisfaction or the EPA determines that the NO_x emissions are not a significant contributor to PM_{2.5} nonattainment in the area.

Final-form § 127.201(g)(1) was modified between proposed and final-form rulemaking to provide that beginning January 1, 2011, or earlier date established by the Administrator, condensable PM shall be accounted for in applicability determinations for PM_{2.5} and PM-10 emission limitations established in a plan approval or operating permit issued under Chapter 127.

Final-form §§ 127.201a and 127.202 were not changed between proposed and final-form rulemaking.

Final-form § 127.203 was modified between proposed and final-form rulemaking to delete the proposed phrase “including the emissions from the proposed project” in subsection (b)(2) and (3).

Final-form § 127.203a(a)(2) was modified between proposed and final-form rulemaking to provide that as part of the plan approval application for a proposed de minimis emission increase, the owner or operator of the facility shall use subparagraphs (i) and (ii) to calculate the net emissions increase for a regulated NSR pollutant except PM_{2.5} and PM_{2.5} precursors.

Final-form § 127.204 was not changed between proposed and final-form rulemaking.

Final-form § 127.206(o) was modified between proposed and final-form rulemaking to provide that except as provided under § 127.210, an ERC created for a regulated criteria pollutant shall only be used for offsetting or netting an emissions increase involving the same criteria pollutant unless approved in writing by the Department and the EPA.

Section 127.210 is amended to remove interpollutant trading for PM_{2.5} and PM_{2.5} precursors in the final-form rulemaking due to the EPA’s reconsideration of specific provisions of the final rule published at 73 FR 28321. On July 15, 2008, the Natural Resources Defense Council

and the Sierra Club petitioned the EPA to reconsider and administratively stay specific parts of the final rule, “Implementation of the New Source Review (NSR) Program for Particulate Matter Less Than 2.5 Micrometers (PM_{2.5}),” published at 73 FR 28321. The petition objected to four parts of the final rule, including allowing states to use EPA-recommended PM_{2.5} precursor trading ratios to offset PM_{2.5} emissions increases in PM_{2.5} nonattainment areas. On January 16, 2009, the EPA denied the July 2008 petition. On February 10, 2009, the same petitioners submitted a second reconsideration request for the same four issues and another request for administrative stay. They also requested reconsideration of the January 16, 2009, denial letter.

The EPA granted the February 10, 2009, petition for reconsideration to allow for public comment on each of the four issues raised, including allowing states to use EPA-recommended PM_{2.5} precursor trading ratios to offset PM_{2.5} emissions increases in PM_{2.5} nonattainment areas. The EPA agreed to reconsider the trading ratios and granted the reconsideration of this policy on the grounds that the EPA failed to propose for public comment the EPA-recommended offset ratios in the preamble to the final rule published at 73 FR 28321. As a result, the existing “preferred” precursor offset ratios will no longer be considered presumptively approvable. That is, any precursor offset ratio submitted as part of the NSR SIP for a PM_{2.5} nonattainment area must be accompanied by a technical demonstration showing the suitability of the ratio for that particular nonattainment area. Therefore, the Board developed language for the final-form rulemaking that mirrors the EPA’s intent.

This language removes interpollutant trading for PM_{2.5} and PM_{2.5} precursors in the final-form rulemaking and amends § 127.210 to provide that the Department may, based on a technical assessment, establish interpollutant trading ratios for offsetting PM_{2.5} emissions or PM_{2.5} precursor emissions in a specific nonattainment area or geographic area in this Commonwealth. The interpollutant trading ratios shall be subject to public review and comment for at least 30 days prior to submission to the EPA for approval as a SIP revision. Section 127.210 of the final-form rulemaking is further amended to provide that if the EPA promulgates PM_{2.5} interpollutant trading ratios in 40 CFR Part 51, the ratios shall be adopted and incorporated in the final-form regulation by reference.

G. Benefits, Costs and Compliance

Benefits

Overall, the citizens of this Commonwealth will benefit from this final-form rulemaking because it will help to reduce emissions of PM_{2.5} from major stationary sources. Attaining and maintaining levels of PM_{2.5} below the health- and welfare-based NAAQS are important to reduce premature mortality and other health effects associated with PM_{2.5} exposure. Reductions in ambient levels of PM_{2.5} will also promote improved animal health and welfare, improved visibility, decreased soiling and materials damage and decreased damage to plants and trees.

Compliance Costs

The final-form rulemaking should not impose additional costs on the regulated community. If a facility triggers NSR for a regulated pollutant or precursor, the owner or operator of the facility shall demonstrate compliance by procuring emission offsets and achieving the LAER. Compliance costs will vary depending on the type of controls installed to satisfy the control technology requirements and the cost of emission offsets.

