

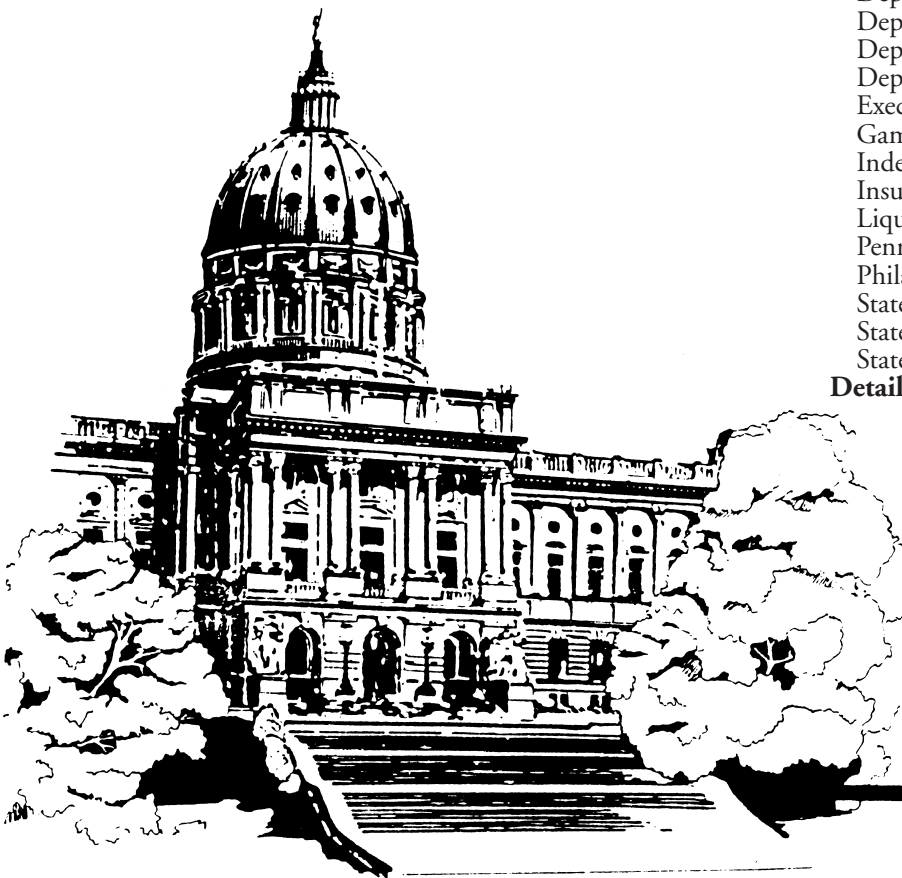
PENNSYLVANIA BULLETIN

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The Governor
The General Assembly
The Courts
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Department of Banking
Department of Conservation and Natural Resources
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Department of General Services
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Insurance Department
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**Latest Pennsylvania Code Reporters
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No. 453, August 2012

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Pennsylvania Bulletin

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

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

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

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

Adoption, Amendment or Repeal of Regulations

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

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

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

wishes to adopt changes to the Notice of Proposed Rulemaking to enlarge the scope, it must repropose.

Citation to the *Pennsylvania Bulletin*

Cite material in the *Pennsylvania Bulletin* by volume number, a page number and date. Example: Volume 1, *Pennsylvania Bulletin*, page 801, January 9, 1971 (short form: 1 Pa.B. 801 (January 9, 1971)).

Pennsylvania Code

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

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

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

How to Find Documents

Search for your area of interest in the *Pennsylvania Code*. The *Pennsylvania Code* is available at www.pacode.com.

Source Notes give you the history of the documents. To see if there have been recent changes, not yet codified, check the List of *Pennsylvania Code* Chapters Affected in the most recent issue of the *Pennsylvania Bulletin*.

A chronological table of the history of *Pennsylvania Code* sections may be found at www.legis.state.pa.us.

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

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Printing Format

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

Fiscal Notes

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

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

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List of Pa. Code Chapters Affected

The following numerical guide is a list of the chapters of each title of the *Pennsylvania Code* affected by documents published in the *Pennsylvania Bulletin* during 2012.

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THE GOVERNOR

Title 4—ADMINISTRATION

PART I. GOVERNOR'S OFFICE

[4 PA. CODE CHS. 5 AND 6]

[EXECUTIVE ORDER NO. 2012-10]

Governor's Advisory Commission on Latino Affairs

July 9, 2012

Whereas, Latinos in Pennsylvania make unique, diverse and valuable contributions to the culture, society and economy of Pennsylvania, which have a beneficial impact on life in the Commonwealth; and

Whereas, the Commonwealth is committed to providing equality and opportunity for all its citizens, including increased access for Latinos to civic, economic and educational opportunities in Pennsylvania; and

Whereas, it will benefit the Commonwealth to define and address the unique contributions, needs and concerns of the Latino community, in order to improve the lives of all Pennsylvanians.

Now, Therefore, I, Tom Corbett, Governor of the Commonwealth of Pennsylvania, by virtue of the authority vested in me by the Constitution of the Commonwealth of Pennsylvania and other laws, do hereby reestablish the Governor's Advisory Commission on Latino Affairs as the Commonwealth's advocate agency for Latinos as herein set forth.



Governor

Fiscal Note: 2012-10. No fiscal impact; (8) recommends adoption.

Annex A

TITLE 4. ADMINISTRATION

PART I. GOVERNOR'S OFFICE

CHAPTER 5. COUNCILS AND COMMITTEES

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§ 6.521. Functions.

The Governor's Advisory Commission on Latino Affairs shall:

(1) Advise the Governor on policies, procedures, legislation and regulations that impact the Latino community.

(2) Develop, review and recommend to the Governor policies in the areas of health and human services, housing, education, employment, business formation and other relevant areas which impact the Latino community.

(3) Provide appropriate assistance and advice to the Pennsylvania Minority Business Development Authority and work with the Bureau of Equal Employment Opportunity within the Office of Human Resources Management in the Governor's Office of Administration to strengthen the enforcement of the Commonwealth's antidiscriminatory hiring, retention and promotion policies.

(4) Serve as a liaison to Federal, State and local agencies to ensure that programs impacting the Latino community are effectively utilized and promoted.

(5) Serve as a resource for community groups and provide forums for developing strategies and programs that will expand and enhance the civic, social, educational, cultural and economic status of the Latino community.

(6) Identify programs, scholarships, mentoring programs, sources of funding or other resources for the benefit and advancement of Latinos.

(7) Promote the cultural arts of the Latino community throughout this Commonwealth.

§ 6.522. Composition.

(a) The Governor's Advisory Commission on Latino Affairs (Commission) shall consist of no more than 25 members appointed by the Governor who are representatives of the Latino community in this Commonwealth or others who have an interest in the success of the Latino community and provide value to the work of the Commission.

(b) The Governor will designate one Commission member or the Executive Director of the Commission to serve as chairperson. The Governor may designate one Commission member or the Executive Director of the Commission to serve as vice-chairperson of the Commission. The chairperson and vice-chairperson serve at the pleasure of the Governor.

(c) The Governor will appoint an Executive Director of the Commission who serves at the pleasure of the Governor and who may be a member of the Commission.

§ 6.523. Terms of membership.

(a) Members will be appointed for terms of 2 years and continue to serve until successors are appointed. A member may be reappointed for one or more additional terms. Members serve at the pleasure of the Governor.

(b) If a vacancy occurs on the Governor's Advisory Commission on Latino Affairs (Commission), the Governor will appoint a successor. The successor will be appointed for a full 2-year term. A successor may be reappointed for one or more additional terms.

(c) A member who is absent from two consecutive meetings of the Commission, without excuse, shall forfeit membership on the Commission.

§ 6.524. Compensation.

Members of the Governor's Advisory Commission on Latino Affairs will not receive compensation for their service except that members may be reimbursed for travel in accordance with Commonwealth policy. See Chapter 40 (relating to travel and subsistence).

§ 6.525. Relationship with other agencies.

Agencies under the Governor's jurisdiction shall cooperate with and provide assistance and support as needed by the Governor's Advisory Commission on Latino Affairs to carry out its functions effectively.

§ 6.526. Reports.

The Governor's Advisory Commission on Latino Affairs may submit reports to the Governor or the Governor's designee, as it deems necessary, on issues affecting Latinos in this Commonwealth.

§ 6.527. Procedures.

(a) The Governor's Advisory Commission on Latino Affairs (Commission) is authorized to establish subcommittees and rules and procedures for the effective implementation of its functions consistent with this subchapter. Subcommittees may include advisory nonmembers, if approved by the Commission chairperson.

(b) A majority of the Commissioners serving at any time constitutes a quorum.

§ 6.528. Effective date.

This subchapter takes effect July 9, 2012, and remains in effect unless revised or rescinded by the Governor.

§ 6.529. Rescission.

Executive Order 2003-9 is rescinded.

[Pa.B. Doc. No. 12-1498. Filed for public inspection August 10, 2012, 9:00 a.m.]

PART I. GOVERNOR'S OFFICE
[4 PA. CODE CHS. 7 AND 7a]
[EXECUTIVE ORDER NO. 2012-11]
Permit Decision Guarantee for the Department of Environmental Protection

July 24, 2012

Whereas, it is the Commonwealth's constitutional responsibility to conserve and maintain Pennsylvania's public natural resources for generations yet to come; and

Whereas, the Commonwealth fulfills this mission in part through the granting of permits and other approvals ("permits") by the Department of Environmental Protection (the "Department") for specific regulated activities; and

Whereas, the Department's permitting function places significant responsibilities and obligations on the regulated community—individuals, small businesses, local governments and industry alike; and

Whereas, delays in making permitting decisions often have significant impacts on the individual, government and business planning processes and do not enhance the ability of the Department to protect the Commonwealth's natural resources; and

Whereas, both the Commonwealth and its diverse population have a vital interest in timely answers within reasonable time frames, but not at the expense of public comment and good environmental decisions; and

Whereas, permit applicants have the responsibility to submit applications that are complete and meet all requirements and include all information necessary for the agency to make a decision; and

Whereas, Executive Order 1995-5 Money-Back Guarantee Permit Review Program for the Department of Environmental Protection issued by Governor Thomas J. Ridge on August 23, 1995, established definitive processing times for permit applications under review by the Department; and

Whereas, the Department has identified further improvements to its permitting processes that can build on the successes of Executive Order 1995-5, Money-Back Guarantee Permit Review Program for the Department of Environmental Protection.

Now, Therefore, I, Tom Corbett, Governor of the Commonwealth of Pennsylvania, by virtue of the authority vested in me by the Constitution of the Commonwealth of Pennsylvania and other laws, do hereby establish the Permit Decision Guarantee for the Department of Environmental Protection, as hereinafter set forth.



Governor

Fiscal Note: 2012-11. No fiscal impact; (8) recommends adoption.

Annex A

TITLE 4. ADMINISTRATION

PART I. GOVERNOR'S OFFICE

CHAPTER 7. MISCELLANEOUS PROVISIONS

Subchapter RR. (Reserved)

Sec.
7.651—7.659. (Reserved).

CHAPTER 7a. ADDITIONAL MISCELLANEOUS PROVISIONS

**Subchapter H. PERMIT DECISION GUARANTEE FOR THE
DEPARTMENT OF ENVIRONMENTAL PROTECTION**

Sec.
7a.91. Types of permits covered.
7a.92. Applicant responsibilities.
7a.93. Department of Environmental Protection responsibilities.
7a.94. Coordinated permits.
7a.95. Staff evaluation.
7a.96. Information technology tools.
7a.97. Effective date.
7a.98. Termination date.
7a.99. Rescission.

§ 7a.91. Types of permits covered.

This subchapter authorizes the Department of Environmental Protection (Department) to establish by policy, using an open and participatory process, the elements of the Permit Decision Guarantee Program and the specific permits covered by the permit decision guarantee. Permits may include those with the most direct impacts on protection of public health, safety and the environment, as well as economic development. The Department will periodically revise and republish the policy as needed. Notice of these actions will be published in the *Pennsylvania Bulletin*.

§ 7a.92. Applicant responsibilities.

The permit applicant is responsible for submitting an application that contains the information needed by the Department of Environmental Protection (Department) to make a decision and meets applicable environmental statutory and regulatory requirements. The applicant is encouraged to schedule a preapplication conference with the Department as soon as practicable to discuss the permitting needs for the total project.

§ 7a.93. Department of Environmental Protection responsibilities.

The Department of Environmental Protection (Department) will establish clear guidance that describes permit application requirements. The permit decision guarantee policy (policy) developed by the Department for implementation of this subchapter must include a predictable processing time for each permit application covered by the permit decision guarantee. The policy must establish that the Department will strive to process environmentally-protective applications as expeditiously as possible but no longer than the established processing times. The policy must indicate that only applications that are complete and technically adequate are eligible for the permit decision guarantee and that incomplete or severely deficient applications will be returned to the applicant. The processing time is the

total number of business days beginning with the receipt of an application and ending with the final action by the Department.

§ 7a.94. Coordinated permits.

The Department of Environmental Protection (Department) will coordinate the review of applications for projects with multiple permits. The Department will develop and update, as needed, a permit coordination policy that is consistent with the permit decision guarantee.

§ 7a.95. Staff evaluation.

The Department of Environmental Protection will establish performance standards for staff engaged in permit reviews and consider compliance with the review deadlines a factor in job performance evaluations.

§ 7a.96. Information technology tools.

The Department of Environmental Protection will develop, implement and improve available information tools to include an automated system, when possible, for notifications, permit applications, form letters regarding application completeness and technical deficiency, and general permit registration notifications.

§ 7a.97. Effective date.

This subchapter takes effect July 24, 2012. Applications received by the Department of Environmental Protection on or after July 24, 2012, are included in the Permit Decision Guarantee Program.

§ 7a.98. Termination date.

This subchapter remains in effect until amended or rescinded by the Governor.

§ 7a.99. Rescission.

Executive Order 1995-5 is rescinded.

[Pa.B. Doc. No. 12-1499. Filed for public inspection August 10, 2012, 9:00 a.m.]

THE GENERAL ASSEMBLY

Recent Actions during the 2012 Regular Session of the General Assembly

The following is a summary of recent actions of the General Assembly during the 2012 Regular Session

<i>Doc. No.</i>	<i>Date of Action</i>	<i>Bill Number</i>	<i>Printer's Number</i>	<i>Effective Date</i>	<i>Subject Matter</i>
2012 General Acts of Regular Session Enacted—Act 075 through 143					
075	Jun 29	HB1264	PN3643	60 days	Judicial Code (42 Pa.C.S.)—expert testimony in certain criminal proceedings
076	Jun 29	HB1349	PN3773	60 days	Regulatory Review Act—legislative intent and proposed regulations and procedures for review
077	Jun 29	HB2027	PN2776	60 days	Kyle D. Pagerly Memorial Highway—designation
078	Jun 29	SB0866	PN2270	Immediately	Health and Safety (35 Pa.C.S.)—Volunteer Companies Loan Fund, scope of chapter, establishment and award of grants, additional funding, allocation of appropriated funds and for expiration of authority and editorial changes
079	Jun 30	HB1026	PN3876	Immediately*	Judicial Code (42 Pa.C.S.)—oaths and acknowledgements, senior judge operational support grants and expiration of provisions relating to access to justice
080	Jun 30	HB1261	PN3884	Immediately*	Public Welfare Code—omnibus amendments
081	Jun 30	HB1893	PN3877	Immediately	Crimes Code (18 Pa.C.S.)—gambling devices, gambling, etc.
082	Jun 30	HB1901	PN3885	Immediately*	Public School Code of 1949—omnibus amendments
083	Jun 30	HB1934	PN3589	60 days	Municipal Waste Planning, Recycling and Waste Reduction Act—municipal implementation of recycling programs
084	Jul 2	HB0254	PN3874	Immediately*	Vehicle Code (75 Pa.C.S.)—display of registration plate, learners' permits, automated red light enforcement systems in certain municipalities and specific powers of department and local authorities
085	Jul 2	HB0761	PN3894	Immediately*	Tax Reform Code of 1971—omnibus amendments
086	Jul 2	HB2438	PN3659	Immediately*	Department of Banking Code—conflicts of interest and penalty, reorganizing the Department of Banking and the Pennsylvania Securities Commission and related repeals
087	Jul 2	SB1263	PN2351	Immediately	Fiscal Code—omnibus amendments
088	Jul 5	HB0003	PN3769	Immediately*	Transportation (74 Pa.C.S.)—public-private transportation partnerships and a related repeal
089	Jul 5	HB0017	PN2466	60 days	Robert V. Cotton Bridge—designation
090	Jul 5	HB0048	PN3846	Immediately	Medical Practice Act of 1985—licensure of prosthetists, orthotists, pedorthists and orthotic fitters
091	Jul 5	HB0075	PN3827	Immediately*	Crimes Code (18 Pa.C.S.) and Judicial Code (42 Pa.C.S.)—omnibus amendments
092	Jul 5	HB0197	PN3834	Immediately*	General Local Government Code (53 Pa.C.S.)—review of agreements by Local Government Commission and hotel room rental

<i>Doc. No.</i>	<i>Date of Action</i>	<i>Bill Number</i>	<i>Printer's Number</i>	<i>Effective Date</i>	<i>Subject Matter</i>
093	Jul 5	HB0208	PN3491	60 days	Vehicle Code (75 Pa.C.S.)—driving while operating privilege is suspended or revoked, duties of drivers in accidents involving death or personal injury and subsequent convictions of certain offenses
094	Jul 5	HB0532	PN3601	180 days	Children and Developmentally Disabled Patient Access to Quality Dental Care Act
095	Jul 5	HB0608	PN0592	60 days	Surface Mining Conservation and Reclamation Act—mining permit and bioenergy crop bonding
096	Jul 5	HB0807	PN3586	30 days	Biofuel Development and In-State Production Incentive Act—omnibus amendments
097	Jul 5	HB0823	PN3792	60 days	Pennsylvania Municipalities Planning Code—notice to school district, application for final approval and wastewater processing cooperative planning
098	Jul 5	HB0864	PN3875	60 days	Vehicle Code (75 Pa.C.S.)—Pedalcycle and Pedestrian Advisory Committee
099	Jul 5	HB0869	PN3891	60 days	Vehicle Code (75 Pa.C.S.)—drivers in funeral processions and for use and display of illuminated signs
100	Jul 5	HB0970	PN3493	Immediately	Uniform Real Property Electronic Recording Act
101	Jul 5	HB0973	PN3835	Immediately	Vital Statistics Law of 1953—omnibus amendments
102	Jul 5	HB1055	PN3577	180 days	Professional Employer Organization Act
103	Jul 5	HB1269	PN2161	120 days	Vehicle Code (75 Pa.C.S.)—special license plate for recipients of the Silver Star, Bronze Star and Bronze Star for Valor and special plates for recipients of the Distinguished Service Cross, Distinguished Flying Cross, Navy Cross or Air Force Cross
104	Jul 5	HB1343	PN3828	60 days	Commonwealth Higher Education Modernization Act
105	Jul 5	HB1363	PN3837	Immediately	Public School Code of 1949—certain circumstances in which strikes are prohibited, continuing professional development and program of continuing professional development
106	Jul 5	HB1525	PN3714	60 days	Health Club Act—employee available to administer CPR
107	Jul 5	HB1539	PN3790	Immediately	Workforce Development Act—Keystone Works Program
108	Jul 5	HB1720	PN2589	60 days	Probate, Estates and Fiduciaries Code (20 Pa.C.S.)—uniform adult guardianship and protective proceedings jurisdiction
109	Jul 5	HB1820	PN3687	Immediately*	Minimum Wage Act of 1968—minimum wages and exemptions
110	Jul 5	HB1908	PN3842	60 days	Towing and Towing Storage Facility Standards Act
111	Jul 5	HB1960	PN2674	Immediately	Prescribed Pediatric Extended Care Centers Act—regulations
112	Jul 5	HB2135	PN3603	120 days	Portable Electronics Insurance Act

<i>Doc. No.</i>	<i>Date of Action</i>	<i>Bill Number</i>	<i>Printer's Number</i>	<i>Effective Date</i>	<i>Subject Matter</i>
113	Jul 5	HB2151	PN3333	120 days	Vehicle Code (75 Pa.C.S.)—registration of snowmobile or ATV, certificate of title for snowmobile or ATV, fees and records, vintage snowmobile permits and operation by persons under age sixteen
114	Jul 5	HB2199	PN3888	60 days	Vehicle Code (75 Pa.C.S.)—schedule of convictions and points and obedience to traffic control devices warning of hazardous conditions
115	Jul 5	HB2215	PN3110	60 days	Officer John David Dryer Memorial Interchange—designation
116	Jul 5	HB2267	PN3786	Immediately*	Liquor Code—omnibus amendments
117	Jul 5	HB2345	PN3473	60 days	Albert Earl Momme Bridge—designation
118	Jul 5	HB2349	PN3476	60 days	Purple Heart Memorial Bridge of Jefferson County—designation
119	Jul 5	HB2390	PN3604	Immediately	General Local Government Code (53 Pa.C.S.)—omnibus amendments
120	Jul 5	HB2406	PN3829	Immediately	Conveyance—Commonwealth property in multiple counties
121	Jul 5	SB0008	PN2269	Immediately	Pennsylvania eHealth Information Technology Act
122	Jul 5	SB0100	PN2272	Immediately*	Crimes Code (18 Pa.C.S.), Judicial Code (42 Pa.C.S.) and Prisons and Parole Code (61 Pa.C.S.)—omnibus amendments
123	Jul 5	SB0157	PN2289	60 days	Task force on homeless children's education—establishment, powers and duties and administrative support
124	Jul 5	SB0237	PN0722	60 days	Judicial Code (42 Pa.C.S.)—Commonwealth portion of fines
125	Jul 5	SB0351	PN2326	60 days	Judicial Code (42 Pa.C.S.)—Good Samaritan civil immunity for use of automated external defibrillator and nonmedical good Samaritan civil immunity
126	Jul 5	SB0449	PN2248	180 days	Public School Code of 1949—child abuse recognition and reporting training
127	Jul 5	SB0637	PN2347	Jan 1, 2013	Public Works Employment Verification Act
128	Jul 5	SB0707	PN0694	60 days	Military and Veterans Code (51 Pa.C.S.)—educational leave of absence
129	Jul 5	SB0887	PN0903	60 days	Landlord and Tenant Act of 1951—disposition of abandoned personal property
130	Jul 5	SB1174	PN2350	60 days	Housing Authorities Law—omnibus amendments
131	Jul 5	SB1301	PN2334	Immediately	General Local Government Code (53 Pa.C.S.)—cities and counties of the first class, administration and procedure and applicability
132	Jul 5	SB1308	PN1732	60 days	State System of Higher Education Intellectual Property Act
133	Jul 5	SB1321	PN2237	60 days	Municipalities Financial Recovery Act—contents, plan not affected by certain collective bargaining agreements or settlements, filing municipal debt adjustment under Federal law, collective bargaining agreements, furlough of employees and disputes

<i>Doc. No.</i>	<i>Date of Action</i>	<i>Bill Number</i>	<i>Printer's Number</i>	<i>Effective Date</i>	<i>Subject Matter</i>
134	Jul 5	SB1322	PN1743	60 days	Public School Code of 1949—purposes and general powers
135	Jul 5	SB1386	PN2247	Immediately	Air Pollution Control Act—Department of Environmental Protection and control of volatile organic compounds from gasoline-dispensing facilities
136	Jul 5	SB1464	PN2238	Immediately*	Insurance Company Law of 1921—omnibus amendments
137	Jul 5	SB1465	PN2059	60 days	Representative Sam Morris and Eleanor Morris Memorial Bridge—designation
138	Jul 5	SB1528	PN2213	60 days	Occupational Therapy Practice Act—creation of board, requirements for licensure, practice and referral, renewal of license, refusal, suspension or revocation of license and impaired professionals program
139	Jul 5	SB1535	PN2299	60 days	Judicial Code (42 Pa.C.S.)—subpoena of records
140	Jul 5	SB1551	PN2332	60 days	Transportation (74 Pa.C.S.)—designation of U.S. Route 202 Parkway in Montgomery and Bucks County as scenic byway and designation of bridge on U.S. Route 202 Parkway in Montgomery Township, Montgomery County as the Chief Richard J. Brady Bridge
141	Jul 12	HB1307	PN3771	Immediately*	Public School Code of 1949—omnibus amendments
142	Jul 12	HB1588	PN3346	Immediately	County Code—authorization of five per centum hotel tax in certain counties of the fifth class
143	Jul 12	HB1749	PN2238	60 days	County Code—authorization of hotel tax
2012 Appropriation Acts of Regular Session Enacted—Act 008A through 014A					
008A	Jun 29	SB1478	PN2244	Immediately*	Department of Labor and Industry and Department of Community and Economic Development—workers' compensation, occupational diseases and Office of Small Business Advocate
009A	Jun 30	SB1466	PN2335	Immediately*	General Appropriation Act of 2012—enactment
010A	Jul 2	SB1122	PN2312	Immediately*	Pennsylvania State University—education and general expenses, agricultural research and extension services and Pennsylvania College of Technology
011A	Jul 2	SB1123	PN2313	Immediately*	University of Pittsburgh—education and general expenses and rural education outreach
012A	Jul 2	SB1124	PN2314	Immediately*	Temple University—education and general expenses
013A	Jul 2	SB1125	PN2315	Immediately*	Lincoln University—education and general expenses
014A	Jul 2	SB1126	PN2316	Immediately*	University of Pennsylvania—veterinary activities and Center for Infectious Diseases

* denotes an effective date with exceptions

Effective Dates of Statutes

The effective dates specified previously for laws and appropriation acts were contained in the applicable law or appropriation act. Where no date is specified or where the effective date specified is prior to the date of enactment, the effective date is 60 days after final enactment except for statutes making appropriations or affecting budgets of political subdivisions. See 1 Pa.C.S. §§ 1701—1704 (relating to effective dates of statutes).

Advance Copies of Statutes

Section 1106 of Title 1 of the *Pennsylvania Consolidated Statutes* provides that the prothonotaries of each county shall file advance copies of statutes in their offices for public inspection until the *Laws of Pennsylvania* are generally available. Section 2406(h) of The Administrative Code of 1929 provides that the Department of General Services (Department) shall distribute advance sheets of the *Laws of Pennsylvania* to each law judge of the courts, to every county and public library of this Commonwealth and to each member of the General Assembly. These copies shall be furnished without charge. The Department shall also mail one copy of each law enacted during any legislative session to any person who pays to it the sum of \$25.

Requests for annual subscriptions for advance copies of statutes should be sent to the State Bookstore, Commonwealth Keystone Building, 400 North Street, Harrisburg, PA 17120, accompanied by a check or money order in the sum of \$25, payable to the “Commonwealth of Pennsylvania.”

ROBERT ZECH, Jr.,
Director
Legislative Reference Bureau

[Pa.B. Doc. No. 12-1500. Filed for public inspection August 10, 2012, 9:00 a.m.]

THE COURTS

Title 204—JUDICIAL SYSTEM GENERAL PROVISIONS

PART V. PROFESSIONAL ETHICS AND CONDUCT [204 PA. CODE CHS. 85, 87, 89, 91 AND 93]

Amendments to Rules of Organization and Procedure of the Disciplinary Board of the Supreme Court of Pennsylvania; Order No. 73

The Rules of Organization and Procedure of the Board have been drafted to restate in full the substance of the Pennsylvania Rules of Disciplinary Enforcement. By Orders dated March 19, 2012, April 9, 2012, and May 17, 2012, the Supreme Court of Pennsylvania amended Pa.R.D.E. 216, 218, 214, 219, 102, 203, 204, 205, 207, 208, 215 and 402, respectively. By this Order, the Board is making conforming changes to its Rules to reflect the adoption of those amendments. This order also updates the address of the Board's District III Office, reduces the number of briefs required to be filed with the Board and makes clarifying corrections to Rule 89.4(c) and the third official note to Rule 89.273.

The Disciplinary Board of the Supreme Court of Pennsylvania finds that:

(1) To the extent that 42 Pa.C.S. § 1702 (relating to rule making procedures) and Article II of the act of July 31, 1968 (P. L. 769, No. 240), known as the Commonwealth Documents Law, would otherwise require notice of proposed rulemaking with respect to the amendments adopted hereby, those proposed rulemaking procedures are inapplicable because the amendments adopted hereby relate to agency procedure and are perfunctory in nature.

(2) The amendments to the Rules of Organization and Procedure of the Board adopted hereby are not inconsistent with the Pennsylvania Rules of Disciplinary Enforcement and are necessary and appropriate for the administration of the affairs of the Board.

The Board, acting pursuant to Pa.R.D.E. 205(c)(12), orders:

(1) Title 204 of the *Pennsylvania Code* is hereby amended as set forth in Annex A hereto.

(2) The Secretary of the Board shall duly certify this Order, and deposit the same with the Administrative Office of Pennsylvania Courts as required by Pa.R.J.A. 103(c).

(3) The amendments adopted hereby shall take effect upon publication in the *Pennsylvania Bulletin*.

(4) This Order shall take effect immediately.

By The Disciplinary Board of the Supreme Court of Pennsylvania

ELAINE M. BIXLER,
Secretary

Annex A

TITLE 204. JUDICIAL SYSTEM GENERAL PROVISIONS

PART V. PROFESSIONAL ETHICS AND CONDUCT

Subpart C. DISCIPLINARY BOARD OF THE SUPREME COURT OF PENNSYLVANIA

CHAPTER 85. GENERAL PROVISIONS

§ 85.2. Definitions.

(a) Subject to additional definitions contained in subsequent provisions of this subpart which are applicable to specific chapters, subchapters or other provisions of this subpart, the following words and phrases, when used in this subpart shall have, unless the context clearly indicates otherwise, the meanings given to them in this section:

* * * * *

Prothonotary—The Prothonotary of the Supreme Court of Pennsylvania.

Public Reprimand—Public reprimand by the Board.

Respondent-attorney—Includes any person subject to the Enforcement Rules (See § 85.3(a) (relating to jurisdiction)).

* * * * *

§ 85.5. Location of Office of Disciplinary Counsel.

* * * * *

(b) *Disciplinary District Offices*. The present locations of the district offices of the Office of Disciplinary Counsel and the office of the Assistant Disciplinary Counsel for each such disciplinary district are:

* * * * *

(3) District III Office
Office of Disciplinary Counsel
The Disciplinary Board of the
Supreme Court of Pennsylvania
[100 Pine Street
Suite 400
Harrisburg, PA 17101-1228]
Pennsylvania Judicial Center
601 Commonwealth Avenue, Suite 5800
PO Box 62675
Harrisburg, PA 17106-2675
(717) 772-8572
(fax: (717) 772-7463)

* * * * *

§ 85.7. Grounds for discipline.

* * * * *

(b) Enforcement Rule 203(b) provides that the following shall also be grounds for discipline:

(1) Conviction of a crime.

(2) Wilful failure to appear before the Supreme Court, the Board or Disciplinary Counsel for censure, public or private reprimand, or informal admonition.

* * * * *

§ 85.8. Types of discipline.

(a) *General rule.* Enforcement Rule 204(a) provides that misconduct shall be grounds for any of the following:

* * * * *

(5) **Public reprimand by the Board with or without probation.**

(6) Private reprimand by the Board with or without probation.

[(6)] (7) Private informal admonition by [the] Disciplinary Counsel.

[(7)] (8) Revocation of an attorney's admission or license to practice law in the circumstances provided in § 85.7(b)(6) (relating to grounds for discipline).

(b) *Conditions attached to discipline.* Enforcement Rule 204(b) provides that conditions may be attached to an informal admonition [or], private reprimand, or **public reprimand** and that failure to comply with such conditions shall be grounds for reconsideration of the matter and prosecution of formal charges against the respondent-attorney.

* * * * *

CHAPTER 87. INVESTIGATIONS AND INFORMAL PROCEEDINGS

Subchapter A. PRELIMINARY PROVISIONS COMPLAINTS

§ 87.7. Notification to respondent-attorney of complaint and duty to respond.

(a) *Condition precedent to recommendation for discipline.* Disciplinary Counsel shall not recommend or undertake a disposition of discipline under Enforcement Rule 204 (relating to types of discipline) until the [**accused attorney**] **respondent-attorney** has been notified of the allegations and the time for response under [§ 89.54 (relating to answer)] **subdivision (b)(2) of this rule**, if applicable, has expired.

* * * * *

§ 87.8. District office action or recommendation.

(a) *General rule.* Enforcement Rule 208(a)(2) provides that upon the conclusion of an investigation, Disciplinary Counsel may dismiss the complaint as frivolous, as falling outside the jurisdiction of the Board, or on the basis of Board policy or prosecutorial discretion. Disciplinary Counsel may recommend:

- (1) Dismissal of the complaint.
(2) A conditional or unconditional informal admonition of the attorney concerned.
(3) A conditional or unconditional private reprimand by the Board of the attorney concerned.
(4) **A conditional or unconditional public reprimand by the Board of the attorney concerned.**
(5) The prosecution of formal charges before a hearing committee or special master.

(b) *District office procedure.* Following completion of any investigation of the complaint and after consideration of any statement of position filed by the respondent-attorney pursuant to § 87.7 (relating to notification to respondent-attorney of complaint) the Assistant Disciplinary Counsel assigned to the district office shall promptly

complete the appropriate form specified in subsection (c). The action taken or disposition recommended shall be one of the following:

* * * * *

(6) Conditional or unconditional informal admonition [or], private reprimand, or **public reprimand**. An informal admonition [or], private reprimand, or **public reprimand** shall be administered in those cases in which a violation of § 85.7 (relating to grounds for discipline) is found, but which is determined to be of insufficient gravity to warrant prosecution of formal charges.

* * * * *

Subchapter B. REVIEW OF RECOMMENDED DISPOSITION OF COMPLAINT

§ 87.32. Action by reviewing hearing committee member.

* * * * *

(c) *Modification.* If the reviewing hearing committee member determines to modify the recommendation of the Office of Disciplinary Counsel, the member shall set forth the determination on Form DB-3 (Referral of Complaint to Reviewing Hearing Committee Member) together with a brief statement of the reasons therefor. Such determination shall be one of the following:

- (1) Dismissal of the complaint.
(2) A conditional or unconditional informal admonition.
(3) A conditional or unconditional private reprimand.
(4) **A conditional or unconditional public reprimand.**
(5) Prosecution of formal charges.

* * * * *

§ 87.33. Appeal by Office of Disciplinary Counsel [for] from modification of recommendation.

* * * * *

(c) *Action by Board.* The Office of the Secretary shall transmit the Form DB-8 and related file to a panel of three members of the Board designated by the Chairman, who shall consider the appeal and, as provided by Enforcement Rule 208(a)(4), order that the matter be concluded by dismissal, conditional or unconditional informal admonition [or], conditional or unconditional private reprimand, or **conditional or unconditional public reprimand**, or direct that a formal proceeding be instituted before a hearing committee or special master in the appropriate disciplinary district.

* * * * *

§ 87.34. Review of recommendation of private reprimand or public reprimand.

(a) *General rule.* Enforcement Rule 208(a)(5) provides that a recommendation by a reviewing hearing committee member for a conditional or unconditional private or **public reprimand** shall be reviewed by a panel composed of three members of the Board who may approve or modify.

(b) *Procedure.* Where a recommendation by a reviewing hearing committee member for a conditional or unconditional private or **public reprimand** is not appealed by Disciplinary Counsel, the Office of the Secretary shall transmit the file to a panel of three members of the Board designated by the Chairman, who shall consider the

matter and, as provided by Enforcement Rule 208(a)(5), approve or modify the recommendation for private or public reprimand.

(c) *Notice of Board [Action] action.* The Office of the Secretary shall return the file, showing the action of the reviewing panel of the Board, to the Office of Disciplinary Counsel and shall notify the reviewing hearing committee member of the action taken by the Board.

Subchapter C. FINAL DISPOSITION WITHOUT FORMAL PROCEEDINGS

§ 87.51. Notification of disposition of complaint.

(a) *General [Rule] rule.* Upon completion of the procedures prescribed by Subchapter B (relating to review of recommended disposition of complaint), the Office of the Secretary or the Office of Disciplinary Counsel, as appropriate, shall:

(1) Notify the complainant of the disposition of the complaint.

(2) Unless the disposition involves the institution of formal proceedings, notify the respondent-attorney:

(i) that the complaint has been dismissed; or

(ii) that the respondent-attorney shall appear in person before the Chief Disciplinary Counsel [or Board] for the purpose of receiving an informal admonition or before the Board for the purpose of receiving a private or public reprimand. The respondent-attorney shall also be notified of the place and date to appear. The date fixed shall be not earlier than 20 days after the date of the notice to the respondent-attorney of the disposition of the complaint.

(b) *Contents of notice.*

(1) **The notice to appear for public reprimand shall be on Form DB-12.2(IP) (Notice to Appear for Public Reprimand Following Informal Proceedings) and shall contain the statement required by § 89.205(c)(1) (relating to notice to appear).**

(2) The notice to appear for private reprimand shall be on Form DB-12(IP) (Notice to Appear for Private Reprimand Following Informal Proceedings) and shall contain the statement required by [§ 89.205(c)(1) (relating to informal admonition or private reprimand following formal hearings)] § 89.205(c)(2) (relating to notice to appear).

[(2)] (3) The notice to appear for informal admonition shall be given by the Office of Disciplinary Counsel on Form DB-12.1(IP) (Notice to Appear for Informal Admonition Following Informal Proceedings) and shall contain the statement required by [§ 89.205(c)(2)] § 89.205(c)(3) (relating to notice to appear).

[(3)] (4) The notice to appear for informal admonition or private reprimand shall advise the respondent-attorney of:

(i) The right of the respondent-attorney under § 87.54 (relating to demand by respondent-attorney for formal proceedings) to demand the institution of formal proceedings.

(ii) The limited availability of the record of informal admonition or private reprimand under § 93.104(d) (relating to restrictions on available information).

(5) **The notice to appear for public reprimand shall advise the respondent-attorney of the right of the respondent-attorney under § 87.54 (relating to**

demand by respondent-attorney for formal proceedings) to demand the institution of formal proceedings.

§ 87.53. Private reprimand or public reprimand without formal hearing.

(a) *General rule relating to private reprimand.* A respondent-attorney who is given notice of private reprimand pursuant to § 87.51 (relating to notification of disposition of complaint) and who does not timely demand the institution of a formal proceeding pursuant to § 87.54 (relating to demand by respondent-attorney for formal proceedings) shall appear in person before the Board, at the time and place fixed for the administration of the private reprimand. A record shall be made of the fact of and basis for the private reprimand, which record shall be available only as provided in § 93.104(d) (relating to restrictions on available information).

(b) *General rule relating to public reprimand.* **A respondent-attorney who is given notice of public reprimand pursuant to § 87.51 (relating to notification of disposition of complaint) and who does not timely demand the institution of a formal proceeding pursuant to § 87.54 (relating to demand by respondent-attorney for formal proceedings) shall appear in person before the Board, at the time and place fixed for the administration of the public reprimand, which proceeding shall be open to the public as provided in § 93.102(a) (relating to access to disciplinary information and confidentiality). A record shall be made of the fact of and basis for the public reprimand, which record shall be public.**

(c) *Failure to appear.* The neglect or refusal of the respondent-attorney to appear for the purposes of private or public reprimand without good cause shall (as provided by Enforcement Rule 203(b)(2)) constitute an independent act of professional misconduct and shall automatically result in the institution of formal proceedings relating to such act of misconduct and to the grievance upon which such private or public reprimand was to relate.

§ 87.54. Demand by respondent-attorney for formal proceedings.

(a) *General rule.* Enforcement Rule 208(a)(6) provides that **in cases where no formal proceeding has been conducted**, a respondent-attorney shall not be entitled to appeal an informal admonition, a private reprimand, a public reprimand, or any conditions attached thereto [in cases where no formal proceeding has been conducted], but may demand as of right that a formal proceeding be instituted against such attorney in the appropriate disciplinary district; and that in the event of such demand, the respondent-attorney need not appear for the administration of the informal admonition [or], private reprimand, or public reprimand, and the matter shall be disposed of in the same manner as any other formal proceeding, but any expenses of the proceeding taxed against the respondent-attorney shall be paid as required by § 89.205(b) (relating to taxation of expenses).

* * * * *

Subchapter D. ABATEMENT OF INVESTIGATION

§ 87.74. Discipline on consent.

* * * * *

(d) *Private discipline.* Enforcement Rule 215(f) provides that if a panel approves a Petition consenting to an informal admonition or private reprimand, with or with-

out probation, the Board shall enter an appropriate order, and [it] the Board shall arrange to have the respondent-attorney appear before Disciplinary Counsel for the purpose of receiving an informal admonition or before a designated panel of three members selected by the Board Chair for the purpose of receiving a private reprimand.

(e) *Public discipline.* Enforcement Rule 215(g) provides that [,]: (1) if a panel approves a Petition consenting to a public reprimand, the Board shall enter an appropriate order, and the Board shall arrange to have the attorney appear before the Board or a designated panel of three members selected by the Board Chair for the purpose of receiving a public reprimand; and (2) if a panel approves a Petition consenting to public censure or suspension, the Board shall file the recommendation of the panel and the Petition with the Supreme Court; [and that,] if the Court grants the Petition, the Court shall enter an appropriate order disciplining the respondent-attorney on consent.

* * * * *

CHAPTER 89. FORMAL PROCEEDINGS

Subchapter B. INSTITUTION OF PROCEEDINGS

§ 89.51. Grounds for institution of formal proceedings.

[The] (a) Except where the Office of Disciplinary Counsel and the respondent-attorney file a joint petition in support of *public discipline on consent* pursuant to § 87.74 (relating to discipline on consent) or the respondent-attorney submits a resignation statement under § 87.73 (relating to voluntary resignation by attorneys under disciplinary investigation and disbarment on consent), the Office of Disciplinary Counsel shall institute formal disciplinary proceedings by filing with the Board a petition under § 89.52 (relating to petition for discipline) in [either of] the following cases:

(1) [Pursuant to a referral from the Supreme Court under § 91.35(a) (relating to institution of formal proceedings upon conviction of serious crime) following the conviction of the respondent-attorney for a crime. See Chapter 91 Subchapter B (relating to attorneys convicted of crimes).] Where a certificate of conviction is filed with the Supreme Court under § 91.33 (relating to notification by Office of Disciplinary Counsel of conviction of attorneys) and the Supreme Court directs that formal proceedings be instituted;

(2) After the Supreme Court has entered an order temporarily suspending the respondent-attorney under § 91.34(c) (relating to temporary suspension following the conviction of the respondent-attorney for a crime) or § 91.34(f) (relating to joint petition for temporary suspension); or

(3) Pursuant to a determination to institute formal proceedings made under Chapter 87 (relating to investigations and informal proceedings).

(b) Except where the Office of Disciplinary Counsel shall institute formal disciplinary proceedings pursuant to the provisions of subsection (a), the Office of Disciplinary Counsel may, upon the filing of a certificate of conviction with the Supreme Court under § 91.33 (relating to notification by

Office of Disciplinary Counsel of conviction of attorneys), institute formal disciplinary proceedings by filing with the Board a petition under § 89.52 (relating to petition for discipline). See § 91.35(a) (relating to authority of Office of Disciplinary Counsel to commence a formal proceeding following the conviction of a respondent-attorney for a crime).

Subchapter C. HEARING PROCEDURES

ABBREVIATED PROCEDURE

§ 89.181. Abbreviated procedure.

(a) *Scope.* [Experience has shown that frequently at the conclusion of the hearings it] At the conclusion of the hearing, it may be obvious to all participants that no showing of misconduct has been made or that there has been adequate proof of a violation of § 85.7 (relating to grounds for discipline) and that some form of private discipline or a public reprimand would be appropriate. In such circumstances the cost and delay of the preparation of a formal transcript is unnecessary and the preparation of a detailed report as provided by § 89.172 (relating to contents of report) is an unnecessary and time-consuming burden on the hearing committee and others. Where the participants can stipulate to an acceptable determination the procedures of this section minimize cost, effort and time for all participants. This section may be applicable to combined reinstatement and disciplinary hearings conducted before a hearing committee pursuant to § 89.273(b)(4) (relating to combined hearings in reinstatement matters where formal disciplinary proceedings are then pending or have been authorized against the formerly admitted attorney).

* * * * *

(c) *Procedures.*

* * * * *

(8) Thereafter the Board shall either:

(i) affirm the finding that no violation of § 85.7 has been shown and dismiss the proceeding;

(ii) impose or cause to be imposed the type of private discipline, stipulated by the participants; [or]

(iii) impose the public reprimand, stipulated by the participants; or

(iv) remand the record to the hearing committee with instructions to fix a briefing schedule and to proceed as provided in paragraph (6), if for any reason the type of discipline stipulated by the parties is not accepted by the Board.

(9) Where the proceeding is disposed of as provided by paragraph (8)(i) [or], (ii), or (iii), the official reporter shall preserve the untranscribed notes or recording of testimony in the manner and for the duration specified by the Office of the Secretary.

Subchapter D. ACTION BY BOARD AND SUPREME COURT

§ 89.202. Content and form of briefs on exceptions.

* * * * *

(d) *Copies.* [Fourteen] Three copies of each brief shall be filed with the Office of the Secretary in addition to the copies served on the participants in the proceedings.

§ 89.205. Informal admonition [or], private reprimand **or public reprimand** following formal hearing.

(a) *General rule.* Enforcement Rule 208(d)(2)(ii) provides that in the event that the Board determines that the proceeding should be concluded by informal admonition [or], private reprimand, [it] **or public reprimand, the Board** shall arrange to have the respondent-attorney appear in person before Disciplinary Counsel for the purpose of receiving informal admonition or before a **designated panel of three members selected by the Board Chair pursuant to Pa.R.D.E. 205(c)(11)** for the purpose of receiving private reprimand **or public reprimand**, in which case the [Chairman] **designated member** shall deliver the private reprimand **or public reprimand**. [In such event the Office of the Secretary shall notify the respondent-attorney and staff counsel by means of Form DB-12 (Notice to Appear for Admonition or Reprimand). The notice shall state that Enforcement Rule 203(b)(2) and (c) expressly provides that willful failure to appear before the Board or Disciplinary Counsel for private reprimand or informal admonition shall be an independent ground for discipline and that the Board and (when administering informal admonitions) Disciplinary Counsel are “tribunals” within the meaning of the Disciplinary Rules (see, e.g. DR 7-106(C)).]

(b) *Taxation of expenses.* Enforcement Rule 208(g)(2) provides that in the event a proceeding is concluded by informal admonition [or], private reprimand, **or public reprimand**, the Board in its discretion may direct that the necessary expenses incurred in the investigation and prosecution of the proceeding shall be paid by the respondent-attorney, and that all expenses so taxed shall be paid by the respondent-attorney on or before the date fixed for the appearance of the respondent-attorney before Disciplinary Counsel **for informal admonition** or the Board for [informal admonition or] private **or public reprimand**. The expenses taxable under this subsection shall be those prescribed by § 93.111 (relating to determination of reimbursable expenses).

(c) *Notice to appear.*

(1) In the event that the Board determines that the proceeding should be concluded by public reprimand, the Office of the Secretary shall notify the respondent-attorney and staff counsel by means of Form DB-12.2 (FP) (Notice to Appear for Public Reprimand Following Formal Proceedings) which shall state that Enforcement Rule 203(b)(2) and (c) expressly provides that willful failure to appear before the Board for public reprimand shall be an independent ground for discipline and that the Board is a “tribunal” within the meaning of the Disciplinary Rules (see, e.g., Rules 3.3, 3.4(c) and 3.5).

(2) In the event that the Board determines that the proceeding should be concluded by private reprimand, the Office of the Secretary shall notify the respondent-attorney and staff counsel by means of Form DB-12(FP) (Notice to Appear for Private Reprimand Following Formal Proceedings) which shall state that Enforcement Rule 203(b)(2) and (c) expressly provides that willful failure to appear before the Board for private reprimand shall be an independent ground for discipline and that the Board is a “tribunal” within the meaning of the Disciplinary Rules (see, e.g. [§ 81.4 (relating to rules of professional conduct)], Rules 3.3, 3.4(c) and 3.5).

[(2)] (3) In the event that the Board determines that the proceeding should be concluded by informal admonition, the Office of Disciplinary Counsel shall notify the respondent-attorney and staff counsel by means of Form DB-12.1(FP) (Notice to Appear for Informal Admonition Following Formal Proceedings), which shall state that Enforcement Rule 203(b)(2) and (c) expressly provides that willful failure to appear before Disciplinary Counsel for informal admonition shall be an independent ground for discipline and that Disciplinary Counsel, when administering informal admonitions, constitutes a “tribunal” within the meaning of the Disciplinary Rules (see, e.g. [§ 81.4,] Rules 3.3, 3.4(c) and 3.5).

[(3)] (4) The Office of the Secretary shall notify the respondent-attorney of the expenses of the proceeding which have been taxed pursuant to subsection (b) by means of Form DB-41 (Notice of Taxation of Expenses), which shall state that if the respondent-attorney fails to pay the taxed expenses on or before the date fixed for the appearance of the respondent-attorney before the Board [or Disciplinary Counsel] for private **or public reprimand** or **before Disciplinary Counsel** for informal admonition, action will be taken by the Board pursuant to § 93.112 (relating to failure to pay taxed expenses) which will result in the entry of an order placing the respondent-attorney on administrative suspension.

(d) *Appearance.* An attorney who is given notice to appear for informal admonition or private reprimand shall appear in person at the time and place fixed in such notice, for the purpose of receiving such informal admonition or private reprimand. A permanent record shall be made of the fact of and basis for such action as is taken. The fact of receipt of such **informal** admonition or **private** reprimand shall not affect the good standing of the [**respondant attorney**] **respondent-attorney** as an attorney and shall be kept confidential to the extent provided in Chapter 93 Subchapter F (relating to confidentiality). **An attorney who is given notice to appear for public reprimand shall appear in person at the time and place fixed in such notice, for the purpose of receiving such public reprimand. The proceeding shall be open to the public as provided in § 93.102(a) (relating to access to disciplinary information and confidentiality), and a record shall be made of the fact of and basis for the public reprimand, which record shall be public.**

(e) *Failure to appear.* The neglect or refusal of the respondent-attorney to appear before Disciplinary Counsel for the purposes of informal admonition without good cause shall automatically convert the decision of the Board on informal admonition into one for private reprimand. The neglect or refusal of the respondent-attorney to appear before the Board for the purposes of private **or public** reprimand without good cause shall automatically convert the decision of the Board on private **or public** reprimand into a recommendation to the Supreme Court for censure, and the Office of the Secretary shall notify the respondent-attorney, and the Office of Disciplinary Counsel accordingly. [**The intention of a respondent-attorney to proceed further under subsection (d) shall not excuse the neglect or failure of the respondent-attorney to appear before the Board under this section.**]

(f) *Demand for Supreme Court review.*

(1) Enforcement Rule 208(d)(2)(iii) provides that a respondent-attorney who is unwilling to have the matter

concluded by an informal admonition or private reprimand must file, within 30 days after notice of the determination of the Board, a notice of appeal in the Supreme Court. **Enforcement Rule 208(d)(2)(iii) provides that within 30 days after notice of the determination of the Board, the respondent-attorney must file a notice of appeal with the Supreme Court.**

(2) A respondent-attorney who objects to an order taxing expenses in connection with a matter concluded by informal admonition or private reprimand may file a petition for review of such order in the Supreme Court under 42 Pa.C.S. §§ 725(5) and 5105(a)(2) (relating to direct appeals from constitutional and judicial agencies and right to appellate review). See 210 Pa. Code Chapter 15 (relating to judicial review of governmental determinations) with respect to the time limits for seeking review and other applicable procedures.

§ 89.206. Transmission of record to Supreme Court.

(a) *General rule.* Enforcement Rule 208(d)(2)(iii) provides that in the event that the Board shall determine that the matter should be concluded by probation, censure, suspension, disbarment, or by informal admonition [or], private reprimand, or public reprimand in cases where the respondent-attorney is unwilling to have the matter concluded by informal admonition [or], private reprimand, or public reprimand, [it] the Board shall file its findings and recommendations, together with the briefs, if any, before the Board and the entire record, with the Supreme Court.

* * * * *

Subchapter F. REINSTATEMENT AND RESUMPTION OF PRACTICE

REINSTATEMENT OF FORMERLY ADMITTED ATTORNEYS

§ 89.272. Waiting period.

(a) *General rule.* Enforcement Rule 218(b) provides that a person who has been disbarred may not apply for reinstatement until the expiration of at least five years from the effective date of the disbarment, except that a person who has been disbarred pursuant to § 91.51 (relating to reciprocal discipline and disability) may apply for reinstatement at any earlier date on which reinstatement may be sought in the jurisdiction of initial discipline.

* * * * *

§ 89.273. Procedures for reinstatement.

(a) Enforcement Rule 218(c) provides that the procedure for petitioning for reinstatement from suspension for a period exceeding one year or disbarment is as follows:

* * * * *

(3) The hearing committee shall promptly schedule a hearing at which a disbarred or suspended attorney shall have the burden of demonstrating by clear and convincing evidence that such person has the moral qualifications, competency and learning in law required for admission to practice law in this Commonwealth and that the resumption of the practice of law within the Commonwealth by such person will be neither detrimental to the integrity and standing of the bar or the administration of justice nor subversive of the public interest. When the petitioner-attorney is seeking reinstatement from disbarment, the threshold inquiry articulated in *Office of Disciplinary*

[*counsel*] *Counsel v. Keller*, 509 Pa. 573, [576] 579, 506 A.2d 872, 875 (1986) and its progeny applies.

Official Note: The requirement that a hearing be scheduled “promptly” means that a hearing should ordinarily be held within 60 days after [the response to] the petition for reinstatement has been filed with the Board and the response from Disciplinary Counsel has been received, unless the [chair] chairman of the hearing committee extends that time for good cause shown.

* * * * *

CHAPTER 91. MISCELLANEOUS MATTERS
Subchapter B. ATTORNEYS CONVICTED OF CRIMES

§ 91.31. Notification by attorneys convicted of crimes.

Enforcement Rule 214(a) provides that an attorney convicted of a [serious] crime shall report the fact of such conviction within 20 days to the [Secretary of the Board] Office of Disciplinary Counsel; and that the responsibility of the attorney to make such report shall not be abated because the conviction is under appeal or the clerk of the court has transmitted a certificate to Disciplinary Counsel pursuant to § 91.32 (relating to notification by clerks of conviction of attorneys).

§ 91.32. Notification by clerks of conviction of attorneys.

Enforcement Rule 214(b) provides that the clerk of any court within the Commonwealth in which an attorney is convicted of any crime, or in which any such conviction is reversed, shall within 20 days after such disposition transmit a certificate thereof to Disciplinary Counsel, who shall file such certificate with the Supreme Court [(Form DB-18) (Certification of Conviction of Attorney)].

§ 91.33. Notification by Office of Disciplinary Counsel of conviction of attorneys.

Enforcement Rule 214(c) provides that upon being advised that an attorney has been convicted of a crime [within this Commonwealth], Disciplinary Counsel shall secure and file a [Form DB-18 (Certification of Conviction of Attorney) in accordance with the provisions of § 91.32 (relating to notification by clerks of conviction of attorneys); and that if the conviction occurred in another jurisdiction, it shall be the responsibility of Disciplinary Counsel to secure and file a] certificate of such conviction with the Supreme Court.

§ 91.34. Temporary suspension upon conviction of [serious] a crime.

(a) *Commencement of summary [proceeding] proceedings* Enforcement Rule [214(d)] 214(d)(1) provides that upon the filing with the Supreme Court of a certified copy of an order demonstrating that an attorney has been convicted of a [serious] crime, the Court may enter a rule directing the respondent-attorney to show cause why the respondent-attorney should not be placed on temporary suspension, which rule shall be returnable within ten days.

(b) *Subject of summary proceeding.* The Note to Enforcement Rule 214(d) provides that the subject of the

summary proceedings authorized by this section [is] will ordinarily be limited to whether the [conditions] condition triggering the application of this section [exist] exists, i.e., proof that the respondent-attorney is the same person as the individual convicted of the offense charged [and that the offense is a serious crime], [and will not include] although the Court has the discretion to consider such subjects as mitigating or aggravating circumstances.

* * * * *

(f) [At] *Joint petition for temporary suspension.* Enforcement Rule 214(d)(5) provides that at any time before a plea or verdict or after a guilty plea or verdict of guilt in the criminal proceeding, Disciplinary Counsel and the respondent-attorney may file with the Court a joint petition for temporary suspension of the respondent-attorney on the ground that the respondent-attorney's temporary suspension is in the best interest of the respondent and the legal system.

§ 91.35. Institution of formal proceedings upon conviction of [serious] a crime.

(a) *General rule.* Enforcement Rule 214(f)(1) provides that upon [receipt] the filing of a certificate of conviction of an attorney for a [serious] crime, [the Court shall, in addition to any order of suspension it may enter in accordance with the provisions of § 91.34 (relating to temporary suspension upon conviction of serious crime), also refer the matter to the Board for the institution of a formal proceeding before a hearing committee in the appropriate disciplinary district in which the sole issue to be determined shall be the extent of the final discipline to be imposed, except that a disciplinary proceeding so instituted shall not be brought to hearing until sentencing and all appeals from the conviction are concluded. The Office of the Secretary shall transmit the file to the Office of Disciplinary Counsel by means of Form DB-31 (Reference for Proceedings in Response to Conviction).] Disciplinary Counsel may commence either an informal proceeding under Chapter 87 (relating to investigations and informal proceedings) or a formal proceeding under Subchapter 89B (relating to institution of formal proceedings), except that Disciplinary Counsel may institute a formal proceeding before a hearing committee or special master by filing a petition for discipline under § 89.52 (relating to petition for discipline) without seeking approval for the prosecution of formal charges under Subchapter 87B (relating to review of recommended disposition by reviewing hearing committee member). If a petition for discipline is filed, a hearing on the petition shall be deferred until sentencing and all direct appeals from the conviction have been concluded. The sole issue at the hearing shall be the extent of the discipline or, where the Court has temporarily suspended the attorney under § 91.34(c), the final discipline to be imposed.

* * * * *

§ 91.36. [Proceedings upon conviction of other crimes] (Reserved).

[(a) Enforcement Rule 214(g) provides that upon receipt of a certificate of conviction of any attorney

for a crime other than a serious crime, the Court shall take such action as it deems warranted; and that the Court may in its discretion take no action with respect to convictions for minor offenses.

(b) The Official Note to Enforcement Rule 214(g) provides that the actions the Court may take under Subsection (a) include reference of the matter to the Office of Disciplinary Counsel for investigation and possible commencement of either a formal or informal proceeding, or reference of the matter to the Board with direction that it institute a formal proceeding.]

[§ 91.37] § 91.36. Effect of reversal of conviction.

(a) *General rule.* Enforcement Rule [214(h)] 214(g) provides that an attorney suspended under the provisions of § 91.34 (relating to temporary suspension upon conviction of [serious] a crime) may be reinstated immediately upon the filing by the Board with the Supreme Court of a certificate demonstrating that the underlying conviction has been reversed, but that the reinstatement shall not terminate any formal proceeding then pending against the attorney.

* * * * *

[§ 91.38] § 91.37. Definition of "[serious] crime."

As [used in this Subchapter 91B,] Enforcement Rule [214(i)] 214(h) provides [that] and as used in this Subchapter 91B, the term "[serious] crime" means a crime that is punishable by imprisonment [for one year or upward in this or any other jurisdiction] in the jurisdiction of conviction, whether or not a sentence of imprisonment is actually imposed. It does not include parking violations or summary offenses, both traffic and non-traffic, unless a term of imprisonment is actually imposed.

[§ 91.39] § 91.38. Definition of "conviction."

As [used in this Subsection 91B,] Enforcement Rule [214(j)] 214(i) provides [that] and as used in this Subchapter 91B, the term "conviction" means any guilty verdict, whether after trial by judge or jury, or finding of guilt, and any plea of guilty or *nolo contendere* that has been accepted by the court, whether or not sentence has been imposed.

Subchapter C. RECIPROCAL DISCIPLINE AND DISABILITY

§ 91.51. Reciprocal discipline and disability.

Enforcement Rule 216 provides as follows:

(1) Upon receipt of a certified copy of [an order, judgment or disciplinary directive of another court, a federal government] a final adjudication any court or any body authorized by law or by rule of court to conduct disciplinary proceedings against attorneys by any state or territory of the United States or of the District of Columbia, a United States court, or government administrative agency or a military tribunal demonstrating that an attorney admitted to practice in this Commonwealth has been disciplined by suspension, disbarment, [or] revocation of license or pro hac vice admission, or has resigned from the bar or otherwise relinquished his or her license to practice while under disciplinary investigation in another jurisdiction or has been transferred to disability inactive status, the Supreme Court shall forthwith issue

a notice (Form DB-19) (Notice of Reciprocal Discipline) directed to the respondent-attorney containing:

(i) A copy of [**said order, judgment or directive from the other court, federal government agency or military tribunal**] the final adjudication described in paragraph (a).

(ii) An order directing that the respondent-attorney inform the Court within 30 days from service of the notice, of any claim by the respondent-attorney that the imposition of the identical or comparable discipline **or disability inactive status** in the Commonwealth would be unwarranted, and the reasons therefor. The Office of the Secretary shall cause this notice to be served upon the respondent-attorney by mailing it to the address furnished by the respondent-attorney in the last registration statement filed by such person in accordance with § 93.142(b) (relating to filing of annual [**statement form**] by attorneys) or, in the case of a foreign legal consultant, by serving it pursuant to the designation filed by the foreign legal consultant under Pennsylvania Bar Admission Rule 341(b)(8) (relating to licensing of foreign legal consultants).

(2) In the event the discipline imposed in the [**other court, federal government agency or military tribunal**] original jurisdiction has been stayed there, any reciprocal discipline imposed in the Commonwealth shall be deferred until such stay expires.

(3) Upon the expiration of 30 days from service of the [**Form DB-19**] notice issued pursuant to the provisions of subdivision (1), the Supreme Court may impose the identical or comparable discipline **or transfer to disability inactive status** unless Disciplinary Counsel or the respondent-attorney demonstrates, or the Court finds that upon the [**face**] fact of the record upon which the discipline is predicated it clearly appears:

* * * * *

(5) An attorney who has been **transferred to disability inactive status** or disciplined in another court or by any body authorized by law or by rule of court to conduct disciplinary proceedings against attorneys by any state or territory of the United States or of the District of Columbia, a United States court, or by a federal [**government**] administrative agency or a military tribunal, by suspension, disbarment, or revocation of license or pro hac vice admission, or who has resigned from the bar or otherwise relinquished his or her license to practice while under disciplinary investigation in another jurisdiction, shall report the fact of such **transfer**, suspension, disbarment, revocation or resignation to the Secretary of the Board within 20 days after the date of the order, judgment or directive imposing or confirming the discipline **or transfer to disability inactive status**.

CHAPTER 93. ORGANIZATION AND ADMINISTRATION

Subchapter B. THE DISCIPLINARY BOARD

§ 93.23. Powers and duties.

(a) *General rule.* Enforcement Rule 205(c) provides that the Board shall have the power and duty:

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(7) To assign periodically, through its Secretary, senior or experienced hearing committee members within each disciplinary district to:

(i) review and approve or modify recommendations by Disciplinary Counsel for dismissals, informal admonitions, private reprimands, **public reprimands** and institution of formal charges;

(ii) hear and determine attacks on the validity of subpoenas issued pursuant to § 91.2 (relating to subpoenas and investigations), as provided in [§ **91.3(2)**] § **91.3(a)(2)** (relating to determination of validity of subpoena; or

(iii) consider a petition for reinstatement to active status from retired or inactive status, or administrative suspension, under § 89.273(b) (relating to procedures for reinstatement).

(8) To review, through a designated panel of three members, and approve or modify a determination by a reviewing hearing committee member that a matter should be concluded by dismissal, private informal admonition, private reprimand, **public reprimand** or the institution of formal charges before a hearing committee.

(9) To review, through a designated panel of three members, and approve or reject a joint petition in support of discipline on consent filed with the Board pursuant to Enforcement Rule 215(d).

(10) To review, through a single member designated by the Board Chair, and approve or reject a certification filed by Disciplinary Counsel under Enforcement Rule 218(d)(2)(ii) indicating that Disciplinary Counsel has determined that there is no impediment to reinstatement of the petitioner, and to issue the report and recommendation required by subdivision (d) of Enforcement Rule 218.

(11) To administer, **by the Board or through a designated panel of three members selected by the Board Chair**, private reprimands **or public reprimands** to attorneys for misconduct.

* * * * *

Subchapter D. OFFICE OF DISCIPLINARY COUNSEL

§ 93.63. Powers and duties of Office of Disciplinary Counsel.

(a) *General rule.* The Office of Disciplinary Counsel shall have the power and duty (pursuant to Enforcement Rule 207(b)):

(1) To investigate all matters involving alleged misconduct called to its attention whether by complaint or otherwise except, unless as otherwise directed by the Supreme Court or the Board, complaints against Disciplinary Counsel and members of the Board.

(2) To dispose of **any matter that is governed by Enforcement Rules 214 (Attorneys convicted of crimes), 215 (Discipline on Consent), and 216 (Reciprocal discipline) in accordance with the substantive and procedural provisions of those rules, and to dispose of all other matters [(subject to review by a senior or experienced hearing committee matter when required by these rules)]** involving alleged misconduct by dismissal[,] **or (subject to review by a senior or experienced hearing committee member) by recommendation for informal admonition, [recommendation for]** private **or public** reprimand, or the prosecution of formal charges before a hearing committee or special master.

* * * * *

(b) *Party status of Disciplinary Counsel.* Enforcement Rule 207(c) provides that Disciplinary Counsel:

(1) Shall be a party to all proceedings and other matters before the Board or the Supreme Court under the Enforcement Rules.

(2) May urge in the Supreme Court a position inconsistent with any recommendation of the Board where in the judgment of Disciplinary Counsel a different disposition of the matter is warranted by the law or the facts.

(3) May within the time and in the manner prescribed by [210 Pa. Code] Title 210 (relating to the Pennsylvania Rules of Appellate Procedure) obtain in the Supreme Court judicial review of any final determination of the Board, except a determination to conclude a matter by dismissal, informal admonition [or], private reprimand, or public reprimand.

(4) May within the time and in the manner prescribed by [210 Pa. Code] Title 210 petition the Supreme Court for allowance of an appeal from any final determination of the Board to conclude a matter by dismissal, informal admonition [or], private reprimand, or public reprimand.

Subchapter F. CONFIDENTIALITY

§ 93.102. Access to disciplinary information and confidentiality.

(a) *General rule.* Enforcement Rule 402(a) provides that, except as provided in subsections (b) and (d) and §§ 93.104 (relating to access by judicial system agencies to confidential information) and 93.108 (relating to restoration of confidentiality), all proceedings under these rules shall be open to the public after:

- (1) the filing of an answer to a petition for discipline;
- (2) the time to file an answer to a petition for discipline has expired without an answer being filed;
- (3) the filing and service of a petition for reinstatement; [or]
- (4) **the Board has entered an Order determining a public reprimand; or**
- (5) after the expiration of any order restricting access to disciplinary information.

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Subchapter G. FINANCIAL MATTERS

TAXATION OF COSTS

§ 93.111. Determination of reimbursable expenses.

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(c) *Administrative fee.* Enforcement Rule 208(g)(3) provides that the expenses taxable under § 89.205(b) (relating to informal admonition [or], private reprimand, or public reprimand following formal hearing) or § 89.209 (relating to expenses of formal proceedings) may include an administrative fee except that an administrative fee shall not be included where the discipline imposed is an

informal admonition; and that the administrative fee shall be \$250.