Compliance Assistance Plan

The Department plans to educate and assist the public and regulated community in understanding the newly revised requirements and how to comply with them. This will be accomplished through the Department’s ongoing compliance assistance program.

Paperwork Requirements

There are no additional paperwork requirements associated with this final-form rulemaking with which industry will need to comply.

H. Pollution Prevention

The Pollution Prevention Act of 1990 (42 U.S.C.A. §§ 13101–13109) established a National policy that promotes pollution prevention as the preferred means for achieving state environmental protection goals. The Department encourages pollution prevention, which is the reduction or elimination of pollution at its source, through the substitution of environmentally friendly materials, more efficient use of raw materials and the incorporation of energy efficiency strategies. Pollution prevention practices can provide greater environmental protection with greater efficiency because they can result in significant cost savings to facilities that permanently achieve or move beyond compliance. The final-form rulemaking does not directly promote a multimedia approach. The reduced levels of PM_{2.5}, however, will benefit water quality through reduced soiling and quantities of sediment that may run off into waterways. Reduced levels of PM_{2.5} will therefore promote improved aquatic life and biodiversity, as well as improved human, animal and plant life on land.

I. Sunset Review

These regulations will be reviewed in accordance with the sunset review schedule published by the Department to determine whether the regulations effectively fulfill the goals for which they were intended.

J. Regulatory Review

Under section 5(a) of the Regulatory Review Act (71 P.S. § 745.5(a)), on February 6, 2010, the Department submitted a copy of the notice of proposed rulemaking, published at 40 Pa.B. 703, to IRRC and the Chairpersons of the House and Senate Environmental Resources and Energy Committees for review and comment.

Under section 5(c) of the Regulatory Review Act, IRRC and the House and Senate 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 House and Senate Committees and the public.

Under section 5.1(j.2) of the Regulatory Review Act (71 P.S. § 745.5a(j.2)), on July 20, 2011, the final-form rulemaking was deemed approved by the House and Senate Committees. Under section 5.1(e) of the Regulatory Review Act, IRRC met on July 21, 2011, 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) At least a 60-day 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 40 Pa.B. 703.

(4) These regulations are necessary and appropriate for administration and enforcement of the authorizing acts identified in Section C of this preamble.

(5) These regulations are reasonably necessary to attain and maintain the PM_{2.5} NAAQS.

L. Order

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

(a) The regulations of the Department, 25 Pa. Code, Chapters 121 and 127 are amended by amending §§ 121.1, 127.201, 127.201a, 127.202, 127.203, 127.203a, 127.204, 127.206 and 127.210 to read as set forth in Annex A, with ellipses referring to existing text of the regulations.

(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 House and Senate 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 final-form rulemaking will be submitted to the EPA as an amendment to the Pennsylvania SIP.

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

MICHAEL L. KRANCER,
Chairperson

(Editor’s Note: For the text of the order of the Independent Regulatory Review Commission relating to this document, see 41 Pa.B. 4265 (August 6, 2011).)

Fiscal Note: Fiscal Note 7-450 remains valid for the final adoption of the subject regulations.

Annex A

**TITLE 25. ENVIRONMENTAL PROTECTION
PART I. DEPARTMENT OF ENVIRONMENTAL
PROTECTION**

**Subpart C. PROTECTION OF NATURAL
RESOURCES**

ARTICLE III. AIR RESOURCES

CHAPTER 121. GENERAL PROVISIONS

§ 121.1. Definitions.

The definitions in section 3 of the act (35 P.S. § 4003) apply to this article. In addition, the following words and terms, when used in this article, have the following meanings, unless the context clearly indicates otherwise:

* * * * *

Marine deck sealant or marine deck sealant primer—A sealant or sealant primer labeled for application to wooden marine decks.

Maximum heat input capacity—The maximum steady state heat input under which a source may be operated as

determined by its physical design and characteristics. Maximum heat input capacity is expressed in millions of British Thermal Units (MMBtu) per unit of time.

* * * * *

PEMS—Predictive emissions monitoring system—For purposes of Chapter 127, Subchapter E, all of the equipment necessary to monitor process and control device operational parameters including control device secondary voltages and electric currents, other information including gas flow rate, O₂ or CO₂ concentrations, and calculate and record the mass emissions rate in terms of mass per unit time, like lb/hr, on a continuous basis.

PM_{2.5}—Particulate matter with an aerodynamic diameter of less than or equal to a nominal 2.5 micrometer body as measured by the applicable reference method or an equivalent method.

PM-10—Particulate matter with an effective aerodynamic diameter of less than or equal to a nominal 10 micrometer body as measured by the applicable reference method or an equal method.