[Pa.B. Doc. No. 12-1501. Filed for public inspection August 10, 2012, 9:00 a.m.]

Title 234—RULES OF CRIMINAL PROCEDURE

[234 PA. CODE CH. 1]

Proposed New Pa.R.Crim.P. 151 and Revision of the Comment to Pa.R.Crim.P. 150

The Criminal Procedural Rules Committee is planning to recommend that the Supreme Court of Pennsylvania adopt new Rule of Criminal Procedure 151 (Bench Warrant Procedures When Witness is Under Age of 18 Years) and to revise the Comment to Rule of Criminal Procedure 150 (Bench Warrants). The proposed new rule and correlative Comment revision establish new procedures for court cases after the execution of a bench warrant that was issued for a witness who is under the age of 18 years. This proposal has not been submitted for review by the Supreme Court of Pennsylvania.

The following explanatory Report highlights the Committee's considerations in formulating this proposal. Please note that the Committee's Report should not be confused with the official Committee Comments to the rules. Also note that the Supreme Court does not adopt the Committee's Comments or the contents of the explanatory Reports.

The text of the proposed changes to the rules precedes the Report. Additions are shown in bold; deletions are in bold and brackets.

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

Jeffrey M. Wasileski, Counsel
 Supreme Court of Pennsylvania
 Criminal Procedural Rules Committee
 Pennsylvania Judicial Center
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 no later than Friday, August 31, 2012.

By the Criminal Procedural Rules Committee

PHILIP D. LAUER,
Chair

Annex A

**TITLE 234. RULES OF CRIMINAL PROCEDURE
 CHAPTER 1. SCOPE OF RULES, CONSTRUCTION
 AND DEFINITIONS, LOCAL RULES**

PART E. Miscellaneous Warrants

Rule 150. Bench Warrants.

* * * * *

Comment

This rule addresses only the procedures to be followed after a bench warrant is executed, and does not apply to execution of bench warrants outside the Commonwealth,

which are governed by the extradition procedures in 42 Pa.C.S. § 9101 *et seq.*, or to warrants issued in connection with probation or parole proceedings.

For the bench warrant procedures when a witness is under the age of 18 years, see Rule 151.

* * * * *

Official Note: Adopted December 30, 2005, effective August 1, 2006; **Comment revised** , 2012, **effective** , 2012.

Committee Explanatory Reports:

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Report explaining the Comment revision adding a cross-reference to new Rule 151 published for comment at 42 Pa.B. 5165 (August 11, 2012).

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

Rule 151. Bench Warrant Procedures When Witness is Under Age of 18 Years.

(A) In a court case when a bench warrant for a witness under the age of 18 years is executed, except as provided in this rule, the case is to proceed in accordance with the procedures in Rule 150.

(B) Upon execution of the warrant for a minor witness, the arresting officer immediately shall inform the proper judicial officer and a parent or guardian of the minor witness of the arrest of the minor witness.

(C) Execution of Bench Warrant in County of Issuance

(1) If the judicial officer who issued the bench warrant, or another judicial officer designated by the president judge or by the president judge's designee, is not available to conduct the bench warrant hearing without unnecessary delay, the minor witness shall be taken before the on-call judge of the court of common pleas.

(a) The on-call judge shall determine whether to release the witness or to detain the witness pending the bench warrant hearing. If the bench warrant specifically orders detention of the minor witness, the on-call judge shall not release the witness.

(b) If the on-call judge determines the witness must be detained, the witness shall be detained in a detention facility. The on-call judge shall notify the parent or guardian of the minor witness of the detention.

(2) The minor witness shall not be detained without a bench warrant hearing on that bench warrant longer than 24 hours, or the close of the next business day if the 24 hours expires on a non-business day.

(D) Execution of Bench Warrant Outside County of Issuance

(1) The minor witness shall be taken before a common pleas court judge of the county of arrest without unnecessary delay and in no case later than the end of the next business day.

(2) The judge shall identify the minor witness as the subject of the bench warrant, decide whether detention as a minor witness is necessary, and order that arrangements be made immediately to transport the minor witness to the county of issuance.

(3) If transportation cannot be arranged immediately, the minor witness shall be released unless the bench warrant specifically orders detention of the witness. In this case, the minor witness shall be detained in an out-of-county detention facility.

(4) If detention is ordered, the minor witness shall be brought to the county of issuance within 72 hours from the execution of the bench warrant.

(5) If the time requirements of this paragraph are not met, the minor witness shall be released.

Comment

This rule was adopted in 2012 to establish the procedures when a witness subject to a bench warrant is under the age of 18. The procedures following the execution of a bench warrant set forth in Rule 150 apply to cases when the witness is under the age of 18, except as otherwise provided in this rule.

Paragraph (B) ensures that the judicial officer who issued the bench warrant is aware that the minor witness has been arrested, and that a parent or guardian of the arrested minor witness is notified of the arrest.

The procedures in paragraph (C) for cases in which the bench warrant is executed in the county of issuance, recognize the need, when the issuing judicial officer is unavailable to conduct the bench warrant hearing, for the common pleas court judge who is on call to determine whether a minor witness may be released or must be detained. If the minor witness is detained, the bench warrant hearing must be held no later than the end of the next business day. If the bench warrant hearing is not conducted within this time period, the minor witness must be released.

The minor witness may not be detained in an adult facility pending a bench warrant hearing unless the witness is separated by sight and sound from incarcerated adult offenders and is under continuous visual supervision by facility staff.

In cases in which the bench warrant is executed outside the county of issuance, the minor witness must be transported to the county of issuance within 72 hours of the execution of the bench warrant, and the bench warrant hearing must be conducted by the end of the next business day.

As used in this rule, "minor witness" means a witness who is under the age of 18 years, and "proper judicial officer" means the judicial officer who issued the bench warrant, or, another judicial officer designated by the president judge or by the president judge's designee.

Official Note: Adopted , 2012, effective , 2012.

Committee Explanatory Reports:

Report explaining proposed new Rule 151 providing procedures for bench warrants when a witness is under the age of 18 published for Comment at 42 Pa.B. 5165 (August 11, 2012).

REPORT

Proposed new Pa.R.Crim.P. 151, and Proposed Revisions to the Comment to Pa.R.Crim.P. 150

Bench Warrant Procedures for Witnesses Who are Under the Age of 18 Years

I. Background

For the past several years, the Committee has been developing procedures governing the use of subpoenas in

the courts of common pleas and in magisterial district courts.¹ During that time, Rule of Juvenile Court Procedure (“Juvenile Rule”) 123 was amended to require parental notification when a subpoena is issued for a minor witness.² The Committee agreed a comparable procedure should be included in the proposed changes to Rule 107 that were being developed.

Correlative to this discussion, the Committee also discussed procedures for the issuance of bench warrants for witnesses under the age of 18 who have failed to appear when issued a subpoena. The Committee reviewed the provisions for bench warrants in Juvenile Rule 140 (Bench Warrants for Failure to Appear at Hearings), specifically in paragraph (D) for witnesses. The Committee agreed there should be comparable special procedures for bench warrants for minor witnesses in the Rules of Criminal Procedure, and that these special procedures should be set forth in a separate rule, proposed new Rule 151.

II. Discussion

Proposed new Rule 151 sets forth the procedures after a bench warrant for a witness who is under the age of 18 years is issued and executed.

Paragraph (A) establishes that, except as provided in Rule 151, the bench warrant procedures in Rule 150 govern cases in which the bench warrant is for a witness under the age of 18 years.

Paragraph (B) requires the arresting officer to notify the judicial officer that the minor witness has been arrested on the bench warrant. The arresting officer also is required to notify the parent or guardian of the minor witness. This parental notification requirement is comparable to the requirements in Juvenile Rule 140(D)(3).

The Committee discussed at length the procedure when a minor witness is arrested on a bench warrant and the issuing judicial officer is not available. The issue was whether magisterial district judges (MDJs) are permitted to lodge juveniles in detention facilities. The consensus was that MDJs do not have the authority to lodge juveniles in a detention facility on these bench warrants.

The Committee also discussed the issue of detention of underage witnesses in common pleas court cases in judicial districts without easy access to detention facilities. The members opined that alternatives to detention should be considered such as release on an electronic monitor.

The Committee agreed that the best resolution of issues related to the detention of a minor witness when the issuing judicial officer is not available, whether the bench warrant was issued by an MDJ or by a common pleas court judge, is to require that the minor witness be taken before the on-call the emergency common pleas court judge for a bail decision, including release on an electric monitor, or a detention decision. Paragraph (C)(1) and paragraph (C)(1)(a) require the minor witness to be taken to the on-call common pleas court judge for a determination whether to set bail or to detain the witness pending

the bench warrant hearing if the judicial officer who issued the bench warrant, or, another judicial officer designated by the president judge or by the president judge’s designee, is not available to conduct the bench warrant hearing without unnecessary delay. Paragraph (C)(1)(a) also limits the on-call judge’s ability to release when the bench warrant specifically orders the detention of the minor witness. *See also* Juvenile Rule 140(D)(1)(b). If the on-call judge determines that the minor witness must be detained, paragraph (C)(1)(b) requires that the witness be detained in a detention facility.

Paragraph (C)(2) is taken from Juvenile Rule 140(D)(2) (Prompt Hearing) that requires the bench warrant hearing to be conducted “by the next business day” when the minor witness is detained, and if the hearing is not conducted within this time frame, the witness must be released. This language has been modified slightly in Rule 151(C)(2) to provide that the hearing be conducted “before the end of the next business day.” The Committee believes this language is clearer.

Paragraph (D) (Execution of Bench Warrant Outside County of Issuance) is taken from Juvenile Rule 140(D)(4) (Out-of-County Custody). Rule 140(D)(4)(a) is addressed in Rule 151(B) by the requirement that the arresting officer notify the proper judicial officer of the arrest of the minor witness.

Paragraphs (D)(2), (D)(3), (D)(4), and (D)(5) follow the requirements in Rule 140(D)(4)(b), (c), (d), (e), (f), and (g). When a minor witness is arrested on a bench warrant out of the county of issuance, paragraph (D)(1) requires the minor witness to be taken before a judge of the county of arrest without unnecessary delay. In no case may there be a delay longer than the end of the next business day. When the minor witness appears before the judge, the judge is required to confirm that the minor witness is the subject of the bench warrant, must decide whether to detain the minor witness, and make arrangements to transport the minor witness to the county of issuance. If the judge is not able to arrange transport, the minor witness must be released unless the bench warrant specifically orders detention. In these cases, the minor witness must be brought to the county of issuance within 72 hours from the execution of the bench warrant or be released.

Because Rule 151 is a court case rule and not a Juvenile Court rule, the Committee did not include the provisions in Juvenile Rule 140(D) for a master or for an “other order of court.” Rule 151 applies only to bench warrants issued in court cases unlike the bench warrants that are issued pursuant to Juvenile Rule 140.

The Rule 151 Comment elaborates on the provisions of the new rule and includes a cross-reference to Rule 150. The fourth paragraph explains that a minor witness may only be detained in an adult facility pending the bench warrant hearing if the witness is separated by sight and sound from the incarcerated adult offenders and is under continuous visual supervision by facility staff.

The Rule 150 Comment would be revised to include a cross-reference to new Rule 151 and to cross-reference Rule 107.

[Pa.B. Doc. No. 12-1502. Filed for public inspection August 10, 2012, 9:00 a.m.]

¹ See Committee explanatory Report at 35 Pa.B. 1557 (March 5, 2005) and Supplemental Report at 35 Pa.B. 5677 (October 15, 2005).

² The Committee also looked at Act 98 of 2008 that amended 42 Pa.C.S. § 6333 to require notice to a parent or guardian of the subpoena issued to any witness who is under the age of 18 years. Changes correlative to this statutory provision also have been added to Civil Rule 234.2 and MDJ Rule 214.

Title 255—LOCAL COURT RULES

BEAVER COUNTY

Local Rules of Civil Procedure; No. 11379 Misc.
2012

Administrative Order

The following amendments to the Beaver County Local Rules of Civil Procedure are hereby adopted, effective thirty (30) days after publication in the *Pennsylvania Bulletin*, in accordance with Pa.R.C.P. No. 239(d). Local Rules of Civil Procedure previously adopted are hereby repealed as of the effective date of the following Rules.

The District Court Administrator is Directed to:

(1) file one (1) certified copy of the Local Rules with the Administrative Office of Pennsylvania Courts;

(2) submit two (2) certified copies of the Local Rules and a copy on computer diskette or CD-ROM containing the text of the Local Rules to the Legislative Reference Bureau for publication in the *Pennsylvania Bulletin*;

(3) submit one (1) certified copy of the Local Rules to the Civil Procedural Rules Committee of the Pennsylvania Supreme Court;

(4) submit one (1) certified copy of the Local Rules to the Domestic Relations Procedural Rules Committee of the Pennsylvania Supreme Court;

(5) keep a copy continuously available for public inspection and copying in the Office of the Prothonotary of Beaver County;

(6) keep a copy continuously available for public inspection and copying in the Beaver County Law Library.

By the Court

JOHN D. McBRIDE,
President Judge

BEAVER COUNTY

Local Rules of Civil Procedure Local Rules of Judicial Administration

PREFACE

The Local Rules of the Court of Common Pleas of Beaver County are intended to supplement the Pennsylvania Rules of Civil Procedure. The latter's system of numbering has been preserved. A local rule dealing with the same or related subject matter as that dealt with by a Pennsylvania rule of Civil Procedure has been given the same number as the Pennsylvania Rule of Civil Procedure and is preceded by the letter "L" to indicate its local character. All local rules should be read in connection with the Pennsylvania Rules of Civil Procedure bearing the same numbers.

The rules of construction found in the Pennsylvania Rules of Civil Procedure shall apply to all Local Rules of the Court of Common Pleas of Beaver County. The Local Rules may be cited as "Beaver County L.R. No. _____."

BUSINESS OF THE COURTS

LR205.1. Court Action On Legal Papers.

Any party who desires the signature of, or action by a judge on a legal paper and who has delivered or will deliver the paper to the Prothonotary for filing in accord-

ance with Pa. R.C.P. No. 205.1, must present the paper in motions court for entry of the order.

Note: The paper must be presented to the court personally by or through counsel. After action is taken on the paper, the court will return the paper to counsel for filing and service. This rule does not apply to motions for summary judgment, motions for judgment on pleadings or post-trial motions.

LR 206.1(b). Presentation of Petitions.

The Court will be available to receive petitions at the times and in accordance with the practice which is published for the presentation of motions in the annual Court Calendar.

Note: The prescribed time to receive motions appears on the Beaver County web site: <http://www.beavercountycourts.org/motions.htm>

LR 206.1(c). Notice to All Parties.

The Court will not entertain a petition in any matter unless the opposing party or his counsel has consented in writing or has received three (3) business days written notice of the intention to present the petition. The petition shall set forth the manner in which notice has been given, attaching a copy thereof. Counsel may present a petition after oral notice only in emergency situations. Ex parte petitions will not be entertained without prior notice unless notice is not possible.

LR207.1. Motions to Exclude Expert Testimony Which Relies Upon Novel Scientific Evidence.

All motions to exclude expert testimony authorized by Pa. R.C.P. No. 207.1 shall be filed and served no later than 30 days after the pre-trial conference unless otherwise directed by Court or the case management order. The content of the motion shall be in accordance with Pa.R.C.P. 207.1 (a).

Note: This rule is intended to require a party to raise the issue of the admissibility of testimony of an expert witness prior to trial pursuant to Pa. R.C.P. No. 207.1(b). If a motion is filed untimely, the issue will be deemed waived and the motion dismissed sua sponte.

LR208.3(a). Procedure Governing Motions.

(1) All motions, as defined in Pa.R.C.P. No. 208.1, whether or not they have been filed, shall be presented to the Court by the moving party.

(2) The Court will be available to receive motions at the times and in accordance with the practice which is published in the annual Court Calendar.

Note. The prescribed time to receive motions appears on the Beaver County web site: www.beavercountycourts.org. Links are available to the Court and then to Motions Court.

(3) *Notice to All Parties.*

The Court will not entertain a motion in any matter unless the opposing party or his counsel has consented in writing or has received three (3) business days written notice of the intention to present the motion. The motion shall set forth the manner in which notice has been given, attaching a copy thereof. Counsel may present a motion after oral notice only in emergency situations. Ex parte motions will not be entertained without prior notice unless notice is not possible.

LR211A. Oral Arguments.

The court will be available to hear oral arguments on the dates designated on the court calendar or such other dates as may be determined by the court.LR211B Argument Lists.

(1) Cases shall be placed on the argument list by Praecept of a party or by order of court. Immediately after the last day to file a praecipe for argument, the Court Administrator shall compile a list of cases to be argued. Thereafter, the Court Administrator shall assign the cases to those judges assigned to preside over civil cases, schedule the cases for oral argument, cause notice of the assignment and the time and place for oral argument to be mailed to all parties unrepresented by counsel as well as all counsel of record, and publish the assigned list in the *Beaver County Legal Journal*.

(2) The praecipe for argument shall be in the form approved and revised from time to time by the court. The original praecipe for argument shall be filed with the Prothonotary and a copy thereof delivered to the Court Administrator.

(3) All interested parties must be present for the oral argument; failure to appear may result in an order being entered against the party.

(4) Cases may be submitted on briefs only without oral argument upon written, filed stipulation of all parties filed with the Prothonotary and a copy of the stipulations shall be delivered to the Court Administrator.

LR211C. Briefing Schedule.

(1) The moving party's brief shall be submitted to the Court Administrator and served in accordance with the following schedule:

(a) where the moving party files the praecipe for argument, not later than simultaneously therewith;

(b) where the responding party files the praecipe for argument or the court orders the matter on the argument list, at least twenty (20) days prior to the argument date;

If the moving party fails to timely submit a brief, the court may deny the relief sought or impose other sanctions.

(2) The responding party's brief shall be submitted to the Court Administrator and served at least ten (10) days prior to the argument date provided that the moving party's brief has been timely served. If the brief is not timely submitted, the court may prohibit the responding party from presenting oral argument or may impose other sanctions.

LR211D. Miscellaneous Provisions.

(1) Any issue which has not been raised and properly discussed in a timely submitted brief may be deemed absolutely to have been waived.

(2) Each party will be allowed fifteen (15) minutes to present oral argument subject, however, to the court's power to limit or extend the time for argument. The time for argument shall be limited to not more than thirty (30) minutes for each side notwithstanding the existence of more than two moving or responding parties. The maximum time shall be divided between or among the moving parties or between or among the responding parties as they may decide.

(3) Oral argument will not be continued except on written motion, for cause shown. Such motion shall be subject to L208.3(a).

LR212.1. Civil Actions. Certification For Trial. Time for Initiating Motions for Pre-Trial Judgment or Discovery.

A. All civil actions which are to be tried by a jury may be tried, at the earliest, during the term of trials next following the filing of a Certificate of Readiness for Trial.

Note: This provision is intended to constitute the Notice Required by Pa. R.C.P. No. 212.1(a).

B. (1) A civil action shall be certified for trial by jury, judge or board of arbitration, by filing with the Prothonotary of Beaver County a Certificate of Readiness for Trial. A copy of the Certificate of Readiness for Trial shall likewise be transmitted by the moving party to the Court Administrator of Beaver County.

(2) No case may be certified for trial without having first given at least sixty (60) days written notice of intention to do so to all other parties or their counsel of record.

The notice of intent to certify for trial shall be given to counsel for all parties in all companion cases. Thereafter, the filing of a certificate of readiness for trial shall operate as the certification for trial of all companion cases unless exceptions thereto are filed pursuant to subdivision five (5) hereof.

(3) After a case has been certified for trial, no motion for judgment on the pleadings or for summary judgment may be filed without having first secured leave of court to do so for cause shown.

(4) After a case has been certified for trial, no discovery, including an independent medical examination, may be initiated without having first secured leave of court to do so for cause shown.

(5) Any other party may file exceptions to the certificate of readiness within ten (10) days of the filing thereof. The exceptions shall be presented to the judge assigned to receive civil motions after notice pursuant to Rule L208.3(a) has been given.

Note: The purpose of subdivision (2) is to provide parties with an opportunity to initiate appropriate pre-trial procedures prior to the certification of the case for trial. Failure to do so prior to certification for trial may result in the waiver of the right to do so under subdivisions (3) and (4).

LR212.2A. Pre-Trial Conference and Pre-Trial Statements.

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

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

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

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

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

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

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

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

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

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

Note: Where a liability insurance carrier, the MCARE Fund or a party has given counsel written authority to settle in an amount deemed by the court to be reasonable, the court will probably excuse attendance at the Pre-Trial Conference. All requests to be excused should be by formal motion setting forth the reasons for the request and shall be presented in accordance with LR 208.3 (a).

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

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

LR212.2B. Case Management Conferences and Complex Cases.

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

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

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

LR212.3. Pre-Trial Conference—Imposition of Sanctions for Obdurate Conduct.

A. The Court may request the presence of an official court stenographer, or utilize the digital audio recording system, during a pre-trial conference. The record shall not be transcribed unless ordered by the presiding judge.

B. The presiding judge shall recommend a settlement amount to counsel for parties if the judge determines that he or she can fairly evaluate the case for settlement purposes. The recommendation and the reasons in support thereof shall be included in the stenographer's notes as well as the parties' settlement positions and the reasons therefore.

C. The court may make a finding that a party has engaged in obdurate conduct in regard to the party's settlement position either sua sponte or on petition of another party. In either event, not later than ten (10) days after a jury verdict or a decision of the court, upon petition of a party or the court, a rule shall be issued to show cause why counsel fees should not be awarded under 42 Pa.C.S.A. § 2503(7). The Petition Practice set forth in Pa.R.C.P. No. 206.1 et seq. will apply.

D. The court should consider and weigh the following factors determining whether or not to impose sanctions:

1. The facts and circumstances which existed at the time of the pre-trial conference;

2. Whether there was a change in such facts or circumstances to account for a variation between the plaintiff's demand, the defendant's offer and the jury's verdict;

3. The final settlement demand and offer;

4. The settlement value;

5. Whether there was substantial merit to the parties' claim or defense, and;

6. Whether a party's settlement position had a reasonable basis in law or in fact.

LR213. Joinder of Cases.

All Orders which join separately filed actions shall specify whether the joinder is intended to provide for a joint trial or hearing, or is intended to consolidate the actions for all purposes. The Order shall further specify the caption(s) and court number(s) to be utilized thereafter.

LR213A. Motion for Joint Hearing or Trial.

All Motions for a Joint Hearing or Trial shall contain a Proposed Order of Court in substantially the following form:

(Caption)

ORDER

AND NOW, this ____ day of _____, upon consideration of the foregoing Motion for Joint Hearing or Trial, it is hereby ORDERED and DECREED that a joint hearing or trial shall be held in the cases of _____, _____ filed at No. _____, and _____, filed at No. _____. Each case shall maintain its separate caption and case number. The Prothonotary shall docket this Order at both case numbers and shall place a duplicate copy of same in the file at No. _____. All future filings shall be docketed and maintained separately at the case number they relate to.

BY THE COURT

J.

LR213B. Motion For Consolidation.

All Motions to Consolidate shall contain a Proposed Order of Court in substantially the following form:

(Caption)

ORDER

AND NOW, this ____ day of _____, upon consideration of the foregoing Motion to Consolidate, it is hereby ORDERED and DECREED that the cases of _____ at No. _____, and _____ at No. _____, shall be consolidated for all purposes at No. _____. The Prothonotary shall transfer all previous filings at No. _____ to the consolidated case number at No. _____. All future filings shall be captioned and docketed as follows:

vs.

and No. _____

vs.

BY THE COURT

J.

Note: Rules LR213, LR213A and LR213B are intended to clarify for the parties, Court, Prothonotary and Appellate Courts, the intended effect of a joinder and whether the cases are to have a separate or consolidated identity as discussed by the Pennsylvania Superior Court in *Keefer v. Keefer*, 741 A.2d 808 (Pa. Super. 1999).

LR214. Trial Lists.

A. The Court Administrator shall maintain a master list of cases to be tried before a jury and a master list of cases to be tried by a judge without a jury. Cases shall be placed on either list pursuant to order of court.

B. After consultation with the court, the Court Administrator shall prepare a list of cases to call for trial before a jury from the master list. The trial list shall be prepared so as to give preference in accordance with Pa. R.C.P. No. 214 and then as the court may see fit. Cases that have not been given preference shall be listed for trial, as nearly as possible, in the chronological order in which they were placed on the master trial list.

The Court Administrator shall then mail a notice of trial to counsel for each party and to each party not represented by counsel. Notice may be by regular mail addressed to counsel or the party at the address they have endorsed on their last pleading.

C. The Court Administrator shall assign cases from the master list of non-jury cases to a judge and give notice of the assignment by regular mail to counsel for each party and each party not represented by counsel. All scheduling of such cases will be done by the assigned judge.

LR217. Costs on Continuance.

A. Bills of costs must set forth the names of witnesses, the dates of their attendance the number of miles actually traveled by them, and the place from which mileage is claimed. The bill shall be verified by the affidavit of the party filing it or his attorney that the witnesses named were actually present in Court, and that, in his opinion they were material witnesses. A copy of the bill of costs shall be served on opposing counsel pursuant to Pa.R.C.P. 440.

B. The party upon whom a bill of costs has been served waives all objections to it unless, within ten (10) days after such service, exceptions thereto are filed. Thereafter,

the issue shall be determined by the Court in accordance with Pa.R.C.P. No. 206.1-206.7.

C. Where the plaintiff resides out of the state, or is a foreign corporation, the defendant, upon filing a petition, may have a rule issued on the plaintiff to enter security for costs within twenty (20) days after notice. In the meantime, all proceedings may be stayed. Upon proof of default filed, the court may enter a judgment of non pros.

LR220.1. Voir Dire of Prospective Jurors.

Voir Dire of Prospective Jurors will be conducted in accordance with Pa.R.C.P. 220.1.

The standard questions in Pa. R.C.P. 220.1 may be deleted or revised to accommodate the particular case either by agreement of counsel for all parties or by leave of court. Additional questions may be posed to prospective jurors by agreement of counsel for all parties or by leave of court. Such deletions, revisions or additions may be requested orally during voir dire provided that all parties or their counsel consent thereto. Otherwise, all deletions, revisions and additions to the list of questions shall be in writing, filed with the Prothonotary and submitted to the trial judge or, if unknown, to the Court Administrator and served on all other parties or their counsel at least seven (7) days prior to the first day of trial term and, unless agreed upon by counsel for all parties, shall not be propounded to the prospective jurors without court approval.

LR223. Custody and Storage of Trial Exhibits.

A. All non-documentary exhibits and documentary exhibits larger than 8.5 x 11 inches shall remain in the custody of the moving party and shall be removed from the courthouse at the conclusion of the trial. Such exhibits shall be retained by the moving party until conclusion of the case and shall be produced upon order of the trial judge to do so when necessary.

B. Any party desiring to utilize a magnified copy of a document or photograph or image at trial, either in hard copy or on a projection screen, shall first submit the original or a copy thereof to be marked as an exhibit for receipt into evidence.

Note: The purpose of this rule is to eliminate problems encountered by the court stenographers relating to custody and storage of large exhibits. The rule is not intended to limit the exhibits which are either shown to the jury or sent out with the jury during deliberation.

C. A hard copy of any photograph or document admitted into evidence at a trial must be provided to the court.

LR229.1. Sanctions For Failure to Pay an Award From an Arbitration or Dispute Resolution From Which No Appeal Has Been Taken.

A. As used in this rule, the following words shall have the following meaning:

“Award.” The finding of a Board of Arbitration, an arbitrator(s), or a dispute resolution proceeding which compels payment, in any form of monetary exchange, to a prevailing party from a non-prevailing party.

B. The provisions of this rule shall not apply to the annuity or future installment portion of a structured settlement award.

C. The Prevailing Party and Non-prevailing Party may agree in writing to modify or waive any of the provisions of this rule.

D. A Non-prevailing Party shall have thirty-five (35) calendar days from receipt of an award within which to deliver the award to the prevailing Party or its counsel.

E. If awarded funds are not delivered to the Prevailing Party or its counsel within aforesaid thirty-five day period, the Prevailing Party may present to the Court a Petition for Sanctions which shall include: (a) an affidavit attesting to nonpayment; (b) a copy of any document evidencing the procedural history of the matter; (c) a copy of the award; (d) a copy of a receipt reflecting delivery of the award more than thirty-five (35) days prior to the date of filing of the Petition; and (e) the form of Order specified in paragraph (G) below. The attorney shall certify to the Court the applicable interest rate specified in paragraph F below and shall certify that the Petition and its accompanying documents have been served on all interested counsel.

F. Upon receipt of the Rule to Show Cause, the Petition and its supporting documentation required by paragraph (E) above, the Non-prevailing Party shall have twenty (20) days to file an Answer to the Rule and thereafter shall conduct discovery and appear for a hearing, if the Court deems necessary. If the Court finds that the Non-prevailing Party has violated this local rule and that there is no material dispute as to the terms of the award, the Court shall impose sanctions in the form of simple interest calculated at the rate equal to the prime rate as listed in the first edition of the Wall Street Journal published for the calendar year last preceding the date on which the Petition was filed, running from the thirty-fifth day to the date of delivery of the award; reasonable attorneys' fees incurred in the preparation and presentation of the Petition and any subsequent action related thereto; and such other sanction as the Court deems necessary, including liquidated damages not in excess of 10% of the award.

G. The Petition shall be accompanied by two Orders in substantially the following form:

ORDER

AND NOW, this ____ day of _____, 20 ____, a Rule is issued upon _____ to show cause why sanctions should not be imposed for failure to deliver awarded funds to _____ or _____ within thirty-five (35) days after receipt of an award. Rule returnable twenty (20) days hereafter, or _____, 20 _____, by which time an Answer shall be filed. If necessary, a hearing or discovery on this matter will be held following the return of the Rule at a time or in a manner to be designated by the Court. Thereafter, an appropriate Order shall be entered.

BY THE COURT

J.

ORDER

AND NOW, this ____ day of _____, 20 _____, upon consideration of the Petition for Sanctions and its attachments, the Answer thereto, and upon a finding that payment was not made to _____ or _____ within thirty-five days of receipt of the award in the above captioned action, and _____ conduct in failing to deliver the awarded funds is dilatory, obdurate and vexatious, it is hereby ORDERED and DECREED that in addition to the award of \$(_____), _____ is ordered to pay forthwith simple interest thereon at the rate of on \$(_____) from _____ to the date of delivery of the awarded funds, together with \$(_____) in attor-

neys' fees, and \$ _____ in liquidated damages, pursuant to Beaver County Local Rule 229.1.

BY THE COURT

J.

SERVICE OF ORIGINAL PROCESS

LR430. Service By Publication.

The Beaver County Legal Journal is designated as the publisher of legal notices in Beaver County. Unless the manner of publication of service of process or notice is otherwise specified by law or rule of court, such service or notice shall be made by publishing the same once in the *Beaver County Legal Journal* and once in a newspaper of general circulation in Beaver County.

CIVIL ACTION

LR1018.1. Notice To Defend.

The following organization shall be named in the Notice to Defend as the organization from whom legal help can be obtained:

Lawyer Referral Service of the Beaver County Bar Association, 788 Turnpike Street Beaver, PA 15009 Telephone Number: (724) 728-4888

MORTGAGE FORECLOSURE

LR1147(a)(2). Mortgage Foreclosure.

1. In order to comply with Pa.R.C.P. No. 1147(a)(2), every complaint in mortgage foreclosure shall contain a full and complete description of the land subject to the mortgage. *Note:* A Metes and bounds description of the land is preferable. The attachment as an Exhibit to the complaint of a copy of the deed which conveyed the land to the mortgagor(s) will usually constitute compliance with this rule. A reference in the complaint to a recorded deed or mortgage for a fuller description will not constitute compliance with this rule)

2. The Prothonotary of Beaver County shall not accept for filing a complaint in mortgage foreclosure which does not contain a full and complete description of the land subject to the mortgage.

COMPULSORY ARBITRATION

LR1301A. These Rules apply to the following civil matters or issues which shall be submitted to compulsory arbitration under Section 7361 of the Judicial Code.

1. All civil actions, as defined in Pa. R.C.P. No. 1001(a) and (b)(1), as amended, for money damages where the amount in controversy on any claim is \$25,000.00 or less, exclusive of interest and costs. The amount in controversy shall be determined from the pleadings, by agreement of the parties or by the court.

2. Where no appearance has been entered or a default judgment has been entered in a civil action and the plaintiff desires to have the damages assessed in an amount not to exceed \$25,000.00.

3. By agreement of reference signed by the parties or their counsel. Such agreement shall define the issues and contain such stipulation as to facts, admissions or waivers of defenses or proofs as are agreed upon.

4. Cases in which the amount in controversy exceeds \$25,000.00 but does not exceed \$50,000.00 may be submitted to arbitration under these rules where all parties have consented thereto in writing and such written consent is filed.

LR1301B. Exceptions.

These rules shall not apply to the following matters:

1. Action in Ejectment;
2. Action to Quiet Title;
3. Action in Replevin, unless authorized by the court;
4. Action in Mandamus;
5. Action in Quo Warranto;
6. Action of Mortgage Foreclosure;
7. Actions upon Ground Rent;
8. Foreign Attachment;
9. Fraudulent Debtors Attachment; and
10. Where claims for relief were heretofore asserted in an action in equity.

LR1301C. Compensation of Board.

Each member of the Board of Arbitration who has signed an award, whether as a majority or as a dissenter, shall receive as compensation a daily fee in an amount as set by the Court from time to time by special order. Where hearings exceed one day, the arbitrators may petition the court for additional compensation which may be granted for cause shown. Any such request should be made prior to submitting the award to the Court Administrator as required by Local Rule 1306.

LR1301D. Procedure for Payment.

Upon the filing of the arbitrator's award, the Prothonotary shall certify such filing to the County Commissioners and to the County Controller, together with the names of the members of the Board and an Order for payment. The County Commissioners and Controller shall thereupon pay the applicable fee to each member of the Board. Such fees shall not be taxed as costs in the case.

LR1301E. Discovery.

Discovery in cases subject to these rules shall be governed by LR4011.

LR1302A. Eligibility to Serve as Arbitrators.

Only persons actively engaged in the practice of law in Beaver County shall be eligible to serve as Arbitrators. For purposes of this rule, "persons actively engaged in the practice of law" is defined as: persons who are authorized by the Pennsylvania Supreme Court to practice law and who regularly maintain their principal office in Beaver County for the practice of law, excluding all attorneys employed full time by Beaver County unless their Department Head consents in writing to their eligibility.

LR1302B. Qualifications as Chairman.

Only persons admitted to the practice of law for at least fifteen (15) years and who have extensive civil trial experience are eligible to serve as Chairman of the Boards of Arbitrators.

LR1302C. List of Arbitrators.

The Court Administrator of Beaver County shall, with the approval of the President Judge, on or before October 1 of each year, compile a list of persons eligible to serve as Arbitrators including persons eligible to serve as Chairmen of Boards of Arbitrators. Persons who have been determined to be eligible shall file a written consent to serve as an Arbitrator or Chairman with the Court Administrator. Arbitrators and Chairmen shall be selected alphabetically as nearly as possible by the Court

Administrator in accordance with L1302D from the persons who have filed a consent to serve.

LR1302D. Selection of Board.

Boards of Arbitrators shall be selected by the Court Administrator to serve on each arbitration day designated by the Court. Two Arbitrators and a Chairman shall be selected from the list of eligible persons who have consented to serve and appointed to each Board. At least one of the two other arbitrators shall have significant civil trial experience. The Court Administrator shall give each Arbitrator at least ninety (90) days written notice of the date the Arbitrator is to serve.

LR1302E. Scheduling of Cases.

Upon the filing of a Certificate of Readiness as provided in LR212.1.B., the Court Administrator shall schedule the case of arbitration.

The Court Administrator shall schedule a sufficient number of cases for hearing on each arbitration day and give at least 45 days written notice of the hearing date to counsel for the parties and to pro se litigants. All requests for a continuance must be submitted to and approved by the Court to a date to be selected by the Court Administrator. Copies of all hearing notices shall be filed with proof of mailing.

When scheduling cases for hearing, the Court Administrator shall avoid the creation of conflicts of interest with Arbitrators. The notice of hearing shall identify the members of the Board of Arbitration. Any objection to an Arbitrator shall be made to the Court within twenty (20) days of mailing the notice and, if sustained, will be grounds to continue the hearing.

LR1302F. Vacancies.

Should a vacancy on the Board of Arbitration occur for any reason prior to hearing, or should a member of the Board be unable to serve or fail to attend on the arbitration day, the Court Administrator shall be notified and shall appoint a substitute. The appointment of the substitute Arbitrator shall be communicated to all parties or their counsel prior to the commencement of the hearing. If a party has an objection to the substitute, it shall be made forthwith or be waived.

Should an Arbitrator fail to appear on the scheduled arbitration day, without good cause or without having notified the Court Administrator at least ten (10) days prior thereto, that Arbitrator shall be removed from the list of eligible Arbitrators. In the event a substitute Arbitrator cannot be appointed, sanctions may be imposed against the delinquent Arbitrator.

LR1303. Arbitration Hearings.

Arbitration hearings shall be conducted at the Beaver County Courthouse pursuant to assignment by the Court Administrator. Prior to the commencement of the hearing, the Prothonotary shall administer the oath of office in the form mandated by Pa.R.C.P. 1312, to each arbitrator and deliver the file to the Chairman.

LR1304. Powers of Arbitrators.

The Board of Arbitrators shall have the powers conferred upon them by law, including the power to permit the amendment of any pleading. The Arbitrators' permission and the amendment must be filed in writing promptly.

Note: 1. See Pa.R.C.P. Nos. 1303(b) and 1304(a) for the power of arbitrators to act when a party fails to appear or is not ready.

LR1306. Arbitration Award.

The Board shall submit its award to the Court Administrator who shall note the same on its records and forthwith file the award with the Prothonotary. Failure to submit the Award promptly may result in the imposition of sanctions, including forfeiture of the Arbitrator's fees.

CLASS ACTIONS**LR1703. Class Actions—Assignment to a Judge.**

A party who commences a class action shall forthwith deliver a copy of the complaint to the Court Administrator who shall forthwith assign the case to a Judge of the Court assigned to preside over civil cases.

ACTIONS PURSUANT TO PROTECTION FROM ABUSE ACT**LR1901.5. Procedure for Enforcement of Protection From Abuse Orders.**

A. When a defendant is arrested for violation of a Protection From Abuse Order issued by the Court or a Temporary Protection Order issued by a District Justice, the defendant shall be preliminarily arraigned by a District Justice forthwith.

B. In that event, a complaint for a violation of an existing order must be filed with the District Justice by the plaintiff in such action or by the police. The complaint shall be substantially in following form:

(Caption)

COMPLAINT FOR INDIRECT CRIMINAL CONTEMPT FOR VIOLATION OF PROTECTION FROM ABUSE ORDER

I, the undersigned, do hereby state:

1. My name is _____ and I live at _____;
2. I accuse _____, who lives at _____, with violating a Protection From Abuse Order entered by Judge _____ on the _____ day of _____, 20____ (attach a copy of the Order if available);
3. The date (and the day of the week) when the accused committed the offense was on or about _____;
4. The place where the offense was committed in the County of Beaver;
5. The acts committed by the accused were _____; all of which were in violation of the Protection From Abuse Order entered in accordance with the Protection From Abuse Act, 35 P. S. § 10181, et seq.;
6. If the defendant has not already been arrested, I ask that a warrant of arrest be issued and that the accused be required to answer the charges I have made.

I verify that the statements made in the complaint are true and correct to the best of my knowledge, information and belief. I further understand that any false statements made herein are subject to the penalties of 18 Pa.C.S. § 4904 relating to unsworn falsification to authorities.

Date _____ (Signature of Affiant)

The above subscribed affiant personally appeared before me on _____, _____, signed the complaint in my presence and asserted that the facts therein are true and correct; and wherefore it appears that there is probable cause for the issuance of process.

_____ (SEAL) (Issuing Authority)

C. At the Preliminary Arraignment, the defendant shall be notified:

(a) that he or she is charged with indirect criminal contempt for violation of the Protection From Abuse Order. A copy of the complaint shall be given to the defendant;

(b) that a hearing will be held before a judge of the Court on the first available date; and

(c) that the defendant is entitled to be represented by counsel and, if unable to afford counsel and otherwise qualifies, counsel will be appointed.

D. Bail shall be set to insure defendant's presence at the contempt hearing in accordance with Pennsylvania Rule of Criminal Procedure No. 4004 including, without limitation, the condition that the defendant not contact the petitioner or members of the petitioner's household, or anyone with whom the petitioner then resides, directly or indirectly.

E. If the defendant is not able to post bail, he shall be committed to the Beaver County Jail. Bail may be thereafter posted through Beaver County Pre-Trial Services at the earliest appropriate time.

F. The office of the District Justice shall cause the following completed forms and bail, if entered, to be forwarded immediately to the Beaver County Court Administrator's Office, Beaver County Courthouse: (a) complaint charging a violation of the Protection From Abuse Order; (b) probable cause affidavit, if any; and (c) certificate of bail and commitment.

G. Upon receipt of papers from the District Justice, the Office of the Beaver County Court Administrator will forward said papers to the appropriate Judge of the Court who will set a hearing on the contempt charge at the earliest possible time.

ACTIONS FOR SUPPORT**LR1910A. Procedure.**

(a) Actions for support shall proceed as prescribed by P.A.R.C.P. 1910.11.

(b) A conference scheduled as a result of the filing of a complaint or petition shall be continued by the Domestic Relations Section only if the parties, or their counsel, agree thereto in writing or if an order of Court is obtained directing the same. A motion seeking such an order shall be presented in Motions Court after appropriate notice of same is given to the opposing party or that party's lawyer pursuant to local rule LR208.3(a)3.

(c) A demand for de novo hearing filed after the entry of an Interim Order following a Domestic Relations conference should set forth the issues to be raised with specificity. A copy of the demand for de novo hearing is to be served within five days of its filing upon the opposing party or that party's counsel of record.

LR1910B. Appearance of Counsel.

(a) All counsel shall file a Praeceptum for Appearance with the Domestic Relations Section, which includes the attorney's name, business address, telephone and facsimile numbers, and Supreme Court identification number. If counsel fails to enter his or her appearance as prescribed by this Rule, he or she shall not be entitled to receive copies of orders, notices, or other record matters.

(b) Following entry of a final order from the matter for which counsel entered his or her appearance as set forth in LR1910B(a) counsel may withdraw his or her appearance by filing of record a praeceptum to withdraw to which is

attached a certificate of service on that attorney's client as well as on the opposing party or that party's counsel forthwith.

LR1910C. Special Relief Orders.

All motions seeking immediate relief shall be presented to the assigned Motions Judge after notice of same is given to the opposing party or that party's counsel of record pursuant to local rule LR208.3(a)3.

A copy of any such motion which is anticipated to be contested shall be delivered to the Motions Judge at least twenty four hours prior to presentation.

LR1910D. Temporary Suspension of Order.

(a) An enforcement officer of the Domestic Relations Division who suspends or adjusts any order in the absence of an order to do so, must send written notification of the suspension or adjustment, and the reason therefore, to all parties the same day that the action is taken.

(b) Under circumstances where it is anticipated that continuation of a support order will result in an uncollectible overpayment of that obligation any party may move the court for a suspension of the obligation in accordance with Rule L1910C.

LR1910E. Review of Court Files.

Parties, and their attorneys of record in the Domestic Relations action, may upon written request at the Domestic Relations Office view the entire file maintained by the Domestic Relations Office, with the exception of the confidential notes of the hearing officers. No documents from the file may be removed from the Domestic Relations Office.

LR1910F. Marriage Settlement Agreement and Divorce Decree.

A party who wishes to terminate an alimony pendente lite obligation or to initiate enforcement of an alimony obligation in accordance with the terms of a divorce decree or a decree with marriage settlement agreement shall forward a true and correct copy of the decree to the Domestic Relations Division with a copy of the request forwarded to the opposing counsel or the opposing party if not represented by counsel. Unless the decree or decree with marriage settlement agreement specifically directs collection of alimony by the Domestic Relations Division, the Domestic Relations Division will not enforce collection without a court order.

ACTIONS FOR CUSTODY, PARTIAL CUSTODY AND VISITATION OF MINOR CHILDREN

LR1915A. Custody.

1. Scheduling the Custody Conference

When filing a claim for custody, partial custody, or visitation in a Complaint or a subsequent claim, the moving party shall:

(a) Present the pleading to the Administrative Custody Judge during Motion's Court to obtain the court's signature on the scheduling Order. Immediately thereafter, obtain a date and time for the conference from the Administrative Custody Judge. The judge's chambers will make a copy of the pleading and Order to be forwarded to Juvenile Services Division.

(b) File the original pleading and Order in the Prothonotary's Office.

(c) Serve a clocked copy of the pleading and Order on counsel of record and/or unrepresented parties, with proof

of service to be filed in the Prothonotary's Office, and a copy of the proof of service to be provided to the Child Custody Conference Officer at or prior to the time set for the Conference.

(d) When a petition for contempt of a custody Order is filed, the judge shall schedule the contempt petition for a status conference or hearing before the court, or for a conciliation conference before a conference officer. If a petition for contempt is filed at or about the same time as a petition for modification of a custody order, the judge may order the contempt petition to be mediated by the conference officer at the same time as the petition for contempt. If the matter is not resolved at the conciliation conference, the court shall schedule a status conference or a hearing on the contempt matter, or if exceptions are filed to the proposed order of custody, the judge may consolidate the contempt matter with the pre-trial conference and/or trial scheduled on the modification petition.

(e) In order to facilitate compliance with the requirements of the Uniform Child Custody Jurisdiction Act, a party shall provide the Court with all known information concerning a Custody proceeding pending in another state which involves the same parties or children.

Note: In particular, the Court should be informed of the following: (1) the name and address of the Court in which such case is pending; (2) the caption of such case; (3) the name, address and telephone number of the Judge to whom the case might have been assigned, and (4) any Orders entered in such case. Information provided under this Rule should be submitted in writing and attached to the Complaint/Petition

2. Preliminary Objections.

Any party filing Preliminary Objections raising issues of jurisdiction or venue of the court to act, shall, concurrently with filing the same with the Prothonotary, deliver a true and correct copy of the Preliminary Objections to the Judge assigned to handle Custody matters and to opposing counsel and/or to any party not represented by counsel. The Judge will schedule the matter for Argument on a priority schedule to dispose of the issues as expeditiously as possible.

3. Conduct of Conciliation Conference Officer

(a) The Child Custody Conference Officer will convene a Conciliation Conference, as scheduled by the Court, which Conference shall be attended by the parties and their legal counsel, if any.

(b) Before counsel appears before the Child Custody Conference Officer, counsel must enter his/her Appearance on the record in the Prothonotary's Office, provide notice to all opposing counsel or party(ies) and have proof of entry of Appearance available at the Conference.

(c) Counsel for the parties, or the parties themselves if unrepresented, are to provide true and correct copies of any exhibits to be shown to the Child Custody Conference Officer at the Conference, to counsel for the opposing party or to the opposing party if unrepresented, at least five (5) days prior to the scheduled Conference. Failure to comply may, at the discretion of the Child Custody Conference Officer, result in the exclusion of the exhibit from consideration, the rescheduling of the Conference to allow the opposing party an opportunity to respond or other action deemed appropriate by the Child Custody Conference Officer, keeping in mind the Officer's need to evaluate the best interest of the child(ren).

(d) The parties, counsel and the Child Custody Conference Officer, as mediator or conciliator, shall make a

good-faith effort to resolve the issues and reach agreement on custody, partial custody and/or visitation. The Child Custody Conference Officer shall conduct the Conciliation Conference as an informational and conciliatory proceeding rather than confrontational or adversarial.

(e) No scheduled Custody Conference shall be rescheduled by any party or counsel without the prior expressed consent of the opposing party or counsel or Order of Court issued upon a Motion to Continue submitted in accordance with LR 208.3(a)3.

4. Procedure After Conciliation Conference.

(a) If the parties reach agreement, the Child Custody Conference Officer shall submit an Agreed Order to the Court bearing the written consents, evidenced by signatures of the parties and their counsel, if any. Neither the parties nor counsel need to appear before the Court for the Court's approval of the Agreed Order.

(b) If, for any reason, the parties do not reach agreement, the Child Custody Conference Officer shall file a written report with the Court within five (5) business days, unless otherwise extended by agreement of counsel, or the parties if unrepresented. The report shall be in a narrative form and shall include the positions of the parties, proposed settlements of the parties, if any, and the recommendation of the Child Custody Conference Officer, together with reasoning for the recommendations and either a Proposed Order or a proposed Temporary Order. Upon receipt and review of the report, the Court shall issue a Proposed Order or a Temporary Order and promptly provide a copy thereof, together with a copy of the Child Custody Conference Officer's report, except for that portion of the report relating to comments from the minor child(ren), to counsel for the parties, or the parties themselves if not represented by counsel.

(c) A Proposed Order shall be entered as a Final Order unless Exceptions thereto are filed by either party within twenty (20) days after the effective date set forth in the Proposed Order. Exceptions may also be filed to a Temporary Order at any time during the existence of the Temporary Order, but the Court will decide whether the Exceptions will be remanded back to the Child Custody Conference Officer for further proceedings and recommendation or set down by the court for a Pre-Hearing Conference as provided for herein. The Court may Order, if circumstances warrant, that should Exceptions be filed, the Proposed Order shall be effective as a Temporary Order pending further Order of Court.

(d) Exceptions to the Proposed Order or Temporary Order must be in writing and should state, with particularity, the portion(s) of the Order objected to. The Exceptions must be filed with the Prothonotary, and copies thereof must be delivered forthwith to the Court Administrator's Office, as well as to all counsel and/or unrepresented parties of record.

(e) Failure of any party, having primary or shared physical custody of a child, to appear at a scheduled Conciliation Conference or Pre-Trial Conference will result in the scheduling of the matter for a Hearing before the Court and may result in imposition of sanctions by the Court.

(f) Failure of any party, not having primary physical custody of a child, to appear at a scheduled Conciliation Conference or Pre-Trial Conference may result in the Court's entry of a Proposed Final Order or a Temporary Order, as the Court determines to be warranted under the circumstances found to be present and may result in the imposition of sanctions.

5. Pre-Trial Conference.

(a) Upon receipt of the Exceptions by the Court Administrator's Office, the Court will schedule a Pre-Trial Conference to be attended by all counsel and parties, whether represented by counsel or not. A Pre-Trial Conference with the Court will be scheduled in every case and will be waived only with the consent of the Court.

(b) No later than five (5) days prior to the date scheduled for Pre-Trial Conference, each attorney and each party not represented by counsel must file a completed Pre-Hearing Information Statement, on or in a form approved by the Court, at the Court Administrator's Office for the Presiding Judge, with copies provided to opposing counsel and/or unrepresented parties of record.

(c) Failure of any party, having primary or shared physical custody of a child, to appear at a scheduled Conciliation Conference or Pre-Trial Conference will result in the scheduling of the matter for a Hearing before the Court and may result in imposition of sanctions by the Court.

(d) Failure of any party, not having primary physical custody of a child, to appear at a scheduled Pre-Trial Conference may result in the Court's entry of a Proposed Final Order or a Temporary Order, as the Court determines to be warranted under the circumstances found to be present and may result in the imposition of sanctions.

LR1915B. Reduced Fee Program.

1. Any individual who is referred under Neighborhood Legal Services Association's Pro Bono or Reduced-Fee Programs to a participating member of the Beaver County Bar Association for representation as a litigant in a Custody Action and who is certified by NLSA to be income eligible under Legal Services regulations, shall be granted leave to proceed In Forma Pauperis. Counsel representing these individuals shall present to the Prothonotary a Praeceptum for Permission to Proceed In Forma Pauperis, which shall be endorsed by counsel, and which shall have attached to it a Certificate of Eligibility prepared by NLSA. The Praeceptum shall be substantially in the following form:

(Caption)

Praeceptum to Proceed in Forma Pauperis

To the Prothonotary: Kindly allow {Plaintiff's/Defendant's Name}, the Plaintiff/Defendant, to proceed In Forma Pauperis.

I, {Attorney's Name}, attorney for the party proceeding In Forma Pauperis, certify that I believe the party is unable to pay the costs and that I am providing free legal services or reduced-fee legal services to the party pursuant to the Reduced-Fee or Pro Bono Referral Programs of Neighborhood Legal Services Association. The party's Certificate of Eligibility prepared by Neighborhood Legal Services Association is attached hereto.

Name of Attorney for
{Plaintiff/Defendant}
Address
Telephone Number
Supreme Court ID Number

2. Any participating member of the Beaver County Bar Association who provides representation to a Custody litigant on a Motion for Special Relief or at a Child Custody Conference pursuant to a referral from NLSA's Pro Bono or Reduced-Fee Programs, shall be permitted to

enter a Limited Appearance. The Praecipe for Entry of Limited Appearance shall be substantially in the following form:

(Caption)

Praecipe for Entry of Limited Appearance

To the Prothonotary: Kindly enter my Limited Appearance for {Plaintiff's/Defendant's Name}, the Plaintiff/Defendant, in the above-captioned matter.

This Appearance is limited to providing representation {on the _____ filed on behalf of this party/at the Custody Conference scheduled in this matter for [date of Conference]}.

Name of Attorney for
{Plaintiff/Defendant}
Address
Telephone Number
Supreme Court ID Number

3. Upon completion of the representation under the above-described referral programs, the attorney shall file a Praecipe for Withdrawal of Limited Appearance. This Praecipe shall be filed without leave of Court, and it shall not be required to, but may, contain information about another attorney who may be entering his/her Appearance at the same time. This Praecipe shall direct the Prothonotary to send all future notices directly to the client and shall set forth the client's last-known address. The Praecipe for Withdrawal of Limited Appearance shall be substantially in the following form:

(Caption)

Praecipe for Withdrawal of Limited Appearance

To the Prothonotary: Kindly withdraw my Limited Appearance for {Plaintiff's/Defendant's Name}, the Plaintiff/Defendant, in the above-captioned matter. Withdrawal of this Limited Appearance is permitted pursuant to Miscellaneous Order No. ____ of _____. All future notices should be sent directly to {Plaintiff's/Defendant's Name}, the Plaintiff/Defendant, at {set forth last-known address for this party}.

Name of Attorney for
{Plaintiff/Defendant}
Address
Telephone Number
Supreme Court ID Number

LR1915C. Educational Seminar Pertaining to Children of Divorcing Parents.

All parties to Custody Actions filed on or after June 1, 1994 where the interests of children under the age of eighteen (18) years are involved, shall, unless excused by the Court, complete a program which we have entitled the Educational Seminar Pertaining to Children of Divorcing Parents (the "Seminar").

All parties shall register for the first available Seminar after the date the Defendant has been served with process. Counsel for the Plaintiff shall require the Plaintiff to register for the Seminar and shall have a copy of the attached Notice and Registration Form served on the Defendant at the same time as the Complaint.

Failure of a party to successfully complete the Seminar will result in sanctions by the Court, including Contempt.

ACTIONS OF DIVORCE OR ANNULMENT OF MARRIAGE

LR1920.33(b). Pre-Trial Conference.

When a divorce case which contains contested claims is at issue, either party may present to the judge assigned

to divorce matters a motion for a pre-trial conference. A party requesting a pre-trial conference must first have filed an inventory prepared in compliance with Pa.R.C.P. No. 1920.33(a); the motion requesting the pre-trial conference must so certify.

Advance notice must be given in accordance with LR208.3(a)3. At least five (5) calendar days prior to a scheduled pre-trial conference, each party shall file, serve, and deliver to the trial judge a pre-trial statement prepared in compliance with Pa.R.C.P. No. 1920.33(b). This requirement will be strictly enforced. The issues to be addressed at a pre-trial conference shall include settlement, simplification of any unresolved issues, and whether the court or a Master will hear any unresolved issues.

LR1920.42. Affidavit under Section 3301(d) of the Divorce Code.

The affidavit required under Section 3301(d) of the Divorce Code (the "Affidavit") shall be filed with the Prothonotary before it is served. The opposing party must be served with a certified copy of the Affidavit. The moving party must wait a minimum of twenty (20) days after service of the Affidavit before serving the Notice of Intention to File Praecipe to Transmit the Record and Counter Affidavit or filing the Waiver of Notice authorized by Pa.R.C.P. 1920.42(e).

LR1920.43. Special Relief.

A party seeking special relief must give notice to opposing counsel, or to an unrepresented opposing party, of his or her intention to seek such special relief in accordance with LR206.1(c). If immediate relief is requested, or if the request for relief is such as would likely be opposed, a copy of the notice, the petition, and the proposed order shall be delivered to the judge to whom the request is to be made at least three (3) business days before the request is to be presented.

LR1920.51. Proceedings Before Master.

If a party seeks to continue a hearing or other proceeding which has been set by the Master, and the other party opposes the continuance, the motion requesting a continuance of the matter pending before the Master shall be presented to the judge who appointed the Master in accordance with LR208.3(a)3.

LR1920.55-2. Exceptions to a Master's Report.

Counsel or an unrepresented party who files exceptions to a Master's Report shall, concurrently with the filing, deliver a copy of the exceptions to the judge who appointed the Master.

MINORS AS PARTIES

LR2039A. Approval of Compromise and Settlement by the Court.

The Court may approve the compromise, settlement or discontinuance of an action filed on behalf of a minor or an action in which a minor has interest without a hearing provided that the petition complies with LR2039B. Should the Court determine that a hearing is necessary, the Petition will be entertained pending the hearing.

LR2039B. Content of Petition.

A petition for leave to compromise, settle or discontinue an action in which a minor is a party, or an action in which a minor has an interest shall set forth:

- (a) the facts out of which the cause of action arose;
- (b) the elements of damage sustained;

(c) all expenses incurred or to be incurred, including the counsel fees requested;

(d) the facts relied upon by the adverse party; and,

(e) all circumstances relevant to the propriety of granting the petition including any significant medical reports and records.

INCAPACITATED PERSONS AS PARTIES

LR2064. Approval of Compromise and Settlement by the Court.

The procedure to secure Court approval of the compromise and settlement of actions in which incapacitated persons have an interest shall be governed by LR2039A and LR2039B.

ACTIONS FOR WRONGFUL DEATH

LR2206. Approval of Compromise and Settlement of Actions for Wrongful Death.

The procedure to secure Court approval of the compromise and settlement of an action for wrongful death in which a minor or incapacitated person has an interest shall be governed by LR2039A and LR2039B.

DEPOSITIONS AND DISCOVERY

LR4002. Place of Depositions.

Unless counsel for all parties agree otherwise, all discovery depositions shall take place in Beaver County. Depositions for use at trial may be taken outside Beaver County upon agreement of counsel or leave of court.

Note: It is contemplated that depositions will take place in the office of counsel for a party so long as the office is located in Beaver County.

LR4011. Limitation of Scope of Written Discovery and Deposition.

A. Written discovery in all civil cases shall be limited to 30 written questions, including subparts, except in those cases governed by Pa. R. C. P.1930.5 (domestic relations matters) and LR1301A et.seq. (compulsory arbitration)

B. In order to avoid unreasonable annoyance or expense, all requests for discovery or depositions in cases governed by Rule LR1301A et seq. (compulsory arbitration) shall be limited in scope to the standard interrogatories, attached hereto as Form A and Form B, unless leave of court to seek additional discovery is first secured for cause shown.

FORM A

**IN THE COURT OF COMMON PLEAS OF
BEAVER COUNTY
PENNSYLVANIA
CIVIL ACTION**

_____,
Plaintiff,
vs.
_____,
Defendant.

No.

**PLAINTIFF'S ARBITRATION DISCOVERY
REQUESTS FOR PERSONAL INJURY CLAIMS**

These discovery requests are directed to _____.

Within thirty (30) days following receipt of these requests, you shall provide the information sought in these discovery requests to every other party in this lawsuit.

IDENTITY OF DEFENDANT(S)

1. Set forth your full name and address.

INSURANCE

2. (a) Is there any insurance agreement that may provide coverage to you for this incident?
Yes _____ No _____

(b) If so, list the name of each company and the amount of protection that may be available.

WITNESSES

3. List the names, present addresses and telephone numbers (if known) of any persons who witnessed the incident (including related events before and after the incident) and any relationship between the witness and you.

STATEMENTS AND OTHER WRITINGS

4. (a) Do you have any written or oral statements from any witnesses, including the defendant?
Yes _____ No _____

(b) If you answered yes, attach any written statements signed, adopted or approved by any witness, attach a written summary of any other statements (including oral statements), and identify any witnesses from whom you obtained a stenographic, mechanical, electrical or other recording that has not been transcribed. (This request does not cover a statement made by a party to that party's attorney.)

I have _____ have not _____ fully complied with request 4(b).

(c) Do you have any photographs, maps, drawings, diagrams, etc. that you may seek to introduce at trial?
Yes _____ No _____.

(d) If you answered yes, attach each of these documents. I have _____ have not _____ fully complied with request 4(d).

MEDICAL DOCUMENTS

5. (a) Do you have any medical documents relating to the plaintiff? Yes _____ No _____

(b) If you answered yes, attach each of these documents. I have _____ have not _____ fully complied with request 5(b).

CRIMINAL CHARGES

6. (a) Were any felony or misdemeanor criminal charges filed against you or any of your agents as a result of the incident that is the subject of this lawsuit?
Yes _____ No _____

(b) If you answered yes, list each felony or misdemeanor charge that is pending and each felony or misdemeanor conviction.

(c) Were you ever convicted of a crime that involved dishonesty or false statement, whether by verdict, or by plea of guilty or nolo contendere? Yes _____ No _____

(d) If you answered yes, list the charge you were convicted of, the court where the conviction was entered and the date of the conviction.

Defendant verifies the statements made herein are true and correct. Defendant understands that false statements herein are made subject to the penalties of 18 Pa.C.S. § 4904 relating to unsworn falsifications to authorities.

Date: _____

Defendant

FORM B

**IN THE COURT OF COMMON PLEAS OF
BEAVER COUNTY
PENNSYLVANIA**

CIVIL ACTION

_____,
Plaintiff,
vs. _____, No.
Defendant.

**DEFENDANT'S ARBITRATION DISCOVERY
REQUESTS FOR PERSONAL INJURY CLAIMS**

These discovery requests are directed to _____.

Within thirty (30) days following receipt of these requests, you shall provide the information sought in these discovery requests to every other party in this lawsuit.

IDENTITY OF PLAINTIFF(S)

1. Set forth your full name and address.

WITNESSES

2. List the names, present addresses and telephone numbers (if known) of any persons who witnessed the incident (including related events before and after the incident) and any relationship between the witness and you.

STATEMENTS AND OTHER WRITINGS

3. (a) Do you have any written or oral statements from any witnesses, including the defendant?
Yes _____ No _____

(b) If you answered yes, attach any written statements signed, adopted or approved by any witness, attach a written summary of any other statements (including oral statements), and identify any witnesses from whom you obtained a stenographic, mechanical, electrical or other recording that has not been transcribed. (This request does not cover a statement made by a party to that party's attorney.)

I have _____ have not _____ fully complied with request 3(b).

(c) Do you have any photographs, maps, drawings, diagrams, etc. that you may seek to introduce at trial?
Yes _____ No _____.

(d) If you answered yes, attach each of these documents. I have _____ have not _____ fully complied with request 3(c).

**MEDICAL INFORMATION CONCERNING
PERSONAL INJURY CLAIM**

4. (a) Have you received any inpatient or outpatient treatment from any hospital for any injuries or other medical conditions for which you seek damages in this lawsuit? Yes _____ No _____

(b) If you answered yes, list the names of the hospitals, the names and addresses of the attending physicians, and the dates of hospitalization.

(c) Have you received any chiropractic treatment for any injuries or other medical conditions for which you seek damages in this lawsuit? Yes _____ No _____

(d) If you answered yes, list the name and address of each chiropractor and the dates of treatment.

(e) Have you received any other medical treatment not covered by the previous interrogatories for any injuries or other medical conditions for which you seek damages in this lawsuit? Yes _____ No _____

(f) If you answered yes, list the names and addresses of each physician or other treatment provider and the dates of treatment.

(g) Attach complete hospital and office records covering the injuries or other medical conditions for which you seek damages for each hospital, chiropractor, and other medical provider identified in response to interrogatories 4(b), 4(d) and 4(f) or authorizations for these records.

I have _____ have not _____ fully complied with request 4(g).

OTHER MEDICAL INFORMATION

5. (a) List the name and address of your family physician for the period from five (5) years prior to the incident to the present date.

(b) Have you received inpatient or outpatient treatment for injuries or physical problems that are not part of your claim in this lawsuit from any hospital or medical office within the period from five (5) years prior to the incident to the present date? Yes _____ No _____

(c) If you answered yes, attach a separate sheet which lists the name and address of the hospital or medical office, the date of each treatment, the reasons for the treatment, and the length of the hospitalization.

(d) Have you received chiropractic treatment for injuries or physical problems that are not part of your claim in this lawsuit from any hospital within the period from five (5) years prior to the incident to the present date? Yes _____ No _____

(e) If you answered yes, attach a separate sheet which lists the chiropractor's name and address, the dates of the treatment, and the reasons for the treatment.

(f) Have you received any other medical treatment for injuries or physical problems that are not part of your claim in this lawsuit within the period from five (5) years prior to the incident to the present date? Yes _____ No _____

(g) If you answered yes, attach a separate sheet which lists the name and address of the medical treatment provider, the dates of the treatment, and the reasons for the treatment.

I have _____ have not _____ fully complied with requests 5(c), 5(e) and 5(g).

WORK LOSS

6. (a) Have you sustained any injuries which resulted in work loss within the period from five (5) years prior to the incident to the present date?

(b) If you answered yes, for each injury list the date of the injury, the nature of the injury, and the dates of the lost work.

7. If a claim is being made for lost income, state the following information:

- (a) the name and address of your employer at the time of the incident;
- (b) the name and address of your immediate supervisor at the time of the incident;
- (c) your rate of pay;
- (d) the dates of work loss due to the injuries from this alleged accident; and
- (e) the total amount of your work loss claim.

OTHER BENEFITS

8. (a) If you are raising a claim for medical benefits or lost income, have you received or are you eligible to receive benefits from Workers' Compensation or any program, group contract, or other arrangement for payment of benefits as defined by Title 75 P. S. § 1719(b)?
Yes _____ No _____

(b) If you answered yes, set forth the type and amount of these benefits.

INSURANCE INFORMATION

9. (a) Are you subject to the "Limited Tort Option" or "Full Tort Option" as defined in Title 75 P. S. § 1705 (a) and (b)?

_____ Limited Tort Option (no claim is made for nonmonetary damages)

_____ Limited Tort Option (claim is made for nonmonetary damages because the injuries fall within the definition of serious injury or because one of the exceptions set forth in 75 P. S. § 1705(d)(1)—(3) applies).

_____ Full Tort Option

(b) (Applicable only if you checked "Full Tort Option".) Describe each vehicle (make, model and year) in your household.

(c) (Applicable only if you checked "Full Tort Option".) Attach a copy of the Declaration Sheet for the automobile insurance policy covering each automobile in your household.

I have _____ have not _____ fully complied with request 9(c).

Plaintiff verifies the statements made herein are true and correct. Plaintiff understands that false statements herein are made subject to the penalties of 18 Pa.C.S. § 4904 relating to unsworn falsifications to authorities.

Date: _____ Plaintiff

LR4017.1. Use of Videotape Depositions at Trial.