* * * * *

Regulated NSR pollutant—

- (i) NO_x or VOCs.
- (ii) A pollutant for which the EPA has promulgated a NAAQS.
- (iii) A pollutant that is a constituent or precursor of a pollutant listed under subparagraph (i) or (ii), if the constituent or precursor pollutant may only be regulated under NSR as part of regulation of the pollutant listed under subparagraph (i) or (ii). Precursors identified by the Administrator of the EPA for purposes of NSR are the following:

(A) VOCs and NO_x are precursors to ozone in all ozone nonattainment areas.

(B) SO₂ is a precursor to PM_{2.5} in all PM_{2.5} nonattainment areas.

(C) Nitrogen oxides are presumed to be precursors to PM_{2.5} in PM_{2.5} nonattainment areas unless the Department demonstrates to the satisfaction of the Administrator of the EPA or the Administrator of the EPA determines that NO_x emissions from a source in a specific area are not a significant contributor to that area's ambient PM_{2.5} concentrations.

(iv) PM_{2.5} and PM-10 emissions, including gaseous emissions from a facility or activity that condense to form particulate matter at ambient temperatures, as specified in § 127.201(g) (relating to general requirements).

* * * * *

Significant—

(i) In reference to a net emissions increase or the potential of a facility to emit one of the following pollutants at a rate of emissions that would equal or exceed the following emissions rates except as specified in subparagraphs (ii)—(v):

<i>Pollutant</i>	<i>Emissions Rate</i>
Carbon monoxide (CO):	100 TPY
Nitrogen oxides (NO _x):	40 TPY
Sulfur oxides (SO _x):	40 TPY
Ozone:	40 TPY of VOCs or 40 TPY of NO _x

Pollutant

Emissions Rate

Lead:	0.6 TPY
PM-10:	15 TPY
PM _{2.5} :	10 TPY of PM _{2.5} ; 40 TPY of SO ₂ ; 40 TPY of NO _x , unless the Department demonstrates to the EPA's satisfaction or the EPA determines that the NO _x emissions are not a significant contributor to PM _{2.5} nonattainment in the area.

(ii) The emissions rate that is significant for VOCs in a serious or severe ozone nonattainment area is 25 TPY.

(iii) For purposes of applying Chapter 127, Subchapter E to the owner or operator of modifications at a major facility located in an ozone nonattainment area or in an ozone transport region that emits or has the potential to emit NO_x, the emissions rate that is significant and other requirements for VOCs in subparagraphs (i) and (ii) apply to NO_x emissions.

(iv) The emissions rate that is significant for CO in a serious nonattainment area is 50 TPY if the EPA has determined that the affected facility contributes significantly to CO levels in that area.

(v) The emissions rate that is significant for VOCs in an extreme nonattainment area for ozone is any amount above zero.

* * * * *

CHAPTER 127. CONSTRUCTION, MODIFICATION, REACTIVATION AND OPERATION OF SOURCES

Subchapter E. NEW SOURCE REVIEW

§ 127.201. General requirements.

(a) A person may not cause or permit the construction or modification of an air contamination facility in a nonattainment area or having an impact on a nonattainment area unless the Department or an approved local air pollution control agency has determined that the requirements of this subchapter have been met.

(b) The nonattainment area classification that applies for offset trading and offset ratio selection shall be the highest classification designated by the EPA Administrator in 40 CFR 81.339 (relating to Pennsylvania) or by operation of law.

(c) The NSR requirements of this subchapter also apply to a facility located in an attainment area for ozone and within an ozone transport region that emits or has the potential to emit at least 50 TPY of VOC or 100 TPY of NO_x. A facility within either an unclassifiable/attainment area for ozone or within a marginal or incomplete data nonattainment area for ozone or within a basic nonattainment area for ozone and located within an ozone transport region will be considered a major facility and shall be subject to the requirements applicable to a major facility located in a moderate nonattainment area.

(d) The NSR requirements of this subchapter apply to an owner or operator of a facility at which a net emissions increase that is significant would occur as determined in accordance with § 127.203a (relating to applicability determination). If an emissions increase meets or exceeds the applicable emissions rate that is significant as defined in § 121.1 (relating to definitions),

the facility is subject to the permitting requirements under § 127.205 (relating to special permit requirements). An emissions increase subject to this subchapter must also be offset through the use of ERCs at the offset ratios specified in § 127.210 (relating to offset ratios). The generation, use, transfer and registration requirements for ERCs are listed in § § 127.206—127.209.

(e) In the event of an inconsistency between this rule and any other rule promulgated by the Department, the inconsistency must be resolved by the application of the more stringent provision, term, condition, method or rule.

(f) A facility located in Bucks, Chester, Delaware, Montgomery or Philadelphia Counties that emits or has the potential to emit at least 25 TPY of VOC or NO_x will be considered a major facility and shall be subject to the requirements applicable to a major facility located in a severe nonattainment area for ozone.