The trial judge may refuse permission to use a videotape deposition at trial if either the audio or video portions of the tape are of poor quality. Prior to offering a videotape deposition of a witness at trial, counsel for the proponent of the deposition shall file a certification that he or she has reviewed the videotape and that both the audio and the video portions thereof are of good quality. Failure to comply with this rule may result in the refusal of permission to use the videotape at the time of trial.

Material to which objection has been sustained shall be excluded at trial by "fast forward" by the video machine operator so as to eliminate both the image and the sound of the objectionable material. A copy of the stenographic transcript of the deposition shall be delivered to the court

stenographer with redacted portions, if any, clearly marked, before the close of the parties' case in which the deposition was utilized.

Note: The videotape should be marked as an exhibit and physical custody thereof remain with counsel for the proponent subject to surrender to the court upon order to do so pursuant to L.R. 223.

LR4019. Discovery Motions.

No motion relating to discovery will be entertained by the court unless counsel for the parties involved shall have first conferred and attempted to resolve the issues. All such motions shall be accompanied by a written certification of counsel for the moving party. The certification shall state the date and manner of the conference with respect to each matter in dispute and that counsel was unable to resolve the issues.

In the event counsel has not conferred, counsel for the moving party shall certify the reason or reasons therefore.

LR4020. Use of Depositions at Trial.

Objections made during the taking of depositions or intended to be made at trial pursuant to Pa. R.C. P. No. 4020(c) shall be submitted to the court for ruling thereon prior to the first day of the trial term.

The proponent of the deposition shall petition the court to assign the case to a judge of the court for trial for the purpose of review and ruling on all objections.

Note: This rule is designed to make more efficient use of juror time by avoiding the need to preview depositions while venire persons are present and waiting to be selected. However, the rule is not intended to prevent the judge to whom the case is assigned for trial to elect to preview depositions immediately prior to jury selection or to elect to rule on objections as the testimony is being presented to the jury.

[Pa.B. Doc. No. 12-1503. Filed for public inspection August 10, 2012, 9:00 a.m.]

LACKAWANNA COUNTY

Adoption of Rule of Civil Procedure; 2012 CIV 1

Order

And Now, this 26th day of June, it is hereby *Ordered* and *Decreed* that the following Lacka. Co. R.C.P. 1301 is adopted to govern the management of civil cases in the Court of Common Pleas of Lackawanna County.

The adoption of Lacka. CO. R.C.P. 1301 shall become effective thirty (30) days from the date of its publication in the *Pennsylvania Bulletin* pursuant to Pa. R. Civ. P. 239. The Lackawanna County Court Administrator shall file seven (7) certified copies of the new Local Rule with the Administrative Office of the Pennsylvania Courts and shall forward two (2) certified copies of the same to the Legislative Reference Bureau for publication in the *Pennsylvania Bulletin*. One certified copy of the Lacka. Co. R.C.P. 1301 shall be filed with the Civil Procedural Rules Committee for the Supreme Court of Pennsylvania and new Local Rule 1301 shall be available for public inspection and copying in the Clerk of Judicial Records, Civil Division.

By the Court

THOMAS J. MUNLEY,
President Judge

Rule 1301. Arbitration.

(a). All civil actions brought in the Court of Common Pleas of Lackawanna County in which the amount in controversy is \$50,000.00 or less shall first be submitted to Arbitration and heard by a panel of three (3) Arbitrators selected from Members of the Bar of this Court in accordance with the provisions of this Rule, with the exception of:

- (1). Cases involving title to real estate; and,
- (2). Cases which have been consolidated for Trial with cases in which the amount in the controversy exceeds \$50,000.00.

Once a case has been certified for Compulsory Arbitration or otherwise directed by the Court for same, the Court Administrator shall notify the Parties or their Legal Representatives of the date and time of the Arbitration. **This matter will be heard by a Board of Arbitrator at the time, date, and place specified, but, if one or more of the Parties is not present at the Hearing, the matter may be heard at the same time and date before a Judge of the Court without the absent Party or Parties. There is no right to a Trial De Novo on Appeal from a Decision entered by a Judge.**

(h). Except as provided in Sub-Section (a), any Party may appeal from the Findings or Award of the Arbitration Panel to the Court of Common Pleas of Lackawanna County in the same manner as Appeals De Novo are commenced before the Court.

The Court Administrator's Notice of the Arbitration forwarded to the Parties or their Legal Representatives shall contain the following language:

FAILURE TO APPEAR AT THE ARBITRATION MAY JEOPARDIZE A PARTY'S APPEAL RIGHTS TO A TRIAL DE NOVO. Pa. R.C.P. 1303(a)(2); Lacka. Co. R.C.P. 1301(a).

[Pa.B. Doc. No. 12-1504. Filed for public inspection August 10, 2012, 9:00 a.m.]

LACKAWANNA COUNTY

Rules of Procedure, Rules of Court and Rules of Procedure Governing Orphans' Court Proceedings; 2012 CIV 1

Order of Court

Now, this 7th day of June, 2012, it is hereby *Ordered* and *Decreed* that the Lackawanna County Rules of Procedure, Rules of Court, and Rules of the Orphans' Court are amended as follows:

1. Said Rules are amended as reflected in the following Rule.
2. Pursuant to Pa.R.C.P. 239(c)(2)—(6), the following Local Rule shall be disseminated and published in the following manner:

a. Seven certified copies of the following Local rule shall be filed with the Administrative Office of the Pennsylvania Courts;

b. Two certified copies of the following Local Rule and a computer diskette containing the text of the following Local rule in Microsoft Word format and labeled with the Court's name and address and computer file name shall be distributed to the Legislative Reference Bureau for publication in the *Pennsylvania Bulletin*;

c. One certified copy of the following Local Rule shall be filed with the Civil Procedural Rules Committee;

d. The following Local Rule shall be kept continuously available for public inspection and copying in the Office of the clerk of Judicial Records, Civil Division, and the Office of the Register of Wills, and upon request and payment of reasonable costs of reproduction and mailing, the Clerk of Judicial Records and the Register of Wills shall furnish to any requesting person a copy of the requested Local Rule; and

e. A computer diskette containing the text of the following Local Rule in Microsoft Word format and labeled with the Court's name and address and computer file name shall be distributed to the Lackawanna Bar Association for publication on the website of the Lackawanna Bar Association.

f. The amendment to the Rules shall become effective thirty days after the date of its publication in the *Pennsylvania Bulletin* pursuant to Pa.R.C.P. 239(d).

By the Court

THOMAS J. MUNLEY,
President Judge

Order of Court

Now, this 7th day of June, 2012, this Court hereby *Orders* and *Decrees* that Rule 8 of the Lackawanna County Rules of Orphan's Court, "Auditor and Masters," is amended as follows:

Rule 8.8(1): With the exception of adoption matters, including voluntary relinquishments of parental rights, involuntary terminations of parental rights, and terminations under the alternative procedure utilizing consent to adoption, all Orphans' Court hearings and arguments may be assigned to an Orphans' Court Hearing Master on the motion of the parties to the litigation, or at the discretion of the President Judge, unless the parties request that the matter be scheduled before and heard by a Judge of this Court's Orphans' Court division.

By the Court

THOMAS J. MUNLEY,
President Judge

[Pa.B. Doc. No. 12-1505. Filed for public inspection August 10, 2012, 9:00 a.m.]

WESTMORELAND COUNTY

Imposition of Clerk of Courts Administrative Fee

Administrative Order of Court

And Now, to wit, this 9th day of July, 2012, I direct, pursuant to 42 Pa.C.S.A. § 9728(g), that, effective on the 1st day of August, 2012, a one-time administrative fee of Eleven Dollars and fifty-cents (\$11.50) be imposed in all cases disposed of by the Court. Payments of any and all court-imposed financial obligations must be allocated to satisfy the payment of this Fee, thereafter, allocation is administered by the Clerk of Courts as required.

By the Court

GARY P. CARUSO,
Judge

[Pa.B. Doc. No. 12-1506. Filed for public inspection August 10, 2012, 9:00 a.m.]

DISCIPLINARY BOARD OF THE SUPREME COURT

Notice of Suspension

Notice is hereby given that Anderson J. Ward having been suspended from the practice of law in the State of Illinois for a period of 3 years by Order of the Supreme Court of Illinois dated September 20, 2011, the Supreme Court of Pennsylvania issued an Order dated July 25, 2012, suspending Anderson J. Ward from the practice of law in this Commonwealth for a period of 3 years. In accordance with Rule 217(f), Pa.R.D.E., since this formerly admitted attorney resides outside the Commonwealth of Pennsylvania, this notice is published in the *Pennsylvania Bulletin*.

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

[Pa.B. Doc. No. 12-1507. Filed for public inspection August 10, 2012, 9:00 a.m.]

RULES AND REGULATIONS

Title 49—PROFESSIONAL AND VOCATIONAL STANDARDS

STATE BOARD OF PHARMACY

[49 PA. CODE CH. 27]

Electronic Prescribing of Controlled Substances

The State Board of Pharmacy (Board) amends §§ 27.18 and 27.201 (relating to standards of practice; and electronically transmitted prescriptions) to read as set forth in Annex A. This final-omitted rulemaking makes the Board's regulations consistent with Federal regulations published at 75 FR 16236 (March 31, 2010) by the Drug Enforcement Administration (DEA) of the United States Department of Justice, which became effective June 1, 2010, as well as the Department of Health (Department) notice published at 40 Pa.B. 7160 (December 11, 2010).

Background and Purpose

The DEA published at 75 FR 16236 revisions to the regulations which provide health care practitioners the option of transmitting prescriptions for controlled substances electronically. The revised regulations are in 21 CFR Parts 1300, 1304, 1306 and 1311.

The revised Federal regulations permit, but do not require, pharmacies to receive, dispense and archive electronic prescriptions. The electronic prescription and the application utilized by the pharmacy must meet DEA requirements. For example, the application being used to import, display and store electronic prescriptions must either be audited by a qualified third party or be certified by an approved certification body as in compliance with the DEA's requirements. The application provider shall provide a copy of the report of the auditor or certification body to pharmacies that use or are considering use of the pharmacy application.

Further, the DEA's revised regulations acknowledge that electronic prescriptions for controlled substances may be subject to state laws and regulations. If state requirements are more stringent than the DEA's regulations, the State requirements supersede less stringent DEA provisions. At the time of the publication of the DEA's revised regulations in 2010, the Board's regulations and those of the Department were more stringent than the DEA's revised regulations.

The Department has the authority to administer The Controlled Substance, Drug, Device and Cosmetic Act (DD&C Act) (35 P. S. §§ 780-101—780-144). This authority includes the promulgation of regulations regarding, among other things, the possession, distribution, sale, purchase or manufacture of controlled substances as may be necessary to aid in the enforcement of the DD&C Act. The Department published a notice entitled "electronically transmitted prescriptions" at 40 Pa.B. 7160. In that notice, the Department clarified its position on whether the electronic transmission of prescriptions to a pharmacy is an acceptable practice for the medical and pharmaceutical communities under the DD&C Act and its regulations. Department regulations in 28 Pa. Code Chapter 25 (relating to controlled substances, drugs, devices, and cosmetics) provide that prescription orders may be written on prescriptions blanks or may be oral, if allowed by

law, and that prescriptions for controlled substances shall be written in indelible ink, indelible pencil or typewriter and include certain information. The Department's notice clarifies its interpretation that a prescription transmitted electronically or by facsimile constitutes a "written order on a prescription blank" and that an electronically-transmitted prescription for a controlled substance is considered to be typewritten, provided that the transmission of the prescription otherwise complies with Federal and State laws and regulations, including the Board's regulations.

Thus, the Board's regulations remain as the last regulatory obstacle to the use of e-prescribing technology for the transmission of prescriptions for Schedule II controlled substances in this Commonwealth. The Pennsylvania Pharmacists Association has urged the Board to move as quickly as possible to effectuate these amendments because with the recent changes to the DEA regulations and publication of the Department's notice, many prescribers believe that the current restrictions have been lifted and will begin to submit electronic prescriptions for controlled substances, including Schedule II controlled substances, as soon as their software has been certified under the DEA regulations. However, pharmacies and pharmacists will have to reject these prescriptions or delay patient care until a handwritten prescription is obtained in compliance with the Board's existing regulations. Additionally, since the Federal law was revised, all of the contiguous states now permit the transmission of electronic prescriptions for Schedule II controlled substances in accordance with the DEA regulations.

Omission of Proposed Rulemaking

Under section 204 of the act of July 31, 1968 (P. L. 769, No. 240) (45 P. S. § 1204), known as the Commonwealth Documents Law (CDL), the Board is authorized to omit the procedures for proposed rulemaking in sections 201 and 202 of the CDL (45 P. S. §§ 1201 and 1202) if the Board finds that the specified procedures are impracticable, unnecessary or contrary to the public interest.

Prior to making the determination to adopt this final-omitted rulemaking, the Board sent a draft of the rulemaking in proposed form to the regulated community and other affected or interested parties on June 29, 2011. The Board held public discussion regarding the final-omitted rulemaking at its July 19, 2011, meeting. Commentators who responded in writing to support the final-omitted rulemaking include the National Association of Chain Drug Stores and Pennsylvania Association of Chain Drug Stores, the Pennsylvania Pharmacists Association, the Pennsylvania Medical Society and the Montgomery County Pharmacy Association.

Given that the Department issued a notice in response to the DEA's amendment of its regulations, and with the support of the regulated community, the Board believes that it is in the best interests of the regulated community, as well as prescribers and patients, to bring its regulations into consistency with those of the applicable Federal and State agencies to permit the transmission of electronic prescriptions for Schedule II controlled substances. The Board finds for good cause that publication of this rulemaking as proposed is unnecessary.

Under section 204(3) of the CDL, notice of proposed rulemaking has been omitted as unnecessary because the rulemaking is merely incorporating the regulatory changes made by the DEA to Federal regulations and the

notice published by the Department at 40 Pa.B. 7160 regarding its interpretation of existing regulations to permit the electronic prescribing of controlled substances.

Accordingly, the Board adopts this rulemaking without notice of proposed rulemaking. Comments on the final-omitted rulemaking may be submitted within 30 days of publication to the following Board contact person.

Description of the Amendments

Under former § 27.18(b)(2), prescriptions for Schedule II controlled substances must be written with ink, indelible pencil, typewriter, word processor or computer printer and manually signed by the prescriber. Former § 27.201(b) provided that, with the specific exception of Schedule II controlled substances, a pharmacist may accept an electronically transmitted prescription from an authorized licensed prescriber or an authorized designated agent that was sent directly to a pharmacy of the patient's choice if the requirements in this section were met.

This final-omitted rulemaking adds electronic means to the methods in which a prescription for a Schedule II controlled substance may be written and provides an exception to the manual signature requirement by providing that electronic prescriptions shall be electronically signed by the prescriber. This final-omitted rulemaking also adds § 27.201(b)(5), which provides that the electronic transmission of a prescription for a Schedule II, III, IV or V controlled substance is considered a written prescription order on a prescription blank and may be accepted by a pharmacist provided that the transmission complies with this chapter and other requirements under Federal or other State laws or regulations. Paragraph (5) lists some of the applicable State and Federal laws and regulations. Paragraph (5) purposely uses the terms "written," "prescription order" and "prescription blank" to be consistent with the Department's interpretation of 28 Pa. Code Chapter 25.

Statutory Authority

This final-omitted rulemaking is authorized under section 6(k)(9) of the Pharmacy Act (act) (63 P.S. § 390-6(k)(9)).

Fiscal Impact and Paperwork Requirements

This final-omitted rulemaking will not have adverse fiscal impact on the Commonwealth or its political subdivisions. This final-omitted rulemaking will not impose additional paperwork requirements upon the Board. The inherent goal of the final-omitted rulemaking is to decrease paperwork in the form of the prescriptions and related recordkeeping, which is consistent with § 27.201 and § 27.202 (relating to computerized recordkeeping systems).

It is the intention of this final-omitted rulemaking to make the Board's regulations consistent with recent Federal and State regulatory changes. Those changes recognize pharmacists' needs to avail themselves of technological developments to better serve their patients. There may be costs to pharmacists/pharmacies involved in upgrading their technology or obtaining an application for the submission of electronic prescriptions that meets the requirements of the DEA's regulations. However, because the acceptance of electronic prescriptions of Schedule II controlled substances is not mandatory, pharmacies will be able to decide by means of their own

cost-benefit analyses whether to accept these prescriptions electronically. Many pharmacies began to utilize computerized recordkeeping systems when the Board authorized this method, along with electronic prescribing of medications (other than Schedule II controlled substances), in 2006. Therefore, some of the technology for adapting to electronic prescribing of Schedule II controlled substances may already be in place.

Regulatory Review

Under section 5.1(c) of the Regulatory Review Act (71 P.S. § 745.5a(c)), on May 30, 2012, the Board submitted a copy of the final-omitted rulemaking and a copy of a Regulatory Analysis Form to the Independent Regulatory Review Commission (IRRC) and to the Chairpersons of the Senate Consumer Protection and Professional Licensure Committee (SCP/PLC) and the House Professional Licensure Committee (HPLC). On the same date, the regulations were submitted to the Office of Attorney General for review and approval under the Commonwealth Attorneys Act (71 P.S. §§ 732-101—732-506).

Under section 5.1(j.2) of the Regulatory Review Act, on June 13, 2012, the final-omitted rulemaking was approved by the HPLC. On July 18, 2012, the final-omitted rulemaking was deemed approved by the SCP/PLC. Under section 5.1(e) of the Regulatory Review Act, IRRC met on July 19, 2012, and approved the final-omitted rulemaking.

Additional Information

For additional information about the final-omitted rulemaking, submit inquiries to Kerry Maloney, Counsel, State Board of Pharmacy, P. O. Box 2649, Harrisburg, PA 17105-2649, (717) 783-7200.

Findings

The Board finds that:

(1) Public notice of the Board's intention to amend its regulations under the procedures in sections 201 and 202 of the CDL has been omitted under the authority of section 204 of the CDL because public comment is unnecessary in that the amendment adopted by this order adopts the changes made to applicable corresponding Federal and State regulations.

(2) The amendment of the Board's regulation in the manner provided in this order is necessary and appropriate for the administration of the act.

Order

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

(a) The regulations of the Board, 49 Pa. Code Chapter 27, are amended amending §§ 27.18 and 27.201 to read as set forth in Annex A, with ellipses referring to the existing text of the regulations.

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

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

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

EDWARD J. BECHTEL, R.Ph.,
Chairperson

(Editor's Note: For the text of the order of the Independent Regulatory Review Commission relating to this document, see 42 Pa.B. 4992 (August 4, 2012).)

Fiscal Note: 16A-5428. No fiscal impact; (8) recommends adoption.

Annex A

TITLE 49. PROFESSIONAL AND VOCATIONAL STANDARDS

PART I. DEPARTMENT OF STATE

Subpart A. PROFESSIONAL AND OCCUPATIONAL AFFAIRS

CHAPTER 27. STATE BOARD OF PHARMACY STANDARDS

§ 27.18. Standards of practice.

* * * * *

(b) Prescriptions kept on file in the pharmacy must meet the following requirements:

(1) Prescriptions on file must show the name and address of the patient; the name and address or other identifier of the prescriber; the date the prescription was issued, if the prescription is for a controlled substance or if it was written with a PRN or ad lib refill designation; the name and quantity of the drug prescribed; directions for its use; cautions communicated to the ultimate consumer by means of auxiliary labels or other means when dispensed to the ultimate consumer; the date the prescription was compounded and dispensed; and the name or initials of the dispensing pharmacist.

(2) Prescriptions for controlled substances must show the DEA number of the prescriber. Prescriptions for Schedule II controlled substances must be written with ink, indelible pencil, typewriter, word processor, computer printer or by electronic means and shall be manually signed by the prescriber, except that prescriptions written by electronic means shall be electronically signed by the prescriber. Electronic prescriptions of Schedule II controlled substances must comply with § 27.201(b) (relating to electronically transmitted prescriptions). The pharmacist is responsible for compounding and dispensing nonproprietary drugs consistent with the Federal Controlled Substances Act (21 U.S.C.A. §§ 801—904), The Controlled Substance, Drug, Device and Cosmetic Act (35 P. S. §§ 780-101—780-144) and the regulations promulgated under these acts.

(3) If a prescription for a nonproprietary drug is refilled, a record of the refill must show the date of the refill, the name or initials of the dispensing pharmacist and the quantity dispensed. If the pharmacist dispenses a quantity different from that of the original prescription, the pharmacist shall indicate the changes on the back of the original prescription or must enter the changes in the computerized files of the pharmacy.

(4) Original prescriptions or readily retrievable images of the original prescriptions shall be kept for 2 years from the date of the most recent filling.

(5) In an institution, Schedule II controlled substances which the pharmacy dispensed and which were ultimately received by the patient shall be recorded and the record kept for 2 years.

* * * * *

TECHNOLOGY AND AUTOMATION

§ 27.201. Electronically transmitted prescriptions.

(a) For the purposes of this section, an electronically transmitted prescription means the communication of an original prescription or refill authorization by electronic means, to include computer-to-computer, computer-to-facsimile machine or e-mail transmission which contains the same information it contained when the authorized prescriber transmitted it. The term does not include a prescription or refill authorization transmitted by telephone or facsimile machine.

(b) A pharmacist may accept an electronically transmitted prescription from an authorized licensed prescriber or an authorized designated agent which has been sent directly to a pharmacy of the patient's choice if all the following requirements are met:

(1) The prescription must contain the signature or the electronic equivalent of a signature of the prescriber made in accordance with the requirements of the Electronic Transactions Act (73 P. S. §§ 2260.101—2260.5101).

(2) The prescription must include the following information:

(i) The information that is required to be contained on a prescription under State and Federal law.

(ii) The prescriber's telephone number.

(iii) The date of the transmission.

(iv) The name of the pharmacy intended to receive the transmission.

(3) The prescription must be electronically encrypted or transmitted by other technological means designed to protect and prevent access, alteration, manipulation or use by any unauthorized person.

(4) A hard copy or a readily retrievable image of the prescription information that is transmitted shall be stored for at least 2 years from the date of the most recent filling.

(5) The electronic transmission of a prescription for a Schedule II, III, IV or V controlled substance is considered a written prescription order on a prescription blank and may be accepted by a pharmacist provided that the transmission complies with this chapter and other requirements under Federal or other State laws or regulations, including The Controlled Substance, Drug, Device and Cosmetic Act (35 P. S. §§ 780-101—780-144), Department of Health regulations in 28 Pa. Code §§ 25.1—25.131 and Federal rules established by the United States Drug Enforcement Administration in 21 CFR Part 1311 (relating to requirements for electronic orders and prescriptions).

(c) An electronically transmitted prescription shall be processed in accordance with the act and this chapter.

(d) The pharmacist and pharmacy may not provide electronic equipment to a prescriber for the purpose of transmitting prescriptions.

[Pa.B. Doc. No. 12-1508. Filed for public inspection August 10, 2012, 9:00 a.m.]

Title 52—PUBLIC UTILITIES

PENNSYLVANIA PUBLIC UTILITY COMMISSION [52 PA. CODE CH. 54]

[L-2009-2095604]

Default Service Regulations

The Pennsylvania Public Utility Commission (Commission), on September 22, 2011, adopted a final rulemaking order which revises the Commission's default service regulations to be consistent with the act of October 15, 2008 (P. L. 1592, No. 129) (Act 129).

Executive Summary

On May 10, 2007, the Commission issued a Final Rulemaking Order at Docket No. L-00040169 addressing default service. The default service regulations became effective on September 15, 2007. The regulations require default service providers to acquire default supply at prevailing market prices.

On October 15, 2008, the Governor enacted House Bill 2200, Act 129, which made substantial changes to the statutory standards for acquisition of electric generation supply by electric distribution companies (EDCs) for their default service customers including: requirements in regard to competitive procurement, a prudent mix of contract types and least cost service to customers over time. 66 Pa.C.S. § 2807(e)(3.1).

By Order entered January 19, 2010, the Commission initiated a rulemaking proceeding to consider amendments to our default service regulations as required by enactment of Act 129 such that our regulations shall be consistent with the Act.

This final rulemaking revises 52 Pa. Code 54.181—54.188. These revisions establish the needed consistency between the existing regulations and the requirements of the Act, improves the default supply acquisition process and establishes more fair and equitable standards for evaluating electric utility default supply plans.

Public Meeting held
September 22, 2011

Commissioners Present: Robert F. Powelson, Chairperson; John F. Coleman, Jr., Vice Chairperson; Tyrone J. Christy; Wayne E. Gardner; Pamela A. Witmer, statement follows

*Implementation of Act 129 of October 15, 2008;
Default Service and Retail Electric Markets;
Doc. No. L-2009-2095604*

Final Rulemaking Order

By the Commission:

By this Order, the Commission issues Final Regulations amending its existing regulations at 52 Pa. Code §§ 54.181 through 54.188 to be consistent with the requirements of Act 129 which, inter alia, made substantial changes to the statutory standards for acquisition of electric generation supply for default service customers. In this Order, the Commission also provides guidance on the default service process and procedure based on input received in response to sixteen questions posed in its Order entered January 19, 2010.

Procedural History

On October 15, 2008, Governor Edward Rendell signed House Bill 2200, Act 129, into law. The Act became

effective on November 14, 2008. Act 129 has several key elements and goals, including: Commission establishment of an energy efficiency and conservation program, mandated reductions by Electric Distribution Companies (EDCs) in their energy consumption and peak demand, Commission review and approval of each EDC's programs and plans to achieve the mandated reductions, and penalties for an EDC's failure to achieve the mandated reductions. In addition, Act 129 made substantial changes to the statutory standards for acquisition of electric generation supply by EDCs for their default service customers, including: requirements in regard to competitive procurement, a prudent mix of contract types, least cost to customers over time, and adequate and reliable service. 66 Pa.C.S. § 2807(e)(3.1).

Historically, the local electric utility company was responsible for generating, purchasing and delivering electricity to the customers' premises. However, the Electric Generation Customer Choice and Competition Act (Competition Act) of December 3, 1996 (P. L. 802, No. 138), codified at 66 Pa.C.S. §§ 2801, et seq., required electric distribution companies (EDCs) to unbundle transmission, distribution and generation rates for retail customers. The Competition Act deregulated electricity generation and provided all customers in Pennsylvania with the opportunity to choose their electricity generation supplier (EGS). 66 Pa.C.S. 2806(a). The EDC is responsible for delivering the electricity to those customers who choose to buy from an EGS. Additionally, the EDC is responsible for both acquiring and delivering electricity for those customers who do not shop or buy their electricity from an EGS or where an EGS fails to provide the promised electricity.

When an EDC acquires electricity for customers not served by an EGS, the EDC is functioning as the "default service provider" (DSP). The Competition Act provided that an EDC's generation rates be capped until the EDC had completed its stranded cost recovery. Many of the larger EDCs agreed to extend rate caps as part of their electric restructuring settlements. All generation rate caps have now expired, the most recent expirations occurring on December 31, 2010.

Following the expiration of rate caps, the Competition Act provided that default service providers "acquire electric energy at prevailing market prices" to serve default service customers and that default service providers "recover fully all reasonable costs." 66 Pa.C.S. § 2807(e)(3). There has been disagreement over what "prevailing market prices" mean as applied to default service rates.

History of Default Service Regulations and Policy Statement

On May 10, 2007, the Commission issued a Final Rulemaking Order at Docket No. L-00040169 addressing default service. The default service regulations became effective on September 15, 2007. The Commission further issued a separate policy statement order on February 9, 2007 at Docket No. M-00072009 that contained guidelines for DSPs in the areas of procurement, rate design, and cost-recovery. The default service regulations set forth detailed requirements for default service plans. The regulations require default service providers to acquire default supply at prevailing market prices. The regulations further require that electric generation supply be acquired by competitive bid solicitations, spot market purchases or a combination of both. 52 Pa. Code § 54.186(b)(4). Competitive bid processes are subject to monitoring by the Commission. 52 Pa. Code § 54.186(c)(3). The regulations

allow DSPs to use automatic adjustment clauses for recovery of non-alternative energy default service costs. 52 Pa. Code § 54.187(f). The Default Service Policy Statement provides additional guidance to EDCs regarding energy procurement, bid solicitation processes, default service cost elements, rate design, rate change mitigation, rate and bill ready billing, purchase of receivables programs, customer referral program and supplier tariff uniformity.

Act 129 Amendment to Default Service Obligations

Even though the retail provision of electric generation service has been subject to competition for nearly a decade, the vast majority of residential customers continue to obtain their generation supplies from their default supplier, that is, their regulated electric distribution utility. Under the Competition Act, EDCs (or alternative Commission-approved default suppliers) were required to serve non-shopping customers after rate caps ended by acquiring electric energy “at prevailing market prices.” Act 129 explicitly repealed the “prevailing market prices” standard and declared instead that the utilities’ generation purchases must be designed to ensure adequate and reliable service at “the least cost to customers over time.” Moreover, such purchases must be in compliance with the new statutory obligations in regard to competitive procurement and a “prudent mix” of contract types. 66 Pa.C.S. § 2807(e)(3.4).

In reviewing a utility’s default service plan, the Commission must consider “the default service provider’s obligation to provide adequate and reliable service to customers and that the default service provider has obtained a prudent mix of contracts to obtain least cost on a long-term, short-term and spot market basis.” 66 Pa.C.S. § 2807(e)(3.7).

Another substantive change is that contracts for supply formerly were defined as being up to 3-years in length. Now, under Act 129, a long-term purchase contract is generally defined as a contract “of more than four and not more than 20 years.” 66 Pa.C.S. § 2807(e)(3.2)(iii).

In summary, under Act 129, electric power shall be procured through competitive procurement processes and shall include one or more of the following: (1) auctions; (2) requests for proposals; or (3) bilateral agreements. 66 Pa.C.S. § 2807(e)(3.1). Additionally, the electric power that is procured shall include a prudent mix of: (1) spot market purchases; (2) short-term contracts; and (3) long-term purchase contracts of more than 4 and not more than 20 years. 66 Pa.C.S. § 2807(e)(3.2). Long term contracts may not constitute more than 25% of projected load absent a Commission determination that good cause exists for a higher percentage to achieve least cost procurement. 66 Pa.C.S. § 2807(e)(3.2)(iii).

The “prudent mix” of contracts shall be designed to ensure: (1) adequate and reliable service; (2) the least cost to customers over time; (3) compliance with the procurement methodologies described above, i.e., through auctions, requests for proposals, or bilateral agreements. 66 Pa.C.S. §§ 2807(e)(3.4) and (e)(3.1). “Bilateral contract” is a new term defined under 66 Pa.C.S. § 2803 (relating to definitions).

In terms of process, the DSP must file a plan for competitive procurement with the Commission and obtain Commission approval of the plan considering certain factors and standards under 66 Pa.C.S. § 2807(e) before the competitive process is implemented. The Commission shall hold hearings as necessary on the proposed plan. If the Commission fails to issue a final order on the default

service plan or an amended default service plan within nine months of the date that the plan is filed, the plan or amended plan is deemed to be approved and the default service provider may implement the plan or amended plan as filed. 66 Pa.C.S. § 2807(e)(3.6).

When evaluating a default service plan, the Commission must consider the DSP’s obligation to provide adequate and reliable service to the customers and that the DSP has obtained a prudent mix of contracts to obtain the least cost on a long-term, short-term and spot market basis. The Commission is required to make specific findings that include: (1) the DSP’s plan includes prudent steps necessary to negotiate favorable generation supply contracts; (2) the DSP’s plan includes prudent steps necessary to obtain least cost generation contracts on a long-term, short-term and spot market basis; and (3) neither the DSP nor its affiliated interest has withheld generation supply from the market as a matter of federal law. 66 Pa.C.S. § 2807(e)(3.7).

Further, under Act 129, DSPs have a right to recover default service costs pursuant to a reconcilable automatic adjustment clause and residential and small commercial and industrial customers’ rates cannot change more frequently than quarterly. 66 Pa.C.S. § 2807(e)(3.9). Default service plans approved by the Commission prior to the effective date of Act 129 shall remain in effect through the approved term. However, the DSP may propose amendments to an approved plan. 66 Pa.C.S. § 2807(e)(6). The DSP shall offer residential and small business customers a generation supply service that shall change no more frequently than on a quarterly basis. All default service rates shall be reviewed by the Commission to ensure that the costs of providing service to each customer class are not subsidized by other classes. 66 Pa.C.S. § 2807(e)(7).

By Order entered January 19, 2010, the Commission initiated a rulemaking proceeding to consider amendments to our default service regulations as required by the enactment of Act 129 such that our regulations shall be consistent with the Act.

Parties Filing Comments

Initial comments to the Commission’s January 19, 2010 Proposed Rulemaking Order (“Order”) were filed by the following parties on behalf of the electric utility industry: Energy Association of PA (EAP), FirstEnergy (Pennsylvania Electric Company, Metropolitan Edison Company, Pennsylvania Power Company) (FirstEnergy), PECO Energy Company (PECO), PPL Electric Utilities Corporation (PPL), Allegheny Power Company (Allegheny), Duquesne Light Company (Duquesne) and Citizens Electric/Wellsboro Electric (Citizens/Wellsboro). Comments were filed by the following parties on behalf of electric generation companies: FirstEnergy Solutions (FES), P3 Group (P3), Exelon Generation (Exelon), PPL Energy Plus (PPL Energy), Constellation NewEnergy and Constellation Commodities Group, Inc. (Constellation). The following retail supplier providers and representative organizations filed comments: Pennsylvania Energy Marketers Coalition (PEMC), National Energy Marketers Association (NEMA) and the Retail Energy Supply Association (RESA). Finally, comments were filed by the Office of Consumer Advocate (OCA), Office of Small Business Advocate (OSBA), Industrial Customer Group (ICG) and Citizen Power (CP). Comments were also received from the Independent Regulatory Review Commission (IRRC) and the Office of Attorney General (AG).

Reply comments were filed by the following parties: FirstEnergy, PECO, EAP, Citizens/Wellsboro, FES, RESA, Constellation, OCA, OSBA, and ICG.

Discussion

The purpose of this rulemaking is to amend existing Commission regulations at 52 Pa. Code §§ 54.181 through 188 to be consistent with the requirements of Act 129. Initially, we address some overall comments received from IRRIC.

IRRC Comments

In its comments, IRRIC raised the following points:

1. IRRIC is concerned that the 16 questions posed should have formed the basis for the rulemaking on default service and regulations should have been drafted based on feedback received from the parties to the questions as opposed to the Commission's approach of simply engrafting the Act 129 changes onto the existing regulations.

2. IRRIC is concerned that the approach undertaken by the Commission will result in the incorporation of changes to the default service regulations, based on responses to the 16 questions, that have not been reviewed by the stakeholders, the designated standing committees and IRRIC.

3. IRRIC recommends the Commission withdraw the proposed rulemaking, evaluate the feedback on the 16 questions, draft new regulations based on the feedback and the reintroduce the rulemaking.

4. In the event the Commission does not withdraw the rulemaking, IRRIC suggests the Commission draft an Advance Notice of Final Rulemaking (ANOFR) based on the responses received from the parties on the 16 questions and share that ANOFR with the parties.

We have carefully considered IRRIC's recommendations and decline to withdraw the current rulemaking. The Commission has been grappling with the difficult task of implementing the provisions of the Competition Act in its original default service regulations. With the passage of Act 129, we were again faced with the pressing need to revise the existing default service regulations to conform to the changes imposed by Act 129. We believe that our ability to efficiently and capably comply with the provisions of both laws require us to press ahead with the current update of the regulations.

The purpose of posing the 16 questions, in conjunction with the proposed regulations, was twofold: (1) to assess the views of the parties on critical legal and policy issues relevant to evaluating default service plans that come before us; and (2) to determine if any additional changes to the current regulations needed to be made in light of the responses to the 16 questions. The substance of the responses received to both the proposed regulations and the 16 questions convinced this Commission that our first priority needs to be updating the current default service regulations to be consistent with the requirements of Act 129. With reference to the 16 questions, we agree with IRRIC that, in retrospect, it would have been more efficient to issue the 16 questions prior to drafting our proposed rulemaking. However, these questions developed as a result of issues arising in our review of recent default service plans—issues which we believe were critical enough to merit stakeholder input.

In the meantime, the need to incorporate Act 129 changes remains and we are compelled to move forward with those changes. We believe, as noted by IRRIC and some parties, that it would be fundamentally unfair to the regulated community and stakeholders to implement significant changes to the current default service regulations based on responses received to the 16 questions at

this time. That is not to say that the information obtained from these questions was not of value. The responding parties provided most helpful input into a number of complex issues—input that will inform our decision-making process in reviewing future default service plans. In fact, one theme repeated throughout the responses was that the Commission should refrain from adopting a “one-size fits all” approach to reviewing default service plans and retain a more flexible “case by case” approach which still adheres to those fundamental standards contained in the Competition Act and Act 129.

To conclude, we did not undertake any revisions to the final form default service regulations beyond the scope of the specific comments provided by the parties on the proposed changes resulting from Act 129. We will continue to review default service plans as they are filed with the additional information received in the responses to the 16 questions. If, in the future, there is a need to make further revisions based on our evolving experience with default service plans, we will initiate a new rule-making process to update existing regulations as necessary. In particular, the Commission wishes to make clear that the focus of this rulemaking is to bring our existing default service rules into compliance with Act 129 standards. Therefore, these final form regulations should not be construed to anticipate, pre-judge or otherwise foreclose our consideration of other default supply models or adjustments to the current default service model in the pending Retail Electricity Markets Investigation at Docket No. I-2011-2237952. Having decided to move forward, we have responded to the concerns raised by IRRIC in the context of specific sections of the regulations. These concerns are addressed later in this Order in the discussion related to each section.

Section 54.181. Purpose.

No revision to this language was proposed by the Commission as part of the proposed Rulemaking Order. However, both OCA and OSBA have suggested that the existing “Purpose” section be modified to delete the reference to “prevailing market price” and substitute the language “least cost over time” as follows to be consistent with the changes made by Act 129:

§ 54.181. Purpose.

This subchapter implements 66 Pa.C.S. § 2807(e) (relating to duties of electric distribution companies), pertaining to an EDC's obligation to serve retail customers at the conclusion of the restructuring transition period. The provisions in this subchapter ensure that retail customers who do not choose an alternative EGS, or who contract for electric energy that is not delivered, have access to generation supply at [**prevailing market prices**] **the least cost over time**. The EDC or other approved entity shall fully recover all reasonable costs for acting as a default service provider of electric generation supply to all retail customers in its certificated distribution territory.

RESA expresses dissatisfaction with this proposed change for the reason that the Legislature, in amending Section 2807(e) (3), did not mean to institute the “least cost standard” as the only standard by which to assess a DSP. RESA cites to Constellation's comments that a DSP must include: (1) power acquired through competitive procurement processes; (2) a prudent mix of supply contracts; and (3) a plan that must ensure adequate and reliable service. RESA also states in Reply Comments that this change is unnecessary as default service rates

priced at the “prevailing market” are consistent with the mandates of Act 129 and the Competition Act because they are the products of default service plans appropriately structured to stimulate retail competition. RESA then proposes its own amendatory language to make the section consistent with the mandates of the Competition Act as follows:

The provisions in this subchapter ensure that retail customers who do not choose an alternative EGS, or who contract for electric energy that is not delivered, have access to generation supply **procured by a default service provider pursuant to a Commission approved competitive procurement plan.** (New language is bold.)

Initially, we agree with the OCA’s proposed change to this section since the “prevailing market prices” standard has been repealed by the legislature. To fail to recognize this important distinction would result in our failing to give the legislative changes inherent in Act 129 their proper effect.

However, we agree with RESA that to replace “prevailing market prices” with “least cost to customers over time,” while correct, is an incomplete and therefore misleading description of the multi-faceted standard that Act 129 has established. As correctly noted by RESA, the statutory standard now includes review of the competitive procurement process employed, the “prudent mix” of supply contracts negotiated and the ability of the default plan to ensure adequate and reliable service, as well as the “least cost to customers over time” standard. Moreover, to retain the prior language would continue to perpetuate confusion among the parties and the public as to the proper standard. For these reasons, we shall adopt RESA’s suggested changes.

PECO, in Reply Comments, also disagreed with OCA’s proposed change to insert the “least cost to customers” standard for the “prevailing market price” standard but indicated that, if the change is made, the Commission should make clear that “least cost to customers over time” will be construed as part of the requirements of a “prudent mix” of contracts pursuant to Section 2807(e) (3.4) and not independently of the statutory framework of Act 129. We believe this caveat is appropriate and we reiterate that our application of the “least cost over time standard” will be construed as part of the requirements of a competitive procurement process, a “prudent mix” of contracts, and adequate and reliable service pursuant to the requirements of Act 129.

IRRC requested the Commission to identify every section of the existing default service regulations that uses the phrase “prevailing market price” and explain why it decided to retain that phrase. The AG also endorsed this change. As discussed previously, we have chosen to delete the phrase “prevailing market price” while adopting in this Order certain cautionary language proposed by RESA and PECO to insure application of the correct standard.

Finally, it should be noted that the “least cost over time” standard should not be confused with the notion that default prices will always equal the lowest cost price for power at any particular point in time. In implementing default service standards, Act 129 requires that the Commission be concerned about rate stability as well as other considerations such as ensuring a “prudent mix” of supply and ensuring safe and reliable service. See 66 Pa.C.S. §§ 2807(e)(3.2), (3.4) and (7). In our view, a default service plan that meets the “least cost over time” standard in Act 129 should not have, as its singular focus,

achieving the absolute lowest cost over the default service plan time frame but, rather, a cost for power that is both adequate and reliable and also economical relative to other options.

We recognize that amendment of the language of this section was not proposed as part of the Proposed Rule-making Order and no other parties have had the opportunity to consider this modification. However, we consider this change to be appropriate and consistent with our objective to conform the current default service regulations to the requirements of Act 129. We will adopt this amendment and include in the final version of these regulations at Annex A to this Order.

Section 54.182—Definitions.

“Bilateral contract” is a new term and is defined in Section 2803 as follows.

An agreement, as approved by the Commission, reached by two parties, each acting in its own independent self-interest, as a result of negotiations free of undue influence, duress or favoritism, in which the electric energy supplier agrees to sell and the electric distribution company agrees to buy a quantity of electric energy at a specified price for a specified period of time under terms agreed to by both parties, and which follows a standard industry template widely accepted in the industry or variations thereto accepted by the parties. Standard industry templates may include the EEI Master Agreement for physical energy purchases and sales and the ISDA Master Agreement for financial energy purchases and sales.

66 Pa.C.S. § 2803.

Bilateral agreements are referenced in 66 Pa.C.S. § 2807(e)(3.1)(iii). We proposed to amend 52 Pa. Code § 54.182 such that it mirrors verbatim the definition in 66 Pa.C.S. § 2803 as follows:

Bilateral contract—The term as defined in 66 Pa.C.S. § 2803 (relating to definitions).

Comments to this proposed amendment were almost unanimously supportive of this modification. Citizens/Wellsboro suggested that the definition is too restrictive and should be revised to specifically confirm that “Bilateral contracts” may be used for both physical and financial transactions. Citizens/Wellsboro’s clarification is predicated on certain circumstances associated with its recent default service plan. PECO supports this clarification as well.

We adopt the term “Bilateral contract” and its definition as proposed as it appears in Annex A to this Order. We reject the proposed change suggested by Citizens/Wellsboro for the reason that the existing definition is sufficiently clear for purposes including both physical and financial transactions. Any necessary clarifications regarding what products may qualify for inclusion in bilateral contracts can be explored in the course of review of individual EDC DSPs.

Act 129 adds additional language to the definition of a default service provider. Definitions at 66 Pa.C.S. § 2803—Default Service Provider provides in pertinent part:

An electric distribution company within its certified service territory or an alternative supplier approved by the Pennsylvania Public Utility Commission that provides generation service to retail electric customers who: (1) contract for electric power, including

energy and capacity, and the chosen electric generation supplier does not supply the service; or (2) do not choose an alternative electric generation supplier.

Whereas, 52 Pa. Code § 54.182 (Definitions) provides:

“DSP—Default Service Provider”—The incumbent EDC within a certificated service territory or a Commission approved alternative supplier of electric generation service.

Because the new definition of default service provider includes alternative supplier approved by the Commission, we proposed to amend 52 Pa. Code § 54.182 such that it mirrors verbatim the definition in 66 Pa.C.S. § 2803 as follows:

DSP—Default service provider—[**The incumbent EDC within a certificated service territory or a Commission approved alternative supplier of electric generation service.**] **The term as defined in 66 Pa.C.S. § 2803 (relating to definitions).**

Virtually all parties agreed with this proposed amendment of the definition of “Default service provider” to be consistent with the language contained in 66 Pa.C.S. § 2803 (relating to definitions) and we will adopt the proposed language. It should be noted that Duquesne and PECO requested insertion of the precise language of Section 2803 into the definition. We reject that suggestion on the basis that incorporation of the language by reference to the statute is sufficient and we have incorporated such definitions by reference in other instances in these regulations. The definition as adopted appears at Annex A to this Order.

Additionally, we deleted the term “prevailing market price” and its definition consistent with comments filed by OCA and OSBA. As the term no longer appears in these regulations, there is no need for the definition.

52 Pa. Code § 54.184. (Default Service Provider Obligations).

Section 2807(e) of the Competition Act explains the EDC’s obligation to serve. Specifically, it adds a qualifier that while an EDC collects either a competitive transition charge or an intangible transition charge or until 100% of an EDC’s customers have electric choice, whichever is longer, an EDC as a default service provider is responsible for reliable provision of default service to retail customers. Accordingly, we proposed the following language be added to 52 Pa. Code § 54.184(a).

(a) [**A DSP**] **While an EDC collects either a competitive transition charge or an intangible transition charge or until 100% of an EDC’s customers have electric choice, whichever is longer, an EDC, as a default service provider** shall be responsible for the reliable provision of default service to retail customers who are not receiving generation services from an alternative EGS within the certificated territory of the EDC that it serves or whose alternative EGS has failed to deliver electric energy.

Furthermore, Act 129 states that following the expiration of an EDC’s obligation to provide electric generation supply service to retail customers at capped rates, if a customer contracts for electric generation supply service and the chosen electric generation supplier does not provide the service or if a customer does not choose an alternative electric generation supplier, the default service provider shall provide electric generation supply

service to that customer. This provision of default service must be pursuant to a Commission-approved competitive procurement process including one or more of the following: (1) auctions, (2) requests for proposals, or (3) bilateral agreements entered into at the sole discretion of the DSP which shall be at prices that are no greater than the cost of obtaining generation under comparable terms in the wholesale market or consistent with a Commission-approved competitive procurement process. 66 Pa.C.S. § 2807(e)(3.1). Affiliated interest agreements are subject to Commission review and approval. 66 Pa.C.S. § 2807(e)(3.1)(iii).

We propose adding the underlined language above to 52 Pa. Code § 54.184 to reflect these additional requirements. We wish to highlight that any bilateral agreements between EDCs and their affiliated suppliers must be filed with the Commission and will be subject to review pursuant to the Chapter 21 requirements relating to review of affiliated interest agreements.

To further accommodate the new requirements set forth in Act 129, we propose to amend the following language in 52 Pa. Code § 54.184(d):

A DSP shall continue the universal service and energy conservation program in effect in the EDC’s certificated service territory or implement, subject to Commission approval, similar programs consistent with [**the**] **66 Pa.C.S. § 2801—[2812] 2815** (relating to Electricity Generation Customer Choice and Competition Act **and the amendments provided under the Act of October 15, 2008 (P. L. 1592, No. 129 (Act 129) providing for energy efficiency and conservation programs)**). The Commission will determine the allocation of these responsibilities between an EDC and an alternative DSP when an EDC is relieved of its DSP obligation.

The majority of comments received were supportive of the proposed amendments to Section 54.184. Citizens/Wellsboro requested that the final regulations confirm that purchases in PJM or other RTO markets and auctions are permissible including spot purchases, capacity, ancillary services, transmission, auction revenue rights and financial transmission rights.

RESA objects to the additional proposed language in Section 54.184(a) because the language would assign the EDC the DSP role without regard to the possibility that the Commission may choose to assign the role to another entity through the procedures provided in Section 54.183(b). Additionally, RESA contends the proposed revision contemplates keeping the EDC in the role of DSP until 100% migration is reached which is unreasonable and unattainable. RESA proposes alternative language which would remove the 100% requirement and give the Commission the flexibility to select an alternative DSP “when it is no longer necessary to have the default service option or until the Commission determined that it is appropriate to assign the default service obligation to another entity.” RESA, in Reply Comments, opposes the language proposed by Citizens/Wellsboro discussed above as unnecessary.

IRRC references RESA’s concern about not acknowledging that other entities may be assigned to the default service provider role and that the new language contemplates keeping the default service provider until 100% migration is reached. IRRC asks for a more detailed explanation of why this language was included in the rulemaking.

With reference to the new language introduced in Section 54.184(a) and in response to IRRC’s request for

more explanation, we reiterate that we merely incorporated the language from Section 2807(e) (1) which establishes the parameters in which a DSP must provide default service. That language provides that an EDC shall have the obligation to provide default service in two instances: (1) while the EDC collects an intangible transition charge or (2) until 100% of customers have choice. Including this language from the statute does not and is not intended to negate, in any way, the Commission's authority and discretion to choose an alternative default service supplier who is not an EDC.

With reference to the proposed change in Section 54.184(b), we have reconsidered our proposed change and have decided not to adopt it. Upon closer review, we recognize that the proposed language could create the impression that an alternative DSP would be required to provide "connection" and "delivery" functions, which will always remain natural monopoly functions of the EDC. To avoid this inconsistency, we will retain the original language in Section 54.184(b).

We reject RESA's proposal to either make no change or to adopt their proposed language for the reason that our purpose in revising the existing DSP regulations was to conform the existing regulations to the changes implemented by Act 129. RESA's proposal to not make any language changes to Section 54.184(a) ignores the clear and specific language contained in 66 Pa.C.S. § 2807(e)(1) which dictates the parameters under which we may select an alternative DSP. RESA's proposed alternative language would have this Commission potentially exceed its authority under the existing statutory requirement by giving it the discretion to select an alternative DSP under circumstances that are not permitted under the language of Section 2807(e). In our view, in order for RESA's changes to be adopted, changes to the Commission's statutory authority for selecting DSPs would need to be implemented. This is also responsive to IRRC's request for more information on why we included the proposed language.

OSBA opposed RESA's first change in its Reply Comments as a violation of the Customer Competition statute. PECO also opposed this change posed by RESA.

A few other proposed changes were offered by the parties and IRRC.

PECO and IRRC suggest inserting the word "or" between the proposed Section 54.184(c)(3)(i) and (ii) to be consistent with current language contained in 66 Pa.C.S. § 2807(e)(3.1)(III)(A) and (B). We agree this change is appropriate and will adopt it in the final regulations.

OSBA contends some of the proposed language referencing Act 129 is redundant and should be deleted. We do not agree that the language is redundant and find it is necessary for proper clarity. We will retain the language as proposed.

Citizens/Wellsboro suggests that the final regulations recognize an additional type of competitive procurement process - purchases of products in the markets and auctions operated by the applicable RTO such as spot purchases, capacity, ancillary services, transmission auction rights and financial transmission rights. PECO supports this change as well. We reject this proposed change to the regulation as the existing language in 52 Pa. Code § 54.184(c) adequately addresses the range of competitive procurement options available to DSPs. In terms of the procurement products that may be purchased, those details are set forth in subsection (e)(3.2) and are mirrored in Section 54.186(b)(1). Among the types of products

permitted are "spot market purchases" which, in the Commission's view, would include the types of RTO-offered products and services referenced by Citizens/Wellsboro and PECO, so long as they are reasonably necessary for the provision of default service. Accordingly, Citizens/Wellsboro is already free to purchase the products enumerated from the wholesale market and we will evaluate those purchases in our review of the utilities' DSP under the standards established by Act 129. We adopt Section 54.184 as modified herein and as included at Annex A to this Order.

52 Pa. Code § 54.185. (Default service programs and periods of service).

In this Section, we proposed adding language to subsection (b) to reflect the new nine month deadline for Commission review in Act 129. 66 Pa.C.S. § 2807(e)(3.6). If the Commission fails to issue a final order on the initial default service plan or an amended default service plan within nine months of the date that the plan or amended plan is filed, then the plan or amended plan shall be deemed approved and the DSP may implement the plan or amended plan as filed. Costs incurred through an approved competitive procurement plan shall be deemed to be the least cost over time as per Act 129. 66 Pa.C.S. § 2807(e)(3.6). This language will replace existing subsection (b)'s language. The old language will be moved to subsection (c). Subsequent sections will move down one letter as well.

Almost all parties agreed with the proposed changes to Section 54.185. RESA proposed some additional qualifying language to Section 54.185(b) which purports to insert language that introduces a wholly different standard for evaluating default service plans than what was intended by Act 129 and the existing procedures. RESA proposes to hold hearings "to ensure that the plan is reasonably likely to promote sustainable retail market development by resulting market reflective and market responsive default service rates."

PECO noted in Reply Exceptions that RESA's proposals would improperly modify the statutory standard against which default service plans would be evaluated. OSBA also objects to RESA's proposed language change. PECO aptly points out that Section 2807(e)(3.4) of Act 129 provides that a DSP's prudent mix of default service supply contracts shall be designed to ensure adequate and reliable service at the least cost over time. The phrase "least cost over time" is not defined in the Act, but the Act provides that "costs incurred through an approved competitive procurement plan shall be deemed to be least cost over time as required under paragraph (3.4) (ii)." 66 Pa.C.S. § 2807(e)(3.6).

We agree with the objections of PECO and OSBA and reject RESA's proposed language. Inserting RESA's proposed language requiring findings of "market effective" and "market responsive rates" as well as "competitive retail alternatives" in order for a plan to be approved would result in the injection of specific standards applicable to the Commission's decision-making process in a section that is meant to be procedural. Section 54.185 is designed to strictly govern the process for Commission review of DSPs and RESA's proposed language would unduly restrict Commission flexibility in carrying out its responsibilities under these regulations.

RESA's proposed language change is rejected. Section 54.185 is adopted as proposed and as it appears in Annex A to this Order.

52 Pa. Code § 54.186. (Default Service Procurement and Implementation Plans).

Act 129 sets forth different standards from our current regulations that a DSP's procurement plan must adhere to. We propose deleting the old standard and replacing it with the "prudent mix" standard as outlined in Act 129. For example, instead of a plan being "designed to acquire electric generation supply at prevailing market prices to meet the DSP's anticipated default service obligation at reasonable costs," as specified in Section 54.186, Act 129 now requires the plan "include a prudent mix" of: (a) spot market purchases; (b) short-term contracts; and (c) long-term (5-20 year) contracts. 66 Pa.C.S. § 2807(e)(3.2)(i),(ii), and (iii).

In addition, the prudent mix of contracts must be designed to ensure: (1) adequate and reliable service; (2) the least cost to customers over time; and (3) compliance with the requirements of subsection (e)(3.1) regarding competitive procurement. 66 Pa.C.S. § 2807(e)(3.4). We propose to add this language to our regulation. There are two exceptions to the long-term purchase contracts under Act 129 which will be added to our regulations at subsection (b)(1)(iii)(A) and (B).

Act 129 provides that the DSP may petition for modifications to the approved procurement and implementation plans when material changes in wholesale energy markets occur to ensure the acquisition of sufficient supply at prevailing market prices. 66 Pa.C.S. § 2807(e)(6). Also, the DSP is obligated to monitor changes in wholesale energy markets to ensure that its procurement plan continues to reflect the incurrence of reasonable costs, consistent with 66 Pa.C.S. § 2807(e)(3.4) (relating to the prudent mix).

Accordingly, we will add the following language to this section in conformance with Act 129:

(e) At the time the Commission evaluates the plan and prior to its approval, in determining if the DSP's Plan obtains generation supply at the least cost over time, the Commission shall consider the DSP's obligation to provide adequate and reliable service to customers and that the DSP has obtained a prudent mix of contracts to obtain least cost on a long-term, short-term and spot market basis. The Commission shall make specific findings which shall include the following:

- (1) The DSP's plan includes prudent steps necessary to negotiate favorable generation supply contracts **through a competitive procurement process.**
- (2) The DSP's plan includes prudent steps necessary to obtain least cost generation supply contracts on a long-term, short-term, and spot market basis.
- (3) Neither the DSP nor its affiliated interest has withheld from the market any generation supply in a manner that violates federal law.

A number of parties proposed minor editorial changes to this regulation.

Both OCA and Duquesne suggest deleting the term "prevailing market prices" in Section 54.186(a) and inserting language reflecting the "least cost" standard to reflect Act 129's changes to the goals of default service. Duquesne and OCA also requested that the reference to "prevailing market price" in subsection (d) be replaced to be consistent with adoption of the "prudent mix standard." RESA and PECO object to these changes in their Reply Comments.

We adopt OCA and Duquesne's suggestion to replace the language "prevailing market price" in Sections 54.186(a) and (d) with the language "least cost to customers over time." As the "least cost to customers over time" is now the prevailing standard established in Act 129, we believe that replacement of language referencing "prevailing market price" is necessary in order to have our current regulations correctly reflect the Act 129 legislation. In adopting this change, we reject OSBA's suggestion to delete the Section 54.186(d) standard as unnecessary.

OCA proposes deleting some language at Section 54.186(b)(2)(iii) substituting reference to subparagraph (b)(1)(iii) with Section 54.184(c) for the sake of clarity. OSBA comments that the reference to "(b)(1)(iii)" in Section 54.186(b)(2)(iii) be changed to simply "(b)(1)" for correctness. The AG also endorses OSBA's change. We agree with OSBA's change as more appropriate and adopt it.

RESA suggests additionally adding the language "... through a competitive procurement process" to the proposed language at Section 54.186(e)(1) to insure consistency with Section 2807(e). We have reviewed the proposed language change and accept this change as it is appropriate to reinforce the concept that one of the Commission's obligations under the Competition Act is to ensure that a competitive process exists. IRRC has requested specifically whether we have incorporated this change and our foregoing response addresses that concern.

Citizens/Wellsboro and ICG suggest that the proposed language at Section 54.186(b)(1)(iii)(A) (relating to DSPs offering negotiated rate service to a customer with a peak demand of 15 MW or greater at one meter location) would be better located in Section 54.187 which addresses rate design and cost recovery. We have reviewed this proposed change and reject it. We believe the present location of the language is appropriate and best reflects our desire to conform the regulation to the requirements of Act 129.

Citizens/Wellsboro request clarification of the language at Section 54.186(b)(1)(iii) to allow long-term contracts of four but not more than 20 years. The proposed language provides for contracts "... of more than 4 and not more than 20 years" which parallels the language in Act 129. Citizens/Wellsboro suggests changing the language to include a contract "... of at least four years but not longer than 20 years." Citizens/Wellsboro requests that the language be clarified so as to provide that the shortest long-term contract be four years.

We agree that this is a point in need of clarification. Our proposed language does not clearly state whether a 4 year contract is a short-term or long-term contract. By adopting the language of Section 2703(e)(3.2)(iii), we only perpetuate the ambiguity. We believe the Legislature's intent was to define a 4 year contract as a short-term contract and a contract greater than 4 years but not greater than 20 years as a long-term contract. We therefore reject the suggested change of Citizens/Wellsboro and revise the language of Section 54.186(b)(1)(iii) to parallel the language adopted in our order at M-2009-2140580 (Final Policy Statement) which clearly provides for long-term contracts as greater than 4 years in length but not greater than 20 years.

OSBA proposes that Section 54.186(b) (1) should properly track the language in Section 2807(e)(3.2)(iii) that requires a hearing when a default service plan is filed that includes long term contracts as more than 25% of the projected load. We adopt this change. OSBA also suggests

that new Section 54.186(b)(5) make clear that all products itemized in this section are to be acquired through a competitive procurement process. RESA supports the latter change. We believe that the language is sufficiently clear as stated and the language remains as initially proposed.

To conclude, we adopt Section 54.186 as modified herein and reflected in Annex A to this Order.

52 Pa. Code § 54.187. (Default Service Rate Design and the Recovery of Reasonable Costs).

Act 129 states that a default service provider shall have the right to recover on a full and current basis, through a reconcilable automatic adjustment clause under Section 1307, all reasonable costs incurred under 66 Pa.C.S. § 2807 and a Commission-approved competitive procurement plan. 66 Pa.C.S. § 2807(e)(3.9). This language was added to Section 54.187(b) and the phrase “default service rate schedule . . . designed to recover fully all reasonable costs incurred by the DSP during the period default service is provided to customers, based on the average-cost to acquire supply for each customer class” was stricken as the methodology has changed.

Additionally, consistent with 66 Pa.C.S. § 2807(e)(3.8), we added language under Section 54.187(a) regarding when the Commission may modify contracts or disallow costs when, after a hearing, the party seeking recovery of the costs of a procurement plan is found to be at fault for either: (1) not complying with the Commission-approved procurement plan; or (2) the commission of fraud, collusion, or market manipulation with regard to these contracts.

We changed, consistent with 66 Pa.C.S. § 2807(e) (3.8), language in Subsection (b) allowing for recovery through reconcilable automatic adjustment under 66 Pa.C.S. § 1307. We combined the first two sentences of Subsection (g) into (b) as they are redundant. We removed the phrase “or more frequently” from Subsection (i) to comply with Act 129.

In its comments, IRRC correctly suggested that the word “or” should be inserted at the end of Section 54.187(a)(1) and we have made this change.

In their comments, PECO and PPL both suggest changing “may” to “shall” in Section 54.187(b) to be consistent with the Act 129 language that mandates that “the default service provider *shall* have the right to recover. . . . all reasonable cost incurred under this section . . .” 66 Pa.C.S. § 2807(e)(3.9) (emphasis added). IRRC also endorsed this change. We agree with this change and will adopt it.

Both Duquesne and OCA suggest deleting the language “prevailing market price” from Sections 54.187(i), (j), (k) and (l) and substitute the language “. . . least cost to customers over time . . .” Both parties state that the purpose of this change is to bring the language into compliance with Act 129. RESA disagrees for the reason stated previously. We agree that these language changes are appropriate to conform to Act 129 requirement and we adopt them.

OCA suggests revising section 54.187(i) to read as follows:

- (i) Default service rates shall be adjusted **no more frequently than** on a quarterly basis for all customer classes with a maximum registered peak load up to 25 kW, to ensure the recovery of costs reasonably incurred in acquiring electricity **at the least cost to customers over time [prevailing market**

prices and to reflect the seasonal cost of electricity]. DSPs may propose alternative divisions of customers by maximum registered peak load to preserve existing customer classes.

The OCA submits that Act 129 prohibits a DSP from changing rates more frequently than quarterly, but does not prohibit a DSP from offering more stable rates. OCA states that Act 129 could have easily been written to require quarterly changes if that was the General Assembly’s intent. The OCA submits, however, that Act 129 places an emphasis on rate stability. As such, a DSP must offer a residential rate that changes no more frequently than quarterly, but it may provide additional stability through even less frequent rate changes. We have reviewed this change and believe it is appropriate and consistent with the intent of Act 129 to promote rate stability. We will adopt this change. IRRC also endorses adding this language.

OSBA suggests adding some additional wording to Section 54.187(b) to fully conform to 66 Pa.C.S. § 2807(e)(3.9). The specific words to be inserted are “. . . on a full and current basis.” This appears to be an oversight in the drafting and we will incorporate this language. IRRC also endorses this change.

OSBA suggests updating language in Section 54.187(h) to incorporate any demand side related requirements that arise from enactment of 66 Pa.C.S. §§ 2806.1 and 2807(f). OSBA did not suggest what specific language should be inserted. We have reviewed the comments of OSBA on this point and conclude that the proposed language is sufficient and OSBA’s change is not warranted.

OSBA also expresses dissatisfaction with the use of language in renumbered Section 54.187(j) because it continues to allow for adjustment of default service rates “. . . on a quarterly basis or more frequently . . .” for customers with a peak load of 25 kW to 500kW. OSBA suggests changing the language to provide for adjustment of default service rates on a basis no more frequently than quarterly because many EDCs charge the same default service rate for residential and non-residential customers up to 500 kW. Additionally, as the OSBA makes clear, the definition of what precisely defines a small business customer, in terms of peak load, is not always clear. OSBA cites to a number of existing EDC tariffs that charge the same default service rates for residential customers as are charged to small business customers. OSBA’s proposed change would bring Section 54.187(j) (renumbered) in line with the change proposed by OCA for Section 54.187(i) (renumbered) discussed above. RESA objects to this change because it would prevent small business customers from taking advantage of market responsive rates which could not be adjusted more frequently than quarterly over time.

We reject OSBA’s proposed change as it goes beyond the scope of changes required by Act 129. We will retain the original language.

We adopt the revisions as discussed above and amend Section 54.187 as reflected in Annex A.

52 Pa. Code § 54.188. (Commission Review of Default Service Program and Rates).

Act 129 provides that a DSP shall file a plan for competitive procurement with the Commission and obtain Commission approval of the plan considering the standards in paragraphs (3.1), (3.2), (3.3) and (3.4) before the competitive process is implemented. 66 Pa.C.S.

§ 2807(e)(3.6). The Commission is required to hold hearings as necessary on the proposed plan or amended plan and if the Commission fails to issue a final order on the plan or amended plan within nine months of the date the plan is filed, the plan or amended plan is deemed to be approved and a DSP may implement the plan. 66 Pa.C.S. § 2807(e)(3.6). At the outset, we note that the initial Proposed Rulemaking did not specify that the nine month review period applies to both the initial and any amended plan filing pursuant to 66 Pa.C.S. § 2807(e)(3.6). We have added the necessary language to clarify that point. We also incorporate provisions of Section 2807(e) (3.7).

Additionally, Section 2813 (relating to procurement of power) provides that the Commission may not order a DSP to procure power from a specific generation supplier, from a specific generation fuel type or from new generation only except as provided under the act of November 30, 2004, (P. L. 1672, No. 213), known as the Alternative Energy Portfolio Standards Act (AEPS).

We have also codified the provisions of House Bill 1530 of 2007, which was signed into law on July 17, 2007. This law added Section 2807(e)(5) to the Public Utility Code and authorized electric distribution companies to offer negotiated rates to some very large industrial customers subject to Commission review. It also permitted some electric distribution companies to construct or acquire an interest in electric generation facilities for the purposes of serving very large industrial customers, subject to certain conditions. We addressed this change under Section 54.188(h).