(g) PM_{2.5} and PM-10 emissions include gaseous emissions from a facility or activity that condense to form PM at ambient temperatures, if present, in accordance with the following requirements:

(1) Beginning January 1, 2011, or an earlier date established by the Administrator of the EPA, condensable PM shall be accounted for in applicability determinations and for PM_{2.5} and PM-10 emission limitations established in a plan approval or operating permit issued under this chapter.

(2) Compliance with emissions limitations for PM_{2.5} and PM-10 issued prior to January 1, 2011, or an earlier date established by the Administrator, may not be based on condensable PM unless required by the terms and conditions of a plan approval, operating permit or the SIP.

(3) Applicability determinations made prior to January 1, 2011, or an earlier date established by the Administrator, without accounting for condensable PM may not be considered in violation of this subchapter unless the applicable plan approval, operating permit or SIP includes requirements for condensable PM.

§ 127.201a. Measurements, abbreviations and acronyms.

Measurements, abbreviations and acronyms used in this subchapter are defined as follows:

- BACT—Best available control technology
- BAT—Best available technology
- CEMS—Continuous emissions monitoring system
- CERMS—Continuous emissions rate monitoring system
- CO—Carbon monoxide

- CPMS—Continuous parametric monitoring system
- ERC—Emission reduction credit
- LAER—Lowest achievable emission rate
- lb—Pounds
- MACT—Maximum achievable control technology
- MERC—Mobile emission reduction credit
- µg/m³—Micrograms per cubic meter
- mg/m³—Milligrams per cubic meter
- NO_x—Nitrogen oxides
- NSPS—New source performance standard
- NSR—New source review
- O₂—Oxygen
- PAL—Plantwide Applicability Limit
- PEMS—Predictive emissions monitoring system
- PM—Particulate matter
- PM_{2.5}—Particulate matter less than or equal to 2.5 micrometers
- PM-10—Particulate matter less than or equal to 10 micrometers
- RACT—Reasonably available control technology
- SO_x—Sulfur oxides
- TPY—Tons per year
- VOC—Volatile organic compound

§ 127.202. Effective date.

(a) The special permit requirements in this subchapter apply to an owner or operator of a facility to which a plan approval will be issued by the Department after May 19, 2007, except for PM_{2.5}, which will apply after September 3, 2011.

(b) For SO_x, PM_{2.5}, PM-10, lead and CO, this subchapter applies until a given nonattainment area is redesignated as an unclassifiable or attainment area. After a redesignation, special permit conditions remain effective until the Department approves a permit modification request and modifies the permit.

§ 127.203. Facilities subject to special permit requirements.

(a) This subchapter applies to the construction of a new major facility or modification at an existing major facility located in a nonattainment area, an ozone transport region or an attainment or unclassifiable area which impacts a nonattainment area in excess of the following significance levels:

<i>Pollutant</i>	<i>Averaging time</i>	
	<i>Annual</i>	<i>24 (hours)</i>
SO ₂	1.0 µg/m ³	5 µg/m ³
PM-10	1.0 µg/m ³	5 µg/m ³
CO	-	-
Lead	-	0.1 µg/m ³

<i>Averaging time</i>	<i>Significance levels</i>		
	<i>8 (hours)</i>	<i>3 (hours)</i>	<i>1 (hours)</i>
8 (hours)	-	25 µg/m ³	-
3 (hours)	-	-	-
1 (hours)	0.5 mg/m ³	-	2 mg/m ³
	-	-	-

(b) The following provisions apply to an owner or operator of a facility located in Bucks, Chester, Delaware, Montgomery or Philadelphia County or an area classified as a serious or severe ozone nonattainment area:

(1) The applicability requirements in § 127.203a (relating to applicability determination) apply except as pro-

vided by this subsection. The requirements of this subchapter apply if the aggregated emissions determined according to subparagraph (i) or (ii) exceed 25 TPY of NO_x or VOCs.

(i) The proposed increases and decreases in emissions are aggregated with the other increases in net emissions

occurring over a consecutive 5 calendar-year period, which includes the calendar year of the modification or addition which results in the emissions increase. The aggregated VOC or NO_x emissions must meet the applicability requirements in paragraph (2) or (3).

(ii) The proposed increases and decreases in emissions are aggregated with other increases and decreases which occurred within 10 years prior to the date of submission of a complete plan approval application. If the aggregated emissions increase calculated using this subparagraph meets or exceeds the emissions rate that is significant, only the emissions offset requirements in § 127.205(3) (relating to special permit requirements) apply to the aggregated emissions.

(2) An increase in emissions of VOCs or NO_x, other than a de minimis emission increase, from a discrete operation, unit or other pollutant emitting activity at a facility with a potential to emit less than 100 TPY of VOCs or NO_x, is considered a modification unless the owner or operator elects to offset the increase by a greater reduction in emissions of VOCs or NO_x from other operations, units or activities within the facility at an internal offset ratio of at least 1.3 to 1. If the owner or operator does not elect to offset at the required ratio, the increase is considered a modification and the BACT requirement is substituted for LAER. The owner or operator of the facility shall comply with all applicable requirements including the BAT requirement.

(3) An increase in emissions of VOCs or NO_x, other than a de minimis emission increase, from a discrete operation, unit or other pollutant emitting activity at a facility with a potential to emit of 100 TPY or more, is considered a modification unless the owner or operator elects to offset the increase by a greater reduction in emissions of VOCs or NO_x from other operations, units or activities within the facility at an internal offset ratio of at least 1.3 to 1. If the owner or operator elects to offset at the required ratio, the LAER requirement does not apply. The owner or operator of the facility shall comply with the applicable requirements including the BAT requirement.

(c) The NSR requirements of this subchapter apply to an owner or operator of:

(1) A facility at which the net emissions increase as determined under this subchapter meets or exceeds the applicable emissions rate that is significant. A decrease in a facility's emissions will not qualify as a decrease for purposes of this subchapter unless the ERC provisions in § 127.207(1) and (3)—(7) (relating to creditable emissions decrease or ERC generation and creation) are met.

(2) A major facility subject to this subchapter which was deactivated for a period in excess of 1 year and is not in compliance with the reactivation requirements of § 127.215 (relating to reactivation).

(d) The requirements of this subchapter which apply to VOC emissions from major facilities and major modifications apply to NO_x emissions from major facilities and major modifications in an ozone transport region or an ozone nonattainment area classified as marginal, basic, moderate, serious, severe or extreme, except in areas which the EPA has determined that additional reductions of NO_x will not produce net air quality benefits.

(e) The following provisions apply to an owner or operator of a major facility subject to this subchapter:

(1) Approval to construct or modify an air contamination source or facility does not relieve an owner or

operator of the responsibility to comply fully with applicable provisions of the SIP and other requirements under local, State or Federal law.

(2) If a particular source or modification becomes a major facility or major modification solely by virtue of a relaxation in an enforcement limitation which was established after August 7, 1980, on the capacity of the source or modification to emit a pollutant including a restriction on hours of operation, the requirements of this subchapter also apply to the source or modification as though construction had not yet commenced on the source or modification.

(f) The NSR requirements of this subchapter do not apply to an owner or operator of a major facility at which:

(1) A physical change or change in the method of operation still maintains its total facility-wide emissions below the PAL, meets the requirements in § 127.218 (relating to PALs) and complies with the PAL permit.

(2) A project results in a net emissions increase which does not meet or exceed the applicable emissions rate that is significant.

(3) A proposed de minimis increase results in a net emissions increase calculated using emissions increases and decreases which occurred within 10 years prior to the date of submission of a complete plan approval application, which does not meet or exceed the emissions rate that is significant.

(4) Construction of a new facility or a project at an existing major facility located in an attainment or unclassifiable area does not impact a nonattainment area for the applicable pollutant in excess of the significance level specified in § 127.203a.

§ 127.203a. Applicability determination.

(a) The Department will conduct an applicability determination during its review of a plan approval application for the construction of a new major facility or modification at an existing major facility under this section. The owner or operator of the facility shall include in the plan approval application the estimate of an emissions increase in a regulated NSR pollutant from the project. The owner or operator shall calculate an emissions increase in a regulated NSR pollutant from a project in accordance with paragraph (1). The owner or operator shall calculate a net emissions increase in accordance with paragraph (1)(ii), if the emissions increase from a project equals or exceeds the applicable emissions rate that is "significant" as defined in § 121.1 (relating to definitions). If the emissions increase from a project does not exceed the listed applicable emissions rate that is significant, the owner or operator shall calculate the net emissions increase in accordance with paragraph (2).

(1) As part of the plan approval application, the owner or operator of the facility shall calculate whether a significant emissions increase and a significant net emissions increase will occur as a result of a physical change or change in the method of operation. The owner or operator of the facility shall use the procedures in subparagraph (i) to calculate the emissions increase in a regulated NSR pollutant due to the project, and the procedures in subparagraph (ii) to calculate the net emissions increase in a regulated NSR pollutant. A project is a major modification for a regulated NSR pollutant if it causes two types of emissions increases—a significant emissions increase and a significant net emissions increase. If the project causes a significant emis-

sions increase, the project is a major modification if it also results in a significant net emissions increase.