Accordingly, we added the following language under this section to reflect the considerable changes to this regulation:

(a) **A DSP shall file a plan or amended plan for competitive procurement with the Commission and obtain Commission approval of the plan or amended plan considering the standards in 66 Pa.C.S. § 2807(e)(3.1), (3.2), (3.3), and (3.4) (relating to duties of electric distribution companies) before the competitive process is implemented. The Commission shall hold hearings as necessary on the proposed plan or amended plan. A default service program will initially be referred to the Office of Administrative Law Judge for further proceedings as may be required.**

(b) **[The Commission will issue an order within 7 months of a program’s filing with the Commission on whether the default service program demonstrates compliance with this subchapter and 66 Pa.C.S. §§ 2801—2812 (relating to the Electricity Customer Choice and Competition Act)] If the Commission fails to issue a final order on the plan or amended plan within 9 months of the date the plan or amended plan is filed, the plan or amended plan shall be deemed approved and the DSP may implement the plan or amended plan as filed. Costs incurred through an approved competitive procurement plan shall be deemed to be the least cost over time as required under 66 Pa.C.S. § 2807(e)(3.4)(ii).**

* * * * *

(d) **[Upon receiving written notice, the Commission will have 1 business day, to approve or disapprove the results of a competitive bid solicitation process used by a DSP as part of its**

procurement plan. When the Commission does not act within 1 business day the results of the process will be deemed approved. The Commission will not certify or otherwise approve or disapprove a DSP’s spot market energy purchases made pursuant to a Commission-approved procurement plan. The Commission will monitor the DSP’s adherence to the terms of the approved default service program and 66 Pa.C.S. §§ 2801—2812 (relating to the Electricity Generation Customer Choice and Competition Act).] The Commission may initiate an investigation regarding implementation of the DSP’s default service program and, at the conclusion of the investigation, order remedies as may be lawful and appropriate. The Commission will not deny the DSP the recovery of its reasonable costs for purchases made pursuant to an approved competitive procurement process unless the DSP concealed or misled the Commission regarding its adherence to the program, or otherwise violated the provisions of this subchapter or the code. **Except as provided under the act of November 30, 2004, (P.L. 1672, No. 213), known as the Alternative Energy Portfolio Standards Act, the Commission may not order a DSP to procure power from a specific generation supplier, from a specific generation fuel type or from new generation only. At the time the Commission evaluates the plan and prior to approval, the Commission shall consider the default service provider’s obligation to provide adequate and reliable service to customers and the DSP has obtained a prudent mix of contracts to obtain least cost on a long-term, short-term and spot market basis. The Commission shall make specific findings which include:**

(1) **The DSP’s plan includes prudent steps necessary to negotiate favorable generation supply contracts THROUGH A COMPETITIVE PROCUREMENT PROCESS.**

(2) **The DSP’s plan includes prudent steps necessary to obtain least cost generation supply contracts on a long-term, short-term and spot market basis.**

(3) **Neither the DSP nor its affiliated interest has withheld from the market any generation supply in a manner that violates Federal law.**

* * * * *

(f) **A DSP shall submit tariff supplements on a NO MORE FREQUENTLY THAN quarterly [or more frequently] basis, consistent with § 54.187(h) and**

(i) (pertaining to default service rate design and recovery of reasonable costs), to revise default service rates to ensure the recovery of costs reasonably incurred in acquiring electricity at **THE LEAST COST TO CUSTOMERS OVER TIME [prevailing market prices]**. The DSP shall provide written notice to the named parties identified in § 54.185(b) of the proposed rates at the time they are filed with the Commission. The exceptions shall be limited to whether the DSP has properly implemented the procurement plan approved by the Commission and accurately calculated the rates. The DSP shall post the revised PTC for each customer class within 1 business day of its effective date to its public internet domain to enable customers to make an informed decision about electric generation supply options.

(g) If a customer that chooses an alternative supplier and subsequently desires to return to the local distribution company for generation service, the local distribution company shall treat that customer exactly as it would any new applicant for energy service.

(h) The DSP may, in its sole discretion, offer large customers with a peak demand of 15 megawatts or greater at one meter location in its service territory any negotiated rate for service at all of the customers' locations within the service territory for any duration agreed upon by the DSP and the customer.

(1) Contract rates shall be subject to Commission review to ensure all costs are borne by the parties to the contract and no one else.

(2) If no costs related to the rates are borne by other customers, the Commission shall approve the contract within 90 days of its filing at the Commission, or it shall be deemed approved.

(i) The DSP shall offer residential and small business customers a generation supply service rate that shall change no more frequently than on a quarterly basis. All default service rates shall be reviewed by the Commission to ensure that the costs of providing service to each customer class are not subsidized by any other class.

On these proposed changes, OCA largely agreed with the proposed language but suggested modifying Section 54.188(f) to permit a DSP to submit tariff supplements on a “. . . no more frequently than quarterly basis . . .” to be consistent with Act 129 which prohibits a DSP from changing rates more frequently but does not prohibit a DSP from offering more stable rates. OCA submits this change is necessary to comply with Act 129 and is consistent with the change proposed by OCA in Section 54.187(i) discussed above. We will adopt this change as necessary for consistency with the requirements of Act 129. This change also addresses IRRC's concern.

OSBA objects to the deletion of language that requires the Commission to approve or disapprove competitive bid results within one business day in Section 54.188(d). OSBA requests reinstatement of that provision to avoid a potential increase in default service rates. We reject OSBA's proposed change as the elimination of the one business day requirement for consideration was necessary to conform the existing regulation to the requirements of Act 129. We are not convinced that repeal of this provision will cause wholesale suppliers to add risk premiums to their bids thereby increasing default service rates. Further, the new language in Section 54.188(d) provides for the Commission to institute an investigation into a DSP's default service plan and order remedies as appropriate.

RESA proposes to add the language “. . . through a competitive procurement process . . .” to Section 54.188(e) (1). RESA has proposed this language be added to previous sections of the regulations. Upon review, we accept this change as appropriate for reasons stated previously with regard to the same change in Section 54.187. IRRC was also in favor of this modification. Section 54.188 is adopted consistent with the modifications discussed herein and as contained at Annex A to this Order.

Additional Questions

This Commission is proposing regulations that generally incorporate Act 129 procurement requirements into the existing regulatory framework. As there remained some ambiguity in the statutory interpretation of Act 129 procurement requirements, the Commission requested comment in its Proposed Rulemaking Order on 16 questions designed to assist the Commission on how Act 129 should be interpreted in order to ensure adequate and reliable service at the least cost to customers over time and on how the proposed regulations should be revised to reflect the interpretation recommended by the person filing the comments.

We have reviewed the answers filed by the various parties and express our appreciation for the time and analysis devoted by the parties on these important policy concerns. We have considered the responses in our formulation of the final regulations but, more importantly, will utilize these responses to inform our evaluation of DSP plans going forward. However, we have not unilaterally made any changes to the regulations based on the comments received. In this regard, we are mindful of EAP's comment that “it is neither necessary nor wise to attempt to resolve all the ambiguities in Act 129's procurement language” in regulations passed a short time after Act 129 was passed. (EAP Comments, p. 2). Moreover, we agree with those comments that emphasize that the language of Act 129 is broad enough to allow the Commission to exercise its discretion to balance a number of policy goals for default service.

Another consideration, raised by RESA, was that the Commission issue a further set of proposed regulations in light of the comments received to these policy questions. We are mindful of RESA's concern. We have chosen not to alter the proposed regulations based on comments received on these questions because of the need to first achieve the goal of harmonizing the current regulations to the Act 129 standards. We assure the parties that any future decisions to amend these regulations as a result of the comments received on the policy questions, the outcome of the current investigation into default service or developments resulting from evaluation of future DSP plans will be subject to the full rulemaking processes.

In the sections which follow, we briefly summarize the substance of comments received on each question by interest group followed by our tentative conclusions on the subject area addressed by the question. Because of the sheer volume of comments and the amount of repetition of particular points, our summary cannot and does not cite to each comment with particularity although all comments were reviewed closely.

1. *What is meant by “least cost to customers over time?”*¹

On this point, the EDCs were fairly uniform in their position that “least cost to customers over time” should not be narrowly construed nor should it be the only standard by which to measure the adequacy of a default service plan. For example, PECO states in its comments that:

While “least cost” is not precisely defined, the Act makes clear that satisfaction of the “least cost” standard is not a one-dimensional test; instead, the Commission must consider various factors to determine whether a proposed procurement plan meets Act 129's requirements. Section 2807(e) (3.2) provides

¹ See 66 Pa.C.S. § 2807(e)(3.2), (3.4) and (3.7).

that the generation supply to be procured by DSPs through competitive processes must consist of a “prudent mix” of supply products, and while the Act itself does not define “prudent mix,” it is linked to the Act’s definition of “least cost,” because a DSP’s prudent mix of contracts “shall be designed to ensure . . . adequate and reliable service [at] the least cost to customers over time . . .” 66 Pa.C.S. § 2807(e)(3.4).

(PECO Comments, pp. 4-5).

PECO goes on to state that, given the dynamic nature of electricity markets, the circumstances of each customer group and the different needs of customers regarding price stability, DSPs should be permitted to design procurement plans to achieve least cost over time in a manner that considers the specific needs of customers and service territories. PECO asserts that the Commission should make specific findings that each default service plan includes “prudent steps necessary to obtain low cost generation.” 66 Pa.C.S. § 2807(e)(3). (PECO Comments, p. 5-6).

PPL states that the term “least cost to customers over time” can be interpreted along two dimensions: (1) the default service plan includes the selection of contracts that comprise a prudent mix that can consist of a variety of products subject to price volatility, changes in generation supply and customer usage characteristics in a manner that assures adequate and reliable service; and (2) the DSP is required to procure the contracts through a process that produces the lowest cost for the contract type, e.g., competitive solicitations such as requests for proposals (RFPs) or auctions. “Least cost to customers over time” does not mean the absolute lowest possible cost to customers because energy markets are subject to volatility based on many factors such as generation supply, customer usage and weather conditions. (PPL Comments, pp. 6-7).

EAP comments that the phrase is ambiguous because it is not clear what time period is being contemplated and one cannot be certain that a particular strategy will result in a “least cost over time” result. FirstEnergy Solutions agrees with EAP in its Reply Comments.

The generators (P3, Constellation, PPL Energy, Exelon) provided extensive comments on this point. Exelon interprets the “least cost” language in Act 129 as not endorsing a “cookie cutter” approach to procurement but rather provides the DSP with a range of options to procure energy and provide price stability. PPL Energy recommends specifically a mix of short term and intermediate term contracts and spot market purchases as best suited to achieve the “least cost” standard. In its definition of the least cost standard, Constellation provides an extensive analysis of Act 129 requirements as contained in 66 Pa.C.S. § 2807(e)(3.7) (i)–(iii) emphasizing its interpretation of this provision by focusing on competitive procurements for wholesale supply that maximizes supplier participation, utilization of RFP Structures and auctions (termed competitive bid processes or CBPs). Constellation praises the Commission’s utilization of RFP and auction structures but also recommends that attention be paid to how other states manage their CBP wholesale supply agreement requirements to ensure that Pennsylvania’s EDC competitive procurement plans are equally attractive to potential bidders as other jurisdictions’ competitive procurement processes. In this regard, Constellation recommends the Commission develop “best practice” documents through the Retail Markets Working Group that

promote the most competitive processes for procurement of wholesale default service supply.

Retail marketers also commented on the “least cost” question. NEMA and PEMC submit that the “least cost procurement” standard should be implemented consistent with competitive market policies, should rely on market-based pricing and that utility pricing of commodity service to commercial and industrial customers should consider such offerings as monthly and hourly pricing.

RESA provides extensive and well-researched comments providing, from its perspective, an analysis of the following topics: (1) the purpose of the Electric Choice Act was to develop a competitive retail market; (2) Act 129 confirms that default service is intended to be a back-stop to the competitive market; and (3) the implementation of Act 129 did not change the “end state” goal of the Competition Act which is to give consumers generation choice through a competitive process that ensures safe and reliable service at the least cost to customers over time. RESA makes some additional recommendations specifically: (1) that a default service plan should only be approved as “least cost” if it results in default service rates that approximate “the market price of energy”; and (2) that default service plans are to be structured to achieve an “end-state” where customers receive no generation service from default suppliers; and (3) RESA recommends the Commission ensure a default service plan that is reasonably likely to result in a market reflective and market responsive service rate and recovers all costs related to providing default service.

OCA defines the “least cost over time” standard as changing the role of the DSP from that of a passive purchaser of default supplies at market prices and places on the DSP an affirmative obligation to assess which products will produce the lowest costs to customers. The key element of this language change is the shift of the DSP from simply matching its purchases to market prices at a particular point in time to seeking a mix of resources at “the least cost to customers over time.” The OCA submits that the new standard requires that a DSP develop a procurement plan that will capture the benefits of the competitive wholesale market and bring power to its default customers at rates that reflect the lowest costs to customers over the term of the plan and beyond. Such prices may be higher or lower than the prevailing market prices at any given point in time. But the overarching goal is to provide service to customers at the least cost over the course of time. When developing its procurement plan, each DSP should avoid sole reliance on short term purchases in order to develop continuity in rates over the years as well as focus on rate stability. (OCA Comments, p. 6).

OSBA suggests that because the Commission approved a request by West Penn to accelerate certain of its default service plan procurements for its residential customers and because the Commission supported its decision using Act 129’s least cost requirement, that it was, in effect, overruling its previous position regarding retail competition. More specifically, OSBA states that “some of the changes [to Act 129] are inconsistent with some of the decisions made and preferences expressed by the Commission prior to the enactment of Act 129.” OSBA opines that, as a result, the Commission’s commitment to retail competition “may have to change.”

Reply Comments of PECO focus mostly on RESA as follows:

- (1) PECO disagrees with RESA and other parties that a default service plan should only be approved

as “least cost” if it results in default service rates that approximate “as close as possible to the market price of energy.” PECO interprets this position of RESA as emphasizing reliance on spot market prices and short term contracts. Such an approach conflicts with Act 129’s objective of achieving price stability.

(2) PECO disagrees with RESA’s statement that default service plans are to be structured to promote retail competition to achieve an “end-state” goal where customers receive no generation services from default suppliers. The Competition Act, as modified by Act 129, envisioned a continuing role for DSPs to regularly propose procurement plans for Commission review. The requirement to follow a “least cost over time” standard does not diminish the Commission’s commitment to retail competition.

(3) PECO believes it is important for the Commission to affirm that a procurement plan based on full requirements contracts is consistent with “least cost” standards. Further PECO disputes OCA’s assertion that Act 129 imposes an affirmative obligation on DSPs to assess which products will produce lowest cost to consumers. PECO asserts that some products such as FR contracts provide price stability and other benefits although they are not strictly speaking the least cost product available.

(PECO Reply Comments, pp. 9-11).

OCA, in Reply Comments, responds to the comments of NEMA disputing the point made by NEMA that the “prevailing market price” standard should be read in conjunction with the “least cost to customer” standard as essentially identical.

RESA, in Reply Comments, reacts strongly to OSBA’s assertion that passage of Act 129 and the changes to the Competition Act now require the Commission to reconsider its position on retail choice. RESA notes that Act 129 did not make any changes to numerous sections of the Competition Act, did not evidence any legislative intent for the Commission to change its focus from retail competition and in fact certain newly added language at 66 Pa.C.S. § 2807(e) (3.1) makes clear that the competitive market remains the preferred choice for electricity supply over default service. RESA goes on to explain that if the legislature had intended the Commission to no longer focus on developing retail competition then it would have clearly stated that directive. Nor does Act 129 give the Commission statutory authority to change its focus from the original directive under the Competition Act of fostering the development of a robust and functionally competitive market. RESA then disputes OSBA’s citation to the acceleration of the default supply procurement plan of Allegheny in 2009 as supportive of the notion that the “least cost over time” standard is more important to the Commission than retail competition. Finally, RESA reiterates its position that the “least cost to customers” standard is just one of the factors under Act 129 and the Act that the Commission must consider.

Our conclusion on this difficult question, based on the extensive and thoughtful comments received, is that the Legislature, in utilizing the language “least cost over time” did not provide a clear-cut definition of the term. As such, we must be guided by the comments received as well as our own experience and sound discretion in implementing both the Competition Act and Act 129 consistent with the plain language and, where ambiguous, the legislative intent.

We find many of the points raised by the parties as valid although certain interpretations of the language

are, to a degree, strained. The conclusions reached herein do not represent a final, definitive position on the meaning and application of the term “least cost to customers over time” but represent guidance regarding how the Commission will evaluate default service plans going forward. The conclusions reached herein represent an evolutionary step in an ongoing process recognizing that further legislative changes as well as changes in the Commission’s own policies regarding default service may occur in the future, for example, as a result of our investigation into default service.

Initially, we must agree with the EDCs, particularly EAP, PECO and PPL, that the term “least cost to customers over time” standard is somewhat ambiguous and not susceptible to a precise “one size fits all” definition. EDCs, that have the primary responsibility under the Competition Act to procure generation supply requirements as well as the expertise to perform these activities, should be permitted the flexibility and latitude to accomplish the goal of achieving the “least cost” standard in a manner that meets the need of their customers and service territories. We also agree with those parties, especially PPL, that the standard must give the DSP sufficient latitude to select contracts that constitute a “prudent mix” which includes a sufficient variety of products that adequately take into consideration price volatility, changes in generation supply, customer usage characteristics and the need to assure safe and reliable service. We also endorse the concept advanced by one commenter that the “lowest cost” standard should reflect DSP strategies that produce the lowest cost by contract type (long, intermediate and short term as well as spot market prices).

Additionally, we endorse the concepts advanced by generators that the “least cost” language of Act 129 does not represent the adoption of a “cookie-cutter” or “one size fits all” approach to procurement but provides the DSP with a range of options to procure energy that maximizes the types of energy products available and balances the concerns of “least cost” with energy stability and minimizing volatility. We do not endorse, at this time, the position of those parties that recommend solely a mix of just short and intermediate term contracts and spot purchases as that unduly limits the range of supply products available.

We are heartened by those parties, such as Constellation, that believe the Commission’s current utilization of RFP and auction structures have been successful. We also find valuable Constellation’s suggestion that attention be paid to how other states with competitive retail markets manage their competitive bid processes and wholesale supply agreement requirements to ascertain improvements to our processes. We adopt Constellation’s suggestion to ask parties, as part of our default service investigation, to examine and comment on the experiences of other states’ competitive bid processes and make concrete suggestions on how our processes may be improved.

As to the comments of OCA, we generally agree with the OCA’s premise that the “least cost” standard necessitates the changing of the DSP’s role from a passive purchaser of default supplies at market prices and places on the DSP an affirmative obligation to assess which products will produce the lowest cost to customers. We caveat our endorsement of this point with the recognition that certain products, such as full requirements (FR) contracts, provide price stability and other benefits although they may not be the least cost product available. (See PECO Reply Comments, pp. 9-11). Also, as noted later, our agreement with OCA on the DSP role evolving from that of a “passive purchaser” to more active man-

ager is not an endorsement of the market portfolio approach which is addressed later.

We also agree with OCA that the new standard requires the DSP to develop a procurement plan that will capture the benefits of the competitive wholesale market and reflect the lowest rates to customers over the term of the plan and beyond. OCA also recommends avoidance of sole reliance on short term purchases as a means of achieving rate stability. While we agree with OCA conceptually in its response to this question, we diverge somewhat in later questions with OCA's recommendations on how to achieve specific goals as part of the DSP procurement process.

We note with interest RESA's extensive comments on this question. We disagree with RESA's overall recommendations as to the proper interpretation of the "least cost" standard as mandating that default service rates approximate, on a prospective basis, the market price of energy. Such an interpretation would signal retention of the "prevailing market price" standard that has been expressly replaced under Act 129. Moreover, this interpretation conflicts with the Act 129 objective of achieving price stability which dictates consideration of a range of energy products, not just those that necessarily reflect the market price of electricity at a given point in time. Price stability benefits are very important to some customer groups in that exposing them to significant price volatility through general reliance on short term pricing would be inconsistent with Act 129 objectives. We also reject for the same reasons, a recommendation by NEMA for use of a "monthly-adjusted, market-based commodity rate for small commercial and residential customers" as inconsistent with the "least cost" requirement under Act 129.

We also disagree with RESA's assertion that default service plans are to be structured to promote retail competition to achieve an end-state goal where customers receive no generation service from default suppliers. As PECO noted, this is a misreading of the relevant statutes. The Competition Act, as modified by Act 129, envisioned a continuing role for DSPs to regularly propose procurement plans for Commission review. The requirement to follow a least cost procurement standard does not diminish the Commission's commitment to retail competition including a continuing role for DSPs, which may be either an EDC or an alternative Commission-approved DSP.

As stated earlier in this Order, the "least cost over time" standard should not be confused with the presumption that default prices will always equal the lowest cost price for power at any particular point in time. In implementing default service standards, the Commission must be concerned about rate stability as well as other considerations such as ensuring a "prudent mix" of supply and ensuring safe and reliable service. In our view, a default service plan that meets the "least cost over time" standard should not have, as its singular focus, the achievement of the absolute lowest cost over the default service plan time frame but rather a cost for power that is both relatively stable and also economical relative to other options. In this regard, we agree with those points raised by both PECO and PPL. To reiterate our prior point, the "least cost over time" standard should not be viewed as synonymous with maximizing market timing benefits at the expense of price stability and economy.

Finally, we disagree with RESA's assertion that the "least cost" standard mandates that a default service plan be reasonably likely to result in a "market-reflective and market-responsive" service rate that recovers all costs related to providing default service. We interpret this

standard, not contained in either the Competition Act or Act 129, to mean a preference for short term and spot price supplies which ignore both the Act 129 concerns of price stability and a "prudent mix" of products. We do not believe that adoption of RESA's suggested standard is consistent with the "least cost" standard contained in Act 129 and would not adequately protect retail customers from volatility and risks inherent in the energy market. Price stability benefits are very important to some customer groups, so an interpretation of "least cost" that mandates subjecting all default service customers to significant price volatility through general reliance on short term pricing is inconsistent with Act 129's objectives. This is especially true given that the statute specifically enumerates short-term (up to 4 years) and long-term (over 4 to 20 years) contracts as part of the "prudent mix" of contracts that should be included in a default service plan. 66 Pa.C.S. § 2807(e)(3.2).

In response to OSBA's point that our decision in a specific West Penn default service case somehow may be interpreted as a retreat from our commitment to retail competition, OSBA's inference is incorrect. Initially, we would note that our specific decision to permit the acceleration of West Penn's procurement process especially for residential customers was driven by a unique and significant drop in the cost of both coal and gas prices which presented a rare opportunity to take advantage of a drop in commodity prices. We also note that the six tranches that were accelerated only represented 13% of the utilities' portfolio thus preserving the diversification element of the portfolio approach.

The Commission's response to this unique situation, supported by OCA and other parties, does not represent a retreat by this Commission from its commitment to retail competition. As noted by Constellation and RESA in their Reply Comments, Act 129 did not make any changes to those portions of the Competition Act relating to retail competition. Also, as OSBA itself points out, the Commission's decision in the amendment of West Penn's default service procurement filing implicitly recognized that Act 129's terms were not applicable to the previously approved default service for West Penn since Act 129 had not been in effect at the time the default service plan was filed.

At this juncture, we will continue to evaluate the degree to which DSP plans meet the "least cost to customers over time" standard on a case by case basis guided by the observations expressed herein.

2. What time frame should the Commission use when evaluating whether a DSP's procurement plan produces least cost to customers over time?

Responses to this question varied regarding establishing specific timeframes for evaluating whether a DSP's procurement plan produces "least cost to customers over time."

EDC parties such as EAP generally favored 2-3 years while Citizens/Wellsboro specified not less than five years. FirstEnergy recommended using the specific period provided for in the default service plan. PECO specified two years but noted that attention should be paid to ongoing price stability benefits associated with long term contracts which may need to be considered. Duquesne's position was similar to PECO. PPL stated that the length of the time period was not the issue but rather the principal concern should be in evaluating the competitiveness of the procurement process and the determination of whether the default service plan produces the "least cost to customers."

Various EDC parties noted that the Commission should continue to treat the evaluation process of default service plans on a "case by case" basis and that neither the relevant provisions of the Competition Act nor Act 129 provided for "after the fact" review of EDC procurement decisions except for instances of noncompliance or fraud/collusion/market manipulation. 66 Pa.C.S. § 2807(e)(3.8). This position was largely echoed by the generator parties.

OCA, OSBA and RESA all recommended against specifying a specific time period. OCA states that the key inquiry should be whether the DSP's plan will produce the "least cost to customers over time" and if the procurement plan will actively engage the default market to procure the best mix of products to meet the needs of default service customers. OSBA notes that no time frame is cited in the relevant statutes so none should be imposed herein. RESA believes the present default service plan evaluation process works well.

OCA reacts in Reply Comments to the recommendations of those parties that the time period over which the least cost period extends should be a definite time period. OCA argues that the "least cost over time" standard should not be constrained to the period of each approved plan as it might preclude consideration of long-term contracts that typically extend beyond the period of each approved plan. The key inquiry should be whether the DSP has established a procurement plan by which it will actively engage the wholesale market to procure the best mix of products to benefit its particular mix of default service customers.

PECO cautions, in response, not to adopt a fixed long term evaluation period as such a requirement will unduly restrict the Commission's review of procurement plans and potentially result in erroneous results given the unavailability of reliable long term pricing information.

Based on the foregoing, we find no compelling reason to prescribe specific time periods for purposes of evaluating whether an EDC plan meets the standard of producing the "least cost to customers over time." As both PPL and OCA noted, the principal concern should be the evaluation of the competitiveness of the default service plan and whether the plan produces the "least cost to customers over time" and procures the best mix of products for the benefit of default service customers. We recognize that most default service plans encompass a 2-3 year period by virtue of how EDCs structure their procurement processes as well as to be consistent with the function of the wholesale markets. We are also aware that the need to incorporate long term contracts into the product mix results in a certain amount of product overlapping more than one default service plan term. We do not discern a need to establish precise time constraints that would unduly constrain the flexibility of DSPs to design a procurement plan that best fits the character of the customer base and the service territory. We will continue to evaluate on a case by case basis the adequacy of plans as they are currently filed with this Commission.

3. In order to comply with the requirement that the Commission ensure that default service is adequate and reliable, should the Commission's default service regulations incorporate provisions to ensure the construction of needed generation capacity in Pennsylvania?

The parties were mostly unanimous in opposition to the suggestion that the Commission's default service regulations incorporate provisions to ensure the construction of needed generation capacity in Pennsylvania. Among the EDC parties, Allegheny contends that PJM already facili-

tates a coordinated transmission and generation planning process that responds to reliability issues. Allegheny notes that requiring that new capacity be built in Pennsylvania outside of the PJM planning process may lead to uneconomic development of generation and additional cost to customers. PECO notes that the need for new generation capacity is best determined by the competitive markets.

Generation parties also weighed in against this proposal. Exelon contends that implementation of state-specific regulations for generation construction would frustrate the benefits of the regional nature of the RTO and could lead to higher electric rates. PPL Energy opines that such a provision would contravene the "least cost" standard under Act 129. Constellation urges the Commission to work with PJM to ascertain what generation capacity may be needed in a future period.

RESA opposes such a revision to the regulations because such a requirement would contravene the Competition Act and the requirement in the Act of allowing market forces, not economic regulation, to control the cost of generating electricity. OSBA opposes the proposal for the reason that ratepayers would be required to bear the cost of any state-mandated new generation.

The OCA appears to obliquely support the proposal in conjunction with entry into long term contracts with any new generation facilities.

CP endorses the concept of developing regulations to ensure construction of needed capacity.

ICG suggests that the Commission should seek to promote construction of new capacity and require that a portion of that capacity be dedicated to economic development on a cost of service basis. These units could be owned by the default service provider, a competitive developer or the Commonwealth.

FES in Reply Comments, opposes ICG's suggestions to promote construction of new generation capacity and the assertion that administratively mandated additional units can reduce prices to customers. OSBA also opposes ICG on this point.

PECO, in reply, observes that attempts to insure construction of new generation in Pennsylvania through long term contracts would result in increased risks being borne by retail customers. PECO also contends that bidders for such contracts face uncertainty due to lack of transparent market prices for longer term generation and delivery and significant credit/collateral requirements to protect customers from financial exposure associated with supplier default. Long term contracts tied to specific generating resources may include additional risks associated with plant outages, fuel costs, development delays and other factors.

After consideration of the many helpful comments received, we decline at this time to consider revising the current default service regulations to provide for construction of needed generation in Pennsylvania. Our reluctance to move further on this proposal is based on the potential uncertainty that such a requirement would present to the current operation of PJM wholesale markets as well as the potential for contravening provisions of our Competition Act and the provisions of Act 129 which mandate establishment of a least cost standard for evaluating EDC plans. Additionally, we reject ICG's suggestion for the reason that it raises a number of issues which ICG fails to address such as who would bear the cost and risk of financing and building these additional generation facilities.

4. *If the Commission should adopt a provision to ensure the construction of needed generation capacity, how should the default service regulations be revised?*

This Policy question elicited a limited number of responses. In light of our response to Question No. 3, we decline to act on any of the suggestions contained herein but appreciate the input received on this important issue.

Among the EDC parties, many indicated their primary preference would be to have no regulatory requirement addressing needed generation capacity. If such a requirement were imposed, FirstEnergy suggests the development of a competitively neutral mechanism that would allow the cost to be borne by all delivery service customers.

Among the generator parties, PPL Energy questioned whether the Commission has the legal authority to promulgate such regulations. Exelon offers that such regulations must require DSP shareholders to assume all construction and operation costs, should not permit DSPs to enter into any contracts for new generation unless the price is less than the existing market price for power, must specify a competitive process based on lowest cost to customers and require new resources to be integrated in a way that does not frustrate wholesale market rules. Constellation cautions that if the Commission forges ahead with such regulations, that the requirements for new generation be narrowly tailored to seek only products that are appropriate to the need identified and that the costs for resources should be allocated to appropriate transmission customers in specific transmission regions.

OCA notes that the implementation of such regulation must be considered in light of the current regulatory prohibitions that a DSP's procurement cannot be from a generating unit with a specific fuel type and that DSPs are prohibited from procuring power from new generation only. OCA reminds the Commission that it is not prohibited from requiring DSPs to design long-term competitive procurements, e.g. long-term contracts, that facilitate new construction in order to ensure adequate and reliable service.

In light of our determination made in response to Question 3 and the very valid legal and policy concerns raised in response to both Questions 3 and 4, we decline for the time being to take further action regarding additional default service regulations that would ensure the construction of needed capacity in Pennsylvania. However, we reserve the option of revisiting the issue should market conditions dictate.

5. *Which approach to supply procurement—a managed portfolio approach or a full requirements approach—is more likely to produce the least cost to customers over time?*

This question generated significant debate among the commenting parties.

PPL explained the difference between the two approaches as follows:

Both approaches, full requirements and managed portfolio, can produce the least cost to customers over time; however, allocation of the risks and costs associated with the supply for each approach must be considered. In the full requirements approach, the default service provider procures all the energy needs for the default service customers at a fixed price. Under this approach, all the associated risks are borne by the full-requirements suppliers, such as changes in load shape, migration of customers to and

from default service, and changes in market prices for energy, capacity, ancillary services, and alternative energy credits to meet the default service supply obligation. PPL Electric has employed the full requirements approach.

A managed portfolio approach includes purchasing and/or selling physical and financial products based on market and default supply conditions. In other words, the DSP is active in the market at all times to manage the risks described above (changes in load shape, migration of customers to and from default service, and changes in market prices for energy, capacity, ancillary services, and alternative energy credits). These risks and associated costs are borne by the DSP and are ultimately passed on to the default service customers. For example, if more customers migrate from default service than anticipated, the DSP may have too much supply, which can be sold in the spot market. However, the price received for those sales could be higher or lower than the price paid to purchase the supply initially. To manage these risks, the DSP would need expertise in trading in the commodity markets, which is not a core business function. Additional costs would be incurred to acquire this expertise resulting in higher default service costs.

Under a full requirements approach, the winning supplier essentially employs a managed portfolio approach to supply the default service customers. The full requirements supplier is active in the commodities markets and has the necessary expertise to manage these risks.

Neither approach, full requirements nor managed portfolio, eliminates any of these risks or costs. Rather, the risks and costs are simply shifted between suppliers and customers. Any effort to compare these two approaches must, of necessity, track the results that would be produced by each over the same period of time and under identical conditions. Because the fundamental difference between the two approaches is an assessment of risk based on imperfect information, it is essential that any such comparison reflect real-time decision-making and not hindsight.

(PPL Comments, pp. 8-10).

Other EDCs utilize the full requirements (FR) approach. Allegheny considers its FR approach as a form of managed portfolio (MP) because customers get the benefit of service based on "the best pieces of many managed portfolios." FirstEnergy states there is clear evidence, in its opinion, that the MP approach shifts the volumetric risk associated with default service supply from suppliers to buyers of default service leaving them more exposed to price volatility than does the laddered portfolio of full requirements contracts. FirstEnergy submits that requiring EDCs to time the market is unlikely to produce the least cost to customers over time and may require additional EDC infrastructure and employees to conduct the managed portfolio activity. Duquesne opines that the supply procurement method should be left up to the discretion of the DSP and the Commission's regulations should remain flexible and consider the appropriate approach on a case by case basis.

PECO highlights the fact the Commission has approved both types of procurement processes at various times and should maintain a flexible "case by case" approach in light of the specific circumstances of each DSP and its custom-

ers. However, on balance, FR suppliers manage their own risk whereas the MP approach shifts the risk from suppliers to customers. PECO concludes that FR procurement approaches are better positioned to manage risk and this approach should remain an option in designing future default service plans.

Citizens/Wellsboro, alone among the EDCs, argues in favor of the MP approach as more likely to produce least cost to customers over time for DSPs serving a small territory. Citizens/Wellsboro takes issue with other parties' support for the full requirements standard in its Reply Comments.

Generator parties support the FR approach. P3 states that EDCs should be "outcome neutral purchasers" for their customers who do not choose a competitive supplier. PPL Energy advances the concern that, for an EDC to pursue a MP approach, it would have to actively manage a portfolio of power supply products and do so at a lower cost than the market. An MP approach may result in commodity positions by the EDC that creates a volumetric and price exposure resulting in higher prices to customers. Exelon notes that both approaches are difficult to compare but that the intent of Act 129 to produce least cost and price stability militates toward a "prudent mix of standard and full requirements products." Constellation explains in great detail its internal processes associated with supply procurement-functions that would be difficult and expensive for an EDC to duplicate including the need to employ experienced personnel.

FES, in Reply Comments, believes that a FR solicitation is the best method of supply procurement but that no "one size fits all" approach that will work in every market. FES asserts that each DSP should be able to work with stakeholders in default supply proceedings to craft a solution that balances competing interests. FES states that an MP approach entails an unjustifiably high level of risk and is not appropriate for default supply procurement. If the Commission were to implement an MP approach, FES believes that no after the fact review process should be imposed as part of that process.

RESA also endorses the FR model. RESA considers the FR approach, if properly structured and without an overreliance on long term contracts, to be the best way to achieve the goals of the Competition Act. Under the FR approach, the wholesale supplier bears the risk of customer migration, weather, load variation and economic activity and factors the costs of these risks into a risk premium. If the risk premium is not sufficient to cover ultimate cost, the supplier cannot seek additional cost recovery from the customer or the DSP. Alternatively, the MP approach places all the management and market timing risk on customers and reflects the cost of bearing that risk in the default service rate. Under the MP model, it is virtually impossible, in RESA's view, to assume that a utility portfolio manager will outperform the wholesale supply manager. While RESA has a clear preference for the FR approach, it is possible to construct a managed portfolio plan that minimizes customer risk and requires all direct and indirect procurement costs are recovered. RESA recommends more short-term block purchases and spot purchases.

OCA advocates reliance on the MP approach for the following reasons:

1. OCA has long advocated for the MP approach because it has not seen any empirical evidence indicating the superiority of the FR approach.

2. The FR approach shifts risks to third party suppliers who are compensated by customers for the risk associated with variation of load and other risk factors that are factored into the winning bid. Suppliers also add in additional profit margins over and above the margins factored in to compensate full requirements middlemen.

3. Under the MP approach, the DSP can directly access the generation products in the wholesale market without the need to pay an additional level of profit.

4. OCA opines that recent procurements demonstrate that the MP approach is a lower cost alternative to the FR approach. In support, OCA cites to recent procurements by PPL, PECO and FirstEnergy affiliates where the winning bids for block energy purchases was significantly less than full requirements purchases. Therefore block and spot purchase should be part of a prudent mix of products for default service.

5. OCA cites to a movement away from the FR approach based on recent procurement results from Illinois and New Jersey.

(OCA Comments, pp. 12-19).

OSBA makes the following points: (1) there are fundamental economic differences between the FR and MP approach; (2) there are advantages and disadvantages to both methods; (3) the Commission has previously expressed preference for the FR approach but encourages further EDC study of the MP approach; and (4) there is not enough empirical evidence to support the definitive use of one method over the other.

In their Reply Comments, Citizens/Wellsboro takes issue with many of Constellation's initial comments and requests the Commission recognize that an MP procurement standard has worked well and has enabled it to manage certain congestion events.

PECO, in its Reply Comments, disputes the validity of OCA's reliance on the procurement results in Illinois and New Jersey as being supportive of the MP approach. PECO alleges these programs can be distinguished based on the state-specific circumstances that underlay their development. As to the evidence offered by OCA in recent EDC procurements, supporting the MP approach, PECO seizes on OCA's admission that "comparisons of block and full requirements products cannot be made on a direct comparison basis because block purchases do not include all attributes required for default service supply and do not reflect all costs to consumers." Additionally, PECO highlights the fact that block price purchased power will vary based on the timing of purchases, delivery locations and ratemaking differences.

OCA filed extensive Reply Comments in support of the MP procurement approach reiterating the following points:

1. Under the MP approach, each DSP will procure power directly from the wholesale market through a variety of products tailored to specific load.

In order to balance the precise load, the DSP would access the energy balancing services of spot purchases and sales. A portfolio approach provides the default service provider with the latitude needed to procure products available to meet its least cost obligation.

2. The MP approach will allow the DSP to lower the cost of its supply portfolio when customers participate in Act 129's energy efficiency, demand response and time of use programs.

3. The FR approach shifts the obligation to meet default service load to third party suppliers who are obligated to meet default service to a set percentage of default load regardless of the level of retail shopping that takes place in the service territory. The risks associated with the variation in load are assigned a risk premium cost by bidders that are priced into the winning bids and paid for by default service customers. These profit margins are in addition to the profit margins the generation suppliers build into their supply of the products to FR middlemen.

4. Under the MP approach, the DSP can directly access the generation products available in the wholesale market without the need to pay an extra level of profit and risk premiums to FR suppliers. There is no empirical evidence that the FR approach produces the least cost product.

5. Constellation is in error in saying the MP approach requires the DSP to time the market.

6. The experience of Citizens/Wellsboro with the MP approach is proof the MP approach is superior. Also, EDCs have managed to recently procure block and spot purchases directly at prices that were less than their FR purchases for the same period.

7. The MP approach is most consistent with both the supply and demand aspects of Act 129. A portfolio approach allows the discretion to include a variety of resources and products and affords the flexibility to incorporate new products into the supply mix such as energy efficiency, demand response, smart meter and TOU requirements to customers.

(OCA Reply Comments, pp. 3-10).

RESA responds to OCA's arguments in support of the MP approach as follows:

1. OCA, in advocating the MP approach, never explains how this approach will impact the development of the competitive market.

2. Default service customers will be required to pay all of the costs associated with building an EDC infrastructure necessary for EDCs to perform all functions associated with MP approach.

3. Requiring EDCs to perform the MP function ignores the fact that wholesale suppliers compete with each other to win a supply contract and have an incentive to drive down costs as low as possible insulating customers from being forced to pay over inflated or unreasonable costs.

4. OCA fails to address how default service customers are benefitted when they are forced to pay the full costs of unforeseen risks under the MP method. Under the MP approach, default service customers pay the full cost of future risks where the EDC fails to perform. Under the FR approach, there is an insurance component built into the supply contract that insulates default service customers from those risks.

5. OCA fails to explain how an EDC can adequately take on, as a core business function, the role of active portfolio manager.

(RESA Reply Comments, pp. 9-13).

This is indeed a complex and difficult issue. We appreciate the efforts the parties make in their comments to explain the advantages and disadvantages of the FR and MP methods. The question that we must address is whether we should be encouraging EDCs, as default suppliers, to be adopting, as a core function, the responsibility to act as a portfolio manager for procurement of their default supply - a function that has traditionally been the province of the electric supplier.

The major benefit associated with the FR approach is that the procurement function is delegated to the electric supplier which is presumably better equipped with the necessary personnel and infrastructure to perform the activities associated with acquiring electric supplies in the complex and ever changing wholesale market environment. The FR process insulates default supply customers from the volatility associated with wholesale market conditions with the supplier bearing the risks of factors such as customer migration, weather, load variation and economic activity. For assuming these risks and performing the portfolio manager function, the supplier charges a risk premium (or profit) that is factored into the winning bids and paid for by default service customers.

Alternatively, the MP approach shifts the obligation to meet default service requirements to the EDC to procure power directly from the wholesale market essentially supplanting the role of the electric supplier. Under the MP approach, the EDC becomes an active market participant with the responsibility to manage risks such as changes in load shape, customer migration to and from default service and changes in prices for capacity, energy and other ancillary services as well as the vagaries of weather and economic conditions. Instead of being insulated from the impacts of these risks, default service customers are directly exposed to the impacts of the EDCs expertise in managing its portfolios.

Most Pennsylvania EDCs have preferred the FR approach given the balance of risks and rewards. Electric suppliers understandably favor this approach as it is their core business function - a function largely the result of electric deregulation under the Competition Act. One utility, Citizens/Wellsboro, has successfully utilized the MP approach to the benefit of its customers. Recent plans, as pointed out by OCA, have been approved which have included spot and block purchases resulting in lower prices than under the FR approach. This fact, argues OCA, coupled with experiences in New Jersey and Illinois, the potential for excess profits to generation suppliers as well as the lack of empirical evidence that the FR approach is more cost effective than the MP approach militates in favor of the MP approach. In contrast to OCA's position, RESA opines that suppliers cannot seek additional cost recovery from the customer or the DSP if the risk premium is not sufficient to cover the cost of procured power.

On balance, we are not persuaded that the MP approach is superior to the FR approach in achieving the "least cost to customers" while also achieving the other objectives of "prudent mix" of products and price stability. The MP approach has clear advantages to the retail markets and the retail customer provided the EDC is capable of performing the full range of portfolio management functions. Based on the uniformity of comments received from those parties that actually perform these functions, the EDCs and electric suppliers, we do not feel confident in expressing a preference for the MP method at this time as the preferred means of default supply procurement. Our principal concerns are that EDCs do

not currently possess the requisite expertise and infrastructure to perform these portfolio management duties and the risks to retail customers from EDC inexperience in performing these functions is too great. We are also mindful of the fact that the current default supply process, with the EDC acting as the default supplier and distribution entity purchasing its supply from electric suppliers knowledgeable about the workings of the wholesale electric market, is a product of the Competition Act, which created the market structure we now operate within. Requiring DSPs to adopt the role of electric market portfolio manager may be inconsistent with our charge under the Competition Act. Finally, we note here that, after the restructuring of the electric utility industry in Pennsylvania mandated by the Competition Act, generation planning and management is no longer a core function of an EDC's business. As such, to impose MP duties would tend to divert management attention from the EDC's core function of providing safe, reliable and adequate delivery of electric generation service.

Consequently, we will not require nor do we specifically endorse the use of the MP approach at this time. We do express a preference for continued reliance by DSPs on the FR approach to the extent this method best suits the DSP's particular procurement needs. DSPs are, of course, free to modify their procurement methodologies as necessary to incorporate aspects of the MP approach where appropriate given the level of confidence the DSP has in its own ability to perform the portfolio management function, the DSP's customer characteristics and usage patterns and the service territory.

We will continue to evaluate default service plans on a "case by case" basis recognizing that the maximum degree of flexibility given to EDC DSPs has proven to produce the best results for customers. Further, we encourage utilities such as Citizens/Wellsboro to continue to utilize those procurement methodologies that best meet the needs of its customers and which comply with the required standards under our regulations.

6. *What is a "prudent mix" of spot, long-term, and short-term contracts?*

What constitutes a "prudent mix" of contracts was subject to a number of varying definitions. Among the EDCs, PPL, PECO and FirstEnergy did not specify fixed percentages. PPL's position is that the DSP should have the discretion to propose a mix of contracts that is appropriate based on the characteristics of its customers. Moreover, there are an infinite number of procurement plans that can be considered "prudent" and the DSP review process allows all parties to weigh in on the subject. PPL cautions, however, that once the Commission has approved a plan, the mix of contracts should remain in place for the term without alteration. FES agrees with this position in its Reply Comments. FirstEnergy notes that the "prudent mix" of contracts must focus on low cost, comply with Act 129 requirements and include an acceptable amount of risk. While default service rules require a separate portfolio for each class, EDCs should not be required to offer all types of contracts (long, intermediate, short, spot) for each customer class.

PECO states as follows:

- 1) "Prudent mix" is linked to "least cost" and should take into account benefits of price stability.
- 2) A "prudent mix" of contracts will differ for each customer class.
- 3) The "prudent mix" of contracts may vary in the future as wholesale and retail markets evolve.

4) The degree to which a "prudent mix" of contracts will ensure adequate and reliable service will be influenced by such factors as contract and credit requirements.

5) The Commission should not place unnecessary constraints on the definition of "prudent mix."

(PECO Comments, pp. 13-15).

Duquesne supports leaving the "prudent mix" of contracts definition to be determined on a "case by case" basis but has determined fixed percentages of products to be an optimal "prudent mix" for its own purposes. Allegheny recommends specific percentages of contract types for service to its customer classes.

Among the generator parties, Exelon and Constellation advocate for a "case by case" determination based on the needs and characteristics of the customer class. PPL Energy offers the perspective that a "prudent mix" should consist of short and intermediate term contracts and spot purchases. Alternatively, PPL Energy states that suppliers should be permitted to provide customers with a diverse supply of demand response, energy efficiency and alternative energy products in addition to more traditional supply sources. FES endorses the "case by case" approach.

OCA does not advocate for a specific "prudent mix," preferring a flexible approach that varies between DSPs and market conditions.

RESA notes that a "prudent mix" of contracts is that which will result in a competitive, sustainable retail market, ensures customers of the least cost over time and should result in a plan that produces market reflective and market responsive rates reflecting all of the relevant costs incurred by the EDC to provide default service. RESA cautions against a "one size fits all" approach to the "prudent mix" standard recognizing that the transition to a fully competitive end-state will result in a varying mix of contracts depending on where the market segment is in the transition process. RESA advocates for an end-state that relies on short term contracts and spot purchases and less on long term contracts. RESA notes that over-reliance on long term contracts runs the risk of customers being forced to pay higher "out of date" rates during a period of declining prices. RESA firmly opposes the use of long term contracts.

ICG maintains the position that, at a minimum, two types of products must be included to constitute a mix. Providing only hourly priced service does not result in a "prudent mix" of spot, long-term and short-term contracts for the large commercial and industrial customers. FES opposes this suggestion in its Reply Comments.

CP advances the notion that the language of Act 129 requiring a prudent mix of spot market purchases, short-term contracts and long-term contracts means that all three types of purchases must be part of each and every procurement type.

In Reply Comments, Citizens/Wellsboro takes issue with RESA's market reflective/market responsive proposal terming it a restatement of the prevailing market price procurement standard that Act 129 eliminated.

PECO disagrees in response to suggestions that a "prudent mix" must include some minimum combination of spot price, short-term and long-term contracts. Adoption of minimum procurement provisions reduces the flexibility of DSPs to develop procurement plans that reflect different DSP and customer characteristics and evolving wholesale and retail markets. Minimum procure-

ment requirements are best considered as part of individual default service plan evaluations.

In evaluating this question, we are guided by the language of Section 2807(e) (3.2) of the Public Utility Code which states that electric power procured pursuant to a default service plan shall include a prudent mix of the following: spot market purchases, short-term contracts and long-term contracts entered into as a result of an auction, RFP or bilateral contract. There is no guidance given regarding what constitutes the composition of a “prudent mix.”

On this point, there was substantial agreement that the term “prudent mix” be interpreted in a flexible fashion. RESA states that a “prudent mix” should be that combination of contracts that will result in a competitive, sustainable retail market that assures default service customers of generation service at the least cost over time. PECO makes the point that “prudent mix” be linked to “least cost” and take into account price stability. PPL and PECO both recommend that the DSP have the discretion to propose a mix of contracts that are appropriate based on customer characteristics. Most of the generators advocate for a “case by case” determination. Some generators recommend a diverse supply of demand response, energy efficiency and alternative energy products. OCA prefers an approach to developing a “prudent mix” that allows for variation between DSPs.

We agree with the majority of parties that the “prudent mix” of contracts be interpreted in a flexible fashion which allows the DSPs to design their own combination of products that meets the various obligations to achieve “least cost to customers over time,” ensure price stability, and maintain adequate and reliable service. As we have done on other aspects of the plan review process, we will continue to review each plan on a “case by case” basis that independently evaluates the merits of each default service plan where input from stakeholders is assured. We reaffirm our commitment that a “prudent mix” include a combination of spot purchases, short, intermediate and long-term contracts recognizing the limitation of 25% on long-term contracts under Section 2807(e)(3.2)(iii).

We do reject the positions of those parties that “prudent mix” be defined to always require a specific mix or percentage of types of contract components in each default service plan or a minimum of two types of products. We also reject the position of RESA that long term contracts should not be part of the “prudent mix” standard. Our concern with adopting specific parameters is that adoption of specific component requirements creates constraints that limit the flexibility of the DSP to design a combination of products that meets the requirements under the Competition Act and Act 129.

7. Does a “prudent mix” mean that the contracts are diversified and accumulated over time?

To a degree, this question overlaps with Question 6 and the responses also repeated in large measure parties’ response to Question 6. The purpose of this question was to delve more deeply into the benefits of diversification and accumulation of contracts in meeting default service procurement requirements. The majority of responding parties were generally in favor of interpreting the “prudent mix” as including diversification and accumulation of contracts that incorporates such concepts as laddering and dollar cost averaging.

Among the EDCs, PPL states that a “prudent mix” is established through the procurement process that involves four solicitations a year. The “prudent mix” can

change over time due to changing market conditions but the term does not mean that contracts must be diversified and accumulated over time. Allegheny employs a “dollar cost averaging” method for procurement with its various affiliates. In this manner, Allegheny can mitigate extraordinary market events and assure its customers consistent value. Duquesne points out that having more contracts does not always mean less risk and staggering contracts may not always be warranted when a fixed price full requirements contract represents less risk for customers.

PECO makes the important point that “diversity” of contracts should not be confused with a “prudent mix” where full requirements contracts can include significant mitigation risks for customers by ensuring fixed prices regardless of congestion costs, usage patterns, weather and other factors.

The generators (Exelon, PPL, Constellation) generally support the proposition that procurement plans can potentially be achieved by contracts that are diversified and accumulated over time. Utilizing a laddering approach with varying procurement periods and different contract durations can benefit customers through cost averaging. Where a portfolio of FR contracts are laddered, customers are insulated from market price volatility that may occur where supply contracts are all purchased at one time.

RESA supports diversified contracts accumulated over time as long as the contracts are short-term. RESA states that laddering long-term contracts does not make the default service rate market reflective because they will not reflect the true market price of electricity.

Certain parties recommended specific restrictions on the number and types of products offered. Citizens/Wellsboro and ICG recommend offering at least two products. Allegheny states that only spot purchases are appropriate for industrial customers.

OCA generally supports diversification of supply contracts as part of a portfolio approach both in timing of purchases and in terms of products procured.

OSBA cautions that the Commission should retain its current practice of requiring DSPs to conduct multiple procurements. The Commission should not mandate the timing of procurements or the mix of products.

OCA, in its Reply Comments, opposes proposals by Citizens/Wellsboro, ICG and Allegheny that seek to impose certain restrictions on the types of products offered.

The tenor of the comments received on this question affirm our prior understanding that, on balance, accumulation and diversification of contracts is a beneficial practice for DSPs to engage in when developing their procurement plans. We agree with those parties that utilizing such practices as laddering contracts, with varying procurement periods and contract durations over multiple procurements provide definite benefits in terms of minimizing the impacts of market volatility and decreasing customer risk.

Therefore, we continue to endorse the use of contract diversification and accumulation as part of the default supply procurement process, but leave it to the DSPs to develop those methods of accumulation and diversification that best meet the needs and characteristics of the customer base and service territory. Our review of the individual default service plans will provide an opportunity for interested parties to critique shortcomings in the methods employed by individual DSPs. We reject the recommendations of those parties such as RESA, ICG and

Citizens/Wellsboro that seek to set limits on the numbers and types of products that should be included as part of the procurement portfolio.

8. *Should there be qualified parameters on the “prudent mix”? For instance, should the regulations preclude a DSP from entering into all of its long-term contracts in one year?*

On this point, EDCs generally opposed specific parameters on what constitutes a “prudent mix” recommending instead a “case by case” evaluation of each plan as it is filed. The EDCs generally recommend that the Commission should retain flexibility in its regulatory review process by not prescribing restrictive parameters.

Among the generators, Exelon and Constellation prefer maintaining the present plan review process that provides maximum flexibility and rejects the establishment of specific parameters. PPL Energy recommends implementing regulations that restrict DSPs from entering into contract types all in one year although it recognizes that there may be situations where entry into contracts in one year may be appropriate.

The OCA likewise recommends against implementing an overly restrictive set of parameters for product mix achieved by each DSP, recognizing that DSPs should be expected to incorporate “best practices” to ensure diversity of supply and limit over-reliance on any one product.

OSBA recommends deferral of any decision until the Commission has more opportunity to analyze the results of current default service plans.

As with our response to Question 7, the majority of comments recommend against setting firm qualified parameters on what constitutes a “prudent mix” insofar as setting requirements reduces the flexibility of the DSP to design a procurement plan that best suits the requirements and characteristics of the customer base and the service area.

We agree with those parties that setting specific requirements unduly reduces flexibility of the DSP to achieve a “prudent mix” that meets the “least cost over time” standard while ensuring rate stability and adequate and reliable service. We will leave to the DSP the appropriate design of the procurement process recognizing that we reserve the discretion to review and approve the DSP’s plan when it is filed. We do not at this time see the need to implement regulations restricting a DSP from entering into all of its long-term contracts in one year.

9. *Should the DSP be restricted to entering into a certain percentage of contracts per year?*

On this question, the parties’ responses were largely dictated by their response to Question 8. EDCs opposed any restrictions on DSPs entering into a certain percentage of contracts per year expressing a preference for a “case by case” review of each procurement plan. Generators opposed any restriction, recommending the more flexible regulatory approach of evaluating each case on its own merits recognizing that there is a multiplicity of procurement plans.

OCA also opposes this requirement and cautions against approving a plan that has too many contracts expiring in one year. OSBA recommends deferral of any decision until the Commission has more opportunity to analyze the results of current default service plans.

As with our discussion of Questions 8 and 9, we refrain from taking a position in favor of or recommending the establishment of fixed percentages of contracts per year

as such a step would reduce the flexibility of DSPs to design procurement plans that best suit their own supply requirement and the requirements of retail customers.

10. *Should there be a requirement that, on a total plan basis, the “prudent mix” means that some quantity of total plan default service load must be served through spot market purchases, some quantity must be served through short-term contracts, and some quantity must be served through long-term contracts?*

As with the prior three questions, EDCs generally resisted any requirement that the definition of “prudent mix” means a specific quantity of spot market purchases, long-term contracts and short-term contracts. EDCs believe that a “prudent mix” will evolve over time and that a minimum quantity of specific electricity products should not be prescribed. PPL states that it is likely that the “prudent mix” will change with market conditions and can be reflected in future DSP procurement plan filings. Similarly, the generators do not endorse a specific quantity requirement for electricity products noting that the 25% limit on DSP projected load should be the limit on any fixed requirements.

OCA does not endorse a specific requirement but urges that all three types of purchases be considered as part of the default service portfolio approach. OSBA concedes in its comments that there is no clear guidance on this issue and that the Commission has already determined there is no legal requirement there must be, as part of a default service plan, a specific quantity of load served by specific products.

ICG opines that the prudent mix standard can vary by class as long as at least two products are offered. ICG asserts that providing only hourly priced service does not result in a “prudent mix” for large commercial and industrial customers.

RESA presents a forceful analysis on why increased reliance on long-term contracts is not to be recommended for the following reasons: (1) a substantial percentage of supply will be based on prices that are substantially out of date; (2) long-term contracts deprive customers of price decreases in a time of declining prices; (3) long-term fixed price contracts impede the legislative goal of promoting retail competition; (4) there is no guarantee that long-term fixed price contracts will produce lower rates for customers; and (5) long-term contracts require suppliers to factor in higher capital costs into bid prices.

Based on the comments received and our further consideration, we do not believe it is prudent or necessary at this time to establish specific percentages of default service load that should be served under long-term contracts, short-term contracts or spot market purchases. We do agree with OCA that all types of contract products be considered. We also find merit in the points raised by RESA against increased reliance on long-term contracts and we caution parties not to be overly wedded to long-term contracts as a major factor in their portfolio requirements. In declining to set fixed quantities for portfolio requirements, we allow DSPs maximum flexibility to design their default service plans with a minimum of restrictions while retaining our ability to review and evaluate plans on a case by case basis.

11. *Should there be a requirement that some quantity of each rate class procurement group’s load be served by spot market purchases, some quantity through short-term contracts, and some quantity through long-term contracts? In contrast, should a DSP be permitted to rely on only one or two of those product categories with the choice depending*

on what would be the prudent mix and would yield the least cost to customers over time for that specific DSP?

On this point, the EDCs resist imposing requirements that portions of each rate class be served by specific quantities of product. PECO and Duquesne oppose any fixed requirements. FirstEnergy and Citizens/Wellsboro indicate that a DSP should be permitted to rely on one or two product categories if necessary. Allegheny and PPL point out that a DSP should be permitted to develop plans based on the characteristics of each rate class. The generators uniformly opposed this requirement.

RESA recommends default service plans be designed to gradually transition toward a robust and competitive end-state. ICG prefers that a prudent mix contain more than one product. OCA prefers a mix of all products for residential customers. OSBA points out that the Commission has already decided there is no legal requirement that the “prudent mix” for each rate class include specific quantities from each product.

Based on the comments received and our further consideration, we do not believe it is prudent or necessary at this time to establish specific quantities of default service load that should be served under long-term contracts, short-term contracts or spot market purchases. As indicated in our responses to Questions 8 through 10, prescribing specific parameters and minimum load or product parameters limits the flexibility of the DSP to design a default service portfolio that best fits the needs of its service territory and customer base.

12. Should the DSP be required to hedge its positions with futures including natural gas futures because of the link between prices of natural gas and the prices of electricity?

EDCs generally opposed any requirement to hedge their positions with futures products including natural gas futures. PPL states that DSPs generally use RFPs and auctions for procurement and thus do not have to hedge nor should DSPs be required to hedge positions as there is risk associated with hedging and specialized expertise is required to perform this function in a competent manner. PECO and Citizens/Wellsboro state that DSPs should be permitted, but not required, to utilize hedges because properly structured hedges can provide protection against price changes in wholesale electricity markets. FirstEnergy opposes mandated hedging and notes that requiring the use of one market method over another is unlikely to result in the lowest cost to customers over time.

Generators largely oppose the use of mandated hedging. PPL Energy highlights the commodity risk and lack of DSP expertise as primary reasons for not endorsing this method. Exelon notes that there may be instances when a DSP can use gas hedging options to reduce risk and in those cases should be permitted to do so.

RESA opposes hedging as it is fraught with risk and, when it fails, customers will pay the consequences. RESA cites to prior Commission statements that it is “generally skeptical of DSP’s ability to beat the market.”

OCA indicates that hedging products should be the types of products considered for inclusion in a portfolio if they can contribute to price stability, but these products should not be mandated. OSBA recommends the Commission defer a decision on this question.

Based on the extent of comments received, we do not see a compelling reason to require DSPs to employ hedging strategies, either natural gas or other hedging

vehicles, as part of their default service plan. As noted by the parties, DSPs do not typically have the in-house expertise to engage in these potentially risky practices that may result in additional cost to ratepayers. The use of hedging strategies does have its benefits in providing price stability in times of price volatility and we encourage DSPs to consider hedging as part of the total mix of available procurement strategies if the DSP has a level of confidence that hedging can be employed in a beneficial manner.

13. Is the “prudent mix” standard a different standard for each different customer class?

The consensus EDC response on this question was in the affirmative - that the “prudent mix” standard applies to all customer groups but since each customer group is different, the appropriate default service product will differ from one group to the next. PECO notes that the product mix for industrial and commercial customers will differ from the products for small commercial and residential customers, as the former classes are generally more sophisticated and have more competitive opportunities than the latter classes. Generators endorsed the “case by case” approach allowing for different product mixes by customer class considering the overall mandate of the default procurement process which is to achieve the least cost and greatest price stability to customers.

OCA is generally supportive of the concept that the “prudent mix” standard be interpreted as allowing for customer class specific product mixes.

OSBA also agrees with this proposition but cautions that long-term contracts will usually not be part of a “prudent mix” for small and medium commercial and industrial customers. Further, because medium-sized higher load factor customers (commercial and industrial) have a higher propensity to shop, long-term contracts may be imprudent for serving that group.

The Commission notes there was substantial unanimity on this point and agrees with the parties that the “prudent mix” standard should be interpreted to allow for a class-specific product mix that best matches the needs of each DSP customer class. However, DSPs are advised to carefully review and update as necessary the usage characteristics of each customer class when developing class-specific product mix. We will continue to analyze DSP proposals of this nature on a “case by case” basis.

14. What will be the effects of bankruptcies of wholesale suppliers and default service suppliers on the short and long-term contracts?

We requested this information to better inform our future judgments regarding the evaluation of risk associated with supplier bankruptcy, to elicit information on the current “best practices” employed by DSPs and to evaluate whether additional regulations on this point are necessary.

PPL notes that its response to supplier bankruptcies will be dictated by market conditions at the time of the bankruptcy. Both PPL and Allegheny make the point that the outcome of supplier bankruptcy will depend on whether the contract price (at time of supplier failure) is less than or more than the market price. If the former, the DSP can more easily obtain a lower-priced substitute supply. If the latter, the DSP may have to absorb the loss.

PECO notes that the effects of bankruptcies involving long-term contracts are likely to be greater than the impacts of bankruptcy involving short-term contracts, as

the duration of the load obligation of the former lasts longer and increases the degree of market uncertainty.

FirstEnergy, PECO and other EDCs stressed the importance of establishing firm credit requirements upfront in order to minimize counterparty risk.

Generators echo the importance of designing adequate credit protection mechanisms in supplier contracts to protect all parties against the potential for supplier failure. Constellation recommends that default supply procurement mechanisms be structured to account for all risk including, but not limited to, risks to the financial standing of the wholesale suppliers. Exelon recommends that supplier agreements require the posting of collateral equal to the difference between the contract price and the market price-collateral which can be retained for contingency procurement requirements.

RESA endorses the inclusion of contingency provisions in the default service plan that sets forth a process to address situations where the supplier is unable to perform pursuant to the procurement contract.

OCA and OSBA generally refer to the existing regulation requirement that specifies that default service programs include contingency plans to ensure the reliable provision of service when a wholesale supplier fails to meet its contractual obligations. OCA urges the DSP to have a contingency plan that provides for obtaining replacement supply through competitive means on the wholesale market including the possible use of the MP approach. PECO, in Reply Comments, argues against OCA's position on this point noting OCA offers no data to support its claim.

CP suggests that, in the event of a supplier bankruptcy, the DSP be responsible for any cost differential between the contracted cost of supply and the replacement cost for the same supply. CP provides no support for the proposal. EAP, FirstEnergy and PECO vehemently oppose this suggestion terming it a contradiction of Act 129 and Section 2807(e) (3.9), as well as Commonwealth Court precedent that entitles DSPs to recovery of all costs on a full and current basis.

We appreciate the parties' input on these important issues and commend EDCs and suppliers alike for proactively addressing the potential for supplier bankruptcy or other circumstances involving supplier inability to perform. Moreover, we agree with the comments of the EDCs and generators that adequate credit protection mechanisms should be a part of all supply contracts to protect customers in the event of a bankruptcy or other inability to perform. However, we do not propose to make any specific changes to either our regulations or policy statement regarding DSP credit and collateral provisions or other measures to safeguard customers in the event of supplier bankruptcy in this rulemaking. DSPs are already required to detail these credit protection mechanisms and procedures through the default service filing and review process in our regulations. In the event circumstances dictate a need to revise our regulations, we will institute an additional rulemaking to address the issue.

We further reject CP's suggestion for holding DSPs responsible for cost differentials due to supplier failure as inconsistent with Section 2807(e)(3.9) and appellate precedent which ensures full cost recovery.

DSPs should strive to provide as much detail as possible including sample contract language and explanations in their default service plans regarding the DSP procedures in the event of supplier bankruptcy and/or other potential scenarios involving supplier failure. We

endorse RESA's proposal to include contingency provisions in the default service plan that set forth a process to address situations where wholesale suppliers are unable to perform pursuant to the procurement contract. Moreover, we believe our DSPs are capable of independently developing procedures for addressing supplier bankruptcy -procedures that are best designed to minimize impacts on ratepayers when these unfortunate events occur.

15. *Does Act 129 allow for an after-the-fact review of the "cost reasonableness standard" in those cases where the approved default service plan gives the EDC substantial discretion regarding when to make purchases and how much electricity to buy in each purchase?*²

EDC parties were fairly adamant in their position that Act 129 does not allow for an "after the fact" review of the cost reasonableness standard based on the language of Section 2703(e)(3.8) of the Competition Act that permits the Commission to conduct an "after the fact" review to disallow costs only for non-compliance with approved default service plans or where there is the commission of fraud, collusion or market manipulation.

Generator parties concur in this assessment. Constellation observes that adoption of the MP as opposed to the FR approach may invite EDC market-timing practices that could necessitate "after the fact" regulatory and prudence review by the Commission.

RESA and OCA also oppose an "after the fact" review of DSP procurement plans on the same legal grounds, with the exception of those provisions listed under Section 2807(3.8).

OSBA favors an "after the fact" review where the DSP has substantial discretion in the nature and timing of default service with reference to the occurrence of conditions provided for at Section 2807(e)(3.8).

In their Reply Comments, EAP, Citizens/Wellsboro, FirstEnergy and PECO all contest OSBA's interpretation that, under certain circumstances, "after the fact" review may be proper. These parties, especially PECO, do not believe that the reference to "reasonable costs" in Section 2807(e)(3.9) is intended to create the opportunity for general after the fact prudence review in light of the very limited exceptions to full cost recovery set forth in Section 2807(e)(3.8). PECO suggests that if the Commission grants a certain level of discretion to the DSP in the procurement review process, then there should be no second guessing of that discretion through additional cost recovery proceedings.

We have also carefully considered the extensive comments on this question and agree with the majority of the parties who interpret the language of Act 129 as not legally permitting an "after the fact" review of default service plans except for the two exceptions provided for under Section 2807(3.8). These exceptions are: (i) failure to comply with the Commission-approved procurement plan, and (ii) evidence of fraud, collusion or market manipulation with respect to the contracts. We herein reject OSBA's proposed interpretation. To interpret our authority to allow "after the fact" review would, in our view, unduly subject DSPs to a level of second-guessing and regulatory scrutiny that is inconsistent with the purpose of both the Competition Act and Act 129. Further, this limitation on our ability to conduct "after the fact" reviews of a DSP procurement plan (other than under Section 2807(3.8)) puts additional responsibility on this

² See Section 2807(e)(3.9), which provides the EDC with the right to recover "all reasonable costs" incurred under Section 2807 and under an approved competitive procurement plan.

Commission to carefully analyze, scrutinize and, where need be, challenge the DSP on the details of its procurement plan.

However, by not exercising after the fact review, we are not giving the DSPs unfettered discretion in the design of their default service plans. We encourage the DSPs to clearly articulate in their filings reasonable parameters and constraints applicable to their supply acquisition schedules and hedging mechanisms.

16. *How should the requirement that “this section shall apply” to the purchase of AECs be implemented. Section 2807(e)(3.5) states that “. . . the provisions of this section shall apply to any type of energy purchased by a default service provider to provide electric generation supply service, including energy or alternative energy portfolio standards credits required to be purchased, etc.”*

On this question, the EDCs’ general position is that the requirements for the purchase of AECs should be identical to and treated no differently than any other component of the total power supply. FirstEnergy, Duquesne and PPL contend that there is no single correct way to procure AECs—bilateral agreements, auctions, RFPs as well as long-term, short-term and spot purchases are all includable and essential components of default service supply. Allegheny advocates for spreading the renewable obligation across many winning bidders as a means of inviting competition and creating diversity of supply for renewable resources.