(i) The emissions increase in a regulated NSR pollutant due to the project will be the sum of the following:

(A) For existing emissions units, an emissions increase of a regulated NSR pollutant is the difference between the projected actual emissions and the baseline actual emissions for each unit, as determined in paragraphs (4) and (5). When calculating an increase in emissions that results from the particular project, exclude that portion of the unit's emissions following completion of the project that existing units could have accommodated during the consecutive 24-month period used to establish the baseline actual emissions and that is also unrelated to the particular project, including all increased utilization due to product demand growth as specified in paragraph (5)(i)(C).

(B) For new emissions units, the emissions increase of a regulated NSR pollutant will be the potential to emit from each new emissions unit.

(ii) The net emissions increase for a regulated NSR pollutant emitted by a major facility will be the amount by which the sum of the following exceeds zero:

(A) The increase in emissions from a physical change or change in the method of operation at a major facility as calculated under subparagraph (i).

(B) Other increases and decreases in actual emissions at the major facility that are contemporaneous with the project and are otherwise creditable.

(I) An increase or decrease in actual emissions is contemporaneous with the increase from the particular change only if it occurs between the date 5 years before construction on the project commences and the date that construction on the project is completed.

(II) Baseline actual emissions for calculating increases are determined as specified under paragraph (4), except that paragraph (4)(i)(D) does not apply.

(2) As part of the plan approval application for a proposed de minimis emission increase, the owner or operator of the facility shall use subparagraphs (i) and (ii) to calculate the net emissions increase for a regulated NSR pollutant except PM_{2.5} and PM_{2.5} precursors. For a proposed de minimis increase in which the net emissions increase calculated using subparagraphs (i) and (ii) meets or exceeds the emissions rate that is significant, only the emissions offset requirements in this subchapter apply to the net emissions increase.

(i) The net emissions increase is the sum of the proposed de minimis increase due to the project and the previously determined increases in potential emissions or actual emissions and decreases in actual emissions that are contemporaneous with the project.

(ii) An increase or decrease is contemporaneous if it occurred within 10 years prior to the date of the Department's receipt of a complete plan approval application.

* * * * *

§ 127.204. Emissions subject to this subchapter.

(a) In determining whether a project exceeds the emission rate that is significant or the significance levels specified in § 127.203 (relating to facilities subject to special permit requirements), the potential to emit, actual emissions and actual emissions increase shall be determined by aggregating the emissions or emissions increases from contiguous or adjacent properties under the

common control of a person or entity. The aggregation must include emissions resulting from the following: flue emissions, stack and additional fugitive emissions, material transfer, use of parking lots and paved and unpaved roads on the facility property, storage piles and other emission generating activities resulting from operation of the new or modified facility.

(b) Secondary emissions may not be considered in determining whether a facility meets the requirements of this subchapter. If a facility is subject to this subchapter on the basis of the direct emissions from the facility, the conditions of § 127.205 (relating to special permit requirements) shall also be met for secondary emissions.

§ 127.206. ERC general requirements.

* * * * *

(o) Except as provided under § 127.210 (relating to offset ratios), an ERC created for a regulated criteria pollutant shall only be used for offsetting or netting an emissions increase involving the same criteria pollutant unless approved in writing by the Department and the EPA.

(p) The owner or operator of a source or facility which has registered ERCs with the Department may not exceed the emissions limitation or violate other permit conditions established in generating the ERCs.

(q) ERCs may not be generated for emissions in excess of those previously identified in required emission statements and for which applicable emission fees have been paid.

(r) Emission reductions occurring at a facility after April 5, 2005, but prior to September 3, 2011, may be used to generate ERCs in accordance with this subchapter, if a complete ERC registry application is submitted to the Department by September 3, 2012.

§ 127.210. Offset ratios.

(a) The emissions offset ratios for NSR purposes and ERC transactions subject to the requirements of this subchapter must be in an amount equal to or greater than the ratios specified in the following table:

Required Emission Offsets For Existing Sources, Expressed in Tons per Year

<i>Pollutant / Area</i>	<i>Flue Emissions</i>	<i>Fugitive Emissions</i>
PM-10 and SO _x	1.3:1	5:1
Volatile Organic Compounds		
Ozone Classification Areas		
Severe Areas	1.3:1	1.3:1
Serious Areas	1.2:1	1.3:1
Moderate Areas	1.15:1	1.3:1
Marginal/Incomplete Data Areas	1.15:1	1.3:1
Transport Region	1.15:1	1.3:1
NO _x		
Ozone Classification Areas		
Severe Areas	1.3:1	1.3:1
Serious Areas	1.2:1	1.2:1
Moderate Areas	1.15:1	1.15:1
Marginal/Incomplete Data Areas	1.15:1	1.15:1
Transport Region	1.15:1	1.15:1
Carbon Monoxide		
Primary Nonattainment Areas	1.1:1	1.1:1

<i>Pollutant/Area</i>	<i>Flue Emissions</i>	<i>Fugitive Emissions</i>
Lead	1.1:1	1.1:1
PM _{2.5} Nonattainment Area		
PM _{2.5} Precursors	1:1	1:1
SO ₂	1:1	1:1
NO _x	1:1	1:1

(b) In complying with the emissions offset requirements of this subchapter, the emission offsets obtained shall be of the same NSR regulated pollutant unless interpollutant offsetting is authorized for a particular pollutant in accordance with subsection (c).

(c) The Department may, based on a technical assessment, establish interpollutant trading ratios for offsetting PM_{2.5} emissions or PM_{2.5} precursor emissions in a specific nonattainment area or geographic area in this Commonwealth. The interpollutant trading ratios shall be subject to public review and comment for at least 30 days prior to submission to the EPA for approval as a SIP revision.

(d) If the EPA promulgates PM_{2.5} interpollutant trading ratios in 40 CFR Part 51 (relating to requirements for preparation, adoption, and submittal of implementation plans), the ratios will be adopted and incorporated by reference.

[Pa.B. Doc. No. 11-1502. Filed for public inspection September 2, 2011, 9:00 a.m.]

Title 67—TRANSPORTATION

DEPARTMENT OF TRANSPORTATION Address Updates

The Department of Transportation gives notice of administrative corrections needed in various sections of 67 Pa. Code. The addresses for several Department of Transportation offices as listed in 67 Pa. Code are no longer current. The following sections provide the correct contact information.

BARRY J. SCHOCH, P.E.,
Secretary

(Editor's Note: The editorial changes to the following sections of 67 Pa. Code do not substantively change the text. These sections will be updated in the November 2011 update to the Pennsylvania Code.)

67 Pa. Code § 179.1. Definitions.

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

* * * * *

Central Permit Office—The office which administers this chapter, located at:

Department of Transportation
Central Permit Office
400 North Street, 6th Floor
Harrisburg, Pennsylvania 17120-0041

* * * * *

67 Pa. Code § 179.8. Permit application procedure.

Except as otherwise specified in this chapter, a permit application shall be made to the district or county office

having jurisdiction over the point of origin or the point of destination in this Commonwealth. An application shall be submitted in the name of the responsible motor carrier and shall be properly completed.

* * * * *

(6) The applicant may appeal a denial of a permit by the Department under 2 Pa.C.S. §§ 501—508 (relating to practice and procedure of Commonwealth agencies), by submitting a written request for a hearing within 30 days after service of the document containing the denial, to the Commonwealth of Pennsylvania, Department of Transportation, Administrative Docket Clerk, Commonwealth Keystone Building, 400 North Street, 9th Floor, Harrisburg, Pennsylvania 17120-0096. A filing fee, as prescribed under Chapter 491 (relating to administrative practice and procedure), made payable to the “Commonwealth of Pennsylvania,” shall accompany each request.

* * * * *

67 Pa. Code § 179.15. Telecommunications vendor services.

The Department will allow a person to install and maintain telecommunications equipment, such as telefacsimile, in the district offices, as specified in this section.

* * * * *

TABLE 15-1

<i>District</i>	<i>Annual Fee</i>	<i>Number of Permits Annual Fee Represents</i>
1-0—Oil City	\$10,000	5,000
2-0—Clearfield	2,000	1,000
3-0—Montoursville	4,000	2,000
4-0—Dunmore	6,000	3,000
5-0—Allentown	6,000	3,000
6-0—King of Prussia	10,000	5,000
8-0—Harrisburg	14,000	7,000
9-0—Hollidaysburg	4,000	2,000
10-0—Indiana	4,000	2,000
11-0—Pittsburgh	6,000	3,000
12-0—Uniontown	6,000	3,000
Total—All Districts	\$72,000	36,000

67 Pa. Code § 202.4. Appeal of denial of application.

If an application is denied, the applicant may appeal the decision of the Department of Transportation (Department) by submitting, within 20 days of the Department's decision, a written request for an administrative hearing to the Commonwealth of Pennsylvania, Department of Transportation, Administrative Docket Clerk, Commonwealth Keystone Building, 400 North Street, 9th Floor, Harrisburg, Pennsylvania 17120-0096. The applicant's written request shall be accompanied by a \$100 filing fee.