PECO provided the most detailed response to the question from the EDC perspective:

1. Section 2807(e)(5) provides that Section 2807(e) “shall apply” to the procurement of any type of energy by a DSP for electric generation service, including energy or AECs required to satisfy the requirements of the AEPS.

2. This provision is intended to ensure that the framework of competitive procurement established by Act 129 is also applied to the purchase of AECs. DSPs should acquire AECs through auctions and RFPs and should be in accordance with a Commission-approved plan.

3. AECs should also be procured through a “prudent mix” of contracts designed to ensure “least cost over time” but there is no requirement that the AEC component of a “prudent mix” address adequacy and reliability since those generation service-related obligations are not related to AEC compliance obligations.

4. Establishing “least cost” for AEC procurements should take into account the benefits of price stability for customers since wide variations in AEC pricing could have significant effects on retail rates.

5. Procurement of all AECs through short-term and spot purchases should be avoided as should undue reliance on only long-term contracts due to the negative price characteristics associated with over reliance on these resources.

6. Given the developing nature of the AEC markets, the Commission should permit a variety of procurement plans for AEPS compliance. DSPs should be able to obtain AECs from full requirements suppliers as well as enter into long-term, short-term and spot purchases to address shortfalls at the end of the AEPS compliance year.

7. The Commission should interpret Section 2807(e)(3.5) flexibly to both facilitate AEPS compliance and help ensure “least cost” to customers for AECs.

(PECO Comments, pp. 19-20).

Allegheny states that renewable obligations are included as part of the full-requirement RFP process and are included in the purchased product from the wholesale market. Allegheny advocates for spreading the renewable obligation across many winning bidders, thus inviting competition and creating the opportunity for diversity of supply of renewable resources resulting in lower renewable pricing for the benefit of customers. For the spot market load served by the EDC, each EDC should be allowed to present plans to the Commission that allow for the procurement of renewable credits through a separate RFP process layering in competitively bid purchase contracts over time to serve the expected load and then transacting in the spot market to balance the load as necessary.

PPL states that the Commission regulations should explicitly address that AECs are to be considered part of default supply.

Exelon emphasizes that the DSP should have flexibility in how it proposes to secure required AECs and that the language of the statute clearly states that simply because AECs are required to be purchased pursuant to the AEPS does not exclude these energy products from the overarching goals of Act 129 to achieve least cost and price stability for default service customers. Constellation states that each EDC must account in its default service plan for how it will meet the requirements of the AEPS. One way of meeting this obligation is to include the AEC requirement within the obligations placed on a wholesale FR product supplier.

RESA makes the important point that this Commission recommended, in its Act 129 Proposed Rulemaking Order at p. 25, that DSPs should utilize long-term contracts to meet their requirements under the AEPS. However, RESA also recommends that DSPs’ utilization of long-term contracts for procurement of AECs fulfills the requirement of utilizing long-term contracts under Act 129. RESA further suggests that EDCs be permitted to procure long-term renewable contracts while assigning the AECs to all load serving entities on a load ration share basis and recover the costs of long-term procurements through non-bypassable charges. RESA contends this approach takes the long-term contract out of the default service price and puts EGSs on the same footing as EDCs.

OCA briefly indicates that, in its view, the DSP must actively engage the market for AECs in the same manner as it would procure other sources of default service supply.

OSBA observes that the prudent way to conduct competitive procurement of AECs will vary between DSPs and between rate class procurement groups. OSBA suggests that the acquisition of AECs be included as part of the full requirements contracts serving the default service loads of small business customers.

PECO, in Reply Comments, states that it would be appropriate, in light of the developing alternative energy market, to apply Section 2807(e) (5) on a case by case basis instead of creating specific regulatory requirements at this time.

Of the many comments received, we are inclined to adopt PECO’s detailed recommendations as the best

statement of our position on this issue. We generally agree with PECO that the “shall apply” provision of Section 2807(e)(5) should be interpreted to ensure that the framework of competitive procurement established by Act 129 is also applied to the purchase of AECs. In so doing, it is appropriate for DSPs to acquire AECs through a variety of methods, including FR purchases, as well as long-term, short-term and spot purchases. We adopt the recommendations of those parties that advocate allowing EDCs to present plans to the Commission that allow for procurement of renewable credits through separate RFPs that layer in competitively bid purchase contracts over time and then purchasing from the spot market to balance the load. We do not believe that undue reliance on a particular product is advisable given the relatively recent development of the AEC market and the pricing of certain renewable products such as solar, which may not reflect the market price of power. Finally, the Commission continues to support flexibility to permit DSPs to acquire needed renewable AECs in a manner that facilitates compliance with both the Competition Act and Act 129.

RESA suggests that a DSP can fulfill any requirement for incorporating a long-term contract requirement into a default service plan through long-term contracts for its Act 129 requirements. We do not agree with this interpretation, which would effectively limit the use of long-term contracts to procurement of renewable requirements. As we have stated throughout this Order, we are adopting a position that maximizes a DSP’s flexibility to meet its default supply requirement, the “prudent mix” obligation and the “least cost to customers over time” mandate by not limiting the degree to which the DSP utilizes whatever component it chooses to achieve the “prudent mix” standard.

Finally, we decline to recommend adopting any further regulations in this areas until we have sufficient experience with the developing market in renewable resources and reserve the right to address this area in future rulemaking proceedings.

In summary, we are adopting these final-form regulations in order to implement the Act 129 changes to the statutory standards for the acquisition of electric generation supply by EDCs for their default service customers, including: requirements in regard to competitive procurement, a prudent mix of contract types, least cost to customers over time, and adequate and reliable service.

Regulatory Review

Under section 5(a) of the Regulatory Review Act (71 P. S. § 745.5(a)), on April 15, 2010, the Commission submitted a copy of the notice of proposed rulemaking, published at 40 Pa.B. 2267 (May 1, 2010), to IRRC and the Chairpersons of the House Committee on Consumer Affairs and the Senate Committee on Consumer Protection and Professional Licensure 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 Commission 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 March 14, 2012, the final-form rulemaking was deemed approved by the House and Senate Committees. IRRC met on March 15, 2012, and disapproved the final-form rulemaking. Under section 5.1(e) of the Regulatory Review Act, IRRC met on May 17, 2012, and approved the final-form rulemaking.

Conclusion

Accordingly, under Sections 501, 1301, 1501 and 2807 of the Public Utility Code, 66 Pa.C.S. §§ 501,1301, 1501 and 2807; Sections 201 and 202 of the Act of July 31, 1968, P. L. 769 No. 240, 45 P. S. §§ 1201—1202 and the regulations promulgated at 1 Pa. Code §§ 7.1, 7.2 and 7.5; Section 204(b) of the Commonwealth Attorneys Act, 71 P. S. § 745.5 and Section 612 of The Administrative Code of 1929, 71 P. S. § 732 and the regulations promulgated thereunder at 4 Pa. Code §§ 7.231—7.324, we are considering adopting the proposed regulations set forth in Annex A; *Therefore,*

It Is Ordered That:

1. The regulations of the Commission, 52 Pa. Code Chapter 54, are amended by amending §§ 54.181, 54.182 and 54.184—54.188 to read as set forth in Annex A.

(Editor’s Note: Section 54.181 was not included in the proposed rulemaking published at 40 Pa.B. 2267.)

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

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

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

5. This final rulemaking shall become effective upon publication in the *Pennsylvania Bulletin*.

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

7. A copy of this order and Annex A shall be filed at Doc. No. M-2009-2140580 and Doc. No. L-2009-2095604 and be served upon all parties of record and statutory advocates.

8. The contact person for this matter is James P. Melia, Assistant Counsel, Law Bureau, (717) 787-1859.

ROSEMARY CHIAVETTA,
Secretary

(Editor’s Note: For the text of the order of the Independent Regulatory Review Commission relating to this document, see 42 Pa.B. 3182 (June 2, 2012).)

Fiscal Note: Fiscal Note 57-273 remains valid for the final adoption of the subject regulations.

Statement of Commissioner Pamela A Witmer

Prior to joining my staff, Shelby Linton-Keddie was employed by a law firm that served as counsel to a party that submitted comments in the above-referenced proceeding. Therefore, to avoid any appearance of impropriety arising from her previous employment, I wish to note that I have not been advised by Shelby Linton-Keddie regarding this matter.

PAMELA A. WITMER,
Commissioner

Annex A

TITLE 52. PUBLIC UTILITIES

PART I. PUBLIC UTILITY COMMISSION

Subpart C. FIXED SERVICE UTILITIES

CHAPTER 54. ELECTRICITY GENERATION
CUSTOMER CHOICE

Subchapter G. DEFAULT SERVICE

§ 54.181. Purpose.

This subchapter implements 66 Pa.C.S. § 2807(e) (relating to duties of electric distribution companies), pertaining to an EDC's obligation to serve retail customers at the conclusion of the restructuring transition period. This subchapter ensure that retail customers who do not choose an alternative EGS, or who contract for electric energy that is not delivered, have access to generation supply procured by a DSP pursuant to a Commission-approved competitive procurement plan. The EDC or other approved entity shall fully recover all reasonable costs for acting as a default service provider of electric generation supply to all retail customers in its certificated distribution territory.

§ 54.182. Definitions.

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

Alternative energy portfolio standards—A requirement that a certain percentage of electric energy sold to retail customers in this Commonwealth by EDCs and EGSs be derived from alternative energy sources, as defined in the Alternative Energy Portfolio Standards Act (73 P.S. §§ 1648.1—1648.8).

Bilateral contract—The term as defined in 66 Pa.C.S. § 2803 (relating to definitions).

Commission—The Pennsylvania Public Utility Commission.

Competitive bid solicitation process—A fair, transparent and nondiscriminatory process by which a default service provider awards contracts for electric generation supply to qualified suppliers who submit the lowest bids.

DSP—Default service provider—The term as defined in 66 Pa.C.S. § 2803.

Default service—Electric generation supply service provided pursuant to a default service program to a retail electric customer not receiving service from an EGS.

Default service implementation plan—The schedule of competitive bid solicitations and spot market energy purchases, technical requirements and related forms and agreements.

Default service procurement plan—The electric generation supply acquisition strategy a DSP will use in satisfying its default service obligations, including the manner of compliance with the alternative energy portfolio standards requirement.

Default service program—A filing submitted to the Commission by a DSP that identifies a procurement plan, an implementation plan, a rate design to recover all reasonable costs and other elements identified in § 54.185 (relating to default service programs and periods of service).

Default service rate—The rate billed to a default service customer resulting from compliance with a Commission-approved default service program.

EDC—Electric distribution company—The term has the same meaning as defined in 66 Pa.C.S. § 2803.

EGS—Electric generation supplier—The term has the same meaning as defined in 66 Pa.C.S. § 2803.

FERC—The Federal Energy Regulatory Commission.

Maximum registered peak load—The highest level of demand for a particular customer, based on the PJM Interconnection, LLC, "Peak Load Contribution Standard," or its equivalent, and as may be further defined by the EDC tariff in a particular service territory.

PTC—Price-to-compare—A line item that appears on a retail customer's monthly bill for default service. The PTC is equal to the sum of all unbundled generation and transmission related charges to a default service customer for that month of service.

RTO—Regional transmission organization—A FERC-approved regional transmission organization.

Retail customer or retail electric customer—These terms have the same meaning as defined in 66 Pa.C.S. § 2803.

Spot market energy purchase—The purchase of an electric generation supply product in a FERC-approved real time or day ahead energy market.

§ 54.184. Default service provider obligations.

(a) While an EDC collects either a competitive transition charge or an intangible transition charge or until 100% of an EDC's customers have electric choice, whichever is longer, an EDC as a default service provider shall be responsible for the reliable provision of default service to retail customers who are not receiving generation services from an alternative EGS within the certificated territory of the EDC that it serves or whose alternative EGS has failed to deliver electric energy.

(b) A DSP shall comply with the code and Chapter 1 (relating to rules of administrative practice and procedure) to the extent that the obligations are not modified by this subchapter or waived under § 5.43 (relating to petitions for issuance, amendment, repeal or waiver of regulations).

(c) Following the expiration of an EDC's obligation to provide electric generation supply service to retail customers at capped rates, if a customer contracts for electric generation supply service and the chosen EGS does not provide the service, or if a customer does not choose an alternative EGS, the default service provider shall provide electric generation supply service to that customer pursuant to a Commission-approved competitive procurement process that includes one or more of the following:

- (1) Auctions.
- (2) Requests for proposals.
- (3) Bilateral agreements entered into at the sole discretion of the default service provider which shall be at prices that are either of the following:

(i) No greater than the cost of obtaining generation under comparable terms in the wholesale market, as determined by the Commission at the time of execution of the contract.

(ii) Consistent with a Commission-approved competition procurement process. Agreements between affiliated parties, including bilateral agreements between electric utilities and affiliated generators, shall be subject to review and approval of the Commission under 66 Pa.C.S. §§ 2101—2107 (relating to relations with affiliated interests). The cost of obtaining generation from any affiliated

interest may not be greater than the cost of obtaining generation under comparable terms in the wholesale market at the time of execution of the contract.

(d) A DSP shall continue the universal service and energy conservation program in effect in the EDC's certificated service territory or implement, subject to Commission approval, similar programs consistent with 66 Pa.C.S. §§ 2801—2815 (relating to Electricity Generation Customer Choice and Competition Act) and the amendments provided under the act of October 15, 2008 (P. L. 1592, No. 129) providing for energy efficiency and conservation programs. The Commission will determine the allocation of these responsibilities between an EDC and an alternative DSP when an EDC is relieved of its DSP obligation.

§ 54.185. Default service programs and periods of service.

(a) A DSP shall file a default service program with the Commission's Secretary's Bureau no later than 12 months prior to the conclusion of the currently effective default service program or Commission-approved generation rate cap for that particular EDC service territory, unless the Commission authorizes another filing date. Thereafter, the DSP shall file its programs consistent with schedules identified by the Commission.

(b) The Commission will hold hearings as necessary on the proposed plan or amended plan. If the Commission fails to issue a final order on the plan or amended plan within 9 months of the date that the plan is filed, the plan or amended plan will be deemed to be approved and the default service provider may implement the plan or amended plan as filed. Costs incurred through an approved competitive procurement plan shall be deemed to be the least cost over time.

(c) Default service programs must comply with Commission regulations pertaining to documentary filings in Chapter 1 (relating to rules of administrative practice and procedure), except when modified by this subchapter. The DSP shall serve copies of the default service program on the Pennsylvania Office of Consumer Advocate, Pennsylvania Office of Small Business Advocate, the Commission's Office of Trial Staff, EGSs registered in the service territory and the RTO or other entity in whose control area the DSP is operating. Copies shall be provided upon request to other EGSs and shall be available at the DSP's public internet domain.

(d) The first default service program shall be for a period of 2 to 3 years, or for a period necessary to comply with subsection (e)(4), unless another period is authorized by the Commission. Subsequent program terms will be determined by the Commission.

(e) A default service program must include the following elements:

(1) A procurement plan identifying the DSP's electric generation supply acquisition strategy for the period of service. The procurement plan should identify the means of satisfying the minimum portfolio requirements of the Alternative Energy Portfolio Standards Act (73 P. S. §§ 1648.1—1648.8) for the period of service.

(2) An implementation plan identifying the schedules and technical requirements of competitive bid solicitations and spot market energy purchases, consistent with § 54.186 (relating to default service procurement and implementation plans).

(3) A rate design plan recovering all reasonable costs of default service, including a schedule of rates, rules and conditions of default service in the form of proposed revisions to its tariff.

(4) Documentation that the program is consistent with the legal and technical requirements pertaining to the generation, sale and transmission of electricity of the RTO or other entity in whose control area the DSP is providing service. The default service procurement plan's period of service must align with the planning period of that RTO or other entity.

(5) Contingency plans to ensure the reliable provision of default service when a wholesale generation supplier fails to meet its contractual obligations.

(6) Copies of agreements or forms to be used in the procurement of electric generation supply for default service customers. This includes all documents used as part of the implementation plan, including supplier master agreements, request for proposal documents, credit documents and confidentiality agreements. When applicable, the default service provider shall use standardized forms and agreements that have been approved by the Commission.

(7) A schedule identifying generation contracts of greater than 2 years in effect between a DSP, when it is the incumbent EDC, and retail customers in that service territory. The schedule should identify the load size and end date of the contracts. The schedule shall only be provided to the Commission and will be treated as confidential.

(f) The Commission may, following notice and opportunity to be heard, direct that some or all DSPs file joint default service programs to acquire electric generation supply for all of their default service customers. In the absence of such a directive, some or all DSPs may jointly file default service programs or coordinate the scheduling of competitive bid solicitations to acquire electric generation for all of their default service customers. A multiservice territory procurement and implementation plan must comply with § 54.186.

(g) DSPs shall include requests for waivers from the provisions of this subchapter in their default service program filings. For DSPs with less than 50,000 retail customers, the Commission will grant waivers to the extent necessary to reduce the regulatory, financial or technical burden on the DSP or to the extent otherwise in the public interest.

§ 54.186. Default service procurement and implementation plans.

(a) A DSP shall acquire electric generation supply at the least cost to customers over time for default service customers in a manner consistent with procurement and implementation plans approved by the Commission.

(b) A DSP's procurement plan must adhere to the following standards:

(1) The procurement plan shall be designed so that the electric power procured under § 54.184(c) (relating to default service provider obligations) includes a prudent mix of the following:

(i) Spot market purchases.

(ii) Short-term contracts.

(iii) Long-term purchase contracts, entered into as a result of auction, request for proposal or bilateral contract that is free of undue influence, duress or favoritism of greater than 4 years in length but not greater than 20

years. The default service provider shall have sole discretion to determine the source and fuel type. Long-term purchase contracts must be 25% or less of the DSP's projected default service load unless the Commission, after a hearing, determines for good cause that a greater portion of load is necessary to achieve least cost procurement.

(A) EDCs or Commission-approved alternative suppliers may offer large customers with a peak demand of 15 megawatts or greater at one meter at a location in its service territory any negotiated rate for service at all of the customers' locations within the service territory for any duration agreed upon by the EDC or alternative supplier and the large customer.

(B) The Commission may determine that a contract is required to be extended for longer than 20 years if the extension is necessary to ensure adequate and reliable service at least cost to customers over time.

(2) A prudent mix of contracts shall be designed to ensure:

- (i) Adequate and reliable service.
- (ii) The least cost to customers over time.
- (iii) Compliance with the requirements of paragraph (1).

(3) DSPs with loads of 50 megawatts or less shall evaluate the cost and benefits of joining with other DSPs or affiliates in contracting for electric supply.

(4) Procurement plans may include solicitations and contracts whose duration extends beyond the program period.

(5) Electric generation supply shall be acquired by competitive bid solicitation processes, spot market energy purchases, short- and long-term contracts, auctions, bilateral contracts or a combination of them.

(6) The DSP's supplier affiliate may participate in a competitive bid solicitation process used as part of the procurement plan subject to the following conditions:

(i) The DSP shall propose and implement protocols to ensure that its supplier affiliate does not receive an advantage in the solicitation and evaluation of competitive bids or other aspect of the implementation plan.

(ii) The competitive bid solicitation process shall comply with the codes of conduct promulgated by the Commission in § 54.122 (relating to code of conduct).

(c) A DSP's implementation plan must adhere to the following standards:

(1) A competitive bid solicitation process used as part of the default service implementation plan must provide, to the extent applicable and at the appropriate time, the following information to suppliers:

- (i) A bidding schedule.
- (ii) A definition and description of the power supply products on which potential suppliers shall bid.
- (iii) Bid price formats.
- (iv) A time period during which the power will need to be supplied for each power supply product.
- (v) Bid submission instructions and format.
- (vi) Price-determinative bid evaluation criteria.
- (vii) Current load data for rate schedules or maximum registered peak load groupings, including the following:

- (A) Hourly usage data.
- (B) Number of retail customers.
- (C) Capacity peak load contribution figures.
- (D) Historical monthly retention figures.
- (E) Estimated loss factors.
- (F) Customer size distribution.

(2) The default service implementation plan must include fair and nondiscriminatory bidder qualification requirements, including financial and operational qualifications, or other reasonable assurances of a supplier of electric generation services' ability to perform.

(3) A competitive bid solicitation process used as part of the implementation plan will be subject to monitoring by the Commission or an independent third party evaluator selected by the DSP in consultation with the Commission. A third party evaluator shall operate at the direction of the Commission. Commission staff and a third party evaluator involved in monitoring the procurement process shall have full access to all information pertaining to the competitive procurement process, either remotely or where the process is administered. A third party evaluator retained for purposes of monitoring the competitive procurement process shall be subject to confidentiality agreements identified in § 54.185(d)(6) (relating to default service programs and periods of service).

(4) The DSP or third party evaluator shall review and select winning bids procured through a competitive bid solicitation process in a nondiscriminatory manner based on the price determinative bid evaluation criteria set forth consistent with paragraph (1)(vi).

(5) The bids submitted by a supplier in response to a competitive bid solicitation process shall be treated as confidential pursuant to the confidentiality agreement approved by the Commission under § 54.185(d)(6). The DSP, the Commission and a third party involved in the administration, review or monitoring of the bid solicitation process shall be subject to this confidentiality provision.

(d) The DSP may petition for modifications to the approved procurement and implementation plans when material changes in wholesale energy markets occur to ensure the acquisition of sufficient supply at the least cost to customers over time. The DSP shall monitor changes in wholesale energy markets to ensure that its procurement plan continues to reflect the incurrence of reasonable costs, consistent with 66 Pa.C.S. § 2807(e)(3.1)–(3.4) (relating to duties of electric distribution companies).

(e) At the time the Commission evaluates the plan and prior to its approval, in determining if the DSP's plan obtains generation supply at the least cost, the Commission will consider the DSP's obligation to provide adequate and reliable service to customers and that the DSP has obtained a prudent mix of contracts to obtain least cost on a long-term, short-term and spot market basis. The Commission will make specific findings which include the following:

(1) The DSP's plan includes prudent steps necessary to negotiate favorable generation supply contracts through a competitive procurement process.

(2) The DSP's plan includes prudent steps necessary to obtain least cost generation supply contracts on a long-term, short-term and spot market basis.

(3) Neither the DSP nor its affiliated interest has withheld from the market any generation supply in a manner that violates Federal law.

§ 54.187. Default service rate design and the recovery of reasonable costs.

(a) The Commission may modify contracts or disallow costs when after a hearing the party seeking recovery of the costs of a procurement plan is found to be at fault for either of the following:

(1) Not complying with the Commission-approved procurement plan.

(2) The commission of fraud, collusion or market manipulation with regard to these contracts.

(b) The costs incurred for providing default service shall be recovered on a full and current basis through a reconcilable automatic adjustment clause under 66 Pa.C.S. § 1307 (relating to sliding scale of rates; adjustments), all reasonable costs incurred under 66 Pa.C.S. § 2807(e)(3.9) (relating to duties of electric distribution companies) and a Commission-approved competitive procurement plan. The use of an automatic adjustment clause shall be subject to audit and annual review, consistent with 66 Pa.C.S. § 1307(d) and (e).

(c) Except for rates available consistent with subsection (g), a default service customer shall be offered a single rate option, which shall be identified as the PTC and displayed as a separate line item on a customer's monthly bill.

(d) The rates charged for default service may not decline with the increase in kilowatt hours of electricity used by a default service customer in a billing period.

(e) The PTC shall be designed to recover all default service costs, including generation, transmission and other default service cost elements, incurred in serving the average member of a customer class. An EDC's default service costs may not be recovered through the distribution rate. Costs currently recovered through the distribution rate, which are reallocated to the default service rate, may not be recovered through the distribution rate. The distribution rate shall be reduced to reflect costs reallocated to the default service rate.

(f) A DSP shall use an automatic energy adjustment clause, consistent with 66 Pa.C.S. § 1307 and Chapter 75 (relating to alternate energy portfolio standards), to recover all reasonable costs incurred through compliance with the Alternative Energy Portfolio Standards Act (73 P. S. §§ 1648.1—1648.8). The use of an automatic adjustment clause shall be subject to audit and annual review, consistent with 66 Pa.C.S. § 1307(d) and (e), regarding fuel cost adjustment audits and automatic adjustment reports and proceedings.

(g) A DSP may collect interest from retail customers on the recoveries of under collection of default service costs at the legal rate of interest. Refunds to customers for over recoveries shall be made with interest, at the legal rate of interest plus 2%.

(h) The default service rate schedule must include rates that correspond to demand side response and demand side management programs, as defined in section 2 of the Alternative Energy Portfolio Standards Act (73 P. S. § 1648.2), when the Commission mandates these rates pursuant to its authority under 66 Pa.C.S. Chapter 1 (relating to general provisions).

(i) Default service rates may not be adjusted more frequently than on a quarterly basis for all customer

classes with a maximum registered peak load up to 25 kW, to ensure the recovery of costs reasonably incurred in acquiring electricity at the least cost to customers over time. DSPs may propose alternative divisions of customers by maximum registered peak load to preserve existing customer classes.

(j) Default service rates shall be adjusted on a quarterly basis, or more frequently, for all customer classes with a maximum registered peak load of 25 kW to 500 kW, to ensure the recovery of costs reasonably incurred in acquiring electricity at the least cost to customers over time. DSPs may propose alternative divisions of customers by maximum registered peak load to preserve existing customer classes.

(k) Default service rates shall be adjusted on a monthly basis, or more frequently, for all customer classes with a registered peak load of equal to or greater than 500 kW to ensure the recovery of costs reasonably incurred in acquiring electricity at the least cost to customers over time. DSPs may propose alternative divisions of customers by registered peak load to preserve existing customer classes.

(l) When a supplier fails to deliver electric generation supply to a DSP, the DSP shall be responsible for acquiring replacement electric generation supply consistent with its Commission-approved contingency plan. When necessary to procure electric generation supply before the implementation of a contingency plan, a DSP shall acquire supply at the least cost to customers over time and fully recover all reasonable costs associated with this activity that are not otherwise recovered through its contract terms with the default supplier. The DSP shall follow acquisition strategies that reflect the incurrence of reasonable costs, consistent with 66 Pa.C.S. § 2807(e)(3), when selecting from the various options available in these energy markets.

§ 54.188. Commission review of default service programs and rates.

(a) A DSP shall file a plan or amended plan for competitive procurement with the Commission and obtain Commission approval of the plan or amended plan considering the standards in 66 Pa.C.S. § 2807(e)(3.1), (3.2), (3.3) and (3.4) (relating to duties of electric distribution companies) before the competitive process is implemented. The Commission will hold hearings as necessary on the proposed plan or amended plan. A default service program will initially be referred to the Office of Administrative Law Judge for further proceedings as may be required.

(b) If the Commission fails to issue a final order on the plan or amended plan within 9 months of the date the plan or amended plan is filed, the plan or amended plan will be deemed approved and the DSP may implement the plan or amended plan as filed. Costs incurred through an approved competitive procurement plan will be deemed to be the least cost over time as required under 66 Pa.C.S. § 2807(e)(3.4)(ii).

(c) Upon entry of the Commission's final order, a DSP shall acquire generation supply for the period of service in a manner consistent with the terms of the approved procurement and implementation plans and consistent with the standards identified in § 54.186 (relating to default service procurement and implementation plans).

(d) The Commission may initiate an investigation regarding implementation of the DSP's default service program and, at the conclusion of the investigation, order remedies as may be lawful and appropriate. The Commis-

sion will not deny the DSP the recovery of its reasonable costs for purchases made pursuant to an approved competitive procurement process unless the DSP concealed or misled the Commission regarding its adherence to the program, or otherwise violated the provisions of this subchapter or the code. Except as provided under the Alternative Energy Portfolio Standards Act (73 P.S. §§ 1648.1—1648.8), the Commission may not order a DSP to procure power from a specific generation supplier, from a specific generation fuel type or from new generation only. At the time the Commission evaluates the plan and prior to approval, the Commission will consider the default service provider's obligation to provide adequate and reliable service to customers and that the DSP has obtained a prudent mix of contracts to obtain least cost on a long-term, short-term and spot market basis. The Commission will make specific findings which include:

(1) The DSP's plan includes prudent steps necessary to negotiate favorable generation supply contracts through a competitive procurement process.

(2) The DSP's plan includes prudent steps necessary to obtain least cost generation supply contracts on a long-term, short-term and spot market basis.

(3) Neither the DSP nor its affiliated interest has withheld from the market any generation supply in a manner that violates Federal law.

(e) A DSP shall adhere to the following procedures in obtaining approval of default service rates and providing notice to default service customers:

(1) A DSP shall provide all customers notice of the filing of a default service program in a similar manner as found in § 53.68 (relating to notice requirements).

(2) A DSP shall provide all customers notice of the initial default service rates and terms and conditions of service 60 days before their effective date, or 30 days after bidding has concluded, whichever is sooner, unless another time period is approved by the Commission. The DSP shall provide written notice to the named parties identified in § 54.185(b) (relating to default service programs and periods of service) containing an explanation of the methodology used to calculate the price for electric service.

(3) After the initial steps of a default service procurement and implementation plan are completed, the DSP shall file with the Commission tariff supplements designed to reflect, for each customer class, the rates to be charged for default service. The tariff supplements shall be accompanied by supporting documentation adequate to demonstrate adherence to the procurement plan approved by the Commission, the procurement plan results and the translation of those results into customer rates.

(4) A customer or party identified in § 54.185(b) may file exceptions to the initial default service tariffs within 20 days of the date the tariffs are filed with the Commission. The exceptions shall be limited to whether the DSP properly implemented the procurement plan approved by the Commission and accurately calculated the rates. The Commission will resolve filed exceptions by order. The Commission may allow the default rates to become effective pending the resolution of those exceptions.

(f) A DSP may not submit tariff supplements more frequently than on a quarterly basis, consistent with § 54.187(h) and (i) (relating to default service rate design and recovery of reasonable costs), to revise default service rates to ensure the recovery of costs reasonably incurred

in acquiring electricity at the least cost to customers over time. The DSP shall provide written notice to the named parties identified in § 54.185(b) of the proposed rates at the time of the tariff filings. The tariff supplements shall be posted to the DSP's web site at the time they are filed with the Commission. A customer or the parties identified in § 54.185(b) may file exceptions to the default service tariffs within 20 days of the date the tariffs are filed with the Commission. The exceptions shall be limited to whether the DSP has properly implemented the procurement plan approved by the Commission and accurately calculated the rates. The DSP shall post the revised PTC for each customer class within 1 business day of its effective date to its web site to enable customers to make an informed decision about electric generation supply options.

(g) If a customer chooses an alternative supplier and subsequently desires to return to the local distribution company for generation service, the local distribution company shall treat that customer exactly as it would any new applicant for energy service.

(h) A DSP may, in its sole discretion, offer large customers with a peak demand of 15 megawatts or greater at one meter location in its service territory any negotiated rate for service at all of the customers' locations within the service territory for any duration agreed upon by the DSP and the customer.

(1) Contract rates shall be subject to Commission review to ensure all costs are borne by the parties to the contract and no one else.

(2) If no costs related to the rates are borne by other customers, the Commission will approve the contract within 90 days of its filing at the Commission. If the Commission does not approve the contract within the 90-day period, it shall be deemed approved.

(i) The DSP shall offer residential and small business customers a generation supply service rate that may not change more frequently than on a quarterly basis. Default service rates shall be reviewed by the Commission to ensure that the costs of providing service to each customer class are not subsidized by any other class.

[Pa.B. Doc. No. 12-1509. Filed for public inspection August 10, 2012, 9:00 a.m.]

Title 58—RECREATION

GAME COMMISSION

[58 PA. CODE CH. 131]

Preliminary Provisions; Definitions

To effectively manage the wildlife resources of this Commonwealth, the Game Commission (Commission) at its June 26, 2012, meeting amended § 131.2 (relating to definitions) to delete two sentences from the definition of "bow" relating to draw-locks and the minimum draw weights of bows. The final-form rulemaking also adds definitions for the terms "decoy" and "meat or animal products."

The final-form rulemaking will not have an adverse impact on the wildlife resources of this Commonwealth.

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

Notice of proposed rulemaking was published at 42 Pa.B. 3268 (June 9, 2012).

1. Purpose and Authority

The Commission amended § 131.2 by adding and amending certain definitions. The first amendment involves the deletion of two sentences from the definition of "bow." The first sentence concerns the prohibition of devices commonly known as draw-locks on bows. The Commission determined that the prohibition of this drawing aid was no longer necessary given the recent expansion to permit crossbows during archery season. The second sentence was deemed redundant to similar language proposed in § 141.43 (relating to deer) and therefore no longer necessary. See 39 Pa.B. 5016 (August 22, 2009). The second amendment adds the definition "decoy." The third amendment adds the definition "meat or animal products."

Section 2102(a) of the code (relating to regulations) provides that "The commission shall promulgate such regulations as it deems necessary and appropriate concerning game or wildlife and hunting or furtaking in this Commonwealth, including regulations relating to the protection, preservation and management of game or wildlife and game or wildlife habitat, permitting or prohibiting hunting or furtaking, the ways, manner, methods and means of hunting or furtaking, and the health and safety of persons who hunt or take wildlife or may be in the vicinity of persons who hunt or take game or wildlife in this Commonwealth." The amendments to § 131.2 were adopted under this authority.

2. Regulatory Requirements

The final-form rulemaking amends § 131.2 by deleting two sentences from the definition of "bow" regarding draw-locks and the minimum draw weights of bows. The final-form rulemaking also adds definitions for the terms "decoy" and "meat or animal products."

3. Persons Affected

Persons wishing to hunt or trap game or wildlife within this Commonwealth may be affected by the final-form rulemaking.

4. Comment and Response Summary

There were no official comments received regarding the final-form rulemaking.

5. Cost and Paperwork Requirements

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

6. Effective Date

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

7. Contact Person

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

Findings

The Commission finds that:

(1) Public notice of intention to adopt the administrative amendments adopted by this order has been given under sections 201 and 202 of the act of July 31, 1968 (P. L. 769, No. 240) (45 P. S. §§ 1201 and 1202) and the regulations thereunder, 1 Pa. Code §§ 7.1 and 7.2.

(2) The adoption of the amendments of the Commission in the manner provided in this order is necessary and appropriate for the administration and enforcement of the authorizing statute.

Order

The Commission, acting under authorizing statute, orders that:

(a) The regulations of the Commission, 58 Pa. Code Chapter 131, are amended by amending § 131.2 to read as set forth at 42 Pa.B. 3268.

(b) The Executive Director of the Commission shall certify this order and 42 Pa.B. 3268 and deposit them with the Legislative Reference Bureau as required by law.

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

CARL G. ROE,
Executive Director

Fiscal Note: Fiscal Note 48-340 remains valid for the final adoption of the subject regulation.

[Pa.B. Doc. No. 12-1510. Filed for public inspection August 10, 2012, 9:00 a.m.]

GAME COMMISSION

[58 PA. CODE CH. 141]

Hunting and Trapping; Protective Material Required

To effectively manage the wildlife resources of this Commonwealth, the Game Commission (Commission) at its June 26, 2012, meeting amended § 141.20 (relating to protective material required) to apply the more restrictive fluorescent orange requirements to wildlife management units (WMU) 1A, 1B and 2A that apply to other WMUs where use of rifles to hunt turkey is authorized.

The final-form rulemaking will not have an adverse impact on the wildlife resources of this Commonwealth.

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

Notice of proposed rulemaking was published at 42 Pa.B. 3268 (June 9, 2012).

1. Purpose and Authority

On April 24, 2012, the Commission adopted amendments to § 139.4 (relating to seasons and bag limits for the license year) to expand fall turkey hunting opportunities in WMUs 1A, 1B and 2A by removing the "shotgun, bow and arrow only" limitation. See 42 Pa.B. 3581 (June 23, 2012). This amendment will effectively allow hunters within WMUs 1A, 1B and 2A to hunt fall turkey with rifles. As a result of this change, the Commission amended § 141.20 to apply the more restrictive fluorescent orange requirements to WMUs 1A, 1B and 2A that apply to other WMUs where use of rifles to hunt turkey is authorized.

Section 2102(a) of the code (relating to regulations) provides that "The commission shall promulgate such regulations as it deems necessary and appropriate concerning game or wildlife and hunting or furtaking in this Commonwealth, including regulations relating to the protection, preservation and management of game or wildlife and game or wildlife habitat, permitting or prohibiting hunting or furtaking, the ways, manner, methods and

means of hunting or furtaking, and the health and safety of persons who hunt or take wildlife or may be in the vicinity of persons who hunt or take game or wildlife in this Commonwealth.” The amendments to § 141.20 were adopted under this authority.

2. *Regulatory Requirements*

The final-form rulemaking amends § 141.20 by applying the more restrictive fluorescent orange requirements to WMUs 1A, 1B and 2A that apply to other WMUs where use of rifles to hunt turkey is authorized.

3. *Persons Affected*

Persons wishing to hunt wild turkey during the fall turkey seasons in WMUs 1A, 1B and 2A will be affected by the final-form rulemaking.

4. *Comment and Response Summary*

There were no official comments received regarding the final-form rulemaking.

5. *Cost and Paperwork Requirements*

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

6. *Effective Date*

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

7. *Contact Person*

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

Findings

The Commission finds that:

(1) Public notice of intention to adopt the administrative amendments adopted by this order has been given under sections 201 and 202 of the act of July 31, 1968 (P. L. 769, No. 240) (45 P. S. §§ 1201 and 1202) and the regulations thereunder, 1 Pa. Code §§ 7.1 and 7.2.

(2) The adoption of the amendments of the Commission in the manner provided in this order is necessary and appropriate for the administration and enforcement of the authorizing statute.

Order

The Commission, acting under authorizing statute, orders that:

(a) The regulations of the Commission, 58 Pa. Code Chapter 141, are amended by amending § 141.20 to read as set forth at 42 Pa.B. 3268.

(b) The Executive Director of the Commission shall certify this order and 42 Pa.B. 3268 and deposit them with the Legislative Reference Bureau as required by law.

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

CARL G. ROE,
Executive Director

Fiscal Note: Fiscal Note 48-341 remains valid for the final adoption of the subject regulation.

[Pa.B. Doc. No. 12-1511. Filed for public inspection August 10, 2012, 9:00 a.m.]

GAME COMMISSION

[58 PA. CODE CH. 143]

Hunting and Furtaker Licenses; Change of Residency Registration

To effectively manage the wildlife resources of this Commonwealth, the Game Commission (Commission) at its June 26, 2012, meeting added § 143.13 (relating to change of residency registration) to require holders of hunting and furtaking licenses who change their residency status to acquire a change of residency registration within 30 days of the change otherwise their licenses will become invalid.

The final-form rulemaking will not have an adverse impact on the wildlife resources of this Commonwealth.

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

Notice of proposed rulemaking was published at 42 Pa.B. 3267 (June 9, 2012).

1. *Purpose and Authority*

The Commission recently reviewed its policy concerning what it requires from licensed hunters and trappers who change their residency from resident to nonresident or from nonresident to resident. Formerly, if a resident of this Commonwealth became a nonresident after having previously purchased a hunting or furtaking license, that license was deemed invalid and the person was required to repurchase a nonresident hunting or furtaking license at full cost to continue engaging in hunting or trapping activities within this Commonwealth during that license year. The result was quite the opposite for nonresidents who became residents after previously having a hunting or furtaking license. Nonresidents were not required to repurchase a new license or even report the change in residency. In both cases, the Commission identified value in obtaining updates from its license holders when a change in residency occurs. The Commission added § 143.13 to harmonize the approach that it takes concerning both types of residency change. Under this new section, changes in residency will require the license holder to acquire a change of residency registration within 30 days of the change in residency otherwise the license will automatically become invalid. Once a change of residency registration has been submitted, a further repurchase of license will not be required for residents or nonresidents that have changed their residency status.

Section 2722(g) of the code (relating to authorized license-issuing agents) directs the Commission to adopt regulations for the administration, control and performance of license issuing activities. Section 2102(a) of the code (relating to regulations) provides that “The commission shall promulgate such regulations as it deems necessary and appropriate concerning game or wildlife and hunting or furtaking in this Commonwealth, including regulations relating to the protection, preservation and management of game or wildlife and game or wildlife habitat, permitting or prohibiting hunting or furtaking, the ways, manner, methods and means of hunting or furtaking, and the health and safety of persons who hunt or take wildlife or may be in the vicinity of persons who hunt or take game or wildlife in this Commonwealth.” The addition of § 143.13 was adopted under this authority.

2. *Regulatory Requirements*

The final-form rulemaking adds § 143.13 to require holders of hunting and furtaking licenses who change

their residency status to acquire a change of residency registration within 30 days of the change otherwise their licenses will become invalid.

3. *Persons Affected*

Persons wishing to hunt or trap game or wildlife within this Commonwealth who change their residency status will be affected by the final-form rulemaking.

4. *Comment and Response Summary*

There were no official comments received regarding the final-form rulemaking.

5. *Cost and Paperwork Requirements*

The final-form rulemaking may result in additional cost and paperwork. It is anticipated that these additional costs and paperwork will be nominal and covered by current budgets and work assignments.

6. *Effective Date*

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

7. *Contact Person*

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

Findings

The Commission finds that:

(1) Public notice of intention to adopt the administrative amendments adopted by this order has been given under sections 201 and 202 of the act of July 31, 1968 (P. L. 769, No. 240) (45 P. S. §§ 1201 and 1202) and the regulations thereunder, 1 Pa. Code §§ 7.1 and 7.2.

(2) The adoption of the amendments of the Commission in the manner provided in this order is necessary and appropriate for the administration and enforcement of the authorizing statute.

Order

The Commission, acting under authorizing statute, orders that:

(a) The regulations of the Commission, 58 Pa. Code Chapter 143, are amended by adding § 143.13 to read as set forth at 42 Pa.B. 3267.

(b) The Executive Director of the Commission shall certify this order and 42 Pa.B. 3267 and deposit them with the Legislative Reference Bureau as required by law.

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

CARL G. ROE,
Executive Director

Fiscal Note: Fiscal Note 48-342 remains valid for the final adoption of the subject regulation.

[Pa.B. Doc. No. 12-1512. Filed for public inspection August 10, 2012, 9:00 a.m.]

GAME COMMISSION

[58 PA. CODE CH. 147]

Special Permits; Application for Agriculture Deer Control Permits

To effectively manage the wildlife resources of this Commonwealth, the Game Commission (Commission) at its June 26, 2012, meeting amended § 147.552 (relating to application) to replace the reference to “wildlife management units 5C and 5D” with the more appropriate reference to “the southeast special regulations areas.”

The final-form rulemaking will not have an adverse impact on the wildlife resources of this Commonwealth.

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

Notice of proposed rulemaking was published at 42 Pa.B. 3270 (June 9, 2012).

1. *Purpose and Authority*

On March 31, 2010, the Commission’s 3-year evaluation of the effectiveness of a broad scale and widely accessible authorization permitting the baiting of white-tailed deer across the southeast special regulations areas expired. The Commission’s final review of the baiting authorization generally concluded that broad scale and widely accessible baiting did not establish viable increases in harvest rates to justify an extension of the experimental program. On February 1, 2011, the Commission amended § 147.552 and § 147.556 (relating to lawful devices and methods) to create a focused, limited authorization permitting the baiting of white-tailed deer in wildlife management units (WMU) 5C and 5D on approved properties enrolled in the “Red Tag” program. See 41 Pa.B. 1767 (April 2, 2011). The Commission’s reference to WMUs 5C and 5D was in error as this geographical reference is not compatible with the term “special regulations areas” as referenced in section 2308(b)(2)(iii) of the act (relating to unlawful devices and methods) and described in § 141.1(b) (relating to special regulations areas). The Commission amended § 147.552 to replace the reference to “wildlife management units 5C and 5D” with the more appropriate reference to the “southeast special regulations areas.”

Section 2901(b) of the code (relating to authority to issue permits) provides “. . . the commission may, as deemed necessary to properly manage the game or wildlife resources, promulgate regulations for the issuance of any permit and promulgate regulations to control the activities which may be performed under authority of any permit issued.” Section 2102(a) of the code (relating to regulations) provides that “The commission shall promulgate such regulations as it deems necessary and appropriate concerning game or wildlife and hunting or furtaking in this Commonwealth, including regulations relating to the protection, preservation and management of game or wildlife and game or wildlife habitat, permitting or prohibiting hunting or furtaking, the ways, manner, methods and means of hunting or furtaking, and the health and safety of persons who hunt or take wildlife or may be in the vicinity of persons who hunt or take game or wildlife in this Commonwealth.” The amendments to § 147.552 were adopted under this authority.

2. *Regulatory Requirements*

The final-form rulemaking amended § 147.552 to replace the reference to “wildlife management units 5C and 5D” with the more appropriate reference to the “southeast special regulations areas.”

3. *Persons Affected*

Persons wishing to hunt white-tailed deer through the use of bait on approved red tag properties will be affected by the final-form rulemaking.

4. *Comment and Response Summary*

There were no official comments received regarding the final-form rulemaking.

5. *Cost and Paperwork Requirements*

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

6. *Effective Date*

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

7. *Contact Person*

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

Findings

The Commission finds that:

(1) Public notice of intention to adopt the administrative amendments adopted by this order has been given

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

(2) The adoption of the amendments of the Commission in the manner provided in this order is necessary and appropriate for the administration and enforcement of the authorizing statute.

Order

The Commission, acting under authorizing statute, orders that:

(a) The regulations of the Commission, 58 Pa. Code Chapter 147, are amended by amending § 147.552 to read as set forth at 42 Pa.B. 3270.

(b) The Executive Director of the Commission shall certify this order and 42 Pa.B. 3270 and deposit them with the Legislative Reference Bureau as required by law.

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

CARL G. ROE,
Executive Director

Fiscal Note: Fiscal Note 48-343 remains valid for the final adoption of the subject regulation.

[Pa.B. Doc. No. 12-1513. Filed for public inspection August 10, 2012, 9:00 a.m.]

PROPOSED RULEMAKING

DEPARTMENT OF AGRICULTURE

[7 PA. CODE CHS. 46 AND 76]

Food Code; Food Employee Certification

The Department of Agriculture (Department) proposes to amend Chapters 46 and 76 (relating to food code; and food employee certification) to read as set forth in Annex A.

Statutory Authority

Sections 5701—5714 of 3 Pa.C.S. (relating to Retail Food Facility Safety Act), 3 Pa.C.S. §§ 5721—5737 (relating to Food Safety Act), the act of July 2, 1935 (P. L. 589, No. 210) (31 P. S. §§ 645—660g), known as the Milk Sanitation Law, section 1705(d) of The Administrative Code of 1929 (71 P. S. § 445(d)) and 3 Pa.C.S. §§ 6501—6510 (relating to Food Employee Certification Act) provide the legal authority for this proposed rulemaking.

The Retail Food Facility Safety Act charges the Department with responsibilities regarding the licensure, inspection, cleanliness and sanitation of “retail food facilities” (such as restaurants) in this Commonwealth. This includes the responsibility to promulgate regulations necessary to implement the Retail Food Facility Safety Act and requires that, in promulgating these regulations, the Department “be guided by the most current edition of the Food Code, published by the United States Department of Health, Food and Drug Administration” (see 3 Pa.C.S. § 5707(a) (relating to powers of department)) (Model Food Code). The Retail Food Facility Safety Act also affords the Department the discretion to establish retail food facility license intervals of greater than 1 year, but requires that these license intervals be established by regulation and that the regulations use risk-based factors identified in the Model Food Code as a basis for determining the appropriate license interval.

The Food Safety Act charges the Department with the responsibility to: (1) regulate, register and inspect “food establishments” in the Commonwealth (see 3 Pa.C.S. § 5734(a) (relating to registration of food establishments)); (2) promulgate regulations and food safety standards necessary to the proper enforcement of the food safety requirements in the Food Safety Act (see 3 Pa.C.S. § 5733(a) (relating to rules and regulations)); and (3) construe the Food Safety Act and its attendant regulations in a manner that is as consistent with Federal statutory and regulatory authority as practicable (see 3 Pa.C.S. § 5736 (relating to construction of subchapter)).

The Milk Sanitation Law requires that a person selling milk, milk products or manufactured dairy products have a Department-issued permit. It also charges the Department with responsibility to promulgate regulations necessary for the proper enforcement of the Milk Sanitation Law. (See section 19 of the Milk Sanitation Law (31 P. S. § 660c).)

Section 1705(d) of The Administrative Code of 1929 requires the Department to establish regulatory standards necessary to enforce food safety laws.

The Food Employee Certification Act requires that a retail food facility have at least one employee who holds a valid certificate evidencing successful completion of a

Department-approved food safety training course (see 3 Pa.C.S. § 6504(a) (relating to certification of employees)) and authorizes the Department to promulgate regulations necessary for the proper enforcement of the Food Employee Certification Act (see 3 Pa.C.S. § 6505 (relating to rules and regulations)).

Purpose

The act of November 23, 2010 (P. L. 1039, No. 106) (Act 106) accomplished a significant overhaul of the food-related statutes administered and enforced by the Department. It repealed the Public Eating and Drinking Places Law and the Food Act and supplanted these statutes with the Retail Food Facility Safety Act and the Food Safety Act, respectively. It also made substantive changes to the Food Employee Certification Act. Although many of the provisions of these new or revised food-related statutes are similar to the statutes they replaced, there are also a number of changes that necessitate this proposed rulemaking.

The proposed rulemaking seeks to: (1) adopt the terminology and implement the changes necessitated or authorized by Act 106; (2) incorporate, to the extent practicable, the standards and requirements of the Model Food Code as the food safety standards and requirements for this Commonwealth; (3) establish retail food facility license intervals of greater than 1 year using risk-based factors identified in the Model Food Code as a basis for determining the appropriate license interval; and (4) streamline the food employee certification regulations in Chapter 76 to reflect changes produced by Act 106.

Background

The Model Food Code is the product of a collaborative effort among the Department, the United States Food and Drug Administration, the United States Department of Agriculture Food Safety Inspection Service, the Centers for Disease Control, various State and local public health and food control agencies, food industry representatives, academia and consumers. It represents the state-of-the-science with respect to food handling and food safety. It is adopted by reference in portions of the current regulations in Chapter 46. It is also a basis for food safety training courses Nationwide. In addition, the Retail Food Facility Safety Act specifically requires that the Department be guided by the Model Food Code in promulgating regulations (see 3 Pa.C.S. § 5707(a)). Against this backdrop, the Department is satisfied that the regulated community is familiar with the Model Food Code and that the expansive adoption of Model Food Code standards and requirements in the proposed rulemaking will not have an adverse impact on that regulated community.

The other provisions of the proposed rulemaking implement new or revised statutory requirements established by Act 106, which revised or replaced a number of the food-related statutes as previously described.

Need for the Proposed Rulemaking

The proposed rulemaking is driven by the substantial changes to underlying food safety related statutes accomplished by Act 106.

The proposed rulemaking is also needed to reduce foodborne illness to the fullest extent possible. This public health and safety objective is the primary reason for the proposed rulemaking.

The food safety standards in this proposed rulemaking should also serve the regulated community by helping to lower the number of claims and lawsuits related to foodborne illness.

The provisions of the proposed rulemaking that prescribe the appropriate license intervals for various types of retail food facilities (based on risk-based factors identified in the Model Food Code) are needed for the Department and other licensors of these facilities to make better use of limited manpower resources involved in accomplishing inspections and processing license paperwork.

Act 106 also made significant revisions to the Food Employee Certification Act. The proposed rulemaking is needed to implement these changes.

The Department is satisfied there are no reasonable alternatives to proceeding with the proposed rulemaking.

Overview of the Major Provisions of the Proposed Rulemaking

Proposed amendments to § 46.3 (relating to definitions) delete a number of terms that are defined in the Model Food Code to maintain a common vocabulary of food safety terminology. When an underlying statute uses a term that is not used in the Model Food Code, but that is synonymous with another term in the Model Food Code, the proposed rulemaking identifies that synonymous Model Food Code term. This occurs in the definitions of “licensee,” “proprietor” and “retail food facility.”

Proposed § 46.4 (relating to adoption of Model Food Code) would adopt the standards of the Model Food Code as the regulatory standards of the Department to the extent they do not conflict with an underlying statute or a specific provision of Chapter 46.

The proposed rulemaking would rescind current regulatory provisions when the subject matter of those provisions is adequately addressed in the underlying statutes or the Model Food Code, or when the provisions are no longer necessary. These deletions are throughout the proposed rulemaking and address a wide range of food safety related subjects.

Proposed amendments to § 46.212 (relating to food prepared in a private home) add language to track with 3 Pa.C.S. § 5712 (relating to applicability) that generally exempts food that is prepared in private homes and then sold at events such as church suppers and fundraisers for charitable organizations from the requirements of the Retail Food Facility Safety Act.

The list of the types of retail food facilities that are exempt from licensure under the Retail Food Facility Safety Act are proposed to be amended in § 46.1141 (relating to license requirement) to reflect that 3 Pa.C.S. § 5703(b) (relating to license required) affords a licensor (whether the Department or a local government unit) the discretion to issue an order establishing which types of retail food facilities will be exempt. The Department has exercised this discretion and published an order at 41 Pa.B. 524 (January 22, 2011) designating the types of retail food facilities that are exempt. A reference to this order or its date or place of publication is not included in the proposed rulemaking because the order might change and it might cause confusion in those jurisdictions where the licensor is an entity other than the Department.

Proposed amendments to § 46.1141(c) establish retail food facility license intervals based on risk-based factors identified in the Model Food Code as authorized under section 5703(g) of the Retail Food Facility Safety Act.

Proposed § 76.20 (relating to definitions) would establish definitions either included or authorized in the Food Employee Certification Act.

Proposed § 76.21 (relating to certification programs) would implement 3 Pa.C.S. § 6503(c) (relating to certification programs) that the Department recognize certain certification programs as adequate for purposes of meeting the requirements of the Food Employee Certification Act. It would also require the Department to maintain, post on the Department’s web site and readily provide copies of that list of acceptable certification programs.

Affected Individuals and Organizations

The proposed rulemaking would impact the public by reducing the number of foodborne illness outbreaks originating from retail food facilities and food establishments.

Retail food facilities and food establishments would also be affected by the proposed rulemaking. Fewer foodborne illness incidents will benefit owners, operators and employees of these businesses who will be spared some costs associated with lawsuits, compensation or business disruption relating to foodborne illness. Also, since the proposed rulemaking would bring the Commonwealth’s food safety standards into greater alignment with the Model Food Code, and the Model Food Code is the basis for food safety standards in all of the continental United States, there may be some savings associated with operating in a regulatory environment where there is a greater degree of consistency and uniformity in regulatory food safety standards.

Fiscal Impact

Commonwealth. Aside from an initial expected outlay of approximately \$5,000 to revise literature, web sites, forms and the electronic licensing system, the proposed rulemaking would not impose costs or have fiscal impact on the Commonwealth. The Department currently registers and inspects food establishments under the Food Safety Act and licenses and inspects retail food facilities under the Retail Food Facility Safety Act. The proposed rulemaking would not appreciably expand or alter the Department’s role in administering and enforcing these underlying statutes.

Political subdivisions. The proposed rulemaking would not impose costs or have fiscal impact upon political subdivisions. Although a local government unit may act as the “licensor” of retail food facilities within its borders, the proposed rulemaking would not impose requirements on a local government unit licensor that is not imposed by one or more of the underlying statutes.

Private sector. The proposed rulemaking is not expected to impose costs on the private sector. Owners of restaurants, food processing operations, other retail food facilities and other food establishments are already familiar with the food safety standards and procedures prescribed under the Model Food Code. Chapter 46 embodies many of the provisions of the Model Food Code. The Model Food Code is the basis for much of the food safety related

training that is available to these persons and that has been obtained for purposes of compliance with the Food Employee Certification Act.

General public. The proposed rulemaking would enhance public health and safety. It is expected to reduce the number of cases of foodborne illness attributable to food originating from food facilities in this Commonwealth. This should result in some indeterminate cost savings to the general public.

Paperwork Requirements

The proposed rulemaking is not likely to appreciably impact upon the paperwork generated by the Department or other retail food facility licensors or retail food facilities or food establishments.

Effective Date

The proposed rulemaking will be effective 1 month following final-form publication in the *Pennsylvania Bulletin*.

Sunset Date

There is not a sunset date for the proposed rulemaking. The Department will review the efficacy of these regulations on an ongoing basis.

Public Comment Period/Contact Person

Interested persons are invited to submit written comments regarding the proposed rulemaking within 30 days following publication in the *Pennsylvania Bulletin*. Comments should be submitted to the Department of Agriculture, Bureau of Food Safety and Laboratory Services, 2301 North Cameron Street, Harrisburg, PA 17110-9408, Attention: Sheri Morris.

Regulatory Review

Under section 5(a) of the Regulatory Review Act (71 P. S. § 745.5(a)), on August 1, 2012, the Department submitted a copy of this proposed rulemaking and a copy of a Regulatory Analysis Form to the Independent Regulatory Review Commission (IRRC) and to the Chairpersons of the House and Senate Standing Committees on Agriculture and Rural Affairs. A copy of this material is available to the public upon request.

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

GEORGE D. GREIG,
Secretary

Fiscal Note: 2-174. (1) General Fund; (2) Implementing Year 2011-12 is \$5,000; (3) 1st Succeeding Year 2012-13 is \$0; 2nd Succeeding Year 2013-14 is \$0; 3rd Succeeding Year 2014-15 is \$0; 4th Succeeding Year 2015-16 is \$0; 5th Succeeding Year 2016-17 is \$0; (4) 2010-11 Program—\$1,835,780; 2009-10 Program—\$1,341,812; 2008-09 Program—\$1,088,400; (7) General Government Operations—Bureau of Food Safety; (8) recommends adoption.

Annex A

TITLE 7. AGRICULTURE

PART III. BUREAU OF FOOD SAFETY AND LABORATORY SERVICES

Subpart A. SOLID FOODS

CHAPTER 46. FOOD CODE

Subchapter A. PURPOSE [AND]; DEFINITIONS; ADOPTION OF MODEL FOOD CODE

§ 46.2. Scope.

This chapter establishes definitions; sets standards for management and personnel, food operations and equipment and facilities; and provides for retail food facility plan review, licensing, [registration,] inspection and employee restriction.

§ 46.3. Definitions.

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

[*Additive*—A food additive or a color additive.

[*Adulterated*—Food with respect to which one or more of the following is accurate:

(i) The food bears or contains any poisonous or deleterious substance, which may render it injurious to health. However, if the substance is not an added substance, the food will not be considered adulterated if the quantity of the substance in the food does not ordinarily render it injurious to health.

(ii) The food bears or contains any added poisonous or added deleterious substance, which is unsafe within the meaning of section 11 of the Food Act (31 P. S. § 20.11). This subparagraph does not apply to a pesticide chemical in or on a raw agricultural commodity, a food additive or a color additive.

(iii) The food is a raw agricultural commodity and bears or contains a pesticide chemical which is unsafe within the meaning of section 11 of the Food Act, except that, when a pesticide chemical has been used in or on a raw agricultural commodity with an exception granted or tolerance prescribed under section 11 of the Food Act or under any of the Federal acts and the raw agricultural commodity has been subjected to processing such as canning, cooking, freezing, dehydrating or milling, the residue of the pesticide remaining in or on the processed food will, notwithstanding section 11 of the Food Act and this subparagraph, not be deemed unsafe if the residue in or on the raw agricultural commodity has been removed to the extent possible in good manufacturing practice and the concentration of the residue in the processed food when ready to eat is not greater than the tolerance prescribed for the raw agricultural commodity.

(iv) The food bears or contains any food additive, which is unsafe within the meaning of section 11 of the Food Act or any of the Federal acts.

(v) The food consists in whole or in part of any diseased, contaminated, filthy, putrid or decomposed substance or is otherwise unfit for food.

(vi) The food has been produced, prepared, packed or held under unsanitary conditions so that it may have become contaminated with filth or may have been rendered diseased, unwholesome or injurious to health.

(vii) The food is, in whole or part, the product of a diseased animal or of an animal which has died otherwise than by slaughter.

(viii) The food is in a container composed, in whole or part, of any poisonous or deleterious substance which may render the contents injurious to health, unless the container is fabricated or manufactured with good manufacturing practices as that standard is defined and delineated by any of the Federal acts and their regulations.

(ix) The food has been intentionally subjected to radiation, unless the use of the radiation was in conformity with a regulation or exemption under section 11 of the Food Act or under one of the Federal acts.

(x) The food has had any valuable constituent, in whole or part, omitted or abstracted therefrom.

(xi) The food has had any substance substituted wholly or in part.

(xii) Damage or inferiority of the food is concealed in any manner.

(xiii) A substance has been added to the food and it is mixed or packed so as to increase its bulk or weight or reduce its quality or strength or make it appear better or of greater value than it is.

(xiv) The food bears or contains any color additive which is unsafe within the meaning of section 11 of the Food Act or under one of the Federal acts.

(xv) The food bears or contains eggs processed by or egg products derived from a manufacturing, processing or preparing method wherein whole eggs are broken using a centrifuge-type egg breaking machine that separates the egg's liquid interior from the shell.

Approved—Acceptable to the Department based on a determination of conformity with principles, practices and generally recognized standards proven to be scientifically sound that protect public health.]

Bed and breakfast homestead or inn—A private residence which contains ten or fewer bedrooms used for providing overnight accommodations to the public, and in which breakfast is the only meal served and is included in the charge for the room.

[**Beverage**—A liquid for drinking, including water.

Bottled drinking water—Water that is sealed in bottles, packages or other containers and offered for sale for human consumption. The term includes bottled mineral water.

CFR—The most-recently published edition or revision of the *Code of Federal Regulations*, a compilation of the general and permanent rules published in the *Federal Register* by the executive departments and agencies of the Federal government.

CIP—Cleaned in place—

(i) Cleaned in place by the circulation or flowing by mechanical means through a piping system of a detergent solution, water rinse and sanitizing solution onto or over equipment surfaces that require cleaning, such as the method used, in part, to clean and sanitize a frozen dessert machine.

(ii) The term does not include the cleaning of equipment such as band saws, slicers or mixers that are subjected to in-place manual cleaning without the use of a CIP system.

Casing—A tubular container for sausage products made of either natural or artificial (synthetic) material.

Certification number—A unique combination of letters and numbers assigned by the Department or other shellfish control authority having jurisdiction to a molluscan shellfish dealer according to the provisions of the National Shellfish Sanitation Program.

Color additive—A material which is a dye, pigment or other substance made by a process of synthesis or similar artifice or extracted, isolated or otherwise derived, with or without intermediate or final change of identity, from a vegetable, animal, mineral or other source and when added or applied to a food is capable, alone or through reaction with other substances, of imparting color thereto.

(i) The term includes black, white and intermediate grays.

(ii) The term does not include materials, which the Secretary, by regulation, determines are used, or are intended to be used, solely for a purpose other than coloring.

(iii) The term does not include any pesticide chemical, soil or plant nutrient or other agricultural chemical solely because of its effect in aiding, retarding or otherwise affecting, directly or indirectly, the growth or otherwise natural physiological process of produce of the soil and thereby affecting its color, whether before or after harvest.

Commingle—To combine shellstock harvested on different days or from different growing areas as identified on the tag or label or to combine shucked shellfish from containers with different container codes or different shucking dates.

Comminuted—A food that is reduced in size by methods including chopping, flaking, grinding or mincing. The term includes fish or meat products that are reduced in size and restructured or reformulated such as gefilte fish, gyros, ground beef and sausage; and a mixture of two or more types of meat that have been reduced in size and combined, such as sausages made from two or more meats.

Confirmed disease outbreak—A foodborne disease outbreak in which laboratory analysis of appropriate specimens identifies a causative agent and epidemiological analysis implicates the food as the source of the illness.

Consumer—A person, who is a member of the public, takes possession of food, is not functioning in the capacity of an operator of a food facility or food processing plant, and does not offer the food for resale.

Controlled atmosphere packaging—A type of reduced oxygen packaging in which the atmosphere of a package of food is modified so that until the package is opened, its composition is different from air, and continuous control is maintained, such as by using oxygen scavengers or a combination of

total replacement of oxygen, nonrespiring food and impermeable packaging material.

Corrosion-resistant material—A material that maintains acceptable surface cleanability characteristics under prolonged influence of the food to be contacted, the normal use of cleaning compounds and sanitizing solutions and other conditions of the use environment.

Critical control point—A point or procedure in a specific food system where loss of control may result in an unacceptable health risk.

Critical limit—The maximum or minimum value to which a physical, biological or chemical parameter must be controlled at a critical control point to minimize the risk that the identified food safety hazard may occur.]

Department—The Department of Agriculture of the Commonwealth. The term is synonymous with the term “regulatory authority” in the Model Food Code.

Drinking water, potable water or water—Safe drinking water as defined in the Pennsylvania Safe Drinking Water Act (35 P. S. §§ 721.1—721.17). The term does not include water such as boiler water, mop water, rainwater, wastewater and “nondrinking” water.

[Dry storage area—A room or area designated for the storage of packaged or containerized bulk food that is not potentially hazardous and dry goods such as single service items.

EPA—The United States Environmental Protection Agency.

Easily cleanable—

- (i) A characteristic of a surface that:
 - (A) Allows effective removal of soil by normal cleaning methods.
 - (B) Is dependent on the material, design, construction and installation of the surface.
 - (C) Varies with the likelihood of the surface’s role in introducing pathogenic or toxigenic agents or other contaminants into food based on the surface’s approved placement, purpose and use.
- (ii) The term includes a tiered application of the criteria that qualify the surface as easily cleanable as specified in subparagraph (i) to different situations in which varying degrees of cleanability are required, such as one of the following:
 - (A) The appropriateness of stainless steel for a food preparation surface as opposed to the lack of need for stainless steel to be used for floors or for tables used for consumer dining.
 - (B) The need for a different degree of cleanability for a utilitarian attachment or accessory in the kitchen as opposed to a decorative attachment or accessory in the consumer dining area.

Easily movable—A unit of equipment that is both of the following:

- (i) Portable; mounted on casters, gliders or rollers; or provided with a mechanical means to safely tilt the unit of equipment for cleaning.
- (ii) Has no utility connection, a utility connection that disconnects quickly or a flexible utility con-

nection line of sufficient length to allow the equipment to be moved for cleaning of the equipment and adjacent area.

Egg—The shell egg of the domesticated chicken, turkey, duck, goose or guinea.]

Employee—The license [or registration] holder, person in charge, person having supervisory or management duties, person on the payroll, family member, volunteer, person performing work under contractual agreement or other person working in a retail food facility.

[Equipment—

(i) An article that is used in the operation of a food facility such as a freezer, grinder, hood, ice maker, meat block, mixer, oven, reach-in refrigerator, scale, sink, slicer, stove, table, temperature measuring device for ambient air, vending machine or warewashing machine.

(ii) The term does not include items used for handling or storing large quantities of packaged foods that are received from a supplier in a cased or overwrapped lot, such as hand trucks, forklifts, dollies, pallets, racks and skids.

Exclude—To prevent a person from working as a food employee or entering a food facility except for those areas open to the general public.]

FDA—The United States Food and Drug Administration.

[Federal acts—The Wholesome Meat Act (21 U.S.C.A. §§ 601—641), the Federal Food, Drug and Cosmetic Act (21 U.S.C. §§ 301—399), the Poultry Products Inspection Act (21 U.S.C.A. §§ 451—471), the Fair Packaging and Labeling Act (15 U.S.C.A. §§ 1451—1461), the Federal Insecticide, Fungicide, and Rodenticide Act (7 U.S.C.A. § 136—136y) and the Nutrition Labeling and Education Act of 1990 (21 U.S.C.A. § 343-1).

Fish—The term includes:

(i) Fresh or saltwater finfish, crustaceans, all mollusks and other forms of aquatic life (including alligator, frog, aquatic turtle, jellyfish, sea cucumber, and sea urchin and the roe of those animals), other than birds or mammals, if the animal life is intended for human consumption.

(ii) The term includes an edible human food product derived in whole or in part from fish, including fish that have been processed in any manner.]

Food—An article used for food or drink by humans, including chewing gum and articles used for components of any article. The term does not include medicines and drugs.

[Food Act—The Food Act (31 P. S. §§ 20.1—20.18).

Food additive—

(i) A substance, the intended use of which results or may reasonably be expected to result, directly or indirectly, in its becoming a component or otherwise affecting the characteristics of any food, with respect to which one or more of the following is correct:

(A) The substance is not generally recognized, among experts qualified by scientific training and experience to evaluate its safety, as having been

adequately shown through scientific procedures to be safe under the conditions of its intended use.

(B) The substance has been used in food prior to January 1, 1958, and is not generally recognized, among experts qualified by scientific training and experience to evaluate its safety, as having been adequately shown through scientific procedures or experience based on common use in food, to be safe under the conditions of its intended use.

(ii) The term does not include the following:

(A) A pesticide chemical in or on a raw agricultural commodity.

(B) A pesticide chemical to the extent that it is intended for use or is used in the production, storage or transportation of any raw agricultural commodity.

(C) A color additive.

(D) A substance used in accordance with a sanction or approval granted prior to the enactment of this subparagraph under a statute repealed by the Food Act, under the Poultry Products Inspection Act or under the Wholesome Meat Act.

(E) A new animal drug.

Foodborne disease outbreak—The occurrence of two or more cases of a similar illness after ingestion of a common food.

Food-contact surface—One of the following:

(i) A surface of equipment or a utensil with which food normally comes into contact.

(ii) A surface of equipment or a utensil from which food may drain, drip or splash into a food, or onto a surface normally in contact with food.

Food employee—An individual working with unpackaged food, food equipment or utensils, or food-contact surfaces.]

Food establishment—

(i) A [**retail food store and a**] room, building or place or portion thereof or vehicle maintained, used or operated for the purpose of commercially storing, packaging, making, cooking, mixing, processing, bottling, baking, canning, freezing, packing or otherwise preparing or transporting or handling food.

(ii) The term [**includes those portions of public eating and drinking licensees which offer food for sale for off-premises consumption, except**] excludes retail food facilities, retail food establishments, public eating and drinking places and those portions of establishments operating exclusively under milk or milk products permits.

(iii) The term is synonymous with the term “food processing plant” in the Model Food Code.

[*Food facility*—A public eating or drinking place or a retail food establishment. The term does not include the following:

(i) A food service facility provided by or at an organized camp or campground.

(ii) A food service facility provided by or at a school.

(iii) A food service facility at an institution such as a nursing home or hospital.

(iv) Any other food service facility that is not a public eating or drinking place.

(v) Food processing plants, warehousing establishments and other food establishments that comply with the following:

(A) Are not retail food establishments.

(B) Do not provide food to the consumer either directly or indirectly (such as through the home delivery of groceries).

(C) Applicable Federal regulations.

Food facility operator—The entity that is legally responsible for the operation of the food facility, such as the owner, owner’s agent or other person.

Food facility premises—The food facility, its contents and the contiguous land or property under the control of the food facility operator. If a food facility is a component of a larger operation, such as a hotel, motel, shopping mall or public campground, and that larger operation is also under the control of the food facility operator, that larger operation is part of the food facility premises to the extent it may impact the food facility, its personnel or its operations.

Food processing plant—A commercial operation that manufactures, packages, labels or stores food for human consumption and does not provide food directly to a consumer. The term does not include a food facility.]

Food Safety Act—The Food Safety Act (3 Pa.C.S. §§ 5721—5737).

[*Game animal*—

(i) An animal, the products of which are food, that is not classified as any of the following:

(A) Fish, as that term is defined in this chapter.

(B) Cattle, sheep, swine, goat, horse, mule or other equine, as those terms are used in 9 CFR Chapter III, Subchapter A (relating to agency organization and terminology; mandatory meat and poultry products inspection and voluntary inspection and certification).

(C) Poultry, as that term is used in 9 CFR Chapter III, Subchapter A.

(D) Ratites, such as ostriches, emus or rheas.

(ii) The term includes mammals such as reindeer, elk, deer, antelope, water buffalo, bison, rabbit, squirrel, opossum, raccoon, nutria or muskrat, and nonaquatic reptiles such as land snakes.

General use pesticide—A pesticide that is not classified by the EPA for restricted use as specified in 40 CFR 152.175 (relating to pesticides classified for restricted use).]

HACCP—Hazard Analysis Critical Control Point—A system developed by the National Advisory Committee on Microbiological Criteria for Foods that identifies and monitors specific foodborne hazards that can adversely affect the safety of the food products.

[*HACCP plan*—A written document that delineates the formal procedures for following the HACCP principles developed by the National Advisory Committee on Microbiological Criteria for Foods.

Hazard—A biological, chemical or physical property (such as the presence of pathogens, pesticides, natural toxins, rodent contamination or foreign materials) that may cause an unacceptable consumer health risk.

Hermetically sealed container—A container that is designed and intended to be secure against the entry of microorganisms and, in the case of low acid canned foods, to maintain the commercial sterility of its contents after processing.

High humidity cooking—Cooking in an oven that attains relative humidity of greater than 90% for at least 1 hour as measured in the cooking chamber or exit of the oven, or cooking in a moisture-impermeable bag that provides 100% humidity.

Highly susceptible population—A group of persons who are more likely than other people in the general population to experience foodborne disease because both of the following conditions exist:

(i) The group is comprised of immunocompromised persons, preschool-age children or older adults.

(ii) The group obtains food at a facility that provides services such as custodial care, health care, assisted living services, nutritional services or socialization services. Examples of facilities providing these services include child or adult day care centers, health care centers, assisted living facilities, hospitals, nursing homes, kidney dialysis centers and senior centers.

Honestly presented—Food offered for human consumption in a way that does not mislead or misinform the consumer, and without misrepresenting the true appearance, color or quality of the food through the use of food or color additives, colored overwraps, lighting or other means.

Imminent health hazard—A significant threat or danger to health that is considered to exist when there is evidence sufficient to show that a product, practice, circumstance or event creates a situation that requires immediate correction or cessation of operation to prevent injury based on one or more of the following:

(i) The number of potential injuries.

(ii) The nature, severity and duration of the anticipated injury.

Injected—Manipulating a meat so that infectious or toxigenic microorganisms may be introduced from its surface to its interior through tenderizing with deep penetration or injecting the meat such as with juices which may be referred to as “injecting,” “pinning” or “stitch pumping.”

Juice—When used in the context of food safety, the term refers to the aqueous liquid expressed or extracted from one or more fruits or vegetables, purées of the edible portions of one or more fruits or vegetables, or any concentrate of the liquid or purée. The term includes juice as a whole beverage, an ingredient of a beverage, and a puree as an ingredient of a beverage. This definition does not apply to standards of identity established by the FDA or USDA.

Kitchenware—Food preparation and storage utensils.]

License—A grant to a [licensee to operate a public eating or drinking place, as defined in the Public Eating and Drinking Places Law] proprietor to operate a retail food facility. The term is synonymous with the term “permit” in the Model Food Code.

Licensee—The person, such as a retail food facility operator, that is directly responsible for the operation of a retail food facility and holds a current license. The term is synonymous with the term “permit holder” in the Model Food Code.

Licensors—Includes the following:

(i) The county department of health or joint-county department of health, whenever the [public eating or drinking place] retail food facility is located in a political subdivision which is under the jurisdiction of a county department of health or joint-county department of health.

(ii) The health authorities of cities, boroughs, incorporated towns and first-class townships, whenever the [public eating or drinking place] retail food facility is located in a city, borough, incorporated town or first-class township not under the jurisdiction of a county department of health or joint-county department of health.

(iii) The health authorities of second class townships and second class townships which have adopted a home rule charter which elect to issue licenses under the [Public Eating and Drinking Places Law] Retail Food Facility Safety Act whenever [the public eating and drinking place] a retail food facility is located in [the] a second class township or second class township which has adopted a home rule charter not under the jurisdiction of a county department of health or joint-county department of health.

(iv) The Department, whenever the [public eating and drinking place] retail food facility is located in any other area of this Commonwealth.

Linens—Fabric items such as cloth hampers, cloth napkins, tablecloths, wiping cloths and work garments, including cloth gloves.

mg/L—Milligrams per liter, which is the metric equivalent of parts per million.

Meat—The flesh of animals used as food including the dressed flesh of cattle, swine, sheep or goats and other edible animals. The term does not include fish, poultry and wild game animals as specified under § 46.221(b) and (c) (relating to game animals).]

Milk Sanitation Law—The act of July 2, 1935 (P. L. 589, No. 210) (31 P. S. §§ 645—[660e] 660g).

Mobile food facility—Any stationary, movable or temporary food facility—such as a stand, vehicle, cart, basket, box or similar structure from which food is stored, prepared, processed, distributed or sold—which physically locates at one site or location for no more than 14 consecutive days, whether operating continuously or not during this time. The term does not include a food facility that is physically located at one site for more than 14 consecutive days.]

Model Food Code—The most current edition of the *Food Code* published by the Department of Health and Human Services, Food and Drug Administration.

[Modified atmosphere packaging—

(i) A type of reduced oxygen packaging in which the atmosphere of a package of food is modified so that its composition is different from air but the atmosphere may change over time due to the permeability of the packaging material or the respiration of the food.

(ii) The term includes: reduction in the proportion of oxygen, total replacement of oxygen or an increase in the proportion of other gases such as carbon dioxide or nitrogen.

Molluscan shellfish—An edible species of fresh or frozen oysters, clams, mussels and scallops or edible portions thereof, except when the scallop product consists only of the shucked adductor muscle.

Nonpublic water supply—A system for the provision of piped water for human consumption that is not a public water system.

Other food regulatory agency—Local bodies, State bodies other than the Commonwealth or Federal enforcement bodies having jurisdiction over a food establishment or food processing plant. Examples include the USDA with respect to most meat processing plants within this Commonwealth and the FDA having jurisdiction over food products imported from other countries.]

Organized camp—A combination of programs and facilities established for the primary purpose of providing an outdoor group living experience for children, youth and adults with social, recreational and educational objectives that is operated and used for 5 consecutive days or more during one or more seasons of the year.

[pH—The symbol for the negative logarithm of the hydrogen ion concentration, which is a measure of the degree of acidity or alkalinity of a solution. Values between 0 and 7 indicate acidity and values between 7 and 14 indicate alkalinity. The value for pure distilled water is 7, which is considered neutral.

Packaged—

(i) Bottled, canned, cartoned, securely bagged or securely wrapped in a food facility or a food processing plant.

(ii) The term does not include a wrapper, carryout box or other nondurable container used to containerize food with the purpose of facilitating food protection during service and receipt of the food by the consumer.

Pennsylvania Construction Code Act—35 P. S. §§ 7210.101—7210.1103.

Pennsylvania Sewage Facilities Act—35 P. S. §§ 750.1—750.20a.

Permanent food facility—A food facility—whether stationary or mobile—that is not a temporary food facility operating more than 14 days in a single calendar year—whether these days are consecutive or not.

Person—A corporation, partnership, limited liability company, business trust, other association, government entity (other than the Commonwealth), estate, trust, foundation or natural person.

Personal care items—

(i) Items or substances that may be poisonous, toxic or a source of contamination and are used to maintain or enhance a person's health, hygiene or appearance.

(ii) The term includes items such as medicines, first aid supplies, cosmetics, toiletries (such as toothpaste and mouthwash) and similar items.]

Person in charge—[The individual present at a food facility responsible for the operation at the time of inspection.] A person designated by a retail food facility operator to be present at a retail food facility and responsible for the operation of the retail food facility at the time of inspection.

[Physical facilities—The structure and interior surfaces of a food facility, including accessories such as soap and towel dispensers and attachments such as light fixtures and heating or air conditioning system vents.

Plumbing fixture—A receptacle or device that is one or more of the following:

(i) Permanently or temporarily connected to the water distribution system of the premises and demands a supply of water from the system.

(ii) Discharges used water, waste materials or sewage directly or indirectly to the drainage system of the premises.

Plumbing system—The water supply and distribution pipes; plumbing fixtures and traps; soil, waste and vent pipes; sanitary and storm sewers and building drains, including their respective connections, devices and appurtenances within the premises; and water-treating equipment.

Poisonous or toxic material—A substance that is not intended for ingestion and that fits within one or more of the following categories:

(i) Cleaners and sanitizers, including cleaning and sanitizing agents and agents such as caustics, acids, drying agents, polishes and other chemicals.

(ii) Pesticides.

(iii) Substances necessary for the operation and maintenance of the establishment, such as nonfood grade lubricants, solvents and personal care items that may be deleterious to health.

(iv) Substances that are not necessary for the operation and maintenance of the establishment and are on the premises for retail sale, such as petroleum products and paints.

Potentially hazardous food—

(i) A food which consists, in whole or part, of milk or milk products, eggs, meat, poultry, fish, shellfish, edible crustacea or other ingredients, including synthetic ingredients, which is in a form capable of supporting rapid and progressive growth of infectious or toxigenic microorganisms.

(ii) The term does not include foods that have a pH level of 4.6 or below or a water activity of 0.85 or less under standard conditions or food products

in hermetically sealed containers processed to maintain commercial sterility.

Poultry—One or more of the following:

(i) A domesticated bird (chickens, turkeys, ducks, geese or guineas), whether live or dead, as defined in 9 CFR Chapter III, Subchapter A, Part 381 (relating to poultry products inspection regulations).

(ii) A migratory waterfowl or game bird, such as pheasant, partridge, quail, grouse, guineas, pigeon or squab, whether live or dead, as defined in the USDA regulations in 9 CFR Part 362 (relating to voluntary poultry inspection regulations).

(iii) The term does not include ratites.

Primal cut—A basic major cut into which carcasses and sides of meat are separated, such as a beef round, pork loin, lamb flank or veal breast.]

Proprietor—A person, partnership, association or corporation conducting or operating a retail food facility in this Commonwealth. The term is synonymous with the term “person” in the Model Food Code.

Public eating or drinking place—A place within this Commonwealth where food or drink is served to or provided for the public, with or without charge. The term does not include dining cars operated by a railroad company in interstate commerce or a bed and breakfast homestead or inn.

[**Public Eating and Drinking Places Law**—The act of May 23, 1945 (P. L. 926, No. 369) (35 P. S. §§ 655.1—655.13).

Public water system—A system which provides water to the public for human consumption, and which has at least 15 service connections or regularly serves an average of at least 25 individuals daily at least 60 days out of the year, or as otherwise specified in 25 Pa. Code Chapter 109 (relating to safe drinking water).

(i) The term includes collection, treatment, storage and distribution facilities under control of the operator of the system and used in connection with the system.

(ii) The term also includes a system which provides water for bottling or bulk hauling for human consumption.

Ratite—An animal belonging to the same family as ostriches, emus and rheas.]

Raw agricultural commodity—A food in its raw or natural state, including fruits which are washed, colored or otherwise treated in their unpeeled, natural form prior to marketing, or as otherwise defined in section 5722 of the Food Safety Act (relating to definitions).

[**Ready-to-eat food**—Any of the following types of food:

(i) Food in a form that is edible without additional preparation to achieve food safety, such as raw animal-derived foods that have been cooked in accordance with § 46.361 or § 46.362 (relating to cooking raw animal-derived foods; and microwave cooking), or fish that have been frozen in accordance with § 46.364 (relating to parasite destruction in fish other than molluscan shellfish by freezing),

although additional preparation may occur for palatability or aesthetic, epicurean, gastronomic or culinary purposes.

(ii) Food that is raw or partially-undercooked animal-derived food, where the food facility offering the food has complied with § 46.361(d)(1) and the consumer notification requirements of § 46.423 (relating to consumer advisory required with respect to animal-derived foods that are raw, undercooked or not otherwise processed to eliminate pathogens), although additional preparation may occur for palatability or aesthetic, epicurean, gastronomic or culinary purposes.

(iii) Food that is prepared in accordance with a variance issued by the Department under § 46.361(d)(2) and § 46.1103 (relating to variances), although additional preparation may occur for palatability or aesthetic, epicurean, gastronomic or culinary purposes.

(iv) Raw fruits and vegetables that are washed in accordance with § 46.285 (relating to washing raw fruits and vegetables).

(v) Fruits and vegetables that are cooked for hot holding in accordance with § 46.363 (relating to plant food cooking for hot holding).

(vi) Potentially hazardous food that is cooked in accordance with the time and temperature requirements for that specific food in §§ 46.361—46.363, and that is cooled as specified in § 46.384 (relating to potentially hazardous food: cooling).

(vii) Plant food with respect to which further washing, cooking or other processing is not required for food safety, and from which rinds, peels, husks or shells (if naturally present) are removed.

Reduced oxygen packaging—

(i) The reduction of the amount of oxygen in a package by removing oxygen; displacing oxygen and replacing it with another gas or combination of gases; or otherwise controlling the oxygen content to a level below that normally found in the surrounding 21% oxygen atmosphere.

(ii) A process as specified in subparagraph (i) that involves a food for which *Clostridium botulinum* is identified as a microbiological hazard in the final packaged form.

(iii) The term includes vacuum packaging, modified atmosphere packaging and controlled atmosphere packaging.

Refuse—Solid waste not carried by water through the sewage system.

Registration—A grant to a person to operate a food establishment within this Commonwealth as required by section 14 of the Food Act (31 P. S. § 20.14).

Reg. Penna. Dept. Agr.—An abbreviation connoting that a food bearing that abbreviation on its package label has been processed by a food establishment that is “registered with the Pennsylvania Department of Agriculture” in accordance with section 14(a) of the Food Act.

Restrict—To limit the activities of a food employee so that there is no risk of transmitting a disease that is transmissible through food and the food employee does not work with exposed food,

clean equipment, utensils, linens and unwrapped single-service or single-use articles.

Restricted egg—Any check, dirty egg, incubator reject, inedible, leaker or loss as defined in Chapter 87 (relating to standards for grading and marketing eggs).

Restricted use pesticide—A pesticide classified for restricted use under section 3(d) of the Federal Insecticide, Fungicide and Rodenticide Act of 1947 (7 U.S.C.A. § 136(d)), or a pesticide designated by the Secretary for restricted use under section 7(b)(6) of the Pennsylvania Pesticide Control Act of 1973 (3 P. S. § 111.27(b)(6)).]

Retail food establishment—[A food]

(i) An establishment which stores, prepares, packages, vends, offers for sale or otherwise provides food for human consumption and which relinquishes possession of food to a consumer directly, or indirectly, through a delivery service such as home delivery of grocery orders or delivery service provided by common carriers.

(ii) The term does not include dining cars operated by a railroad company in interstate commerce or a bed and breakfast homestead or inn.

Retail food facility—A public eating or drinking place or a retail food establishment. The term is synonymous with the term “food establishment” in the Model Food Code.

Retail food facility operator—The entity that is legally responsible for the operation of the retail food facility, such as the owner, owner’s agent or other person.

Retail Food Facility Safety Act—The Retail Food Facility Safety Act (3 Pa.C.S. §§ 5701—5714).

[**Risk**—The likelihood that an adverse health effect will occur within a population as a result of a hazard in a food.

Safe material—One or more of the following:

(i) An article manufactured from or composed of materials that may not reasonably be expected to result, directly or indirectly, in their becoming a component or otherwise affecting the characteristics of any food.

(ii) An additive that is used as specified in section 409 or section 706 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C.A. §§ 301 and 376).

(iii) A material that is not an additive and that is used in conformity with applicable regulations of the FDA.

Sanitization—The application of cumulative heat or chemicals on cleaned food-contact surfaces that, when evaluated for efficacy, is sufficient to yield a reduction of five logs, which is equal to a 99.999% reduction, of representative disease microorganisms of public health importance.

Sealed—Free of cracks or other openings that allow the entry or passage of moisture.]

Secretary—The Secretary of the Department or an authorized representative, employee or agent of the Department.

[**Service animal**—An animal such as a guide dog, signal dog or other animal individually trained to provide assistance to an individual with a disability.

Servicing area—An operating base location to which a mobile food facility or transportation vehicle returns regularly for things such as discharging liquid or solid wastes, refilling water tanks and ice bins and boarding food.

Sewage—A substance, which contains waste products or excrements or other discharges from the bodies of human beings or animals and any noxious or deleterious substance being harmful or inimical to the public health, or to animal or aquatic life, or to the use of water for domestic water supply or for recreation.

Shellfish control authority—A State, Federal, foreign, tribal or other government entity legally responsible for administering a program that includes certification of molluscan shellfish harvesters and dealers for interstate commerce.

Shellfish permit—A permit issued by the Department in accordance with Chapter 49 (relating to shellfish) and the National Shellfish Sanitation Program, that authorizes a person to operate a food establishment for shellfish.

Shellfish permit holder—The entity that meets the following conditions:

(i) Is legally responsible for the operation of the food establishment such as the owner, owner’s agent or other person.

(ii) Possesses a valid shellfish permit to operate a shellfish food establishment.

Shellstock—Raw, in-shell molluscan shellfish.

Shiga toxin-producing *Escherichia coli*—Any *E. coli* capable of producing Shiga toxins, also called Verocytotoxins or Shiga-like toxins. This includes, but is not limited to, *E. coli* serotypes O157:H7, O157:NM and O157:H.

Shucked shellfish—Molluscan shellfish that have one or both shells removed.

Single-service articles—Tableware, carry-out utensils and other items such as bags, containers, place mats, stirrers, straws, toothpicks and wrappers that are designed and constructed for one time, one person consumer use after which they are intended for discard.

Single-use articles—

(i) Utensils and bulk food containers designed and constructed to be used once and discarded.

(ii) The term includes items such as wax paper, butcher paper, plastic wrap, formed aluminum food containers, jars, plastic tubs or buckets, bread wrappers, pickle barrels, ketchup bottles and number 10 cans which do not meet the materials, durability, strength and cleanability specifications in §§ 46.521(a), 46.541(a) and 46.542(a) and (b) (relating to materials in multiuse utensils and food-contact surfaces; durability and strength; and cleanability of multiuse food-contact surfaces and CIP equipment) for multiuse utensils.

(iii) The term does not include formed aluminum containers used in conjunction with pan liners that may be reused to cook nonpotentially hazardous baked goods.

Slacking—The process of moderating the temperature of a food such as allowing a food to gradually increase from a temperature of -23°C

(-10°F) to -4°C (25°F) in preparation for deep-fat frying or to facilitate even heat penetration during the cooking of previously block-frozen food such as spinach.

Smooth—One or more of the following:

(i) A food-contact surface having a surface free of pits and inclusions with cleanability equal to or exceeding that of (100 grit) number-3 stainless steel.

(ii) A nonfood-contact surface of equipment having a surface equal to that of commercial grade hot-rolled steel free of visible scale.

(iii) A floor, wall or ceiling having an even or level surface with no roughness or projections that renders it difficult to clean.

Substance—A material intended for use in producing, manufacturing, packaging, processing, preparing, treating, transporting or holding food and any source of radiation intended for any use.

Sulfiting agent—A substance which imparts a residual of sulfur dioxide.

Table—mounted equipment—Equipment that is not portable and is designed to be mounted off the floor on a table, counter or shelf.

Tableware—Eating, drinking and serving utensils for table use such as plates, flatware (including forks, knives and spoons) and hollowware (including bowls, cups, serving dishes and tumblers).

Temperature measuring device—A thermometer, thermocouple, thermistor or other device that indicates the temperature of food, air or water.

Temporary food facility—A food facility that operates for a period of no more than 14 consecutive days in a fixed location and in conjunction with a single event or celebration (such as a fair, festival, carnival or other transitory gathering).

Temporary license—Either of the following:

(i) A license that is the following:

(A) Issued to the operator of a temporary food facility.

(B) Valid for the duration of a particular event or celebration (such as a fair or carnival) of no more than 14 days duration (whether these days are consecutive or nonconsecutive).

(C) Issued to the operator with respect to no more than three events or celebrations in a particular calendar year.

(ii) A license that is the following:

(A) Issued to a food facility operator operating a food facility, whether stationary or mobile.

(B) In operation for a total of no more than 14 days within a particular calendar year.

(C) Not in conjunction with an event or celebration.

USDA—The United States Department of Agriculture.

Utensil—A food-contact implement or container used in the storage, preparation, transportation, dispensing, sale or service of food. The term includes the following:

(i) Kitchenware or tableware that is multiuse, single-service or single-use.

(ii) Gloves used in contact with food.

(iii) The temperature sensing probes of food temperature measuring devices.

(iv) Probe-type price or identification tags used in contact with food.

Utility sink—A sink used for the disposal of mop water or other similar liquid waste.

Vacuum packaging—A type of reduced oxygen packaging in which air is removed from a package of food and the package is hermetically sealed so that a vacuum remains inside the package, such as sous vide.

Variance—A written document issued by the Department that authorizes a modification or waiver of one or more requirements of this chapter if, in the opinion of the Department, a health hazard or nuisance will not result from the modification or waiver.

Vending machine—A self-service device that, upon insertion of a coin, paper currency, token, card or key, dispenses unit servings of food in bulk or in packages without the necessity of replenishing the device between each vending operation.

Vending machine location—The room, enclosure, space or area where one or more vending machines are installed and operated. The term includes the storage areas and areas on the premises that are used to service and maintain the vending machines.

Warewashing—The cleaning and sanitizing of food-contact surfaces of equipment and utensils.

Water activity or a_w —A measure of the free moisture in a food, obtained by dividing the water vapor pressure of the substance by the vapor pressure of pure water at the same temperature. Water activity is typically indicated by the symbol a_w .

Water for human consumption—The term includes water that is used for drinking, bathing and showering, cooking, dishwashing or maintaining oral hygiene.

Whole-muscle, intact beef—Whole muscle beef that is not injected, mechanically tenderized, reconstructed, or scored and marinated, from which beef steaks may be cut.]

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

§ 46.4. Adoption of Model Food Code.

The provisions, terms, procedures, appendices and standards in the current edition of the Model Food Code are adopted to the extent they do not conflict with one or more of the following:

- (1) The Retail Food Facility Safety Act.
- (2) The Food Safety Act.
- (3) This chapter.

Subchapter B. [**MANAGEMENT AND PERSONNEL**]
(Reserved)

(Editor's Note: As part of this proposed rulemaking, the Department is proposing to rescind Subchapter B which appears in 7 Pa. Code pages 46-17—46-28, serial pages (356767), (356768) and (301595)—(301604).)

- Sec.
- 46.101. (Reserved).
- 46.102. (Reserved).
- 46.111—46.115. (Reserved).
- 46.131—46.137. (Reserved).
- 46.151—46.153. (Reserved).

Subchapter C. FOOD
[CHARACTERISTICS]

§ 46.201. [**Food shall be safe, unadulterated and honestly presented**] **(Reserved)**.

[**Food shall be safe, unadulterated and—in accordance with § 46.421(b) (relating to accurate representation)—honestly presented.**]

FOOD SOURCES

§ 46.211. [**Food sources**] **(Reserved)**.

[**Food shall be obtained from sources that comply with the Food Act, the Public Eating and Drinking Places Law and this chapter. Records of food sources shall be maintained and made available for review upon request by the Department.**]

§ 46.212. **Food prepared in a private home.**

(a) *General.* Food prepared in a private home [, not approved by the Department, may not] may be used or offered for human consumption in a retail food facility [.] if the following apply:

- (1) **The food is not potentially hazardous food.**
- (2) **The food is used or offered for human consumption by any of the following organizations:**

(i) **A tax-exempt organization under section 501(c)(3) of the Internal Revenue Code of 1986 (26 U.S.C.A. § 501(c)(3)).**

(ii) **A volunteer fire company or ambulance, religious, charitable, fraternal, veterans, civic, sportsmen, agricultural fair or agricultural association or a separately chartered auxiliary of an association on a nonprofit basis.**

(iii) **An organization that is established to promote and encourage participation and support for extracurricular recreational activities for youth of primary and secondary public, private and parochial school systems on a nonprofit basis.**

(3) **The organization that uses or offers the food for human consumption informs consumers that the organization uses or offers food that has been prepared in private homes that are not licensed or inspected.**

(4) **The food is donated to an organization described under paragraph (2).**

(b) *Private homes that are registered food establishments under the Food Safety Act.* Food prepared in a private home may be offered for human consumption in a retail food facility if the private home is registered with the Department as a food establishment under the Food Safety Act.

(Editor's Note: As part of this proposed rulemaking, the Department is proposing to rescind §§ 46.213—46.216 which appear in 7 Pa. Code pages 46-31—46-32, serial pages (301607) and (301608).)

- Sec.
- 46.213—46.216. (Reserved).

§ 46.217. **Milk and milk products.**

Milk and milk products [**shall be obtained from sources that comply**] may be offered for human consumption in a retail food facility if the facility complies with section 2 of the Milk Sanitation Law (31 P. S. § 646).

(Editor's Note: As part of this proposed rulemaking, the Department is proposing to rescind §§ 46.218—46.222, 46.241—46.251, 46.261, 46.262, 46.281—46.286, 46.301—46.307, 46.321—46.323, 46.341—46.344, 46.361—46.366, 46.381—46.385, 46.401, 46.402, 46.421—46.423, 46.441 and 46.461 which appear in 58 Pa. Code pages 46-32—46-63, serial pages (301608)—(301639).)

- Sec.
- 46.218—46.222. (Reserved).
- 46.241—46.251. (Reserved).
- 46.261. (Reserved).
- 46.262. (Reserved).
- 46.281—46.286. (Reserved).
- 46.301—46.307. (Reserved).
- 46.321—46.323. (Reserved).
- 46.341—46.344. (Reserved).
- 46.361—46.366. (Reserved).
- 46.381—46.385. (Reserved).
- 46.401. (Reserved).
- 46.402. (Reserved).
- 46.421—46.423. (Reserved).
- 46.441. (Reserved).
- 46.461. (Reserved).

Subchapter D. [EQUIPMENT, UTENSILS AND LINENS] (Reserved)

(Editor's Note: As part of this proposed rulemaking, the Department is proposing to rescind Subchapter D which appears in 58 Pa. Code pages 46-63—46-97, serial pages (301639), (301640), (351231), (351232) and (301643)—(301673).)

- Sec.
- 46.501. (Reserved).
- 46.521—46.523. (Reserved).
- 46.541—46.544. (Reserved).
- 46.561—46.563. (Reserved).
- 46.581—46.595. (Reserved).
- 46.611—46.615. (Reserved).
- 46.631—46.634. (Reserved).
- 46.651. (Reserved).
- 46.652. (Reserved).
- 46.671—46.676. (Reserved).
- 46.691—46.693. (Reserved).
- 46.711—46.719. (Reserved).
- 46.731. (Reserved).
- 46.751—46.753. (Reserved).
- 46.771—46.775. (Reserved).

Subchapter E. [WATER, PLUMBING AND WASTE WATER] (Reserved)

(Editor's Note: As part of this proposed rulemaking, the Department is proposing to rescind Subchapter E which appears in 58 Pa. Code pages 46-97—46-110, serial pages (301673)—(301686).)

- Sec.
- 46.801—46.806. (Reserved).
- 46.821—46.825. (Reserved).
- 46.841—46.844. (Reserved).
- 46.861—46.863. (Reserved).
- 46.881—46.886. (Reserved).

Subchapter F. [PHYSICAL FACILITIES] (Reserved)

(Editor's Note: As part of this proposed rulemaking, the Department is proposing to rescind Subchapter F which appears in 58 Pa. Code pages 46-110—46-120, serial pages (301686)—(301696).)

- Sec. 46.901. (Reserved). 46.902. (Reserved). 46.921. (Reserved). 46.922. (Reserved). 46.941—46.946. (Reserved). 46.961—46.965. (Reserved). 46.981. (Reserved). 46.982. (Reserved).

Subchapter G. [POISONOUS OR TOXIC MATERIALS] (Reserved)

(Editor's Note: As part of this proposed rulemaking, the Department is proposing to rescind Subchapter G which appears in 58 Pa. Code pages 46-121—46-125, serial pages (301697)—(301701).)

- Sec. 46.1001. (Reserved). 46.1002. (Reserved). 46.1021—46.1029. (Reserved). 46.1041. (Reserved).

Subchapter H. ADMINISTRATIVE PROCEDURES ACCESS, APPROVALS AND VARIANCES

§ 46.1101. Access to retail food facilities.

After the Department or licensor presents identification, the person in charge shall allow the Department or licensor to determine if the retail food facility is in compliance with this chapter by allowing access to the facility, allowing inspection and providing information and records specified in this chapter and to which the Department or licensor is entitled under the [Public Eating and Drinking Places Law, the Food Act] Retail Food Facility Safety Act and any other relevant statutory or food regulatory authority during the retail food facility's hours of operation and other reasonable times if the facility is not open during normal business hours.

§ 46.1102. Obtaining Department or licensor approval.

* * * * *

(b) Written request. A person seeking an approval from the Department or a licensor under this chapter shall submit a written request for approval to the entity from which approval is sought. If approval is sought from the Department, the written request shall be mailed or delivered to the following address:

Pennsylvania Department of Agriculture Bureau of Food Safety and Laboratory Services [Attn: Chief, Division of Food Safety] 2301 North Cameron Street Harrisburg, Pennsylvania 17110-9408

* * * * *

(e) Standard for approval. The Department or licensor shall grant approval if it determines the approval would not constitute or cause a violation of the [Food Act, the Public Eating and Drinking Places Law] Retail Food Facility Safety Act or this chapter, and that no health hazard would result from the approval.

§ 46.1103. Variances.

(a) Modifications and waivers. The Department may grant a variance by modifying or waiving the requirements of this chapter if—in the opinion of the Department—a health hazard will not result from the variance. If a variance is granted, the Department will retain the information specified in subsection (b) in its records for the retail food facility and provide a copy of the approved variance to the licensor if the licensor is an entity other than the Department.

(b) Documentation of proposed variance and justification. Before a variance from a requirement of this chapter is approved, the information that shall be provided by the person requesting the variance and retained in the Department's file on the retail food facility includes the following:

* * * * *

(c) Conformance with approved procedures. If the Department grants a variance as specified in subsection (a), or an HACCP plan is otherwise required as specified in § 46.1122(a), the retail food facility operator shall do the following:

* * * * *

(2) Maintain and provide to the Department or licensor, upon request, records specified in § 46.1122(b)(4) and (5) that demonstrate that the following are routinely employed:

* * * * *

PLAN SUBMISSION AND APPROVAL

§ 46.1121. Facility and operating plans.

(a) When plans are required. A retail food facility licensing applicant or retail food facility operator shall have plans and specifications reviewed by the Department or licensor and will submit these properly prepared plans and specifications (as described in subsection (b)) to the Department or licensor for review and approval (using the procedure described in § 46.1142 (relating to application procedure for appropriate license [or registration])) before any of the following:

- (1) The construction of a retail food facility. (2) The conversion of an existing structure for use as a retail food facility. (3) The remodeling of a retail food facility (including installation and use of any new major food equipment for heating, cooling and hot and cold holding food) or a change of type of retail food facility or food operation if the Department or licensor determines that plans and specifications are necessary to ensure compliance with this chapter.

(4) A change of ownership of a retail food facility.

(b) Contents of the plans and specifications. The plans and specifications for a retail food facility shall include (as required by the Department or licensor based on the type of operation, type of food preparation and foods prepared) the following information to demonstrate conformance with this chapter:

(1) Intended menu and consumer advisory intentions, if a consumer advisory is required under [§ 46.423 (relating to consumer advisory required with respect to animal-derived)] the Model Food Code for animal

foods that are raw, undercooked or not otherwise processed to eliminate pathogens[)].

* * * * *

(7) Other information that may be required by the Department or licensor for the proper review of the proposed construction, conversion or modification of a retail food facility, and requested by the Department or licensor in writing.

§ 46.1122. HACCP plans.

(a) When [a] an HACCP plan is required.

(1) Before engaging in an activity that requires [a] an HACCP plan, a retail food facility applicant or retail food facility operator shall submit to the Department or licensor for approval a properly prepared HACCP plan as specified in subsection (b) and the relevant provisions of this chapter if any of the following occurs:

(i) Submission of [a] an HACCP plan is required according to applicable Federal or State laws.

(ii) A variance is required as specified in [§ 46.250(b)(2)(ii), § 46.361(d)(2), § 46.401 or § 46.589(b)] the Model Food Code.

* * * * *

(2) A retail food facility applicant or retail food facility operator shall have a properly prepared HACCP plan as specified in [§ 46.402 (relating to reduced oxygen packaging)] the Model Food Code for reduced oxygen packaging.

(b) Contents of [a] an HACCP plan. For a retail food facility that is required in subsection (a) to have [a] an HACCP plan, the plan and specifications shall indicate the following:

* * * * *

§ 46.1123. Confidentiality of trade secrets.

The Department or licensor will treat as confidential information that meets the criteria specified in law for a trade secret and is contained on inspection report forms and in the plans and specifications submitted as specified in §§ 46.1121(b) and 46.1122(b) (relating to facility and operating plans; and HACCP plans).

§ 46.1124. Preoperational inspection of construction.

The Department or licensor will conduct one or more preoperational inspections to verify that the retail food facility is constructed and equipped in accordance with the approved plans and approved modifications of those plans, and variances granted under § 46.1103 (relating to variances). The Department or licensor will also verify the retail food facility is otherwise in compliance with this chapter[, the Food Act and the Public Eating and Drinking Places Law] and the Retail Food Facility Safety Act.

REQUIREMENTS FOR OPERATION

§ 46.1141. [Requirement: license or registration] License requirement.

(a) General requirement. A person may not operate a retail food facility without a valid [registration issued by the Department, or] license issued by the Department or licensor, unless otherwise provided in subsection (b).

(b) [Exceptions.

(1) A building, structure or place owned, leased or otherwise in possession of a person or municipal corporation or public or private organization, used or intended to be used by two or more farmers or an association of farmers for the purpose of selling food directly to consumers—otherwise known as a farmer’s market—shall be considered to be a single retail food establishment for purposes of registration under section 14 of the Food Act (31 P.S. § 20.14).

(2) [Exemptions. The following [food establishments] retail food facilities are exempt from [registration] licensure requirements under [section 14 of the Food Act] the Retail Food Facility Safety Act but remain subject to the inspection provisions and all other provisions of the Retail Food Facility Safety Act:

(i) Vehicles used primarily for the transportation of a consumer commodity in bulk or quantity to manufacturers, packers, processors or wholesale or retail distributors.

(ii) A food establishment in which at least 50% of the commodities sold were produced on the farm on which the food establishment is located.

(iii) A food establishment in which food or beverages are sold only through a vending machine.

(iv) A food establishment in which only prepackaged, nonpotentially hazardous food or beverages are sold.]

(1) A retail food facility in which only prepackaged, nonpotentially hazardous food or beverages are sold.

(2) A retail food facility that sells only raw agricultural commodities.

(3) A retail food facility that is exempt from licensure by an order of the Secretary that has been published in the Pennsylvania Bulletin in accordance with section 5703(b)(1) of the Retail Food Facility Safety Act (relating to license required) if the licensor is the Department.

(4) A retail food facility that is exempt from licensure by an order of the local government unit or units having licensing authority in accordance with section 5703(b)(1) of the Retail Food Facility Safety Act if the licensor is an entity other than the Department.

(c) License interval. A license certificate issued by the Department under this chapter sets forth the license expiration date. The license interval varies, in accordance with the risk-based factors identified in the Model Food Code, as follows:

(1) 24-month license interval.

(i) The license interval is 24 months with respect to a retail food facility that:

(A) Serves or sells only pre-packaged, nonpotentially hazardous foods (non-time/temperature control for safety foods).

(B) Prepares only nonpotentially hazardous foods (non-time/temperature control for safety foods).

(C) Heats only commercially processed, potentially hazardous foods (time/temperature Control for Safety Food (TCS foods)) for hot holding.

(D) Does not cool potentially hazardous foods (TCS foods) for hot holding.

(ii) Examples of the type of retail food facility that would typically be subject to the 24-month license interval in subparagraph (i) are convenience store operations, hot dog carts and coffee shops.

(iii) The license interval for a retail food facility is 24 months if the retail food facility would otherwise be subject to the 18-month license interval in paragraph (2) but demonstrates to the Department, through historical documentation, that it has achieved and documented active managerial control of foodborne illness risk factors identified in the Model Food Code. These risk factors include:

(A) A history of noncompliance with provisions regarding foodborne illness risk factors or critical items.

(B) Specialized processes conducted.

(C) Food preparation a day in advance of service.

(D) Large numbers of people served.

(E) A history of foodborne illnesses or complaints, or both.

(F) Highly susceptible population served.

(2) *18-month license interval.*

(i) The license interval is 18 months with respect to a retail food facility that:

(A) Has a limited menu.

(B) Prepares/cooks and serves most products immediately.

(C) May involve hot and cold holding of potentially hazardous foods (TCS foods) after preparation or cooking.

(D) Limits complex preparation of potentially hazardous foods (TCS foods) requiring cooking, cooling, and reheating for hot holding to only a few potentially hazardous foods (TCS foods).

(ii) Examples of the type of retail food facility that would typically be subject to the 18-month license interval in subparagraph (i) are retail food store operations that have only a limited number of separate departments (such as deli, bakery, produce, seafood or meat area), institutional facilities that do not serve a highly susceptible population and quick food service operations.

(iii) The license interval for a retail food facility is 18 months if the retail food facility would otherwise be subject to the 12-month license interval in paragraph (3) but demonstrates to the Department, through historical documentation, that it has achieved and documented active managerial control of foodborne illness risk factors in paragraph (1).

(iv) The license interval for a retail food facility is 18 months if the retail food facility would otherwise be subject to the 24-month license interval in paragraph (1), but the retail food facility is newly-licensed or has not yet demonstrated to the Department, through historical documentation, that it has achieved and documented active managerial control of foodborne illness risk factors in paragraph (1).

(3) *12-month license interval.*

(i) The license interval is 12 months with respect to a retail food facility that:

(A) Has an extensive menu and entails handling of raw ingredients.

(B) Has complex preparation including cooking, cooling and reheating for hot holding involves many potentially hazardous foods (TCS foods).

(C) Uses a variety of processes that require hot and cold holding of potentially hazardous food (TCS foods).

(ii) Examples of the type of retail food facility that would typically be subject to the 12-month license interval in subparagraph (i) are full service restaurants or retail food stores with a full range of separate departments (such as deli, bakery, produce, seafood or meat area) that includes ready-to-eat foods from a café, salad bar or hot food bar.

(iii) The license interval for a retail food facility is 12 months if the retail food facility would otherwise be subject to the 6-month license interval in paragraph (4) but demonstrates to the Department, through historical documentation, that it has achieved and documented active managerial control of foodborne illness risk factors in paragraph (1).

(iv) The license interval for a retail food facility is 12 months if the retail food facility would otherwise be subject to the 18-month license interval in paragraph (2), but the retail food facility is newly-licensed or has not yet demonstrated to the Department, through historical documentation, that it has achieved and documented active managerial control of foodborne illness risk factors in paragraph (1).

(4) *6-month license interval.*

(i) The license interval is 6 months with respect to a retail food facility that serves a highly susceptible population or that conducts specialized processes such as smoking, curing or reduced oxygen packaging to extend shelf life.

(ii) Examples of the type of retail food facility that would typically be subject to the 6-month license interval in subparagraph (i) are preschools, hospitals, nursing homes and establishments conducting processing at retail.

(iii) The license interval for a retail food facility is 6 months if the retail food facility would otherwise be subject to the 12-month license interval in paragraph (3), but the retail food facility is newly-licensed or has not yet demonstrated to the Department, through historical documentation, that it has achieved and documented active managerial control of foodborne illness risk factors in paragraph (1).

§ 46.1142. Application procedure for appropriate license [or registration].

Prior to the opening of a retail food facility, the operator shall contact the Department or licensor to obtain the appropriate application form for the required license [or registration]. The Department or licensor will supply the applicant with the appropriate form, based upon the type of retail food facility involved. [If the food facility is a public eating and drinking

place, the applicant shall obtain a license. If the food facility is a retail food establishment, the applicant must obtain a registration. A single location (such as a grocery store that also serves hot ready-to-eat foods) might require both a license and a registration.]

§ 46.1143. Issuance.

(a) *New, converted or remodeled retail food facilities.* For retail food facilities that are required to submit plans as specified in § 46.1121(a) (relating to facility and operating plans), the Department [will issue a registration, or the Department] or licensor will issue a license to the applicant after the following occur:

* * * * *

(b) *License [or registration] renewal.* The retail food facility operator of an existing retail food facility shall submit an application, the required fee and be in compliance with this chapter prior to issuance [by the Department of a renewed registration or license, or the issuance] of a renewed license by the Department or a licensor.

(c) *Change of ownership.* Licenses [and registrations] are nontransferable. New owners shall apply to the Department or licensor in accordance with § 46.1142 (relating to application procedure for appropriate license [or registration]).

§ 46.1144. Conditions of retention: responsibilities of the retail food facility operator.

To retain a license [or registration] issued by the Department or licensor under this chapter, a retail food facility operator shall do the following:

(1) Post the license [or registration] in a location in the retail food facility that is conspicuous to consumers and the Department or licensor.

* * * * *

(3) If a retail food facility is required in § 46.1122(a) (relating to HACCP plans) to operate under [a] an HACCP plan, comply with the plan as specified in § 46.1103(c).

(4) Immediately contact the Department or licensor to report an illness of a food employee as specified in [§ 46.111(b) (relating to duty to report disease or medical condition)] Subpart 2-201 of the Model Food Code.

(5) Immediately discontinue operations and notify the Department or licensor if an imminent health hazard may exist because of an emergency such as a fire, flood, extended interruption of electrical or water service, sewage backup, misuse of poisonous or toxic materials, onset of an apparent foodborne illness outbreak, gross unsanitary occurrence or condition or other circumstance that may endanger public health. A retail food facility operator need not discontinue operations in an area of a facility that is unaffected by the imminent health hazard.

(6) Not resume operations discontinued in accordance with paragraph (5) or otherwise according to the [Public Eating and Drinking Places Law or the Food Act] Retail Food Facility Safety Act until approval is obtained from the Department or licensor.

(7) Allow representatives of the Department or licensor access to the retail food facility as specified in § 46.1101 (relating to access to retail food facilities).

* * * * *

(9) [Upgrade or replace refrigeration equipment as specified in § 46.385(a)(3) (relating to potentially hazardous food: hot and cold holding), by December 13, 2008, if the circumstances specified in paragraph (8)(i) and (ii) do not occur first, and unless a variance has been approved as specified in § 46.1103.

(10)] Comply with directives of the Department or licensor including time frames for corrective actions specified in inspection reports, notices, orders, warnings and other directives issued by the Department or licensor in regard to the operator's retail food facility or in response to community emergencies.

[(11)] (10) Accept notices issued and served by the Department or licensor according to the [Public Eating and Drinking Places Law or the Food Act] Retail Food Facility Safety Act.

(11) Remit a fee owed to the Department under section 5703(j) of the Retail Food Facility Safety Act (relating to license required) within the time prescribed by the Department.

(12) Remit a civil penalty assessed against the retail food facility operator under the Retail Food Facility Safety Act or this chapter within 30 days of the later of either of the following:

(i) The effective date of the final adjudication assessing the civil penalty.

(ii) The expiration of the applicable deadline by which the final adjudication could be appealed to an appellate court of the Commonwealth.

Subpart C. MISCELLANEOUS PROVISIONS

CHAPTER 76. FOOD EMPLOYEE CERTIFICATION

(Editor's Note: As part of this proposed rulemaking, the Department is proposing to rescind §§ 76.1—76.17 and 76.19 which appear in 58 Pa. Code pages 76-1—76-18, serial pages (304941)—(304958).)

Sec.
76.1—76.17. (Reserved).
76.19. (Reserved).

(Editor's Note: Sections 76.20 and 79.21 are new and printed in regular type to enhance readability.)

§ 76.20. Definitions.

The following words and terms, when used in this chapter, have the following meanings, unless otherwise defined in Chapter 46 (relating to food code):

Act—The Food Employee Certification Act (3 Pa.C.S. §§ 6501—6510).

Certificate—A certificate of completion issued by a certification program that has been evaluated and listed by an accrediting agency that has been recognized by the Conference for Food Protection Standards for Accreditation of Food Protection Manager Certification Program.

Conference for Food Protection—An independent, National voluntary nonprofit organization to promote food safety and consumer protection. Participants in this organization include Federal, State and local regulatory agencies, universities, test providers, certifying organizations, consumer groups, food service and retail store trade

associations, and retail food facility operators. The objectives of the organization include identifying and addressing food safety problems and promoting uniformity of regulations in food protection.

Department—The Department of Agriculture of the Commonwealth.

Employee—As defined in 3 Pa.C.S. § 5702 (relating to definitions).

§ 76.21. Certification programs.

(a) *General recognition of certification programs.* For purposes of compliance with the act, the Department recognizes certification programs, including examinations developed under those programs, that are evaluated and listed by an accrediting agency that has been recognized by the Conference for Food Protection as conforming to the Conference for Food Protection Standards for Accreditation of Food Protection Manager Certification Program.

(b) *List of acceptable certification programs.* The Department maintains a current list of Department-recognized certification programs. The Department will:

- (1) Publish the current list in the *Pennsylvania Bulletin* annually and when the list is revised.
- (2) Post the current list on the Department's web site at www.agriculture.state.pa.us.
- (3) Provide a copy of the current list upon request directed to the Department's Bureau of Food Safety and Laboratory Services at (717) 787-4315 or the following mailing address:

Pennsylvania Department of Agriculture
Bureau of Food Safety and Laboratory Services
ATTN: Food Employee Certification
2301 North Cameron Street
Harrisburg, Pennsylvania 17110-9408

[Pa.B. Doc. No. 12-1514. Filed for public inspection August 10, 2012, 9:00 a.m.]

GAME COMMISSION

[58 PA. CODE CH. 141]

Hunting and Trapping; Permitted Devices

To effectively manage the wildlife resources of this Commonwealth, the Game Commission (Commission) proposed at its June 26, 2012, meeting to amend § 141.18 (relating to permitted devices) to permit the use of electronic crow decoys to hunt crows.

The proposed rulemaking will not have an adverse impact on the wildlife resources of this Commonwealth.

The authority for the proposed rulemaking is 34 Pa.C.S. (relating to Game and Wildlife Code) (code).

The proposed rulemaking was made public at the June 26, 2012, meeting of the Commission. Comments can be sent, until September 21, 2012, to the Director, Bureau of Information and Education, Game Commission, 2001 Elmerton Avenue, Harrisburg, PA 17110-9797.

1. Purpose and Authority

Each year the Commission is asked to review the potential use of certain devices for hunting or trapping purposes that are otherwise prohibited by statute or regulation. As part of the review process, the Commission generally reviews to what degree use of a given device

might negatively impact principles of resource conservation, equal opportunity or public safety. The Commission has recently been requested to review the use of electronic crow decoys for use in the hunting of crows. After thoughtful review, the Commission determined that use of these devices for crow hunting purposes would be acceptable due to negligible impacts to the previously mentioned principles.

Section 2102(b)(1) of the code (relating to regulations) authorizes the Commission to "promulgate regulations relating to seasons and bag limits for hunting or furtaking, the possession of certain species or parts thereof, the number and types of devices and equipment allowed, the identification of devices and the use and possession of devices." Section 2102(a) of the code provides that "The commission shall promulgate such regulations as it deems necessary and appropriate concerning game or wildlife and hunting or furtaking in this Commonwealth, including regulations relating to the protection, preservation and management of game or wildlife and game or wildlife habitat, permitting or prohibiting hunting or furtaking, the ways, manner, methods and means of hunting or furtaking, and the health and safety of persons who hunt or take wildlife or may be in the vicinity of persons who hunt or take game or wildlife in this Commonwealth." The amendments to § 141.18 are proposed under this authority.

2. Regulatory Requirements

The proposed rulemaking will amend § 141.18 to permit the use of electronic crow decoys to hunt crows.

3. Persons Affected

Persons wishing to hunt crows through the use of crow decoys within this Commonwealth may be affected by the proposed rulemaking.

4. Cost and Paperwork Requirements

The proposed rulemaking should not result in additional cost or paperwork.

5. Effective Date

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

6. Contact Person

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

CARL G. ROE,
Executive Director

Fiscal Note: 48-347. No fiscal impact; (8) recommends adoption.

Annex A

TITLE 58. RECREATION

PART III. GAME COMMISSION

CHAPTER 141. HUNTING AND TRAPPING

Subchapter A. GENERAL

§ 141.18. Permitted devices.

The following devices may be used to hunt or take wildlife:

* * * * *

(4) Electronic illuminating devices that are affixed at the aft end of a bolt or arrow and used solely for the purpose of locating or tracking bolt or arrow flight after being launched from a crossbow or bow.

(5) Electronic crow decoys used solely for harvesting crows.

[Pa.B. Doc. No. 12-1515. Filed for public inspection August 10, 2012, 9:00 a.m.]

[58 PA. CODE CH. 135]

Lands and Buildings; Unlawful Actions

To effectively manage the wildlife resources of this Commonwealth, the Game Commission (Commission) proposed at its June 26, 2012, meeting to amend § 135.2 (relating to unlawful actions) to create a regulatory violation to possess, maintain, operate, occupy or travel by all-terrain vehicle (ATV) or snowmobile in a manner not in accordance with the standards in 75 Pa.C.S. (relating to Vehicle Code).

The proposed rulemaking will not have an adverse impact on the wildlife resources of this Commonwealth.

The authority for the proposed rulemaking is 34 Pa.C.S. (relating to Game and Wildlife Code) (code).

The proposed rulemaking was made public at the June 26, 2012, meeting of the Commission. Comments can be sent, until September 21, 2012, to the Director, Bureau of Information and Education, Game Commission, 2001 Elmerton Avenue, Harrisburg, PA 17110-9797.

1. Purpose and Authority

Unauthorized ATV operation on State game lands and hunter access cooperator properties continue to be one of the top ten violations Wildlife Conservation Officers (WCO) encounter each year. Illegal ATV operation has been identified as a major source of wildlife habitat destruction across the landscapes of these lands and waters. These usage violations are very often accompanied by ATV classification offenses (registration, insurance, and the like) as set forth in 75 Pa.C.S. Under current law, WCOs do not have authority to enforce 75 Pa.C.S. summary offenses. The Commission normally forwards these violations to other enforcement authorities. This practice typically ends in mixed results. Delays and jurisdictional problems often result in significant challenges in the processing of these cases successfully. The Commission is proposing to amend § 135.2 to create a regulatory violation to possess, maintain, operate, occupy or travel by ATV or snowmobile in a manner not in accordance with the standards in 75 Pa.C.S. This proposed amendment will ensure safe and effective enforcement of these requirements occurring on lands and waters under Commission ownership, lease, agreement or control.

Section 721(a) of the code (relating to control of property) provides “The administration of all lands or waters owned, leased or otherwise controlled by the commission shall be under the sole control of the director, and the commission shall promulgate regulations . . . for its use and protection as necessary to properly manage these lands or waters.” Section 2102(a) of the code (relating to regulations) provides that “The commission shall promulgate such regulations as it deems necessary and appropriate concerning game or wildlife and hunting or furtaking in this Commonwealth, including regulations relating to

the protection, preservation and management of game or wildlife and game or wildlife habitat, permitting or prohibiting hunting or furtaking, the ways, manner, methods and means of hunting or furtaking, and the health and safety of persons who hunt or take wildlife or may be in the vicinity of persons who hunt or take game or wildlife in this Commonwealth.” The amendments to § 135.2 are proposed under this authority.

2. Regulatory Requirements

The proposed rulemaking will amend § 135.2 to create a regulatory violation to possess, maintain, operate, occupy or travel by ATV or snowmobile in a manner not in accordance with the standards in 75 Pa.C.S.

3. Persons Affected

Persons operating snowmobiles or ATVs on lands or waters under Commission ownership, lease, agreement or jurisdiction may be affected by the proposed rulemaking.

4. Cost and Paperwork Requirements

The proposed rulemaking should not result in additional cost or paperwork.

5. Effective Date

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

6. Contact Person

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

CARL G. ROE,
Executive Director

Fiscal Note: 48-346. No fiscal impact; (8) recommends adoption.

Annex A

TITLE 58. RECREATION

PART III. GAME COMMISSION

CHAPTER 135. LANDS AND BUILDINGS

Subchapter A. GENERAL PROVISIONS

§ 135.2. Unlawful actions.

In addition to the prohibitions in the act on lands, waters or buildings under Commission ownership, lease, **agreement, control** or jurisdiction, it is unlawful, except with the permission of the person in charge of the lands, or the written permission of the Director to:

* * * * *

(11) Travel by mechanical or motorized conveyance or ride animals on newly constructed, seeded or planted roads, or other areas, when posted against the travel.

(12) Possess, maintain, operate, occupy or travel by snowmobile or ATV in a manner not in accordance with the standards in 75 Pa.C.S. Chapter 77 (relating to Snowmobile and All-Terrain Vehicle Law).

[Pa.B. Doc. No. 12-1516. Filed for public inspection August 10, 2012, 9:00 a.m.]

[58 PA. CODE CH. 131]

Preliminary Provisions; Enforcement

To effectively manage the wildlife resources of this Commonwealth, the Game Commission (Commission) proposed at its June 26, 2012, meeting to amend § 131.3 (relating to enforcement) to eliminate the reference to the Department of Environmental Resources and replace it with a reference to Department of Conservation and Natural Resources and also to update the reference to the Commission's officers as Wildlife Conservation Officers.

The proposed rulemaking will not have an adverse impact on the wildlife resources of this Commonwealth.

The authority for the proposed rulemaking is 34 Pa.C.S. (relating to Game and Wildlife Code) (code).

The proposed rulemaking was made public at the June 26, 2012, meeting of the Commission. Comments can be sent, until September 21, 2012, to the Director, Bureau of Information and Education, Game Commission, 2001 Elmerton Avenue, Harrisburg, PA 17110-9797.

1. *Purpose and Authority*

On July 1, 1995, relevant portions of the Conservation and Natural Resources Act (71 P.S. §§ 1340.101—1340.1103) effectively created the Department of Conservation and Natural Resources and changed the name of the Department of Environmental Resources to the Department of Environmental Protection. The 1995 name changes were not incorporated in § 131.3. The Commission is proposing to amend § 131.3 to amend the reference to the Department of Environmental Resources by updating the reference to the Department of Conservation and Natural Resources. The Commission is also proposing to update the reference to the Commission's officers as Wildlife Conservation Officers. This proposed rulemaking is nonsubstantive and is not intended to further expand or further limit the enforcement authority of any classification of officer.

Section 2102(a) of the code (relating to regulations) provides that "The commission shall promulgate such regulations as it deems necessary and appropriate concerning game or wildlife and hunting or furtaking in this Commonwealth, including regulations relating to the protection, preservation and management of game or wildlife and game or wildlife habitat, permitting or prohibiting hunting or furtaking, the ways, manner, methods and means of hunting or furtaking, and the health and safety of persons who hunt or take wildlife or may be in the vicinity of persons who hunt or take game or wildlife in this Commonwealth." The amendments to § 131.3 are proposed under this authority.

2. *Regulatory Requirements*

The proposed rulemaking will amend § 131.3 to eliminate the reference to the Department of Environmental Resources and replace it with a reference to Department of Conservation and Natural Resources and to also update the reference to the Commission's officers as Wildlife Conservation Officers.

3. *Persons Affected*

Enforcement personnel of the Department of Conservation and Natural Resources will be affected by the proposed rulemaking.

4. *Cost and Paperwork Requirements*

The proposed rulemaking should not result in additional cost or paperwork.

5. *Effective Date*

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

6. *Contact Person*

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

CARL G. ROE,
Executive Director

Fiscal Note: 48-345. No fiscal impact; (8) recommends adoption.

Annex A**TITLE 58. RECREATION****PART III. GAME COMMISSION****CHAPTER 131. PRELIMINARY PROVISIONS****§ 131.3. Enforcement.**

In addition to [**Game Commission**] **Wildlife Conservation Officers** or Deputy [**Game Commission**] **Wildlife Conservation Officers**, the Director designates and empowers the following persons to enforce the act and this part while acting within the scope of their employment and jurisdiction.

* * * * *

(4) Pennsylvania Department of [**Environmental Conservation and Natural Resources**] personnel with enforcement powers.

* * * * *

[Pa.B. Doc. No. 12-1517. Filed for public inspection August 10, 2012, 9:00 a.m.]

[58 PA. CODE CH. 147]

Special Permits; Nuisance Wildlife Control Operator

To effectively manage the wildlife resources of this Commonwealth, the Game Commission (Commission) proposed at its June 26, 2012, meeting to amend § 147.724 (relating to nuisance wildlife control operator examination) to require applicants to take the required examination within 180 days of the final approval of their applications by the Bureau of Wildlife Protection (Bureau) and limit approved applicants to a total of two opportunities to take the examination each permit year. The Commission also proposed to rescind § 147.724a and add these requirements to § 147.724.

The proposed rulemaking will not have an adverse impact on the wildlife resources of this Commonwealth.

The authority for the proposed rulemaking is 34 Pa.C.S. (relating to Game and Wildlife Code) (code).

The proposed rulemaking was made public at the June 26, 2012, meeting of the Commission. Comments can be sent, until September 21, 2012, to the Director, Bureau of Information and Education, Game Commission, 2001 Elmerton Avenue, Harrisburg, PA 17110-9797.

1. *Purpose and Authority*

Each year the Commission processes a few hundred nuisance wildlife control operator applications. The application process ends with an examination that shall be passed with a minimum score of 80% before a permit will be issued. In numerous instances, applicants never take the examination or contact the Commission after an extended period of time and request the opportunity to take the examination. Currently, § 147.724 does not limit an applicant from taking the examination months or even years after their initial application. This deferral in time often results in unreasonable administrative difficulties for the Commission in its attempt to accommodate the delayed testing for these applicants. The Commission is proposing to amend § 147.724 to require applicants to take the required examination within 180 days of the final approval of their applications by the Bureau.

The nuisance wildlife control operator examination has a high failure rate. This is normally the result of the applicant not reviewing or studying the materials provided by the Commission. The Commission has recently identified a significant rise in the number of applicants retesting, sometimes multiple times in a single year, in an attempt to learn the material from the test and ultimately pass the examination. Currently, § 147.724 does not limit the number of times an approved applicant can take the required examination. The Commission is also proposing to amend § 147.724 to limit approved applicants to a total of two opportunities to take the examination each permit year.

Lastly, the Commission is proposing to rescind § 147.724a and add the requirements to § 147.724. This amendment is nonsubstantive and does not create or remove regulatory requirements.

Section 2102(a) of the code (relating to regulations) provides that "The commission shall promulgate such regulations as it deems necessary and appropriate concerning game or wildlife and hunting or furtaking in this Commonwealth, including regulations relating to the protection, preservation and management of game or wildlife and game or wildlife habitat, permitting or prohibiting hunting or furtaking, the ways, manner, methods and means of hunting or furtaking, and the health and safety of persons who hunt or take wildlife or may be in the vicinity of persons who hunt or take game or wildlife in this Commonwealth." The amendments to § 147.724 and rescission of § 147.724a are proposed under this authority.

2. *Regulatory Requirements*

The proposed rulemaking will amend § 147.724 to require applicants to take the required examination within 180 days of the final approval of their applications by the Bureau and limit approved applicants to a total of two opportunities to take the examination each permit year. The proposed rulemaking will also rescind § 147.724a and add the requirements to § 147.724.

3. *Persons Affected*

Persons wishing to apply for a nuisance wildlife control operator permit may be affected by the proposed rulemaking.

4. *Cost and Paperwork Requirements*

The proposed rulemaking should not result in additional cost or paperwork.

5. *Effective Date*

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

6. *Contact Person*

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

CARL G. ROE,
Executive Director

Fiscal Note: 48-348. No fiscal impact; (8) recommends adoption.

Annex A

TITLE 58. RECREATION

PART III. GAME COMMISSION

CHAPTER 147. SPECIAL PERMITS

Subchapter T. NUISANCE WILDLIFE CONTROL OPERATOR

§ 147.724. Nuisance wildlife control operator examination.

(a) New agents [**shall be**] **are** required to obtain a minimum score of 80% on a supervised written examination approved by the Director.

(b) The examination [**shall include**] **must cover** the following subject matter:

* * * * *

(4) Diseases and parasites.

(5) **Public relations.**

(c) **New or existing agents seeking certification to control white-tailed deer are required to pass an additional separate examination after passing the basic examination. This examination is subject to the same examination subject matter and minimum score standards under subsections (a) and (b).**

(d) **New or existing agents applying for certification shall take the required examination within 180 days of final approval of their applications by the Bureau of Wildlife Protection.**

(e) **New or existing agents are eligible to take each certification examination a maximum of two times each permit year.**

§ 147.724a. [**Nuisance deer control examination**] **(Reserved).**

[**(a) New agents shall be required to obtain a minimum score of 80% on a supervised written examination approved by the Director.**

(b) The examination must include the following subject matter:

(1) **Biology, life history and habits of white-tailed deer.**

(2) **Control methods, care and handling and euthanasia.**

- (3) **Laws and regulations.**
 (4) **Diseases and parasites.**
 (5) **Public relations.]**

[Pa.B. Doc. No. 12-1518. Filed for public inspection August 10, 2012, 9:00 a.m.]

[58 PA. CODE CH. 133]
Wildlife Classification; Birds

To effectively manage the wildlife resources of this Commonwealth, the Game Commission (Commission) proposed at its June 26, 2012, meeting to amend § 133.21 (relating to classification of birds) to reflect the current status of breeding populations of threatened and endangered wild birds within this Commonwealth and also to update scientific nomenclature.

The proposed rulemaking will not have an adverse impact on the wildlife resources of this Commonwealth.

The authority for the proposed rulemaking is 34 Pa.C.S. (relating to Game and Wildlife Code) (code).

The proposed rulemaking was made public at the June 26, 2012, meeting of the Commission. Comments can be sent, until September 21, 2012, to the Director, Bureau of Information and Education, Game Commission, 2001 Elmerton Avenue, Harrisburg, PA 17110-9797.

1. *Purpose and Authority*

The Commission is proposing to amend § 133.21 to reflect the current status of breeding populations of threatened and endangered wild birds within this Commonwealth and also to update scientific nomenclature. The upland sandpiper, a grassland nesting bird long classified as threatened, has declined precipitously over the last two decades and has virtually disappeared from this Commonwealth. The Commission believes its rarity and diminished breeding range warrant downgrading its status to endangered. The northern harrier, once a rare but regular breeder in this Commonwealth, has experienced a marked decline in this Commonwealth as well as declines in northwest and northcentral regions over the last few decades, prompting a proposal to list this species as threatened. The northern harrier is listed as either endangered or threatened in neighboring states. Long-eared owls are extremely rare breeders in this Commonwealth and difficult to survey. Nesting locations have been confirmed in only seven locations in recent years, despite a concerted survey effort over much of the last decade. Most nests are located in the Ridge and Valley and Appalachian Plateau regions. The rarity and diffuse scattering of nest records within this Commonwealth have prompted this proposed rulemaking to list the long-eared owl as threatened. Finally, in a major reorganization of warbler nomenclature in 2011 by the American Ornithologist's Union, the genus *Dendroica* was changed to *Setophaga* necessitating this administrative change in the scientific name of the endangered blackpoll warbler.