67 Pa. Code § 441.1. Definitions.

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

* * * * *

Central Permit Office—The office for the control of issuance of permits located at:

Department of Transportation
Central Permit Office
400 North Street, 6th Floor
Harrisburg, Pennsylvania 17120-0041

* * * * *

Chapter 447. Hazardous Walking Routes

APPENDIX A

<i>Engineering District</i>	<i>County</i>
Engineering District 1-0 255 Elm Street P. O. Box 398 Oil City, Pennsylvania 16301	Crawford Erie Forest Mercer Venango Warren
Engineering District 2-0 1924-30 Daisy Street P. O. Box 342 Clearfield, Pennsylvania 16830	Cameron Centre Clearfield Clinton Elk Juniata McKean Mifflin Potter
Engineering District 3-0 715 Jordan Avenue P. O. Box 218 Montoursville, Pennsylvania 17754	Bradford Columbia Lycoming Montour Northumberland Snyder Sullivan Tioga Union
Engineering District 4-0 55 Keystone Industrial Park Dunmore, Pennsylvania 18512	Lackawanna Luzerne Pike Susquehanna Wayne Wyoming
Engineering District 5-0 1002 Hamilton Street Allentown, Pennsylvania 18101	Berks Carbon Lehigh Monroe Northampton Schuylkill
Engineering District 6-0 7000 Geerdes Boulevard King of Prussia, Pennsylvania 19406	Bucks Chester Delaware Montgomery Philadelphia
Engineering District 8-0 2140 Herr Street Harrisburg, Pennsylvania 17103-1699	Adams Cumberland Dauphin Franklin Lancaster Lebanon Perry York
Engineering District 9-0 1620 North Juniata Street Hollidaysburg, Pennsylvania 16648	Bedford Blair Cambria Fulton Huntingdon Somerset
Engineering District 10-0 2550 Oakland Avenue P. O. Box 429 Indiana, Pennsylvania 15701-0429	Armstrong Butler Clarion Indiana Jefferson

<i>Engineering District</i>	<i>County</i>
Engineering District 11-0 45 Thoms Run Road Bridgeville, Pennsylvania 15017	Allegheny Beaver Lawrence
Engineering District 12-0 825 N. Gallatin Avenue Extension P. O. Box 459 Uniontown, Pennsylvania 15401	Fayette Green Washington Westmoreland

67 Pa. Code § 457.6. Classification appeals procedure.

The following procedures apply to classification appeals:

* * * * *

(4) Classification hearings will be held in conformity with 1 Pa. Code Part II (relating to general rules of administrative practice and procedure) as supplemented by Chapter 491 (relating to administrative practice and procedure). As set forth in § 491.4 (relating to institution of proceedings), requests for classification hearings, and all other papers relating to the case, shall be filed with the Administrative Docket Clerk at the following address:

Commonwealth of Pennsylvania, Department of Transportation, Administrative Docket Clerk, Commonwealth Keystone Building, 400 North Street, 9th Floor, Harrisburg, Pennsylvania 17120-0096.

* * * * *

67 Pa. Code § 457.14. Debarment appeals procedure.

* * * * *

(b) *Conformity with administrative practice and procedures; requests for hearing.* Debarment hearings will be in conformity with 1 Pa. Code Part II (relating to general rules of administrative practice and procedure), as supplemented by Chapter 491 (relating to administrative practice and procedure). A filing fee is not required for a debarment hearing. In § 491.3 (relating to request for hearing), requests for debarment hearings and all other papers relating to the case shall be filed with the Department's Administrative Docket Clerk at the following address:

Commonwealth of Pennsylvania, Department of Transportation, Administrative Docket Clerk, Commonwealth Keystone Building, 400 North Street, 9th Floor, Harrisburg, Pennsylvania 17120-0096.

* * * * *

67 Pa. Code § 459.1. Definitions.

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

* * * * *

Central permit office—The office which administers this chapter, located at: Department of Transportation, Central Permit Office, 400 North Street, 6th Floor, Harrisburg, Pennsylvania 17120-0041.

* * * * *

67 Pa. Code § 459.3. Permit application procedure.

* * * * *

(k) *Right of appeal.* The applicant may appeal an adjudication of the Department under 2 Pa.C.S. §§ 501—508 and 701—704 (relating to the Administrative Agency Law), by submitting a written request for a hearing within 30 days after service of the document containing

the adjudication, to the Commonwealth of Pennsylvania, Department of Transportation, Administrative Docket Clerk, Commonwealth Keystone Building, 400 North Street, 9th Floor, Harrisburg, Pennsylvania 17120-0096. A filing fee of \$50, made payable to the "Commonwealth of Pennsylvania," shall accompany each request.

* * * * *

67 Pa. Code § 493.3. Service of legal process and legal pleadings.

(a) Legal process in a matter involving the Secretary of Transportation or the Department of Transportation shall be served only upon, and accepted only by, a staff attorney at one of the following Department Legal Offices:

* * * * *

(2) Office of Chief Counsel
Pennsylvania Department of Transportation
Western Region
301 Fifth Avenue, Suite 210
Pittsburgh, PA 15222
Phone: (412) 565-7555

* * * * *

[Pa.B. Doc. No. 11-1503. Filed for public inspection September 2, 2011, 9:00 a.m.]