Section 322(c)(8) of the code (relating to powers and duties of commission) specifically empowers the Commission to "Add to or change the classification of any wild bird or wild animal." Section 2102(a) of the code (relating to regulations) provides that "The commission shall promulgate such regulations as it deems necessary and appropriate concerning game or wildlife and hunting or

furtaking in this Commonwealth, including regulations relating to the protection, preservation and management of game or wildlife and game or wildlife habitat, permitting or prohibiting hunting or furtaking, the ways, manner, methods and means of hunting or furtaking, and the health and safety of persons who hunt or take wildlife or may be in the vicinity of persons who hunt or take game or wildlife in this Commonwealth." The amendments to § 133.21 are proposed under this authority.

2. *Regulatory Requirements*

The proposed rulemaking will amend § 133.21 to reflect the current status of breeding populations of threatened and endangered wild birds in this Commonwealth and also to update scientific nomenclature.

3. *Persons Affected*

Persons wishing to hunt or trap game or wildlife within this Commonwealth may be affected by the proposed rulemaking.

4. *Cost and Paperwork Requirements*

The proposed rulemaking should not result in additional cost or paperwork.

5. *Effective Date*

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

6. *Contact Person*

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

CARL G. ROE,
Executive Director

Fiscal Note: 48-344. No fiscal impact; (8) recommends adoption.

Annex A

TITLE 58. RECREATION

PART III. GAME COMMISSION

CHAPTER 133. WILDLIFE CLASSIFICATION

Subchapter B. BIRDS

§ 133.21. **Classification of birds.**

The following birds are classified:

(1) *Endangered.*

* * * * *

(xi) Blackpoll Warbler ([*Dendroica*] *Setophaga striata*)

* * * * *

(xv) Yellow-bellied Flycatcher (*Empidonax flaviventris*)

(xvi) **Upland Sandpiper (*Batramia longicauda*)**

(2) *Threatened.*

* * * * *

(iii) [**Upland Sandpiper (*Batramia longicauda*)**]
Northern Harrier (*Circus cyaneus*)

(iv) **Long-eared Owl (*Asio otus*)**

[Pa.B. Doc. No. 12-1519. Filed for public inspection August 10, 2012, 9:00 a.m.]

STATEMENTS OF POLICY

Title 4—ADMINISTRATION

PART II. EXECUTIVE BOARD

[4 PA. CODE CH. 9]

Reorganization of the Department of Agriculture

The Executive Board approved a reorganization of the Department of Agriculture effective July 16, 2012.

The organization chart at 42 Pa.B. 5240 (August 11, 2012) is published at the request of the Joint Committee on Documents under 1 Pa. Code § 3.1(a)(9) (relating to contents of *Code*).

(Editor's Note: The Joint Committee on Documents has found organization charts to be general and permanent in nature. This document meets the criteria of 45 Pa.C.S. § 702(7) (relating to contents of Pennsylvania Code) as a document general and permanent in nature which shall be codified in the Pennsylvania Code.)

[Pa.B. Doc. No. 12-1520. Filed for public inspection August 10, 2012, 9:00 a.m.]

PART II. EXECUTIVE BOARD

[4 PA. CODE CH. 9]

Reorganization of the Department of Transportation

The Executive Board approved a reorganization of the Department of Transportation effective July 16, 2012.

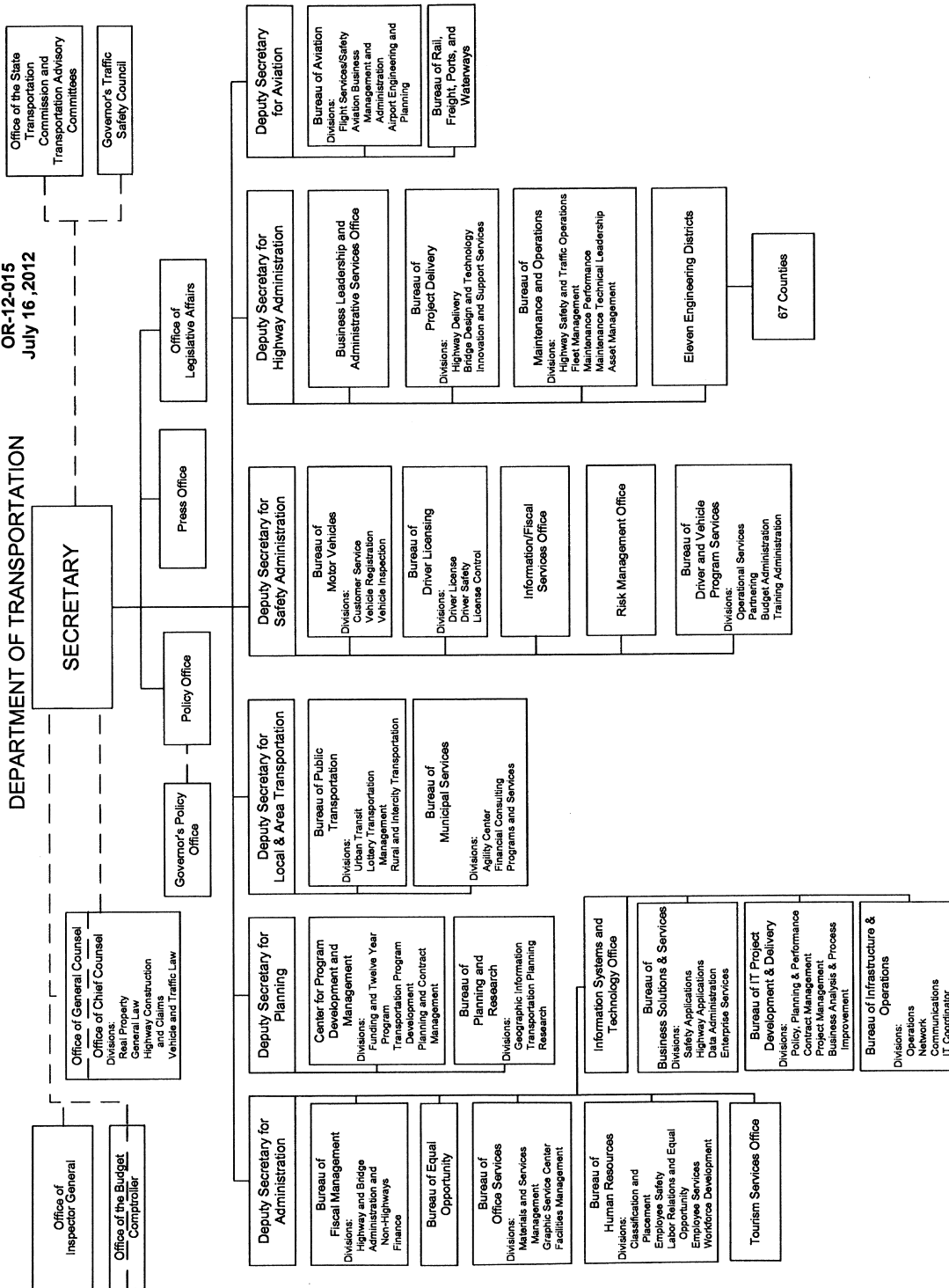
The organization chart at 42 Pa.B. 5241 (August 11, 2012) is published at the request of the Joint Committee on Documents under 1 Pa. Code § 3.1(a)(9) (relating to contents of *Code*).

(Editor's Note: The Joint Committee on Documents has found organization charts to be general and permanent in nature. This document meets the criteria of 45 Pa.C.S. § 702(7) (relating to contents of Pennsylvania Code) as a document general and permanent in nature which shall be codified in the Pennsylvania Code.)

[Pa.B. Doc. No. 12-1521. Filed for public inspection August 10, 2012, 9:00 a.m.]

OR-12-015
July 16, 2012

DEPARTMENT OF TRANSPORTATION



DEPARTMENT OF GENERAL SERVICES

[4 PA. CODE CH. 68]

Small Diverse Business Opportunities within Construction Contracts

The Department of General Services amends Chapter 68 (relating to contract compliance) to update former guidelines and focus on a single goal concept to utilize Small Diverse Businesses. Section 68.101 is rescinded and replaced with § 68.102 (relating to contract compliance—construction contracts—statement of policy). Contractors either commit to meet the minimum participation level or document good faith efforts to secure commitments with Small Diverse Businesses. In addition, this statement of policy modifies commitment credits for stocking suppliers and nonstocking suppliers.

This statement of policy takes effect immediately upon publication in the *Pennsylvania Bulletin*.

Specific questions regarding information provided in this statement of policy may be directed to the Department of General Services, Office of Chief Counsel, 603 North Office Building, 401 North Street, Harrisburg, PA 17120.

Fiscal Impact

This statement of policy is fiscal neutral.

Effective Date

This statement of policy is effective upon publication in the *Pennsylvania Bulletin*.

SHERI PHILLIPS,
Secretary

(Editor's Note: Title 4 of the Pennsylvania Code is amended by deleting the statement of policy in § 68.101 and by adding a statement of policy in § 68.102 to read as set forth in Annex A.)

Fiscal Note: 8-15. No fiscal impact; (8) recommends adoption.

Annex A

TITLE 4. ADMINISTRATION

PART III. DEPARTMENT OF GENERAL SERVICES

Subpart C. CONSTRUCTION AND PROCUREMENT

ARTICLE III. PROCUREMENT

CHAPTER 68. CONTRACT COMPLIANCE

Subchapter B. CONTRACT COMPLIANCE—CONSTRUCTION CONTRACTS

§ 68.101. (Reserved).

§ 68.102. Contract compliance—construction contracts—statement of policy.

(a) The Department of General Services (DGS) is strongly committed to establishing, maintaining and ensuring that open and equitable contracting practices are utilized in construction activities. Contractors may not discriminate against Minority Business Enterprises (MBEs), Woman Business Enterprises (WBEs), Veteran Business Enterprises (VBEs) or Service-Disabled Veteran Business Enterprises (SDVBEs) (together referred to as Small Diverse Businesses) in their solicitation and utilization of subcontractors, manufacturers or suppliers.

(b) DGS will establish a minimum participation level (MPL) for Small Diverse Businesses for each contract in the bid documents. The specific MPL set will be based on factors such as geographical locations, contract size, contract type and the availability of Small Diverse Businesses.

(c) Throughout the duration of the contract, DGS will require contractors to use reasonable and good faith efforts to identify, solicit and secure commitments with Small Diverse Businesses as subcontractors, manufacturers and suppliers.

(d) If awarded the contract, unless the contractor chooses to “opt-in” as stated in subsection (e), the contractor is required, during the term of the contract, to document its reasonable and good faith efforts to identify, solicit and secure commitments with Small Diverse Businesses for each subcontract and purchase order exceeding \$10,000. DGS may require the contractor to submit the Good Faith Effort Documentation.

(e) If awarded the contract, rather than having to prepare, and possibly submit, the Good Faith Effort Documentation for each subcontract and purchase order exceeding \$10,000, a contractor has the option of simply committing to meet or exceed the MPL.

(f) Contractors either selecting the “opt-in” option or the Good Faith Effort Documentation option shall submit a report on Small Diverse Business utilization as part of every application for payment that documents commitments and payments made to Small Diverse Businesses during the contract term. The report must include the name of the company, description of work and amount paid.

(g) Contractors will be credited for Small Diverse Business participation in accordance with the following chart:

<i>Small Diverse Business Category</i>	<i>% of Credit</i>
<i>Subcontractors:</i> The Small Diverse Business subcontractor, through its own employees, shall perform at least 60% of the amount of the subcontract.	Count 100% of the subcontract amount as well as 100% of any subcontract from the subcontractor to another Small Diverse Business subcontractor.
<i>Manufacturers:</i> A manufacturer is a firm that operates or maintains a factory or establishment that produces, on the premises, the materials, supplies, articles or equipment required under the contract and of the general character described by the specifications.	Count 100% of the total cost of the materials or supplies purchased from the Small Diverse Business manufacturer.

<i>Small Diverse Business Category</i>	<i>% of Credit</i>
<p><i>Stocking suppliers:</i> A stocking supplier is a firm that owns, operates or maintains a store, warehouse or other establishment in which the materials, supplies, articles or equipment of the general character described by the specifications and required under the contract are bought, kept in stock and regularly sold or leased to the public in the usual course of business.</p>	<p>Count 60% of the total cost of the materials or supplies purchased from the Small Diverse Business stocking supplier.</p>
<p><i>Nonstocking suppliers:</i> A nonstocking supplier does not carry inventory but orders materials from a manufacturer, manufacturer's representative or a stocking supplier. For a nonstocking supplier to receive credit, the nonstocking supplier shall perform a useful business function by engaging in meaningful work (that is, negotiating price; determining quality and quantity; ordering materials; and paying for the materials).</p> <p>Industry practices and other relevant factors will be considered.</p>	<p>Count only the amount of the fee or commission charged by the Small Diverse Business nonstocking supplier for assistance in the procurement of the materials and supplies provided the fees are reasonable and not excessive as compared with fees customarily allowed for similar services.</p>

[Pa.B. Doc. No. 12-1522. Filed for public inspection August 10, 2012, 9:00 a.m.]

NOTICES

DEPARTMENT OF BANKING

Actions on Applications

The Department of Banking (Department), under the authority contained in the act of November 30, 1965 (P. L. 847, No. 356), known as the Banking Code of 1965; the act of December 14, 1967 (P. L. 746, No. 345), known as the Savings Association Code of 1967; the act of May 15, 1933 (P. L. 565, No. 111), known as the Department of Banking Code; and the act of December 19, 1990 (P. L. 834, No. 198), known as the Credit Union Code, has taken the following action on applications received for the week ending July 31, 2012.

Under section 503.E of the Department of Banking Code (71 P. S. § 733-503.E), any person wishing to comment on the following applications, with the exception of branch applications, may file their comments in writing with the Department of Banking, Corporate Applications Division, 17 North Second Street, Suite 1300, Harrisburg, PA 17101-2290. Comments must be received no later than 30 days from the date notice regarding receipt of the application is published in the *Pennsylvania Bulletin*. The nonconfidential portions of the applications are on file at the Department and are available for public inspection, by appointment only, during regular business hours. To schedule an appointment, contact the Corporate Applications Division at (717) 783-2253. Photocopies of the nonconfidential portions of the applications may be requested consistent with the Department's Right-to-Know Law Records Request policy.

BANKING INSTITUTIONS

Interim Incorporations

<i>Date</i>	<i>Name and Location of Applicant</i>	<i>Action</i>
7-26-2012	Gateway Interim Bank McMurray Washington County The purpose of Gateway Interim Bank, McMurray, is to facilitate the proposed merger of Gateway Bank of Pennsylvania, McMurray, with and into S&T Bancorp, IN.	Approved

Holding Company Acquisitions

<i>Date</i>	<i>Name and Location of Applicant</i>	<i>Action</i>
7-26-2012	e3holdings, Inc. Malvern Chester County Application for approval to acquire 100% of American Eagle Savings Bank, Boothwyn.	Withdrawn
7-26-2012	S&T Bancorp, Inc. Indiana Indiana County Application for approval to acquire 100% of Gateway Interim Bank, McMurray, and thereby indirectly acquire 100% of Gateway Bank of Pennsylvania, McMurray.	Approved
7-31-2012	ESSA Bancorp, Inc. Stroudsburg Monroe County Application for approval to acquire 100% of First Star Bancorp, Inc., Bethlehem, and thereby indirectly acquire 100% of First Star Bank, Bethlehem.	Effective

Consolidations, Mergers and Absorptions

<i>Date</i>	<i>Name and Location of Applicant</i>	<i>Action</i>
7-26-2012	Gateway Interim Bank McMurray Washington County Application for approval to merge Gateway Bank of Pennsylvania, McMurray, with and into Gateway Interim Bank, McMurray.	Approved
7-31-2012	ESSA Bank and Trust Stroudsburg Monroe County Merger of First Star Bank, Bethlehem, with and into ESSA Bank and Trust, Stroudsburg. All branch offices of First Star Bank will become branch offices of ESSA Bank and Trust including the former main office of First Star Bank located at:	Effective

418 West Broad Street
Bethlehem
Northampton

Branch Applications**De Novo Branches**

<i>Date</i>	<i>Name and Location of Applicant</i>	<i>Location of Branch</i>	<i>Action</i>
7-27-2012	Northwest Savings Bank Warren Warren County	Lot # 6R Butler Butler County	Filed

Branch Discontinuances

<i>Date</i>	<i>Name and Location of Applicant</i>	<i>Location of Branch</i>	<i>Action</i>
6-26-2012	3rd Fed Bank Newtown Bucks County	905 North 2nd Street Philadelphia Philadelphia County	Approved

SAVINGS INSTITUTIONS

No activity.

CREDIT UNIONS**Consolidations, Mergers and Absorptions**

<i>Date</i>	<i>Name and Location of Applicant</i>	<i>Action</i>
7-26-2012	TruMark Financial Credit Union Trevose Bucks County	Filed

Application for approval to merge BC3 Employees Federal Credit Union, Newtown, with and into TruMark Financial Credit Union, Trevose.

The Department's web site at www.banking.state.pa.us includes public notices for more recently filed applications.

GLENN E. MOYER,
Secretary

[Pa.B. Doc. No. 12-1523. Filed for public inspection August 10, 2012, 9:00 a.m.]

DEPARTMENT OF CONSERVATION AND NATURAL RESOURCES

Request for Bids

The Department of Conservation and Natural Resources is soliciting bids for the following projects. Bid documents can be obtained from the Administrative Services Section, Bureau of Facility Design and Construction, (717) 787-5055:

FDC-007-7170.1—Sand Mountain Trail, Forest District No. 7, Bald Eagle State Forest, Potter, Gregg and Penn Townships, Centre County. Work included under this contract consists of constructing a new recreational trail and reconstructing an existing recreational trail in Bald Eagle State Forest. Work under this contract also in-

cludes seeding and mulching of all disturbed areas. Bid documents will be available on or after August 15, 2012. The bid opening will be held on September 13, 2012.

FDC-020-7554.1—Shanerburg Road, Tropical Storm Lee Damage, Forest District No. 20, Loyalsock State Forest, Laporte Township, Sullivan County. Work included under this contract consists of 465 linear feet of embankment rebuild and repair, 1,225 linear feet of roadway repair and 1,964 cubic yards material removal, excavation, water diversion, erosion and sediment pollution control. Bid documents will be available on or after August 15, 2012. The bid opening will be held on September 13, 2012.

RICHARD J. ALLAN,
Secretary

[Pa.B. Doc. No. 12-1524. Filed for public inspection August 10, 2012, 9:00 a.m.]

DEPARTMENT OF ENVIRONMENTAL PROTECTION

Applications, Actions and Special Notices**APPLICATIONS**

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

This notice provides information about persons who have applied for a new, amended or renewed NPDES or WQM permit, a permit waiver for certain stormwater discharges or submitted a Notice of Intent (NOI) for coverage under a

General Permit. The applications concern, but are not limited to, discharges regarding industrial, animal or sewage waste, discharges to groundwater, discharges associated with municipal separate storm sewer systems (MS4), stormwater associated with construction activities or concentrated animal feeding operations (CAFO). This notice is provided in accordance with 25 Pa. Code Chapters 91 and 92a and 40 CFR Part 122, implementing The Clean Streams Law (35 P. S. §§ 691.1—691.1001) and the Federal Clean Water Act (33 U.S.C.A. §§ 1251—1376).

<i>Location</i>	<i>Permit Authority</i>	<i>Application Type or Category</i>
Section I	NPDES	Renewals
Section II	NPDES	New or Amendment
Section III	WQM	Industrial, Sewage or Animal Waste; Discharge into Groundwater
Section IV	NPDES	MS4 Individual Permit
Section V	NPDES	MS4 Permit Waiver
Section VI	NPDES	Individual Permit Stormwater Construction
Section VII	NPDES	NOI for Coverage under NPDES General Permits

For NPDES renewal applications in Section I, the Department of Environmental Protection (Department) has made a tentative determination to reissue these permits for 5 years subject to effluent limitations and monitoring and reporting requirements in their current permits, with appropriate and necessary updated requirements to reflect new and changed regulations and other requirements.

For applications for new NPDES permits and renewal applications with major changes in Section II, as well as applications for MS4 Individual Permits and Individual Stormwater Construction Permits in Sections IV and VI, the Department, based upon preliminary reviews, has made tentative determinations of proposed effluent limitations and other terms and conditions for the permit applications. In accordance with 25 Pa. Code § 92a.32(d), the proposed discharge of stormwater associated with construction activities will be managed in accordance with the requirements of 25 Pa. Code Chapter 102. These determinations are published as proposed actions for comments prior to taking final actions.

Unless indicated otherwise, the United States Environmental Protection Agency (EPA) Region III Administrator has waived the right to review or object to proposed NPDES permit actions under the waiver provision in 40 CFR 123.24(d).

Persons wishing to comment on NPDES applications are invited to submit statements to the contact office noted before the application within 30 days from the date of this public notice. Persons wishing to comment on WQM permit applications are invited to submit statements to the office noted before the application within 15 days from the date of this public notice. Comments received within the respective comment periods will be considered in the final determinations regarding the applications. A comment submittal should include the name, address and telephone number of the writer and a concise statement to inform the Department of the exact basis of a comment and the relevant facts upon which it is based.

The Department will also accept requests for public hearings on applications. A public hearing may be held if the responsible office considers the public response significant. If a hearing is scheduled, a notice of the hearing will be published in the *Pennsylvania Bulletin* and a newspaper of general circulation within the relevant geographical area. The Department will postpone its final determination until after a public hearing is held.

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

I. NPDES Renewal Applications

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

<i>NPDES No. (Type)</i>	<i>Facility Name & Address</i>	<i>County & Municipality</i>	<i>Stream Name (Watershed No.)</i>	<i>EPA Waived Y/N?</i>
PA0031071 (Sewage)	St Pius X Seminary STP 1000 Seminary Road Dalton, PA 18414	Lackawanna County Dalton Borough	Unnamed Tributary to Ackerly Creek (4-F)	Y

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

<i>NPDES No. (Type)</i>	<i>Facility Name & Address</i>	<i>County & Municipality</i>	<i>Stream Name (Watershed #)</i>	<i>EPA Waived Y/N?</i>
PA0260398 (CAFO)	Yippee Farms 880 Pinkerton Road Mt. Joy, PA 17556	Rapho Township Lancaster County	Little Chickies Creek / 7-G	Y
PA0246468 (CAFO)	Beaver Ridge Farm 1400 Fowler Hollow Road Blain, PA 17006	Jackson Township Perry County	Shermans Creek / 7-A	Y

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

<i>NPDES No. (Type)</i>	<i>Facility Name & Address</i>	<i>County & Municipality</i>	<i>Stream Name (Watershed#)</i>	<i>EPA Waived Y/N?</i>
PA0005045 (Industrial Waste)	Seneca Generating Station, 500 Powerhouse Drive, Warren, Pa 16365	Warren County Mead Township	Allegheny River (16-B)	Y
PA0034380 (Sewage)	Emlenton Service Plaza 1-80 Exit 43, Emlenton, PA 16373	Venango County Scrubgrass Township	Unnamed Tributary to the Allegheny River (16-G)	Y
PA0033421 (Sewage)	Mercer Grove City Koa Campground 1337 Butler Pike Mercer, PA 16137-8428	Mercer County Findley Township	Unnamed Tributary to Pine Run (20-A)	Y

Southwest Regional Office: Clean Water Program Manager, 400 Waterfront Drive, Pittsburgh, PA 15222-4745. Phone: 412.442.4000.

<i>NPDES No. (Type)</i>	<i>Facility Name & Address</i>	<i>County & Municipality</i>	<i>Stream Name (Watershed No.)</i>	<i>EPA Waived Y/N?</i>
PA0009466 (Industrial Waste)	Vale Wood Dairy PO Box 203 Cresson, PA 16630-0203	Cambria County Munster Township	Clearfield Creek (8-C)	Y

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

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

PA0058131, SIC Code 8811, **Jefferis Warren A**, 1739 Pottstown Pike, Glenmoore, PA 19343-2642. Facility Name: Jeffries SRSTP. This existing facility is located in East Nantmeal Township, **Chester County**.

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

The receiving stream(s), Beaver Run, is located in State Water Plan watershed 3-D and is classified for Exceptional Value Waters and Migratory Fish, aquatic life, water supply and recreation. The discharge is not expected to affect public water supplies.

The proposed effluent limits for Outfall 001 are based on a design flow of 0.0008 MGD.

<i>Parameters</i>	<i>Mass (lb/day)</i>			<i>Concentration (mg/l)</i>		<i>Instant. Maximum</i>
	<i>Average Monthly</i>	<i>Minimum</i>	<i>Inst Min</i>	<i>Average Monthly</i>	<i>XXX</i>	
Flow (GPD)	Report	XXX	XXX	XXX	XXX	XXX
pH (S.U.)	XXX	XXX	6.0	XXX	XXX	9.0
Dissolved Oxygen	XXX	XXX	6.0	XXX	XXX	XXX
CBOD ₅	XXX	XXX	XXX	10	XXX	20
Total Suspended Solids	XXX	XXX	XXX	10	XXX	20
Fecal Coliform (CFU/100 ml)	XXX	XXX	XXX	200	XXX	XXX
Ammonia-Nitrogen						
May 1 - Oct 31	XXX	XXX	XXX	1.5	XXX	3.0
Nov 1 - Apr 30	XXX	XXX	XXX	4.5	XXX	9.0

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

- AMR Report to DEP.
- Abandon STP when municipal sewage facilities becomes available.
- Remedial Measures
- No stormwater discharge
- Necessary property rights
- Change in ownership
- Sludge Disposal

You may make an appointment to review the DEP files on this case by calling the File Review Coordinator at 484-250-5910.

The EPA Waiver is in effect.

PA0026182 A-1, Sewage, SIC Code 4952, **Lansdale Borough**, One Vine Street, Lansdale, PA 19446-3601. Facility Name: Lansdale Borough STP. This existing facility is located in Lansdale Borough, **Montgomery County**.

Description of Existing Activity: Amendment of an NPDES permit to discharge treated sewage from Lansdale Borough STP located at 652 West Ninth Street. This is for a proposed increase in annual average flow from 2.6 MGD to 3.2 MGD, including 0.5 MGD of flow from Merck. Maximum monthly flow will remain 4.5 MGD.

The receiving stream(s), Unnamed Tributary to West Branch Neshaminy Creek, is located in State Water Plan watershed 2-F and is classified for Warm Water Fishes and Migratory Fishes, aquatic life, water supply and recreation. The nearest downstream public water supply intake for AQUA PA is located on Neshaminy Creek.

The proposed effluent limits for Outfall 001 are based on an average flow of 3.2 MGD and a maximum monthly flow of 4.5 MGD.

<i>Parameters</i>	<i>Mass (lb/day)</i>		<i>Minimum</i>	<i>Concentration (mg/l)</i>		<i>Instant. Maximum</i>
	<i>Average Monthly</i>	<i>Weekly Average</i>		<i>Average Monthly</i>	<i>Weekly Average</i>	
Flow (MGD)	Report	Report Daily Max	XXX	XXX	XXX	XXX
pH (S.U.)	XXX	XXX	6.0	XXX	XXX	9.0
Dissolved Oxygen	XXX	XXX	6.0	XXX	XXX	XXX
Total Residual Chlorine	XXX	XXX	XXX	0.013	XXX	0.043
CBOD ₅						
May 1 - Oct 31	413	638	XXX	11	17	22
Nov 1 - Apr 30	826	1,238	XXX	22	33	44
Total Suspended Solids	1,126	1,689	XXX	30	45	60
Fecal Coliform (CFU/100 ml)	XXX	XXX	XXX	200	1,000	XXX
				Geo Mean	Max	
Nitrate-Nitrite as N						
Jul 1 - Oct 31	356	XXX	XXX	9.5	XXX	19.0
Nov 1 - Jun 30	Report	XXX	XXX	Report	XXX	XXX
Ammonia-Nitrogen						
May 1 - Oct 31	56	XXX	XXX	1.5	XXX	3.0
Nov 1 - Apr 30	169	XXX	XXX	4.5	XXX	9.0
Total Kjeldahl Nitrogen	Report	XXX	XXX	Report	XXX	XXX
Total Phosphorus						
Apr 1 - Oct 31 (Final)	35	XXX	XXX	0.93	XXX	1.86
Nov 1 - Mar 31 (Final)	70	XXX	XXX	1.86	XXX	3.72
Total Aluminum	XXX	XXX	XXX	Report	XXX	XXX
Total Copper (Final)	XXX	XXX	XXX	Report	XXX	XXX
Dissolved Iron	XXX	XXX	XXX	Report	XXX	XXX
Total Iron	XXX	XXX	XXX	Report	XXX	XXX
Hardness, Total (as CaCO ₃)						
(Final)	XXX	XXX	XXX	Report	XXX	XXX
Chronic toxicity (Ceriodaphnia) (TUc)						
(Interim)	XXX	XXX	XXX	XXX	Report Max	XXX
(Final)	XXX	XXX	XXX	XXX	1.02 Max	XXX
Chronic toxicity (Pimephales) (TUc) (Interim)	XXX	XXX	XXX	XXX	Report Max	XXX
(Final)	XXX	XXX	XXX	XXX	1.02 Max	XXX

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

- Designation of Responsible Operator
- Remedial Measures if Public Nuisance
- No Stormwater to Sewers
- Necessary Property Rights
- Small Stream Discharge
- Change in Ownership
- Chlorine Dosages
- Proper Sludge Disposal
- TMDL/WLA Analysis
- WET Testing for Renewal
- WET Testing Conditions
- Operator Training

- TRC Reporting
- Stormwater Monitoring
- Combined Sewer Overflow
- Laboratory Certification
- Instantaneous Maximum Limits

You may make an appointment to review the DEP files on this case by calling the File Review Coordinator at 484-250-5910.

The EPA Waiver is not in effect.

Northcentral Regional Office: Regional Clean Water Program Manager, 208 W Third Street Suite 101, Williamsport, PA 17701-6448, Telephone: 570.327.3664.

PA0234010, SIC Code 4953, **PA Department of Transportation (District 2-0)**, 1924 Daisy Street, Clearfield, PA 16830. Facility Name: I-99 ERPA Leachate Treatment Facility. This proposed facility is located in Worth Township, **Centre County**.

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

The receiving stream(s), Bald Eagle Creek, is located in State Water Plan watershed 9-C and is classified for Trout Stock Fishes, Migratory Fishes, aquatic life, water supply and recreation. The discharge is not expected to affect public water supplies.

The proposed effluent limits for Outfall 001 are based on a design flow of 0.0045 MGD.

Parameters	Mass (lb/day)			Concentration (mg/l)		
	Average Monthly	Daily Maximum	Minimum	Average Monthly	Daily Maximum	Instant. Maximum
Flow (MGD)	Report	Report	XXX	XXX	XXX	XXX
pH (S.U.)	XXX	XXX	6.0	XXX	XXX	9.0
Total Suspended Solids	1.0	2.0	XXX	27	54	65
Total Dissolved Solids	Report	Report	XXX	Report	Report	XXX
Total Aluminum	0.03	0.06	XXX	0.75	1.50	1.87
Total Arsenic	0.0004	0.001	XXX	0.01	0.02	0.025
Dissolved Iron	XXX	XXX	XXX	XXX	XXX	7.0
Total Iron	0.06	0.11	XXX	1.5	3.0	3.7
Total Manganese	0.04	0.08	XXX	1.0	2.0	2.5
Total Mercury (µg/L)	0.0000019	0.0000038	XXX	0.05	0.10	0.13
Total Zinc	0.004	0.008	XXX	0.11	0.20	0.25

You may make an appointment to review the DEP files on this case by calling the File Review Coordinator at 570-327-3693.

The EPA Waiver is in effect.

PA0009270, SIC Code 2047, **Del Monte Corp**, 6670 Lowe Street, Bloomsburg, PA 17815-8613. Facility Name: Del Monte Bloomsburg Plant. This existing facility is located in South Centre Township, **Columbia County**.

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

The receiving stream(s), Susquehanna River, is located in State Water Plan watershed 5-D and is classified for Warm Water Fishes, aquatic life, water supply and recreation. The discharge is not expected to affect public water supplies.

The proposed effluent limits for Outfall 001 are based on a design flow of 0.4 MGD.

Parameters	Mass (lb/day)			Concentration (mg/l)		
	Average Monthly	Daily Maximum	Minimum	Average Monthly	Daily Maximum	Instant. Maximum
Flow (MGD)	Report	Report	XXX	XXX	XXX	XXX
pH (S.U.)	XXX	XXX	6.0	XXX	XXX	9.0
Total Residual Chlorine	XXX	XXX	XXX	0.5	XXX	1.6
BOD ₅	754	1507	XXX	Report	Report	565
Total Suspended Solids	917	1833	XXX	Report	Report	687
Oil and Grease	XXX	XXX	XXX	15	XXX	30
Fecal Coliform (CFU/100 ml)						
May 1 - Sep 30	XXX	XXX	XXX	200	XXX	400
Oct 1 - Apr 30	XXX	XXX	XXX	Geo Mean XXX	XXX	400
Ammonia-Nitrogen	Report	Report	XXX	7.8	13.3	19.5

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

<i>Parameters</i>	<i>Mass (lbs)</i>		<i>Minimum</i>	<i>Concentration (mg/l)</i>	
	<i>Monthly</i>	<i>Annual</i>		<i>Monthly Average</i>	<i>Maximum</i>
Ammonia—N	Report	Report		Report	
Kjeldahl—N	Report			Report	
Nitrate-Nitrite as N	Report			Report	
Total Nitrogen	Report	Report		Report	
Total Phosphorus	Report	Report		Report	
Net Total Nitrogen (Interim)	Report	Report			
Net Total Nitrogen (Final)	Report	33196			
Net Total Phosphorus (Interim)	Report	Report			
(Final)	Report	1492			

* This permit contains conditions which authorize the permittee to apply nutrient reduction credits to meet the Net Total Nitrogen and the Net Total Phosphorus effluent mass limits, under the Department's Trading of Nutrients and Sediment Reduction Credits Policy and Guidelines (Document #392-0900-001, December 30, 2006). The condition includes the requirement to report the application of these credits in Supplemental Discharge Monitoring Reports (DMRs) submitted to the Department.

* The compliance date for Net Total Nitrogen and Net Total Phosphorus will begin on October 1, 2014. Since these reporting requirements are annual loads, the reporting on compliance with the annual limitations will be required to be reported on the Supplemental DMR - Annual Nutrient Summary by November 28, 2015. This facility is required to monitor and report for Net Total Nitrogen and Net Total Phosphorus from the effective date of the permit until September 30, 2014.

You may make an appointment to review the DEP files on this case by calling the File Review Coordinator at 570-327-3693.

The EPA Waiver is not in effect.

III. WQM Industrial Waste and Sewerage Applications under The Clean Streams Law

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

WQM Permit No. 0612404, Sewerage, **Amity Township**, 2004 Weavertown Road, Douglassville, PA 19518-8971.

This proposed facility is located in Amity Township, **Berks County**.

Description of Proposed Action/Activity: Modification of Pump Station 1 from a dry well / wet well pump station to a submersible wet well pump station along with other modifications.

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

WQM Permit No. 3008201-A1, Industrial Waste, **Allegheny Energy Supply Company, LLC**, 800 Cabin Hill Drive, Greensburg, PA 15601-1689

This existing facility is located in Monongahela Township, **Greene County**

Description of Proposed Action/Activity: Application for permit amendment.

WQM Permit No. 6312405, Sewerage, **Peters Township Sanitary Authority**, 111 Bell Drive, McMurray, PA 15317-3415

This proposed facility is located in Peters Township, **Washington County**

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

WQM Permit No. 6312406, Sewerage, **Cindy Kerr**, 65 Spring Valley Road, Washington, PA 15301

This proposed facility is located in South Franklin Township, **Washington County**

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

IV. NPDES Applications for Stormwater Discharges from MS4

V. Applications for NPDES Waiver Stormwater Discharges from MS4

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

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

<i>NPDES Permit No.</i>	<i>Applicant Name & Address</i>	<i>County</i>	<i>Municipality</i>	<i>Receiving Water/Use</i>
PAI01 151220	KRVS Associates, LP 1140 Valley Forge Road Valley Forge, PA 19482	Chester	Schuylkill Township	Unnamed Tributary Pickering Creek (HQ-TSF)
PAI01 151221	Jennersville Medical Building, LP PO Box 612 Unionville, PA 19375	Chester	Penn Township	Unnamed Tributary Middle Branch White Clay Creek (TSF); Big Elk Creek (HQ-TSF-MF)

*Northeast Region: Watershed Management Program Manager, 2 Public Square, Wilkes-Barre, PA 18711-0790.**Lehigh County Conservation District: Lehigh Ag. Ctr., Ste. 102, 4184 Dorney Park Road, Allentown, PA 18104, 610-391-9583.*

<i>NPDES Permit No.</i>	<i>Applicant Name & Address</i>	<i>County</i>	<i>Municipality</i>	<i>Receiving Water/Use</i>
PAI023912015	Realty World-Breisch Delores Breisch 4205 W. Tilghman St. Allentown, PA 18104	Lehigh	Borough of Macungie	Little Lehigh Creek, HQ-CWF, MF

Monroe County Conservation District: 8050 Running Valley Road, Stroudsburg, PA 18360, 570-629-3060.

<i>NPDES Permit No.</i>	<i>Applicant Name & Address</i>	<i>County</i>	<i>Municipality</i>	<i>Receiving Water/Use</i>
PAI024506006R	PBE Companies LLC c/o Sovereign Bank One Financial Plaza Providence, RI 02903	Monroe	Stroud Twp.	UNT Brodhead Creek, HQ-CWF, MF

Carbon County Conservation District: 5664 Interchange Road, Lehighton, PA 18235, 610-377-4894.

<i>NPDES Permit No.</i>	<i>Applicant Name & Address</i>	<i>County</i>	<i>Municipality</i>	<i>Receiving Water/Use</i>
PAI021305005R	Bryan Baumgartner RD#4, Box 4290 Kunkletown, 18058	Carbon	Towamensing Twp.	Wild Creek, HQ-CWF; UNT Beltzville Lake, HQ-CWF

Northampton County Conservation District: 14 Gracedale Ave., Greystone Building, Nazareth, PA 18064, 610-746-1971.

<i>NPDES Permit No.</i>	<i>Applicant Name & Address</i>	<i>County</i>	<i>Municipality</i>	<i>Receiving Water/Use</i>
PAI024812009	PPL Electric Utilities Corp. Jason E. Smeltz Two North Ninth St. (GENN 3) Allentown, PA 18101	Northampton	Bushkill Twp., Upper Nazareth Twp., Stockertown Borough, Palmer Twp., Plainfield Twp.	Bushkill Creek, HQ-CWF, MF; Bushkill Creek UNT, HQ-CWF, MF

*Northwest Region: Waterways and Wetlands Program Manager, 230 Chestnut Street, Meadville, PA 16335-3481**Elk County Conservation District, Elk Courthouse Annex, 300 Center Street, Ridgway PA 15853*

<i>NPDES Permit No.</i>	<i>Applicant Name & Address</i>	<i>County</i>	<i>Municipality</i>	<i>Receiving Water/Use</i>
PAI062412001	US Army Corps of Engineers 2200 W. S. Moorhead Federal Bldg 1000 Liberty Avenue Pittsburgh PA 15222	Elk	Jones Township	East Branch Clarion River HQ; CWF

VII. List of NOIs for NPDES and/or Other General Permit Types

PAG-12	CAFOs
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General Permit Type—PAG-12

*Facility Location:
Municipality &
County*

Permit No.

*Applicant Name &
Address*

*Receiving
Water/Use*

*Contact Office &
Phone No.*

Tyrone Township
Perry County

PAG123653

KNS Farms
201 Bartho Drive
Landisburg, PA 17040

Green Valley Run /
CWF

DEP-SCRO
909 Elmerton
Avenue
Harrisburg, PA
17110-8200
717-705-4707

**STATE CONSERVATION COMMISSION
PROPOSED NUTRIENT MANAGEMENT PLANS RELATED TO APPLICATIONS
FOR NPDES PERMITS FOR CAFOs**

This notice provides information about agricultural operations that have submitted nutrient management plans (NMPs) for approval under 3 Pa.C.S. Chapter 5 and that have or anticipate submitting applications for new, amended or renewed NPDES permits, or Notices of Intent (NOIs) for coverage under a general permit, for CAFOs, under 25 Pa. Code Chapter 92a. This notice is provided in accordance with 25 Pa. Code Chapter 92a and 40 CFR Part 122, implementing The Clean Streams Law and the Federal Clean Water Act.

Based upon preliminary reviews, the State Conservation Commission (SCC) or County Conservation Districts (CCD) working under a delegation agreement with the SCC have completed an administrative review of NMPs described. These NMPs are published as proposed plans for comment prior to taking final actions. The NMPs are available for review at the CCD office for the county where the agricultural operation is located. A list of CCD office locations is available at <http://www.nacdnet.org/about/districts/directory/pa.phtml> or can be obtained from the SCC at the office address listed or by calling (717) 787-8821.

Persons wishing to comment on an NMP are invited to submit a statement outlining their comments on the plan to the CCD, with a copy to the SCC for each NMP, within 30 days from the date of this public notice. Comments received within the respective comment periods will be considered in the final determinations regarding the NMPs. Comments should include the name, address and telephone number of the writer and a concise statement to inform the SCC of the exact basis of the comments and the relevant facts upon which they are based. Comments should be sent to the SCC, Agriculture Building, Room 310, 2301 North Cameron Street, Harrisburg, PA 17110.

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

NUTRIENT MANAGEMENT PLAN—PUBLIC NOTICE SPREADSHEET

<i>Agricultural Operation Name and Address</i>	<i>County</i>	<i>Total Acres</i>	<i>Animal Equivalent Units</i>	<i>Animal Type</i>	<i>Special Protection Waters (HQ or EV or NA)</i>	<i>Renewal/ New</i>
Randy Weaver Smaltz Road Womelsdorf, PA 19567	Berks	0	541.8	Layers	N/A	New

**PUBLIC WATER SUPPLY (PWS)
PERMITS**

Under the Pennsylvania Safe Drinking Water Act (35 P. S. §§ 721.1—721.17), the following parties have applied for PWS permits to construct or substantially modify public water systems.

Persons wishing to comment on permit applications are invited to submit statements to the office listed before the application within 30 days of this public notice. Comments received within this 30-day comment period will be considered in the formulation of the final determinations regarding an application. A comment should include the name, address and telephone number of the writer and a concise statement to inform the Department of the exact basis of a comment and the relevant facts upon which it is based. A public hearing may be held after consideration of comments received during the 30-day public comment period.

Following the comment period, the Department will make a final determination regarding the proposed permit. Notice of this final determination will be published

in the *Pennsylvania Bulletin* at which time this determination may be appealed to the Environmental Hearing Board.

The permit application and related documents are on file at the office listed before the application and available for public review. Arrangements for inspection and copying information should be made with the office listed before the application.

Persons with a disability that require an auxiliary aid, service or other accommodations to participate during the 30-day public comment period should contact the office listed before the application. TDD users may contact the Department through the Pennsylvania AT&T Relay Service at (800) 654-5984.

**SAFE DRINKING WATER
MINOR AMENDMENT**

Applications Received Under the Pennsylvania Safe Drinking Water Act

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

Application No. 5612505MA, Minor Amendment.

Applicant	Somerset Township Municipal Authority PO Box 247 Somerset, PA 15501
[Township or Borough]	Somerset Township
Responsible Official	Nancy Aultz, Manager Somerset Township Municipal Authority PO Box 247 Somerset, PA 15501
Type of Facility	Water system
Consulting Engineer	Somerset Planning & Engineering Services, LLC 222 West Main Street Somerset, PA 15501
Application Received Date	July 11, 2012
Description of Action	Installation of approximately 12,000 feet of waterline.

LAND RECYCLING AND ENVIRONMENTAL REMEDIATION

UNDER ACT 2, 1995 PREAMBLE 1

Acknowledgment of Notices of Intent to Remediate Submitted under the Land Recycling and Environmental Remediation Standards Act (35 P. S. §§ 6026.101—6026.907)

Sections 302—305 of the Land Recycling and Environmental Remediation Standards Act (act) (35 P. S. §§ 6026.302—6026.305) require the Department to publish in the *Pennsylvania Bulletin* an acknowledgment noting receipt of Notices of Intent to Remediate. An acknowledgment of the receipt of a Notice of Intent to Remediate is used to identify a site where a person proposes to, or has been required to, respond to a release of a regulated substance at a site. A person intending to use the background standard, Statewide health standard, the site-specific standard or intend to remediate a site as a special industrial area shall file a Notice of Intent to Remediate with the Department. A Notice of Intent to Remediate filed with the Department provides a brief description of the location of the site, a list of known or suspected contaminants at the site, the proposed remediation measures for the site and a description of the intended future use of the site. A person who demonstrates attainment of one or a combination of cleanup standards or receives approval of a special industrial area remediation identified under the act will be relieved of further liability for the remediation of the site for contamination identified in reports submitted to and approved by the Department. Furthermore, the person shall not be subject to citizen suits or other contribution actions brought by responsible persons not participating in the remediation.

Under sections 304(n)(1)(ii) and 305(c)(2) of the act, there is a 30-day public and municipal comment period for sites proposed for remediation using a site-specific standard, in whole or in part, and for sites remediated as a special industrial area. This period begins when a summary of the Notice of Intent to Remediate is published in a newspaper of general circulation in the area of the site. For the following site, proposed for remediation to a site-specific standard or as a special industrial area,

the municipality, within which the site is located, may request to be involved in the development of the remediation and reuse plans for the site if the request is made within 30 days of the date specified as follows. During this comment period, the municipality may request that the person identified as the mediator of the site develop and implement a public involvement plan. Requests to be involved and comments should be directed to the mediator of the site.

For further information concerning the content of a Notice of Intent to Remediate, contact the environmental cleanup program manager in the Department regional office listed before the notice. If information concerning this acknowledgment is required in an alternative form, contact the community relations coordinator at the appropriate regional office. TDD users may telephone the Department through the AT&T Relay Service at (800) 654-5984.

The Department has received the following Notices of Intent to Remediate:

Southeast Region: Environmental Cleanup Program Manager, 2 East Main Street, Norristown, PA 19401

Haverford Animal Hospital, Lower Merion Township, **Montgomery County**. Staci Cottone, J&J Spill Service and Supplies, Inc., PO Box 370, Blue Bell, PA 19422 on behalf of Reginald L. Royster, Jr. D.V.M., Haverford Animal Hospital, 517 West Lancaster Avenue, Haverford, PA 19041 has submitted a Notice of Intent to Remediate. Soil at the site has been impacted by release of leaded gasoline. The future use of the site will remain the same. A summary of the Notice of Intent to Remediate was to have been published in the *Main Line Times* on February 2, 2012.

4413-4421 Germantown Avenue & 4428-4430 North Uber Street, City of Philadelphia, **Philadelphia County**. Ryan Hoffman, GEI Consultants, Inc., 40 Union Park Drive, Woburn, MA 01801, Ileen Gladstone, GEI Consultants, Inc., 400 Unicorn Park Drive, Woburn, MA 01801, Ronald Wong, Nicetown Court II Housing Partners, LP, 256 George Street, New Brunswick, NJ 08901 on behalf of David Thomas, Philadelphia Redevelopment Authority, 1234 Market Street, 16 Floor, Philadelphia, PA 19107, Shahied A. Dawan, Universal Community Homes, 800 South 15th Street, Philadelphia, PA 19146 has submitted a Notice of Intent to Remediate. Soil at the site has been impacted by release of pah and inorganics. The parcel is planned for redevelopment as a residential apartment building.

216 Chestnut Site, City of Philadelphia, **Philadelphia County**. Paul Martino, P.G., Pennoni Associates, Inc., 3001 Market Street, Philadelphia, PA 19104, Bill Schmidt, Pennoni Associates, Inc., 3001 Market Street, Philadelphia, PA 19104 on behalf of Susan Hammersley, 2116 Chestnut Building LLC and 2116 Chestnut Holding LLC, One North Wacker Drive Suite 2400, Chicago, Illinois 60606 has submitted a Notice of Intent to Remediate. Soil at the site has been impacted by release of no. 2 fuel oil. The future use of the site will remain the same.

Waterford Walk, Lower Merion Township, **Montgomery County**. Lawrence W. Bily, RT Environmental Services, Inc., 215 Church Road, King of Prussia, PA 19406 on behalf of D. Charles Houder, Hardy Houder Real Estate Group, LLC, 134 North Narberth Avenue, Narberth PA 19072 has submitted a Notice of Intent to Remediate. Soil at the site has been impacted by release of inorganics and pesticides. The future use of the site will be for residential purposes. A summary of the Notice

of Intent to Remediate was to have been published in the *Philadelphia Inquirer* June 25, 2012.

Kingdom Hall of Jehovah's Witness, City of Chester, **Delaware County**. Staci Cottone, J&J Environmental, PO Box 370, Blue Bell, PA 19422 on behalf of Dennis Bell, Kingdom Hall of Jehovah's Witness, 851 Elsinore Place, Chester, PA 19013 has submitted a Notice of Intent to Remediate. Soil at the site has been impacted by release of no. 2 fuel oil. The future use of the site will remain commercial. A summary of the Notice of Intent to Remediate was to have been published in the *Delaware County Daily Times* on June 27th, 2012.

Biordi Property, Middletown Township, **Delaware County**. Guenter K. Miller, Leggett, Brashsears & Graham, Inc. 901 South Bolmar Street, Suite B, West Chester, PA 19382, Joseph W. Standen, Jr, Leggette, Brashears & Graham, Inc., 901 South Bolmar Street, Suite B, West Chester, PA 19382 on behalf of Laura Biordi, 538 South New Middletown, PA 19063 has submitted a Notice of Intent to Remediate. Groundwater at the site has been impacted by the release of PCE and TCE. The future use of the site will remain the same. A summary of the Notice of Intent to Remediate was to have been published in the *Delaware County Daily Times* on May 7, 2012.

Amra Investment LP, West Whiteland Township, **Chester County**. Michael S. Welsh, P.E. Welsh Environmental Inc., 131 Clearview Drive, Downingtown, PA 19335 on behalf of Anne Fisher, AMRA Investment L.P., 110 Summit Drive Exton, PA 19341 has submitted a Notice of Intent to Remediate. Soil and groundwater at the site has been impacted with the release of chlorinated solvents. The future use of the site will remain the same.

Willow Crossing Townhouse LP, Upper Moreland Township, **Montgomery County**. Staci Cottone, J&J Spill Service and Supplies, PO Box 370, Blue Bell, PA 19422 on behalf of Ed Moser, Willow Crossing Townhouses, L.P., c/o The Moser Group, 2901 Blair Mill Road, Willow Grove, PA 19090 has submitted a Notice of Intent to Remediate. Soil at the site has been impacted with the release of no. 2 fuel oil. The future use of the site will remain the same. A summary of the Notice of Intent to Remediate was to have been published in *The Intelligencer* on March 14, 2012.

Southcentral Region: Environmental Cleanup and Brownfields Program Manager, 909 Elmerton Avenue, Harrisburg, PA 17110.

Buckeye Pipe Line Company, L.P.—Landisburg, PA, Route 850/233 and Ernest Road, Landisburg, PA 17040, Tyrone Township, **Perry County**. Groundwater and Environmental Services, 440 Creamery Way, Suite 500, Exton, PA 19341, on behalf of Eugene and Elizabeth Nolt, 365 Montour Road, Landisburg, PA 17040 and Buckeye Pipeline Company, LP, 5 Tek Park, 9999 Hamilton Boulevard, Breinigsville, PA 8031, submitted a Notice of Intent to Remediate site soils and groundwater contaminated with petroleum hydrocarbons from a pipe line release. The site will be remediated to the Site-Specific and Non-Residential Statewide Health standards. Future use of the site will remain a natural gas transmission pipe line right of way and a farm field.

Route 41 Diner, 42 Route 41, Gap, PA 17527, Sadsbury Township, **Lancaster County**. Hafer Environmental Services, PO Box 4418, Reading, PA 19606, on behalf of the Estate of A. Charles Artinian, 725 Street Road, Cochranville, PA 19330, submitted a Notice of Intent to Remediate site soils and groundwater contami-

nated with gasoline. The site will be remediated to the Site-Specific standard and will remain an eating establishment.

Northcentral Region: Environmental Cleanup Program Manager, 208 West Third Street, Williamsport, PA 17701

Sunbury Generation LP Northern Property Area, Shamokin Dam Borough, **Snyder County**. Advanced Geo Services Corporation, 1055 Andrew Drive, Suite A, West Chester, PA 19380 on behalf of Sunbury Generation LP, PO Box 517, Old Trail Road, Shamokin Dam, PA 17876 has submitted a Notice of Intent to Remediate groundwater contaminated with metals and sulfate. The applicant proposes to remediate the site to meet the Site Specific Standard.

Southwest Region: Environmental Cleanup & Brownfield Development Program Manager, 400 Waterfront Drive, Pittsburgh, Pa 15222-4745

East Liberty Place South, City of Pittsburgh, **Allegheny County**. American Geosciences, Inc., 3925 Reed Blvd. Suite 400, Murrysville, PA 15668 on behalf of the Urban Redevelopment Authority of Pittsburgh, 200 Ross Street, 10th Floor, Pittsburgh, PA 15219 has submitted a Notice of Intent to Remediate site soil and groundwater contaminated with VOCs, and metals at 5800 Penn Avenue, Pittsburgh, PA. The intended future use of the property is for a mixed residential and commercial development.

RESIDUAL WASTE GENERAL PERMITS

Application Withdrawn Under the Solid Waste Management Act (35 P. S. §§ 6018.101—6018.1003); the Municipal Waste Planning, Recycling and Waste Reduction Act (53 P. S. §§ 4000.101—4000.1904); and Residual Waste Regulations for a General Permit to Operate Residual Waste Processing Facilities and the Beneficial Use of Residual Waste other than Coal Ash.

Central Office: Division of Municipal and Residual Waste, Rachel Carson State Office Building, 14th Floor, 400 Market Street, Harrisburg, PA 17106-9170.

General Permit Application No. WMGR135. Delaware County Solid Waste Authority, 583 Longview Road, Boyertown, PA 19512-7955; site: Rolling Hills Landfill. This general permit application proposed the beneficial use of leachate as a substitute for potable water in flue gas air pollution control devices. The application was withdrawn on July 17, 2012 by request of the applicant.

Persons with questions may contact Scott E. Walters, Chief, Permits Section, Division of Municipal and Residual Waste, Bureau of Waste Management, P. O. Box 69170, Harrisburg, PA 17106-9170, 717-787-7381. TDD users may contact the Department through the Pennsylvania Relay service, (800) 654-5984.

DETERMINATION FOR APPLICABILITY FOR MUNICIPAL WASTE GENERAL PERMITS

Application(s) for Determination of Applicability Received Under the Solid Waste Management Act; the Municipal Waste Planning, Recycling and Waste Reduction Act; and Residual Waste Regulations for a General Permit to Operate Residual Waste Processing Facilities and/or the Beneficial Use of Residual Waste Other Than Coal Ash.

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

General Permit Application No. WMGM001D002. Granger Energy of Honey Brook, LLC., 16980 Wood Road, Lansing, MI 48906-1044.

The Department of Environmental Protection, Bureau of Land Recycling and Waste Management has received an application for a determination of applicability (DOA) under the General Permit # WMGM001. The general permit WMGM001D002 is for the processing and beneficial use of landfill gas (LFG), generated at Lanchester Landfill, as an alternate fuel to drive industrial boilers and residential furnaces. The Department determined the DOA application to be administratively complete on September 24, 2004.

Persons interested in obtaining more information about the general permit application may contact Ronald C. Hassinger, Chief, General Permits and Beneficial Use Section, Division of Municipal and Residual Waste, Bureau of Land Recycling and Waste Management, P. O. Box 8472, Harrisburg, PA 17105-8472 at (717) 787- 7381. TDD users may contact the Department through the Pennsylvania Relay service, (800) 654-5984.

MUNICIPAL WASTE GENERAL PERMITS

Application for General Permit Renewal Under the Solid Waste Management Act; the Municipal Waste Planning, Recycling and Waste Reduction Act; and Municipal Waste Regulations for a General Permit to Operate Municipal Waste Processing Facilities and the Beneficial Use of Municipal Waste.

Central Office: Division of Municipal and Residual Waste, Rachel Carson State Office Building, 14th Floor, 400 Market Street, Harrisburg, PA 17106-9170.

General Permit Application No. WMGM017D004. Longwood Gardens Inc., 409 Conservatory Road, Kennett Square, PA 19348, This permit is for the processing and beneficial use of compost of manure, yard waste, source separated food scraps from food markets, grocery stores, food banks, food distribution centers, school cafeterias and institutions, source-separated newspaper and source-separated corrugated paper as soil substitute, soil conditioner, fertilizer, mulch or soil amendment. The application for renewal was found to be administratively complete by the Bureau of Waste Management on July 18, 2012.

Persons with questions may contact Scott E. Walters, Chief, Permits Section, Division of Municipal and Residual Waste, Bureau of Waste Management, P. O. Box 69170, Harrisburg, PA 17106-9170, 717-787-7381. TDD users may contact the Department through the Pennsylvania Relay service, (800) 654-5984.

DETERMINATION FOR APPLICABILITY FOR INFECTIOUS AND CHEMOTHERAPEUTIC WASTE GENERAL PERMITS

Application for Determination of Applicability for General Permit Under the Solid Waste Management Act; the Municipal Waste Planning, Recycling and Waste Reduction Act; and Infectious and Chemotherapeutic Waste Regulations for a General Permit to Operate Infectious and Chemotherapeutic Waste Processing Facilities.

Southeast Region: Regional Solid Waste Manager, 2 East Main Street, Norristown, PA 19401

General Permit Application No. WMGI005A. Merck Sharp & Dohme Corp., 770 Sumneytown Pike,

West Point PA 19486. This is an application for permittee's name change from Merck & Co., Inc., to Merck Sharp & Dohme Corp., regarding an existing determination of applicability general permit for Merck Sharp & Dohme Corp.—West Point Facility, an infectious waste processing facility located at 770 Sumneytown Pike, West Point, PA 19486, in Upper Gwynedd Township, **Montgomery County**. The application for determination of applicability was received by the Southeast Regional Office on June 26, 2012.

DETERMINATION FOR APPLICABILITY FOR RESIDUAL WASTE GENERAL PERMITS

Application(s) for Determination of Applicability received Under the Solid Waste Management Act; the Municipal Waste Planning, Recycling and Waste Reduction Act; and Residual Waste Regulations for a General Permit to Operate Residual Waste Processing Facilities and/or the Beneficial Use of Residual Waste Other Than Coal Ash

Northeast Region: Regional Solid Waste Manager, 2 Public Square, Wilkes-Barre, PA 18701-1915

General Permit Application No. WMGR123, Program I.D. WMGR123NE003, Carrizo (Marcellus), LLC, 251 Drain Lick Road, Drifting, PA 16834. A General Permit Determination of Applicability (DOA) for the transfer and beneficial use of oil and gas liquid waste at the Shaskas South Well Pad site in Jessup Township, **Susquehanna County**. The application for determination of applicability was received in the Regional Office and deemed administratively complete on July 31, 2012.

Persons interested in obtaining more information about the general permit application may contact William Tomayko, Environmental Program Manager, Waste Management Program, Northeast Regional Office, 2 Public Square, Wilkes-Barre, PA 18711-0790 at 570-826-2511. TDD users may contact the Department through the Pennsylvania Relay service, (800) 654-5984. Public comments must be submitted within 60 days of this notice and may recommend revisions to, and approval or denial of the application.

OPERATE WASTE PROCESSING OR DISPOSAL AREA OR SITE

Application Received Under the Solid Waste Management Act, the Municipal Waste Planning, Recycling and Waste Reduction Act and Regulations to Operate Solid Waste Processing or Disposal Area or Site.

Southeast Region: Regional Solid Waste Manager, 2 East Main Street, Norristown, PA 19401

Permit Application No. 400633. Wheelabrator Falls Inc., 1201 New Ford Mill Road, Morrisville PA 19067-3701, This minor permit modification application is for the inclusion of a tarping station and contact water tank closure walls at the Wheelabrator Falls, Inc.'s facility, a municipal waste resource recovery facility located in Falls Township, **Bucks County**. The application was received by Southeast Regional Office on July 18, 2012.

AIR QUALITY

PLAN APPROVAL AND OPERATING PERMIT APPLICATIONS NEW SOURCES AND MODIFICATIONS

The Department has developed an "integrated" plan approval, State Operating Permit and Title V Operating

Permit program. This integrated approach is designed to make the permitting process more efficient for the Department, the regulated community and the public. This approach allows the owner or operator of a facility to complete and submit permitting documents relevant to its application one time, affords an opportunity for public input and provides for sequential issuance of the necessary permits.

The Department received applications for Plan Approvals or Operating Permits from the following facilities.

Copies of these applications, subsequently prepared draft permits, review summaries and other support materials are available for review in the regional office listed before the applications. Persons interested in reviewing the application files should contact the appropriate regional office to schedule appointments.

Persons wishing to receive a copy of a proposed Plan Approval or Operating Permit shall indicate interests to the Department regional office within 30 days of the date of this notice and shall file protests or comments on a proposed Plan Approval or Operating Permit within 30 days of the Department providing a copy of the proposed documents to persons or within 30 days of its publication in the *Pennsylvania Bulletin*, whichever comes first. Interested persons may also request that hearings be held concerning a proposed Plan Approval or Operating Permit. A comment or protest filed with the Department regional office shall include a concise statement of the objections to the issuance of the Plan Approval or Operating Permit and relevant facts which serve as the basis for the objections. If the Department schedules a hearing, a notice will be published in the *Pennsylvania Bulletin* at least 30 days prior the date of the hearing.

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

Final Plan Approvals and Operating Permits will contain terms and conditions to ensure that the source is constructed and operating in compliance with applicable requirements in 25 Pa. Code Chapters 121-143, the Federal Clean Air Act (42 U.S.C.A. §§ 7401-7671q) and regulations adopted under the Federal Clean Air Act.

PLAN APPROVALS

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

Northwest Region: Air Quality Program, 230 Chestnut Street, Meadville, PA 16335-3481

Contact: Edward Orris, New Source Review Chief—Telephone: 814-332-6636

43-319C: JMC Steel Group—Wheatland Tube Division—Church Street Plant (P. O. Box 608, Wheatland, PA 16161-0608) for installation of an annealing furnace and atmosphere generator. The Church Street Plant is at 20 Church Street, Wheatland, PA 16161-0608. This facility is located in the Wheatland Borough, **Mercer County**.

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

Southeast Region: Air Quality Program, 2 East Main Street, Norristown, PA 19401

Contact: Sachin Shankar, New Source Review Chief—Telephone: 484-250-5920

15-0061B: Phoenixville Hospital, Inc. (140 Nutt Road, Phoenixville, PA 19460) for installation of a catalytic converter to control formaldehyde emissions from the existing 1250-kW Emergency Electric Generator/Internal Combustion Engine in Phoenixville Borough, **Chester County**. The generator is subject to the requirements of 40 CFR Part 60 Subpart IIII—Standards of Performance for Stationary Compression Ignition Internal Combustion Engines. Installation of the catalytic converter will not cause an increase in emissions. Facility-wide potential emissions are below major facility thresholds for the Philadelphia Metropolitan Area; the facility is classified as a Synthetic Minor Facility. The plan approval will include monitoring, testing, recordkeeping and reporting requirements designed to keep the facility operating within all applicable air quality requirements.

Southcentral Region: Air Quality Program, 909 Elmerton Avenue, Harrisburg, PA 17110

Contact: Thomas J. Hanlon, Facility Permitting Chief - Telephone: 717-705-4862 or Daniel Husted, New Source Review Chief—Telephone: 717-705-4863

01-05016P: Specialty Granules, Inc.—Charmian Quarry (1455 Old Waynesboro Road, Blue Ridge Summit, PA 17214-0914) for construction of the Undersize Material Processing Plant, controlled by two fabric filters, located in Hamiltonban Township, **Adams County**.

In accordance with 25 Pa. Code §§ 127.44(a) and 127.45(a), the Department of Environmental Protection (DEP) has received and intends to issue a Plan Approval to the above mentioned company for the above mentioned project, which is a modification to the plan approval Number 01-05016M issued on August 22, 2011, construction of which was not started due to the equipment changes and plant layout, which is covered in this plan approval. This plan approval is subject to Federal New Source Performance Standard, 40 CFR Part 60, Subpart 000. This plan approval may be incorporated into the company's facility-wide permit via an administrative amendment at a later date.

The company shall be subject to and comply with the relevant provisions of the Pa. Code including the chapters 123, 127, and 129. The Plan Approval and Operating permit will contain additional recordkeeping and operating restrictions designed to keep the facility operating within all applicable air quality requirements. The use of fabric collectors to control the particulate matter emissions from the source, is considered to be Best Available Technology (BAT). The facility's actual controlled particulate matter emissions from this plan approval shall increase less than 1 tpy of TSP and less than 0.1 tpy of PM10.

Copies of the application, DEP's analysis and other documents used in the evaluation of the application are available for public review during normal business hours at Air Quality Program, 909 Elmerton Avenue, Harris-

burg, PA 17110. A person may oppose the proposed plan approval, or may provide the Department with additional information to consider in its review, by filing a written protest with the Department at the address listed above. Each written comment must contain the name, address and telephone number of the person submitting the comments, identification of the proposed permit by the permit number listed above and a concise statement regarding the relevancy of the information or objections to the issuance of the permit.

A 30-day comment period, from the date of publication of this notice in the *Pennsylvania Bulletin*, will exist for the submission of comments or protests.

Daniel C. Husted, New Source Review Chief, may be contacted at 717-705-4863, or at PA DEP Air Quality Program, 909 Elmerton Avenue, Harrisburg, PA 17110, for additional information or for the submission of comments or protests.

Plan approvals issued to sources identified in 25 Pa. Code § 127.44(b)(1)–(4) or plan approvals issued to sources with limitations on the potential to emit may become part of the SIP, and will be submitted to EPA for review and approval.

06-05069S: East Penn Manufacturing Co., Inc. (P. O. Box 147, Lyon Station, PA 19536) for modifying formation operations at their Lyon Station Plant in Richmond Township, **Berks County**.

In accordance with 25 Pa. Code §§ 127.44(a) and 127.45(a), the Department of Environmental Protection (DEP) has received and intends to issue a Plan Approval to the abovementioned company for the abovementioned project. This plan approval may be incorporated into the company's facility-wide permit via an administrative amendment at a later date.

Plan Approval 06-05069S is for replacing air-rack formation systems 1, 2 and 3 with water bath formation systems and permanently decommissioning air-rack formation systems 4, 5, 6 and 10. The formation systems are controlled by mist eliminators that are best available technology (BAT) for removing sulfuric acid mist. Plan Approval 06-05069S is for installing seven 1.8 mmBtu/hr natural gas fired boilers and installing one 3.75 mmBtu/hr natural gas fired air make-up unit. Use of natural gas and/or propane-air mix fuel is accepted as BAT for combustion products. The plan approval also documents the transfer of 53 tons of NO_x Emission Reduction Credits from the GenOn REMA, LLC Warren County facility to the East Penn Richmond Township facility. The Plan Approval and Operating permit will contain additional recordkeeping and operating restrictions designed to keep the facility operating within all applicable air quality requirements. Because of the removal of four air-rack formation systems, the actual air emissions of H₂SO₄ from the A-3 building will be reduced by one tpy. The new water boilers and air make up unit will have a maximum potential to emit seven tpy of NO_x, six tpy of CO and one tpy of PM.

Copies of the application, DEP's analysis and other documents used in the evaluation of the application are available for public review during normal business hours at Air Quality Program, 909 Elmerton Avenue, Harrisburg, PA 17110.

A person may oppose the proposed plan approval, or may provide the Department with additional information to consider in its review, by filing a written protest with the Department at the address listed above. Each written comment must contain the name, address and telephone

number of the person submitting the comments, identification of the proposed permit by the permit number listed above and a concise statement regarding the relevancy of the information or objections to the issuance of the permit.

A 30-day comment period, from the date of publication of this notice in the *Pennsylvania Bulletin*, will exist for the submission of comments or protests, or for requests for a public hearing. A public hearing may be held, if the Department of Environmental Protection, in its discretion, decides that such a hearing is warranted based on the comments received.

Mr. Thomas Hanlon, Facility Permitting Chief, may be contacted at 717-705-4862, or at PA DEP Air Quality Program, 909 Elmerton Avenue, Harrisburg, PA 17110, for additional information or for the submission of comments, protests, or requests for a public hearing.

Plan approvals issued to sources identified in 25 Pa. Code § 127.44(b)(1)–(4) or plan approvals issued to sources with limitations on the potential to emit may become part of the SIP, and will be submitted to EPA for review and approval.

Northwest Region: Air Quality Program, 230 Chestnut Street, Meadville, PA 16335-3481

Contact: Edward Orris, New Source Review Chief—Telephone: 814-332-6636

24-083U: Mersen USA (215 Stackpole Street, St. Marys, PA 15857) for installation of a continuous baking furnace and associated regenerative thermal oxidizer and wet scrubber at their facility in the City of St. Marys, **Elk County**. This is a Title V facility.

Pursuant to 25 Pa. Code §§ 127.44(b) and 127.424(b), the Pennsylvania Department of Environmental Protection (DEP) intends to issue Plan Approval 24-083U to Mersen USA for the installation of a continuous baking furnace and associated regenerative thermal oxidizer and wet scrubber at their facility in the City of St. Marys, Elk County. The Plan Approval will subsequently be incorporated into the facility's Operating Permit through an administrative amendment in accordance with 25 Pa. Code § 127.450.

Plan Approval No. 24-083U is for the installation a Riedhammer continuous carbon baking oven. Emissions from this source will be controlled by an associated regenerative thermal oxidizer and limestone slurry wet scrubber, which is proposed as Best Available Technology (BAT) for the proposed source. Based on the information provided by the applicant and DEP's own analysis, the proposed source will each have the potential to emit approximately 43.8 tons of sulfur oxides (SO_x), 17.5 tons of nitrogen oxides (NO_x), 4.4 tons of carbon monoxide, 4.4 tons of volatile organic compounds (VOC), 2.1 tons of particulate matter less than 10 microns (PM-10), and 2.0 tons of total hazardous air pollutants (HAP) per year.

The Plan Approval will be subject to the Compliance Assurance Monitoring provisions of 40 CFR Part 64, and will contain additional testing, monitoring, reporting, recordkeeping and work practice requirements designed to keep the facility operating within all applicable air quality requirements. Copies of the application, DEP's analysis, and other documents used in the evaluation are available for public inspection between the hours of 8 a.m. and 4 p.m. weekdays at the address shown below. To make an appointment, contact Records Management at 814-332-6340.

Anyone wishing to provide DEP with additional information they believe should be considered may submit the information to the address shown below. Comments must be received by the Department within 30 days of the last day of publication. Written comments should include the name, address, and telephone number of the person submitting comments, identification of the proposed Plan Approval; No. 24-083U and a concise statement regarding the relevancy of the information or any objections to issuance of the Plan Approval.

A public hearing may be held, if the Department of Environmental Protection, in its discretion, decides that such a hearing is warranted on the comments received during the public comment period. All persons submitting comments or requesting a hearing will be notified of the decision to hold a hearing by publication in a local newspaper of general circulation or the *Pennsylvania Bulletin* or by telephone, where the Department determines such notification is sufficient. Written comments or requests for a public hearing should be directed to John Guth, Regional Air Quality Manager, Department of Environmental Protection, Northwest Regional Office, 230 Chestnut St., Meadville, PA 16335, 814-332-6940.

37-300B: North American Forgemasters (710 Moravia Street, New Castle, PA 16101) for construction of two additional forge furnaces to provide capacity during the subsequent furnace removal and the construction of six new forge furnaces which will replace six existing forge furnaces in New Castle City, **Lawrence County**. This is a State Only facility. The public notice is required for sources required to obtain a Plan Approval in accordance with 25 Pa. Code § 127.44. This plan approval will, in accordance with 25 Pa. Code § 127.450 or § 127.505, be incorporated into the State Only operating permit at a later date.

The construction of six new forge furnaces, two additional forge furnaces to provide, and taking a limit on the gas throughput for the Slow Cool Furnaces to help avoid triggering NSR could result in an increase in emissions of 1.667 tpy for VOC, 33.97 tpy for NO_x, 25.9 tpy for CO, 2.335 tpy for PM/PM₁₀/PM_{2.5}, 0.1865 tpy for SO_x, and 36123 tpy for CO_{2(e)}. This Plan Approval will contain emission restriction, recordkeeping, work practice standard and additional requirement conditions, which will satisfy the requirements of 25 Pa. Code § 127.12b (pertaining to plan approval terms and conditions) and will demonstrate BAT for the source including, but are not limited to, the following:

- The facility shall limit the fuel throughput from Source 103 to less than 112 mmcf/yr of natural gas based on a 12-month rolling total.
- The facility shall limit the combined fuel throughput from Sources 104 & 105 to less than 855 mmcf/yr of natural gas based on a 12-month rolling total.

In accordance with 25 Pa. Code § 127.44(f)(1), all the pertinent documents regarding this application (applications, review memos, and draft approvals) are also available for review from 8:00 a.m. to 4:00 p.m. at the Meadville Regional DEP office (Air Quality). Appointments for scheduling a review must be made by calling the DEP (814) 332-6340.

In accordance with 25 Pa. Code § 127.44(f)(2), a 30-day comment period, from the date of publication, will exist for the submission of comments. Any person(s) wishing to provide DEP with additional information, which they believe should be considered prior to the issuance of this permit, may submit the information to Regional Air

Quality Program Manager, Pennsylvania Department of Environmental Protection, 230 Chestnut Street, Meadville, PA 16335-3494 and must contain the name, address and telephone number of the person submitting the comments, identification of the proposed plan approval 37-300B and a concise statement regarding the relevancy of the information or objections to the issuance of the permit.

A public hearing may be held, if the Department of Environmental Protection, in its discretion, decides that such a hearing is warranted based on the comments received. All persons submitting comments or requesting a hearing will be notified of the decision to hold a hearing by publication in the newspaper or the *Pennsylvania Bulletin* or by telephone, where DEP determines such notification is sufficient. Written comments or requests for a public hearing should be directed to Regional Air Quality Program Manager, 230 Chestnut St., Meadville, PA 16335; Phone (814) 332-6940.

In accordance with 25 Pa. Code § 127.45, a person may oppose the proposed plan approval by filing a written protest with the Department's Northwest Region Air Quality Program Manager.

If a plan approval has not undergone the above public notice process, the change to an operating permit must be treated as a significant modification. In these situations the Department should follow the procedures described in §§ 127.421—127.431 for state only operating permits or 25 Pa. Code §§ 127.521—127.524 for Title V operating permits.

*Department of Public Health, Air Management Services:
321 University Avenue, Philadelphia, PA 19104*

Contact: Edward Wiener, Chief—Telephone: 215-685-9426

AMS 12147: (Philadelphia West TRANSFLO Terminal—36th and Moore Street Philadelphia, PA 19134) for modification and operation of 15 portable pumps for the transfer of crude oil from unit train to tank truck. Hazardous Air Pollutants (HAP) emissions from the facility are limited to less than 10 tons per rolling 12-month period for each individual HAP and less than 25 tons per rolling 12-month period for combined HAPs. A volatile Organic Compound emission at the facility is limited to less than 25 tons per rolling 12-month period.

The plan approval will contain operating, monitoring, recordkeeping, and reporting requirements to ensure operation within all applicable requirements.

Copies of all documents and information concerning this plan approval are available for review in the offices of AMS, room 218, 321 University Ave., Philadelphia, PA 19104-4543 during normal business hours. Persons wishing to review these documents or to submit written comments should contact Ms. Karen Smith (215 685-9493) at the above address. All written comments must be received within 30 days from the publication date. Comments received by facsimile will not be accepted.

OPERATING PERMITS

Intent to Issue Title V Operating Permits under the Air Pollution Control Act and 25 Pa. Code Chapter 127, Subchapter G.

Southeast Region: Air Quality Program, 2 East Main Street, Norristown, PA 19401

Contact: Janine Tulloch-Reid, Facilities Permitting Chief—Telephone: 484-250-5920

09-00006: United States Steel Corp.—Fairless Works (Pennsylvania Avenue, Fairless Hills, PA 19030) for the renewal of the Title V Operating Permit in Falls Township, **Bucks County**. The facility is primarily used for secondary processing, galvanizing of steel sheet products. As a result of potential emissions of NO_x , the facility is a major stationary source as defined in Title I, Part D of the Clean Air Act Amendments, and is therefore subject to the Title V permitting requirements adopted in 25 Pa. Code Chapter 127, Subchapter G. Several sources in the initial Title V Permit were deactivated, and the sources were removed from this Title V Permit Renewal. The proposed Title V Operating Renewal does not adopt any new regulations. The facility is not subject to Compliance Assurance Monitoring (CAM) pursuant to 40 CFR Part 64). From AIMS 2011 Inventory Data, the facility emitted approximately 92 tons of Nitrogen Oxides, 25 tons of carbon monoxide, 2 tons of Particulate Matter and less than one ton of VOC/HAP. The renewal contains all applicable requirements including monitoring, recordkeeping and reporting.

Southcentral Region: Air Quality Program, 909 Elmerton Avenue, Harrisburg, PA 17110

Contact: Thomas J. Hanlon, Facility Permitting Chief—Telephone: 717-705-4862 or Daniel Husted, New Source Review Chief—Telephone: 717-949-705-4863

06-05069S: East Penn Manufacturing Co., Inc. (P. O. Box 147, Lyon Station, PA 19536) for modifying formation operations at their Lyon Station Plant in Richmond Township, **Berks County**.

In accordance with 25 Pa. Code §§ 127.44(a) and 127.45(a), the Department of Environmental Protection (DEP) has received and intends to issue a Plan Approval to the abovementioned company for the abovementioned project. This plan approval may be incorporated into the company's facility-wide permit via an administrative amendment at a later date.

Plan Approval 06-05069S is for replacing air-rack formation systems 1, 2 and 3 with water bath formation systems and permanently decommissioning air-rack formation systems 4, 5, 6 and 10. The formation systems are controlled by mist eliminators that are best available technology (BAT) for removing sulfuric acid mist. Plan Approval 06-05069S is for installing seven 1.8 mMBtu/hr natural gas fired boilers and installing one 3.75 mMBtu/hr natural gas fired air make-up unit. Use of natural gas and/or propane-air mix fuel is accepted as BAT for combustion products. The plan approval also documents the transfer of 53 tons of NO_x Emission Reduction Credits from the GenOn REMA, LLC Warren County facility to the East Penn Richmond Township facility. The Plan Approval and Operating permit will contain additional recordkeeping and operating restrictions designed to keep the facility operating within all applicable air quality requirements. Because of the removal of four air-rack formation systems, the actual air emissions of H_2SO_4 from the A-3 building will be reduced by one tpy. The new water boilers and air make up unit will have a maximum potential to emit seven tpy of NO_x , six tpy of CO and one tpy of PM.

Copies of the application, DEP's analysis and other documents used in the evaluation of the application are available for public review during normal business hours at Air Quality Program, 909 Elmerton Avenue, Harrisburg, PA 17110.

A person may oppose the proposed plan approval, or may provide the Department with additional information

to consider in its review, by filing a written protest with the Department at the address listed above. Each written comment must contain the name, address and telephone number of the person submitting the comments, identification of the proposed permit by the permit number listed above and a concise statement regarding the relevancy of the information or objections to the issuance of the permit.

A 30-day comment period, from the date of publication of this notice in the *Pennsylvania Bulletin*, will exist for the submission of comments or protests, or for requests for a public hearing. A public hearing may be held, if the Department of Environmental Protection, in its discretion, decides that such a hearing is warranted based on the comments received.

Mr. Thomas Hanlon, Facility Permitting Chief, may be contacted at 717-705-4862, or at PA DEP Air Quality Program, 909 Elmerton Avenue, Harrisburg, PA 17110, for additional information or for the submission of comments, protests, or requests for a public hearing.

Plan approvals issued to sources identified in 25 Pa. Code § 127.44(b)(1)—(4) or plan approvals issued to sources with limitations on the potential to emit may become part of the SIP, and will be submitted to EPA for review and approval.

Southwest Region: Air Quality Program, 400 Waterfront Drive, Pittsburgh, PA 15222-4745

Contact: Barbara Hatch, Facilities Permitting Chief—Telephone: 412-442-4174

56-00181: Southern Alleghenies Landfill, Inc. (625 Cherrington Parkway, Moon Township, PA, 15108) for a solid waste landfill at the Conemaugh Township site in Conemaugh Township, **Somerset County**. This is a Title V Operating Permit Renewal application submittal.

Intent to Issue Operating Permits under the Air Pollution Control Act and 25 Pa. Code Chapter 127, Subchapter F.

Northeast Region: Air Quality Program, 2 Public Square, Wilkes-Barre, PA 18711-0790

Contact: Ray Kempa, New Source Review Chief—Telephone: 570-826-2507

64-00007: Hanson Aggregates Pa, LLC—Lake Ariel Quarry (7660 Imperial Way, Allentown, PA 18195) for sandstone crushed and broken mining in Lake Township, **Wayne County**. The sources consist of Crushers and Screens. The sources are considered minor emission sources of nitrogen oxide (NO_x) and sulfur oxides (SO_x). This is a renewal of the State-Only Natural Minor operating permit. The State-Only operating permit includes emissions, work practice standards and testing, monitoring, recordkeeping and reporting requirements designed to keep the facility operating within all applicable air quality requirements.

Southcentral Region: Air Quality Program, 909 Elmerton Avenue, Harrisburg, PA 17110

Contact: Thomas J. Hanlon, Facility Permitting Chief—Telephone: 717-705-4862 or Daniel Husted, New Source Review Chief—Telephone: 717-705-4863

36-05094: Keystone Wood Specialties, Inc. (2225 Old Philadelphia Pike, Lancaster, PA 17602) for their custom wood specialties facility in East Lampeter Township, **Lancaster County**.

In accordance with 25 Pa. Code §§ 127.424 and 127.425 the Department of Environmental Protection (DEP) has received an application and intends to issue an Air Quality Operating Permit for the abovementioned facility.

The subject facility has actual emissions of 4.88 tpy of VOCs, 0.64 tpy of HAPs and 0.41 tpy of Xylene. The Operating Permit will include emission limits and work practice standards along with monitoring, recordkeeping and reporting requirements to ensure the facility complies with the applicable air quality regulations. Among other items, the conditions include provisions derived from 25 Pa. Code § 129.52 Surface coating processes.

Copies of the application, DEP's analysis and other documents used in the evaluation of the application are available for public review during normal business hours at the PA DEP Southcentral Regional Office, at 909 Elmerton Avenue, Harrisburg, PA 17110.

A person may oppose the proposed plan approval, or may provide the Department with additional information to consider in its review, or may request a public hearing, by filing a written protest with the Department at the address listed above. Each written comment must contain the name, address and telephone number of the person submitting the comments, identification of the proposed permit by the permit number listed above and a concise statement regarding the relevancy of the information or objections to the issuance of the permit.

A 30-day comment period, from the date of publication of this notice in the *Pennsylvania Bulletin*, will exist for the submission of comments or protests.

Mr. Thomas Hanlon, Facility Permitting Chief, may be contacted at 717-705-4862, or at PA DEP Air Quality Program, 909 Elmerton Avenue, Harrisburg, PA 17110, for additional information or for the submission of comments or protests.

Northwest Region: Air Quality Program, 230 Chestnut Street, Meadville, PA 16335-3481

Contact: Edward Orris, New Source Review Chief—Telephone: 814-332-6131

25-00279: Associated Spring Barnes Group (226 South Center Street, Corry, PA 16407-1935), for a renewal-operating permit located in Corry City, **Erie County**. The facility manufactures wire springs and other small metal parts, primarily for the automotive industry. The sources at the facility include two space heating boilers, two process boilers, two air handlers, an oiling process, dip coating, spray coating, grinding, bluing and drawing ovens, miscellaneous ovens, and parts washers. The conditions of the previous approvals and operating permit were incorporated into the renewal permit. The facility is a Natural Minor. The potential PM-10, VOC, SO_x, NO_x, CO, and lead emissions from the facility are approximately 2 TPY, 5 TPY, 0.1 TPY, 14 TPY, 12 TPY, and 0.00006 TPY, respectively. The HAPs emissions from the facility are less than 10 TPY and the facility is therefore an Area Source for MACT.

Department of Public Health, Air Management Services: 321 University Avenue, Philadelphia, PA 19104

Contact: Edward Wiener, Chief—Telephone: 215-685-9426

S12-038: Coating and Converting (CCT), Incorporated (80 Morris Street, Philadelphia, PA 19148) a pressure sensitive tape operation in the City of Philadelphia, **Philadelphia County**. The facility's air emission sources include a coater, two (2) coater ovens at 6

MMBTU/hr (combined), twenty-four (24) heater each less than 0.6 MMBTU/hr, a 3.5 MMBTU/hr oxidizer, and cleanup operation of the coater.

The operating permit will be issued under 25 Pa. Code, Philadelphia Code Title 3 and Air Management Regulation XIII. Permit copies and other supporting information are available for public inspection at AMS, 321 University Avenue, Philadelphia, PA 19104. For further information, contact Edward Wiener at (215) 685-9426.

Persons wishing to file protest or comments on the above operating permit must submit the protest or comments within 30 days from the date of this notice. Any protests or comments filed with AMS must include a concise statement of the objections to the permit issuance and the relevant facts upon which the objections are based. Based upon the information received during the public comment period, AMS may modify the operating permit or schedule a public hearing. The hearing notice will be published in the *Pennsylvania Bulletin* and a local newspaper at least thirty days before the hearing.

S12-026: Chestnut Hill Hospital of Philadelphia (8835 Germantown Avenue, Philadelphia, PA 19118) for operation of a hospital facility in the City of Philadelphia, **Philadelphia County**. The facility's air emission sources include two (2) 16.74 MMBTU/hr boiler burning natural gas and four (4) emergency generators burning No. 2 oil.

The operating permit will be issued under 25 Pa. Code, Philadelphia Code Title 3 and Air Management Regulation XIII. Permit copies and other supporting information are available for public inspection at AMS, 321 University Avenue, Philadelphia, PA 19104. For further information, contact Edward Wiener at (215) 685-9426.

Persons wishing to file protest or comments on the above operating permit must submit the protest or comments within 30 days from the date of this notice. Any protests or comments filed with AMS must include a concise statement of the objections to the permit issuance and the relevant facts upon which the objections are based. Based upon the information received during the public comment period, AMS may modify the operating permit or schedule a public hearing. The hearing notice will be published in the *Pennsylvania Bulletin* and a local newspaper at least thirty days before the hearing.

N12-018: The MedImmune, LLC. (3001 Red Lion Road, Philadelphia, PA 19114) to issue an operating permit in the City of Philadelphia, **Philadelphia County**. The facility's air emission sources include two natural gas firing boilers capacity of 3.985 MMBTU/hr each, two natural gas firing hot water heaters capacity of 2.00 MMBTU/hr each, a 605 BHP emergency generator, and a 749 BHP emergency generator ULSD fuel firing each.

The operating permit will be issued under 25 Pa. Code, Philadelphia Code Title 3 and Air Management Regulation XIII. Permit copies and other supporting information are available for public inspection at AMS, 321 University Avenue, Philadelphia, PA 19104. For further information, contact Edward Wiener at (215) 685-9426.

Persons wishing to file protest or comments on the above operating permit must submit the protest or comments within 30 days from the date of this notice. Any protests or comments filed with AMS must include a concise statement of the objections to the permit issuance and the relevant facts upon which the objections are based. Based upon the information received during the public comment period, AMS may modify the operating permit or schedule a public hearing. The hearing notice

will be published in the *Pennsylvania Bulletin* and a local newspaper at least thirty days before the hearing.

COAL AND NONCOAL MINING ACTIVITY APPLICATIONS

Applications under the Surface Mining Conservation and Reclamation Act (52 P. S. §§ 1396.1—1396.19a); the Noncoal Surface Mining Conservation and Reclamation Act (52 P. S. §§ 3301—3326); The Clean Streams Law (35 P. S. §§ 691.1—691.1001); the Coal Refuse Disposal Control Act (52 P. S. §§ 30.51—30.66); and The Bituminous Mine Subsidence and Land Conservation Act (52 P. S. §§ 1406.1—1406.20a). Mining activity permits issued in response to such applications will also address the applicable permitting requirements of the following statutes: the Air Pollution Control Act (35 P. S. §§ 4001—4015); the Dam Safety and Encroachments Act (32 P. S. §§ 693.1—693.27); and the Solid Waste Management Act (35 P. S. §§ 6018.101—6018.1003). The following permit applications to conduct mining activities have been received by the Department. A copy of the application is available for inspection at the district mining office indicated before each application. Notices of requests for 401 Water Quality Certifications are included in individual application notices, as noted.

Written comments or objections, or requests for an informal conference, or a public hearing, as applicable, on a mining permit application and request for Section 401 water quality certification application may be submitted by any person or any officer or head of any Federal, state or local government agency or authority to the Department at the address of the district mining office indicated before each application within 30 days of this publication, or within 30 days after the last publication of the applicant's newspaper advertisement as provided by 25 Pa. Code §§ 77.121—77.123 and 86.31—86.34. Written comments or objections regarding a mining permit application should contain the name, address and telephone number of persons submitting comments or objections, application number and a statement of sufficient detail to inform the Department on the basis of comment or objection and relevant facts upon which it is based.

A request for an informal conference or a public hearing, as applicable, on a mining permit application, as provided by 25 Pa. Code § 77.123 or § 86.34, must contain the name, address and telephone number of the requestor; the application number; a brief summary of the issues to be raised by the requestor at the conference; and a statement whether the requestor desires to have the conference conducted in the locality of the proposed mining activities.

When an NPDES number is listed, the mining activity permit application was accompanied by an application for an individual NPDES permit. A separate notice will be provided after the draft NPDES permit is prepared.

Coal Applications Received

California District Office: 25 Technology Drive, Coal Center, PA 15423, 724-769-1100

56841328 and NPDES No. PA0033677 and GP12-56841328. Rosebud Mining Company, (301 Market Street, Kittanning, PA 16201). To renew the permit for the Mine 78 in Paint Township, **Somerset County** and Adams and Richland Townships, **Cambria County** and related NPDES permit. Includes renewal of Air Quality GPA/GP12 Authorization. No additional discharges. The application was considered administratively complete on July 26, 2012. Application received: May 23, 2012.

Cambria District Mining Office: 286 Industrial Park Road, Ebensburg, PA 15931, 814-472-1900

56070111 and NPDES No. PA0262510. Mountaineer Mining Corporation, 1010 Garrett Shortcut Road, Berlin, PA 15530, revision of an existing bituminous surface mine to add augering to a portion of the existing mining area approximately 2.6 acres in size in Brothersvalley Township, **Somerset County**, affecting 115 acres. Receiving stream(s): unnamed tributaries to Swamp Creek and unnamed tributaries to Buffalo Creek classified for the following use(s): cold water fishery. There are no potable water supply intakes within 10 miles downstream. Application received: July 16, 2012.

32110104 and NPDES No. PA0263303. Simpson Coal Company, 1003 Bush Road, New Alexandria, PA 15670, revision of an existing bituminous surface mine to add 2.5 acres for support in Young Township, **Indiana County**, affecting 40.5 acres. Receiving stream(s): Nesbit Run and unnamed tributary to Whiskey Run classified for the following use(s): cold water fishery. There are no potable water supply intakes within 10 miles downstream. Application received: July 19, 2012.

32070105 and NPDES No. PA0262412. Bedrock Mines, LP, 111 Freeport Road, Pittsburgh, PA 15215, permit renewal for the continued operation and restoration of a bituminous surface mine in Washington Township, **Indiana County**, affecting 35.0 acres. Receiving stream(s): South Branch Plum Creek classified for the following use(s): cold water fishery. There are no potable water supply intakes within 10 miles downstream. Application received: July 25, 2012.

32010109 and NPDES No. PA0249025. Amerikohl Mining, Inc., 202 Sunset Drive, Butler, PA 16001, permit renewal for the continued operation and restoration of a bituminous surface and auger mine in Rayne, Washington and White Townships, **Indiana County**, affecting 28.5 acres. Receiving stream(s): McKee Run classified for the following use(s): cold water fishery. There are no potable water supply intakes within 10 miles downstream. Application received: July 23, 2012.

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

63070101 and NPDES Permit No. PA0251101. Amerikohl Mining, Inc. (1384 State Route 711, Stahlstown, PA 15687). Renewal application for reclamation only to an existing bituminous surface mine, located in Somerset Township, **Washington County**, affecting 183.9 acres. Receiving streams: unnamed tributaries to North Branch Pigeon Creek, classified for the following use: WWF. There is no potable water supply intake within 10 miles downstream from the point of discharge. Renewal application received: July 17, 2012.

26950201 and NPDES Permit No. PA0201081. Mon River Energy Corp. (P.O. Box 466, Brier Hill, PA 15415). Renewal application for continued mining to an existing coal refuse reprocessing surface mine, located in Redstone Township, **Fayette County**, affecting 124.5 acres. Receiving streams: unnamed tributaries to Fourmile Run and to Fourmile Run, classified for the following use: WWF. There is no potable water supply intake within 10 miles downstream from the point of discharge. Renewal application received: July 23, 2012.

Moshannon District Mining Office: 186 Enterprise Drive, Philipsburg, PA 16866, 814-342-8200

17120102 and NPDES No. PA0257915. Rob Holland Enterprises (52 Holland Lane, Curwensville PA 16833),

Commencement, operation and restoration of a bituminous surface mine located in Penn Township, **Clearfield County** affecting 42.5 acres. Receiving streams: Kratzer Run and Hiles Run classified for the following uses: Cold Water Fishes. There are no potable water supply intakes within 10 miles downstream. Application received: July 13, 2012.

17120103 and NPDES No. PA0257923. Swisher Contracting, Inc. (P. O. Box 1223, Clearfield, PA 16830). Commencement, operation and restoration of a bituminous surface mine located in Bradford Township, **Clearfield County** affecting 199.9 acres. Receiving streams: Valley Fork Run, Roaring Run and their tributaries classified for the following uses: Cold Water Fishes. There are no potable water supply intakes within 10 miles downstream. Application received: July 19, 2012.

17860123 and NPDES No. PA0115436. Hepburnia Coal Company (P. O. Box I, 1127 Haytown Road, Grampian, PA 16838) Revision to an existing bituminous surface mine for change in land use from approximate original contour to final contour located in Knox Township, **Clearfield County** affecting 291.0 acres. Receiving stream(s): Unnamed Tributaries to McNeel Run to Gaz-zam Run and to Carson to Little Clearfield Creek classified for the following uses: Cold Water Fishes. There are no potable water supply intakes within 10 miles downstream. Application received: July 11, 2012.

17020103 and NPDES No. PA0243221. River Hill Coal Company, Inc. (P. O. Box 141, Kylertown, PA 16847). Revision to an existing bituminous surface mine to add Coal Refuse Disposal in Chest Township, **Clearfield County**, affecting 560.7 acres. Receiving stream(s): Wilson Run and McMasters Run to Wilson Run to Chest Creek classified for the following uses: Cold Water Fishes. There are no potable water supply intakes within 10 miles downstream. Application received: July 18, 2012.

Pottsville District Mining Office: 5 West Laurel Boulevard, Pottsville, PA 17901, 570-621-3118

54-305-028GP12. Waste Management & Processors, Inc., (P. O. Box K, Frackville, PA 17931), application to operate a coal preparation plant whose pollution control equipment is required to meet all applicable limitations, terms and conditions of General Permit, BAQ-GPA/GP-12 on Surface Mining Permit No. 54080201 in Port Carbon & Mechanicsville Boroughs, **Schuylkill County**. Application received: July 25, 2012.

Noncoal Applications Received

Moshannon District Mining Office: 186 Enterprise Drive, Philipsburg, PA 16866, 814-342-8200

08990301. Glenn O. Hawbaker, Inc. (1952 Waddle Road, Suite 203, State College, PA 16803). Revision of an

existing large industrial mineral permit for modification for clean fill placement located in Athens Township, **Bradford County** affecting 20.08 acres. Receiving streams: Susquehanna River classified for the following uses: Warm Water Fishes. There are no potable water supply intakes within 10 miles downstream. Application received: July 11, 2012.

Pottsville District Mining Office: 5 West Laurel Boulevard, Pottsville, PA 17901, 570-621-3118

58122510 and NPDES Permit No. PA0225312, Nit-tany Nova Aggregates, LLC, (2840 West Clymer Avenue, Suite 400, Telford, PA 18969), commencement, operation and restoration of a bluestone quarry operation and a non-discharge NPDES permit for discharge of treated mine drainage in New Milford Township, **Susquehanna County** affecting 10.0 acres, receiving stream: unnamed tributary to Beaver Creek, classified for the following use: HQ-cold water fishery. Application received: July 10, 2012.

67070301C and NPDES Permit No. PA0224600. Glen-Gery Corp., (1166 Spring Street, Wyomissing, PA 19610), renewal of NPDES Permit for discharge of treated mine drainage from a quarry operation in Dover Township, **York County** affecting 70.6 acres, receiving stream: unnamed tributaries to Fox Run, classified for the following use: migratory fishes and trout stocking. Application received: July 26, 2012.

MINING ACTIVITY NPDES DRAFT PERMITS

This notice provides information about applications for a new, amended or renewed NPDES permits associated with mining activity (coal or noncoal) permits. The applications concern industrial waste (mining) discharges to surface water and discharges of stormwater associated with mining activities. This notice is provided in accordance with 25 Pa. Code Chapters 91 and 92a and 40 CFR Part 122, implementing provisions of The Clean Streams Law (35 P. S. §§ 691.1—691.1001) and the Federal Clean Water Act (33 U.S.C.A. §§ 1251—1376).

The Department of Environmental Protection (Department) has prepared a draft NPDES permit and made a tentative determination to issue the NPDES permit in conjunction with the associated mining activity permit.

Effluent Limits for Coal Mining Activities

For coal mining activities, NPDES permits, when issued, will contain effluent limits that are the more stringent of technology-based (BAT) effluent limitations or Water Quality Based Effluent Limits (WQBEL).

The BAT limits for coal mining activities, as provided in 40 CFR Part 434 and 25 Pa. Code Chapters 87—90 are as follows:

<i>Parameter</i>	<i>30-Day Average</i>	<i>Daily Maximum</i>	<i>Instantaneous Maximum</i>
Iron (Total)	3.0 mg/l	6.0 mg/l	7.0 mg/l
Manganese (Total)	2.0 mg/l	4.0 mg/l	5.0 mg/l
Suspended solids	35 mg/l	70 mg/l	90 mg/l
pH*			

greater than 6.0; less than 9.0

Alkalinity greater than acidity*

*The parameter is applicable at all times.

In addition, the Department imposes a technology-based aluminum limit of 2.0 mg/l (30 day average) to protect stream uses.

A settleable solids instantaneous maximum limit of 0.5 ml/l applies to: surface runoff (resulting from a precipitation event of less than or equal to a 10-year 24-hour event) from active mining areas; active areas disturbed by coal refuse disposal activities; mined areas backfilled and revegetated; and all other discharges and drainage (resulting from a precipitation event of greater than 1-year 24-hour to less than or equal to a 10-year 24-hour event) from coal refuse disposal piles. Similarly, modified BAT limits apply to iron, manganese and suspended solids in surface runoff, discharges and drainage resulting from these precipitation events and those of greater magnitude in accordance with 25 Pa. Code §§ 87.102, 88.92, 88.187, 88.292, 89.52 and 90.102.

Exceptions to BAT effluent limits may be applicable in accordance with 25 Pa. Code §§ 87.102, 88.92, 88.187, 88.292, 89.52 and 90.102.

Effluent Limits for Noncoal Mining Activities

The BAT limits for noncoal mining activities as provided in 40 CFR Part 436 and 25 Pa. Code Chapter 77 are as follows:

<i>Parameter</i>	<i>30-day Average</i>	<i>Daily Maximum</i>	<i>Instantaneous Maximum</i>
Suspended solids	35 mg/l	70 mg/l	90 mg/l
Alkalinity exceeding acidity* pH*		greater than 6.0; less than 9.0	

* The parameter is applicable at all times.

Discharges from noncoal mines located in some geologic settings (for example, in the coal fields) may require additional water quality based effluent limits. If additional effluent limits are needed for an NPDES permit associated with a noncoal mining permit, then the permit description specifies the parameters.

In addition to BAT or WQBEL limits, coal and noncoal NPDES permits establish effluent limitations in the form of implemented Best Management Practices (BMPs) identified in the associated Erosion and Sedimentation Plan, the Reclamation Plan and the NPDES permit application. These BMPs restrict the rates and quantities of associated pollutants from being discharged into surface waters in this Commonwealth. More restrictive effluent limitations, restrictions on discharge volume or restrictions on the extent of mining that may occur are incorporated into an NPDES permit when necessary for compliance with water quality standards and antidegradation requirements (in accordance with 25 Pa. Code Chapters 91—96).

The procedures for determining the final effluent limits, using a mass-balance equation or model, are found in Technical Guidance Document 362-0600-001, NPDES Program Implementation—Memorandum of Understanding (MOU) Concerning Water Quality Management, NPDES Program Implementation, and Related Matters. Other specific factors to be considered include public comments and Total Maximum Daily Load(s). Additional discharge limitations may apply in the event that unexpected discharges occur.

Discharge rates for surface mining activities are precipitation driven. Discharge rates for proposed discharges associated with underground mining are noted in the permit description.

Persons wishing to comment on an NPDES draft permit should submit a written statement to the Department at the address of the district mining office indicated before each draft permit within 30 days of this public notice. Comments received within the comment period will be considered in the final determinations regarding the NPDES permit applications. Comments must include the name, address and telephone number of the writer and a concise statement to inform the Department of the exact basis of a comment and the relevant facts upon which it is based.

The Department will also accept requests or petitions for a public hearing on NPDES permit applications, as provided in 25 Pa. Code § 92a.82(d). The request or petition for a public hearing shall be filed within 30 days of this public notice and contain the name, address, telephone number and the interest of the party filing the request, and state the reasons why a hearing is warranted. A public hearing may be held if the Department considers the public interest significant. If a hearing is scheduled, a notice of the hearing on the NPDES permit application will be published in the *Pennsylvania Bulletin* and a newspaper of general circulation within the relevant geographical area. When a public hearing is held, the Department will consider comments from the public hearing in the final determination on the NPDES permit application.

Coal NPDES Draft Permits

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

NPDES No. PA0241491 (Permit No. 24990101). AMFIRE Mining Company, LLC (One Energy Place, Suite 2800, Latrobe, PA 15650) Renewal of an NPDES permit for a bituminous surface mine in Horton Township, **Elk County**, affecting 568.9 acres. Receiving streams: Unnamed tributary to Little Toby Creek and unnamed tributary to Mead Run, classified for the following uses: CWF. TMDL: Little Toby Creek. Application received: May 25, 2012.

Unless otherwise noted for a specific outfall, the proposed effluent limits for all outfalls in this permit are the BAT limits described above for coal mining activities.

The outfall(s) listed below discharge to unnamed tributary to Little Toby Creek and unnamed tributary to Mead Run:

<i>Outfall No.</i>	<i>New Outfall (Y/N)</i>
TP1	N
TP2	N
TP3	N
TP4	N
TP5	N
TP6	N
TP7	N
TP8	N

The proposed effluent limits for the above listed outfall(s) are as follows:

<i>Parameter</i>	<i>Minimum</i>	<i>30-Day Average</i>	<i>Daily Maximum</i>	<i>Instant. Maximum</i>
pH ¹ (S.U.)	6.0			9.0
Iron (mg/l)		3	6	7
Manganese (mg/l)		2	4	5
Aluminum (mg/l)		.75	1.5	1.88
Alkalinity greater than acidity ¹				
Total Suspended Solids (mg/l)		35	70	90

¹ The parameter is applicable at all times.

The outfall(s) listed below discharge to unnamed tributary to Little Toby Creek and unnamed tributary to Mead Run:

<i>Outfall No.</i>	<i>New Outfall (Y/N)</i>
A	N
B	N
D	N
E	N
F	N
G	N
H	N
I	N
J	N
K	N
L	N
M	N

The proposed effluent limits for the above listed outfall(s) are as follows:

<i>Parameter</i>	<i>Minimum</i>	<i>30-Day Average</i>	<i>Daily Maximum</i>	<i>Instant. Maximum</i>
pH ¹ (S.U.)	6.0			9.0
Iron (mg/l)				7.0
Alkalinity greater than acidity ¹				
Total Settleable Solids (ml/l)				0.5

NPDES No. PA0259276 (Permit No. 33120103). Reichard Contracting, Inc. (212 Olean Trail, New Bethlehem, PA 16242) New NPDES permit for a bituminous surface mine in Beaver Township, **Jefferson County**, affecting 68.0 acres. Receiving streams: Unnamed tributary to Little Sandy Creek, classified for the following uses: CWF. TMDL: Redbank Creek. Application received: April 23, 2012. Unless otherwise noted for a specific outfall, the proposed effluent limits for all outfalls in this permit are the BAT limits described above for coal mining activities.

The outfall(s) listed below discharge to unnamed tributary No. 1 to Little Sandy Creek:

<i>Outfall No.</i>	<i>New Outfall (Y/N)</i>
TA	Y

The proposed effluent limits for the above listed outfall(s) are as follows:

<i>Parameter</i>	<i>Minimum</i>	<i>30-Day Average</i>	<i>Daily Maximum</i>	<i>Instant. Maximum</i>
pH ¹ (S.U.)	6.0			9.0
Iron (mg/l)		3	6	7
Manganese (mg/l)		2	4	5
Aluminum (mg/l)		0.75	1.5	1.88
Alkalinity greater than acidity ¹				
Total Suspended Solids (mg/l)		35	70	90

¹ The parameter is applicable at all times.

The outfall(s) listed below discharge to unnamed tributary No. 1 to Little Sandy Creek:

<i>Outfall No.</i>	<i>New Outfall (Y/N)</i>
A	Y

The proposed effluent limits for the above listed outfall(s) are as follows:

<i>Parameter</i>	<i>Minimum</i>	<i>30-Day Average</i>	<i>Daily Maximum</i>	<i>Instant. Maximum</i>
pH ¹ (S.U.)	6.0			9.0
Iron (mg/l)				7.0
Alkalinity greater than acidity ¹				
Total Settleable Solids (ml/l)				0.5

Noncoal NPDES Draft Permits

Cambria District Mining Office: 286 Industrial Park Road, Ebensburg, PA 15931, 814-472-1900

NPDES No. PA0599549 (Mining permit no. 29920301), H. B. Mellott Estate, Inc., 100 Mellott Drive, Suite 100, Warfordsburg, PA 17267, renewal of an NPDES permit for a limestone quarry in Ayr Township, **Fulton County**, affecting 75.7 acres. Receiving stream(s): Esther Run and Unnamed Tributary to Esther Run, classified for the following use(s): cold water fishery. Application received: July 12, 2012.

Unless otherwise noted for a specific outfall, the proposed effluent limits for all outfalls in this permit are the BAT limits described above for noncoal mining activities.

The mine drainage/stormwater outfall(s) listed below discharge to Esther Run.

<i>Outfall Nos.</i>	<i>New Outfall (Y/N)</i>
001	N

The stormwater outfall(s) listed below discharge to Unnamed Tributary to Esther Run:

<i>Outfall Nos.</i>	<i>New Outfall (Y/N)</i>
002	N

The proposed effluent limits for the above listed outfall(s) are as follows:

<i>Outfalls: Parameter</i>	<i>30-Day Average</i>	<i>Daily Maximum</i>	<i>Instant. Maximum</i>
Total Suspended Solids (mg/l)	35.0	70.0	90.0
Settleable Solids (ml/l)			0.5
pH (S.U.): Must be between 6.0 and 9.0 standard units at all times			
Alkalinity must exceed acidity at all times			

Pottsville District Mining Office: 5 West Laurel Boulevard, Pottsville, PA 17901, 570-621-3118

NPDES No. PA0225118 on Surface Mining Permit Number 52110301. Wayne D. Holbert, (115 Rocky Rift Farm Road, Lackawaxen, PA 18435), new NPDES permit for a bluestone and aggregate quarry operation in Lackawaxen Township, **Pike County**, affecting 40.0 acres. Receiving streams: unnamed tributary to the Lackawaxen River, is classified for the following uses: HQ-cold water fishes and migratory fishes; Lackawaxen River, is classified for the following uses: HQ-trout stock fishes and migratory fishes; Delaware River is classified for the following uses: warm water fishes and migratory fishes. Application received October 4, 2011.

Non-discharge BMP's will apply to this site.

FEDERAL WATER POLLUTION CONTROL ACT, SECTION 401

The following permit applications, requests for Environmental Assessment approval and requests for 401 Water Quality Certification have been received by the Department. Section 401 of the Federal Water Pollution Control Act (FWPCA) (33 U.S.C.A. § 1341) requires the Commonwealth to certify that the involved projects will not violate the sections 301—303, 306 and 307 of the FWPCA (33 U.S.C.A. §§ 1311—1313, 1316 and 1317) as well as relevant State requirements. Persons objecting to approval of a request for certification under section 401 of the FWPCA, the issuance of a Dam Permit or Water Obstruction and Encroachment Permit or the approval of an Environmental Assessment shall submit comments, suggestions or objections within 30 days of the date of this notice as well as any questions to the office noted before an application. Comments should contain the name, address and telephone number of the person

commenting, identification of the certification request to which the comments or objections are addressed and a concise statement of comments, objections or suggestions including the relevant facts upon which they are based.

The Department may conduct a fact-finding hearing or an informal conference in response to comments if deemed necessary. Each individual will be notified, in writing, of the time and place of a scheduled hearing or conference concerning the certification request to which the comment, objection or suggestion relates. Maps, drawings and other data pertinent to the certification request are available for inspection between 8 a.m. and 4 p.m. on working days at the office noted before the application.

Persons with a disability who wish to attend the hearing and require an auxiliary aid, service or other accommodation to participate in the proceedings should contact the specified program. TDD users may contact the Department through the Pennsylvania AT&T Relay Service at (800) 654-5984.

Applications Received under the Dam Safety and Encroachments Act (32 P. S. §§ 693.1—693.27) and section 302 of the Flood Plain Management Act (32 P. S. § 679.302) and Requests for Certification under section 401(a) of the FWPCA.

WATER OBSTRUCTIONS AND ENCROACHMENTS

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

E51-253. Brian Mohl, City of Philadelphia, Philadelphia Water Department, Office of Watersheds, 1101 Market St., 4th Floor, Philadelphia, PA 19107, **Philadelphia County**, ACOE Philadelphia District.

The Cobbs Creek Watershed Improvement Project is located at the confluence of the East and West branches of Indian Creek (WWF, MF). Flow of the West Branch will be diverted from an existing culvert to a created natural stream channel. Bank stabilization, restoration of a riparian buffer and debris removal will be conducted. A combined sewer outfall (CSO) will be directed to a temporary storage created from the existing culvert. Specific water obstruction and encroachment activities consist of:

1) To create and maintain approximately 1,300 linear feet of stream channel with an approximate width of 40 feet to convey the West Branch. This work includes creation of forested riparian buffers, habitat improvement measures and temporary access roads in and along the new channel.

2) To remove approximately 700 linear feet of the existing brick culvert.

3) To reconstruct and maintain the existing CSO outfall structure within the footprint of the existing brick culvert to serve as temporary storage for CSO discharges.

4) To stabilize and maintain the channel and banks of the existing branches. All disturbed areas will be stabilized and replanted with native plants.

The site is located approximately 1000 feet northeast of the intersection of Haverford Avenue and Lansdowne Avenue (Lansdowne, PA USGS Quadrangle N: 18.01 inches; W: 1.52 inches).

E15-833. Pennsylvania Department of Transportation, District 6, 7000 Geerdes Blvd, King of Prussia, PA 19406, **Chester County**, ACOE Philadelphia District.

To perform the following water obstruction and encroachment activities associated with replacement of the Brandywine Avenue bridge (S.R. 0322) over the East Branch of Brandywine Creek (WWF-MF):

1) To remove the existing three-span bridge, and to construct and maintain, in its place, an approximately 53-foot long, 167-foot span single-span bridge with underclearance of 8 feet, impacting 0.06 acre of wetlands. This work includes the modification of the approach roadways, and placement of rip-rap adjacent to the abutments.

2) To remove approximately 0.06 acre of gravel bar from the upstream and downstream of the bridge to enhance stream flow.

The project will permanently impact 131 linear feet of the stream. The project is located at the boundary of East Clan and West Bradford Townships, approximately 227 feet north of the intersection of Bradford Avenue and Downingtown Pike in Chester County (Unionville, PA USGS Quadrangle N: 21.80 inches; W: 10.38 inches).

E46-1082. Borough of Conshohocken, 1 West First Avenue, Suite 200, Conshohocken, PA 19428, Conshohocken Borough, **Montgomery County**, ACOE Philadelphia District.

To construct and maintain an approximately 108-foot long by 65-foot wide boat-house, and associated 360-foot long by 10-foot wide dock, gangway and accessible ramp in and along the 100 year floodplain of the Schuylkill River.

The site is located within the Millennium Tract Development, and extends from Cherry to Ash streets (Norristown, PA USGS Quadrangle N: 12.75 inches; W: 7.2 inches).

Southcentral Region: Waterways & Wetlands Program, 909 Elmerton Avenue, Harrisburg, PA 17110. Telephone: 717.705.4802.

E06-679: PPL Electric Utilities Corporation, Hazleton Service Center, 334 South Poplar Street, Hazleton, PA 18201 (State Hill Taps 1 and 2), in Lower Heidelberg and Spring Townships, **Berks County**, (Sinking Spring, PA Quadrangle; Latitude 40°20'06", Longitude -76°02'22"), ACOE Philadelphia District

The applicant proposes to remove 19 existing wood aerial electric utility poles, and to affect:

1) 0.025 acre of palustrine wetland for a temporary crossing (Latitude: 40°20'19", Longitude: -76°01'26.4"),

2) 0.075 acre of palustrine wetland for a temporary crossing (Latitude: 40°20'19.3", Longitude: -76°01'22.4"),

3) 0.027 acre of palustrine wetland for a temporary crossing (Latitude: 40°20'11.0", Longitude: -76°02'5.6"),

4) 0.409 acre of palustrine wetland for a temporary crossing (Latitude: 40°20'9.2", Longitude: -76°02'15"),

5) 0.087 acre of palustrine wetland for a temporary crossing (Latitude: 40°20'7.1", Longitude: -76°02'25.1"),

6) 0.508 acre of palustrine wetland for a temporary crossing (Latitude: 40°20'2.8", Longitude: -76°02'42"),

7) 0.025 acre of palustrine wetland for a temporary crossing (Latitude: 40°19'59.2", Longitude: -76°02'55"),

8) 0.020 acre of palustrine wetland for a temporary crossing (Latitude: 40°19'57.7", Longitude: -76°02'58.2"),

9) 0.050 acre of palustrine wetland for a temporary crossing (Latitude: 40°19'56.6", Longitude: -76°03'1.1"),

10) 0.040 acre of palustrine wetland for a temporary crossing (Latitude: 40°19'54.1", Longitude: -76°03'7.9"),

11) 0.031 acre of palustrine wetland for a temporary crossing (Latitude: 40°19'53", Longitude: -76°03'10.4"), and

12) 0.003 acre of palustrine wetland for a temporary crossing (Latitude: 40°19'52.1", Longitude: -76°03'12.3"), all in Lower Heidelberg Township, Berks County.

The following activities are waived under 25 Pa. Code § 105.12(a)(3): to construct and maintain 19 steel aerial electric utility poles in palustrine wetlands (Latitude: 40°20'19.0" to 40°19'52.1"; Longitude: -76°01'26.4" to -76°03'12.3"). The project proposes to directly affect 1.3 acres of wetlands.

E22-585: The Harrisburg Authority, 212 Locust Street, Suite 302, Harrisburg, PA 17101 (Harrisburg Advanced WWTP Improvements Project), in Swatara Township, **Dauphin County**, ACOE Baltimore District

To construct and maintain: 1) a 5,082.0-square foot Aerobic Tank, 2) a 12,376.0-square foot Post Anoxic Tank;

3) a 1,100.0-square foot Methanol storage facility, and 4) a 616.0-square foot NaOH storage facility, all in the floodplains of the Spring Creek and the Susquehanna River. The purpose of the project is to improve the treatment capability of the existing plant. The project is located immediately west of the intersection of Gibson Street and SR 230 (Steelton, PA Quadrangle; N: 20.98 inches, W: 14.92 inches; Latitude: 40°40'26"N, Longitude: -76°51'25"W) in Swatara Township, Dauphin County. No wetlands will be impacted by this project.

E36-902: John Lippa, Members 1st Federal Credit Union, 5000 Louise Drive, PO Box 40, Mechanicsburg, PA 17055 (Elizabethtown location), in Elizabethtown Borough and Mount Joy Township, **Lancaster County**, ACOE Baltimore District

To place and maintain fill in 0.02 acre of Palustrine Emergent wetland for the purpose of constructing a proposed credit union branch facility. The project is located approximately 500.0 feet southeast of the intersection of Ridge View Avenue and South Market Street (Latitude: 40°08'24.1"N, Longitude: -76°35'18.70"W) in Elizabethtown Borough and Mount Joy Township, Lancaster County.

E36-905: Charles Douts, County of Lancaster, 150 North Queen Street, Suite 612, Lancaster, PA 17603 (Siegrist Mill Covered Bridge Rehabilitation), in Rapho and West Hempfield Townships, **Lancaster County**, ACOE Baltimore District

To reset and maintain an 88.0-foot, 1.5-inch long, 14.0-foot, 1.0-inch wide covered bridge having a proposed underclearance of 10.0 feet, 3.0 inches over Chiques Creek (WWF-MF), for the purpose of repairing damage caused by flooding that occurred in 2011. The project is located on Siegrist Mill Road (Latitude: 40°04'33.04", Longitude: -76°28'15.06"W) in Hempfield Township, Lancaster County.

District Oil and Gas Operations: Eastern Oil & Gas District, 208 West Third Street, Suite 101, Williamsport, PA 17701

E5929-033: SWEPI LP., 190 Thorn Hill Road, Warrendale, PA 15086, Delmar Township, **Tioga County**, ACOE Baltimore District.

To construct, operate, and maintain:

1) a temporary road crossing using a 20 foot long, 30 inch diameter corrugated metal pipe, a 12 inch diameter natural gas gathering line, a 10 inch diameter fresh waterline, and a fiber optic cable impacting 118 linear feet of an unnamed tributary to West Branch Stony Fork (EV) (Tiadaghton, PA Quadrangle 41°39'53"N 77°25'14"W);

2) a temporary road crossing using a 20 foot long, 18 inch diameter corrugated metal pipe, a 12 inch diameter natural gas gathering line, a 10 inch diameter fresh waterline, and a fiber optic cable impacting 109 linear feet an unnamed tributary to West Branch Stony Fork (EV) (Tiadaghton, PA Quadrangle 41°39'41"N 77°25'13"W);

3) a temporary road crossing using a wood mat bridge, a 12 inch diameter natural gas gathering line, a 10 inch diameter fresh waterline, and a fiber optic cable impacting 1,447 square feet of an exceptional value palustrine emergent (EV-PEM) wetland (Tiadaghton, PA Quadrangle 41°40'01"N 77°25'07"W);

4) a temporary road crossing using a wood mat bridge, a 12 inch diameter natural gas gathering line, a 10 inch

diameter fresh waterline, and a fiber optic cable impacting 865 square feet of a palustrine scrub-shrub (PSS) wetland (Tiadaghton, PA Quadrangle 41°39'47"N 77°25'15"W);

5) a temporary road crossing using a wood mat bridge impacting 505 square feet of a palustrine forested/palustrine emergent (PFO/PEM) wetland (Tiadaghton, PA Quadrangle 41°39'33"N 77°25'09"W).

The project will result in 227 linear feet of temporary stream impacts and 2,817 square feet (0.07 acre) of temporary wetland impacts, all for the purpose of installing a natural gas gathering line, a fresh waterline, a fiber optic cable, and associated access roadways in Delmar Township, Tioga County.

E5829-033: Williams Field Services Company, LLC, 1605 Coraopolis Heights Road, Moon Township, PA 15108, Gibson and Harford Townships, **Susquehanna County**, ACOE Baltimore District.

To construct, operate, and maintain:

1. a 16 inch diameter natural gas gathering pipeline and timber mat crossing impacting 76 lineal feet of an unnamed tributary to Butler Creek (CWF-MF) (Harford, PA Quadrangle; Lat. 41° 45' 01", Long. -75° 39' 28");

2. a 16 inch diameter natural gas gathering pipeline and timber mat crossing impacting 80 lineal feet of an unnamed tributary to Tunkhannock Creek (CWF-MF) (Harford, PA Quadrangle; Lat. 41° 45' 09", Long. -75° 38' 31");

3. a 12 inch diameter natural gas gathering pipeline and timber mat crossing impacting 61 lineal feet of an unnamed tributary to Bell Creek (CWF-MF) (Harford, PA Quadrangle; Lat. 41° 45' 02", Long. -75° 37' 40");

4. a 12 inch diameter natural gas gathering pipeline and timber mat crossing impacting 78 lineal feet of an unnamed tributary to Bell Creek (CWF-MF) (Harford, PA Quadrangle; Lat. 41° 45' 03", Long. -75° 37' 34");

5. a 12 inch diameter natural gas gathering pipeline and timber mat crossing impacting 114 lineal feet of an unnamed tributary to Bell Creek (CWF-MF) (Harford, PA Quadrangle; Lat. 41° 44' 59", Long. -75° 37' 37");

6. a 12 inch diameter natural gas gathering pipeline and timber mat crossing impacting 2 lineal feet of an unnamed tributary to Bell Creek (CWF-MF) (Harford, PA Quadrangle; Lat. 41° 45' 01", Long. -75° 37' 31");

7. a 16 inch diameter natural gas gathering pipeline and timber mat crossing impacting 8,276 square feet (0.19 acre) of a PEM wetland (Lenoxville, PA Quadrangle; Lat. 41° 43' 41", Long. -75° 44' 30");

8. a timber mat crossing impacting 436 square feet (0.01 acre) of a PEM wetland (Harford, PA Quadrangle; Lat. 41° 45' 05", Long. -75° 39' 27");

9. a timber mat crossing impacting 436 square feet (0.01 acre) of a PEM wetland (Lenoxville, PA Quadrangle; Lat. 41° 44' 59", Long. -75° 39' 30");

10. a 16 inch diameter natural gas gathering pipeline and timber mat crossing impacting 8,712 square feet (0.20 acre) of a PEM wetland (Harford, PA Quadrangle; Lat. 41° 45' 10", Long. -75° 38' 37");

11. a 12 inch diameter natural gas gathering pipeline and timber mat crossing impacting 4,792 square feet (0.11 acre) of a PEM and 1,742 square feet (0.04 acre) of a PSS wetlands (Lenoxville, PA Quadrangle; Lat. 41° 43' 35", Long. -75° 44' 30");

12. a 12 inch diameter natural gas gathering pipeline crossing impacting 13,068 square feet (0.30 acre) of a PFO wetland (Lenoxville, PA Quadrangle; Lat. 41° 43' 40", Long. -75° 44' 09");

13. an 8 inch diameter natural gas gathering pipeline and timber mat crossing impacting 2,178 square feet (0.05 acre) of a PEM wetland (Lenoxville, PA Quadrangle; Lat. 41° 43' 35", Long. -75° 43' 51").

The Columbia gas gathering line project will convey natural gas to the Williams - MacDowall Pipeline located in Harford Township, Susquehanna County. The project will result in 411 linear feet (6,121 square feet) of temporary stream impacts, a total of 0.57 acre (24,829 square feet) of temporary wetland impacts, and 0.34 acre (14,810 square feet) of permanent wetland impacts all for the purpose of constructing, operating, and maintaining a natural gas gathering line.

ACTIONS

THE PENNSYLVANIA CLEAN STREAMS LAW AND THE FEDERAL CLEAN WATER ACT

FINAL ACTIONS TAKEN FOR NPDES PERMITS AND WQM PERMITS

The Department has taken the following actions on previously received applications for new, amended and renewed NPDES and WQM permits, applications for permit waivers and NOIs for coverage under General Permits. This notice of final action is provided in accordance with 25 Pa. Code Chapters 91 and 92a and 40 CFR Part 122, implementing provisions of The Clean Streams Law (35 P.S. §§ 691.1—691.101) and the Federal Clean Water Act (33 U.S.C.A. §§ 1251—1376).

<i>Location</i>	<i>Permit Authority</i>	<i>Application Type or Category</i>
Section I	NPDES	Renewals
Section II	NPDES	New or Amendment
Section III	WQM	Industrial, Sewage or Animal Wastes; Discharges to Groundwater
Section IV	NPDES	MS4 Individual Permit
Section V	NPDES	MS4 Permit Waiver
Section VI	NPDES	Individual Permit Stormwater Construction
Section VII	NPDES	NOI for Coverage under NPDES General Permits

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

Persons aggrieved by an action may appeal that action to the Environmental Hearing Board (Board) under section 4 of the Environmental Hearing Board Act (35 P.S. § 7514) and 2 Pa.C.S. §§ 501—508 and 701—704 (relating to Administrative Agency Law). The appeal should be sent to the Environmental Hearing Board, Second Floor, Rachel Carson State Office Building, 400 Market Street, PO Box 8457, Harrisburg, PA 17105-8457, (717) 787-3483. TDD users may contact the Board through the Pennsylvania Relay Service, (800) 654-5984. Appeals must be filed with the Board within 30 days of publication of this notice in the *Pennsylvania Bulletin* unless the appropriate statute provides a different time period. Copies of the appeal form and the Board's rules of practice and procedure may be obtained from the Board. The appeal form and the Board's rules of practice and procedure are also available in Braille or on audiotape from the Secretary to the Board at (717) 787-3483. This paragraph does not, in and of itself, create a right of appeal beyond that permitted by applicable statutes and decisional law.

For individuals who wish to challenge an action, the appeal must reach the Board within 30 days. A lawyer is not needed to file an appeal with the Board.

Important legal rights are at stake, however, so individuals should contact a lawyer at once. Persons who cannot afford a lawyer may qualify for pro bono representation. Call the Secretary to the Board at (717) 787-3483 for more information.

I. NPDES Renewal Permit Actions

Northeast Regional Office: Water Management Program Manager, 2 Public Square, Wilkes-Barre, PA 18701-1915. Phone: 570.826.2553.

<i>NPDES No. (Type)</i>	<i>Facility Name & Address</i>	<i>County & Municipality</i>	<i>Stream Name (Watershed No.)</i>	<i>EPA Waived Y/N?</i>
PA0061506 (Sewage)	Preston Country Market WWTP 470 Shehawken Road (Route 370) Preston Park, PA 18455	Wayne County Preston Township	Unnamed Tributary to Shehawken Creek (01A)	Y

<i>NPDES No. (Type)</i>	<i>Facility Name & Address</i>	<i>County & Municipality</i>	<i>Stream Name (Watershed No.)</i>	<i>EPA Waived Y/N?</i>
PA0020206 (Sewage)	Bath Borough Authority Race & Mill Streets Bath, PA 18014	Northampton County Bath Borough	Monocacy Creek (2-C) High Quality—Cold Water Fishes	Y
PA0064131 (Sewage)	Raceway Truckstop Molleystown Road Pine Grove, PA 17963	Schuylkill County Tremont Township	Swatara Creek (7-D) Cold Water Fishes	Y
PA0051675 (Sewage)	Moore Elementary School Northampton Area Sch. Dist. Klecknersville, PA 18067	Northampton County Moore Township	Unnamed Tributary to Hokendauqua Creek (2-C)	Y
PA0013650 (IW)	General Dynamics OTS Inc. (Scranton Army Ammunition Plant) 156 Cedar Avenue Scranton, PA 18505	Lackawanna County Scranton City	Roaring Brook (5-A)	Y

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

<i>NPDES No. (Type)</i>	<i>Facility Name & Address</i>	<i>County & Municipality</i>	<i>Stream Name (Watershed #)</i>	<i>EPA Waived Y/N?</i>
PA0259951 (Sew)	Jody O. Bradley RR 1 Box 948 Claysburg, PA 16625-9703	Blair County / Greenfield Township	UNT Smokey Run / 11-A	Y
PA0030171 (Sew)	Susan Gochenour Llewellyn's Manufactured Home Community, Inc. 4550 Bull Road Dover, PA 17315-2025	York County / Conewago Township	UNT Little Conewago Creek / 7-F	Y
PA0082015 (Sew)	Dawn Catteau Meadows Sewer Company PO Box 604 Exton, PA 19341	Cumberland County/ Middlesex Township	Conewago Creek / 7-B	Y
PA0084018 (Sew)	Stan Custer, Jr. President Custer Group of Companies 2805 Old Post Road Ste 200 Harrisburg, PA 17110	Dauphin County / Middle Paxton Township	Fishing Creek / 7-C	Y
PA0081302 (Sew)	Scott Galbraith South Londonderry Township Municipal Authority PO Box 3 Campbelltown, PA 17010	Lebanon County / South Londonderry Township	UNT Spring Creek / 7-D	Y
PA0082511 (Sew)	Roxbury Holiness Camp, Inc. PO Box 28 Roxbury, PA 17251-0028	Franklin County / Letterkenny Township	Conodoguinet Creek / 7-B	Y
PA0088650 (Sew)	Capital Area Christian Church 1775 Lambs Gap Road Mechanicsburg, PA 17055	Cumberland County/ Hampden Township	UNT Conodoguinet Creek/ 7-B	Y

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

<i>NPDES No. (Type)</i>	<i>Facility Name & Address</i>	<i>County & Municipality</i>	<i>Stream Name (Watershed #)</i>	<i>EPA Waived Y/N?</i>
PA0114111 (Sewage)	South Shore Recreation Area South Shore Recreation Area Lawrenceville, PA 16929	Tioga County Lawrence Township	Unnamed Tributary to Cowanesque River (4-A)	Y

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

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

NPDES Permit No. PA0005037-A1, Industrial Waste, **EME Homer City Generation, LP**, 1750 Power Plant Road, Homer City, PA 15748-8009.

This existing facility is located in Center Township, **Indiana County**.

Description of Proposed Action/Activity: Permit amendment issuance.

III. WQM Industrial Waste and Sewerage Actions under The Clean Streams Law

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

WQM Permit No. 2312202, Sewerage, **Sunoco Inc. (R & M)**, 10 Industrial Highway, Bldg G, MS4, Lester, PA 19029.

This proposed facility is located in Upper Darby Township, **Delaware County**.

Description of Action/Activity: Construction and operation of an industrial wastewater treatment facility. The facility is a retail gasoline station with groundwater contamination.

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

WQM Permit No. WQG01211201, Sewerage, **Ruth A. Thrush**, 1105 Roxbury Road, Newburg, PA 17241.

This proposed facility is located in Upper Mifflin Township, **Cumberland County**.

Description of Proposed Action/Activity: Permit approval for the construction / operation of a small flow sewage treatment system to serve their existing single family residence.

WQM Permit No. 3609402, Amendment 12-1, Sewerage, **Larry Demarco, Peanut Investments, Inc.**, 312 Paradise Lane, Ronks, PA 17572.

This proposed facility is located in Paradise Township, **Lancaster County**.

Description of Proposed Action/Activity: Permit correction.

WQM Permit No. 0612403, Sewerage, **Kutztown Rd Association Inc.**, 6081 Fairway Lane, Allentown, PA 18106.

This proposed facility is located in Maxatawny Township, **Berks County**.

Description of Proposed Action/Activity: Permit approval for the construction of sewage facilities consisting of a 5-stage treatment process and the treatment process appurtenances need to treat the wastewater generated at the proposed roller skating rink named "The Rink" and an absorption bed and the absorption bed appurtenances needed to provide the ultimate disposal of the treated effluent from the treatment process.

WQM Permit No. 6773421, Sewerage, **Frank Perano, GSP Management Company**, PO Box 677, Morgantown, PA 19543.

This proposed facility is located in Newberry Township, **York County**.

Description of Proposed Action/Activity: Permit approval for the modifications of sewage facilities consisting of: placing the chlorine feed lines pre-sand filtration and the addition of a liquid dechlorination system at the effluent weir of the chlorine contact tank at the Mountain View Terrace Mobile Home Park.

WQM Permit No. 0584404, Amendment 12-1, Sewerage, **Rodney Boyd**, 8220 Black Valley Road, Everett, PA 15537.

This proposed facility is located in West Providence Township, **Bedford County**.

Description of Proposed Action/Activity: Transfer of Permit

IV. NPDES Stormwater Discharges from MS4 Permit Actions

V. NPDES Waiver Stormwater Discharges from MS4 Actions

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

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

<i>NPDES Permit No.</i>	<i>Applicant Name & Address</i>	<i>County</i>	<i>Municipality</i>	<i>Receiving Water/Use</i>
PAI01 1507012-R	Chester County Fund, Inc. 615 Willowbrook Lane West Chester, PA 19382	Chester	East Whiteland Township	Valley Creek (EV)
PAI01 151202 - fna - PAS10-G44-RA1	West Vincent Associates, Ltd 707 Eagleview Boulevard Exton, PA 19341	Chester	West Vincent Township	Birch Run (EV)

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

<i>NPDES Permit No.</i>	<i>Applicant Name & Address</i>	<i>County</i>	<i>Municipality</i>	<i>Receiving Water/Use</i>
PAI024506030R	Monroe Pike Land, LLC 815 Seven Bridge Road East Stroudsburg, PA 18301	Monroe	Pocono Twp., Stroud Twp.	UNT to Brodhead Creek, HQ-CWF, MF
PAI024511006	Arcadia North Land, LLC 101 E. Erie St., Suite 810 Chicago, IL 60611	Monroe	Coolbaugh Twp.	Hawkey Run, HQ-CWF, MF

<i>NPDES Permit No.</i>	<i>Applicant Name & Address</i>	<i>County</i>	<i>Municipality</i>	<i>Receiving Water/Use</i>
PAI025210004	Lehman Township RR4, Box 4000 Bushkill, PA 18324	Pike	Lehman Twp.	Saw Creek, HQ-CWF, MF
PAI025211006	Wallenpaupack Area School District 2552 Route 6 Hawley, PA 18428	Pike	Palmyra Twp.	Wallenpaupack Creek, HQ-CWF, MF
PAI023911008	Lehigh County 17 South Seventh St. Allentown, PA 18101	Lehigh	Whitehall Twp.	Lehigh River, TSF, MF

Northcentral Region: Waterways & Wetlands Program Manager, 208 West Third Street, Williamsport, PA 17701

Union County Conservation District: Union County Government Center, 155 North 15th Street, Lewisburg, PA 17837, (570) 524-3860

<i>NPDES Permit No.</i>	<i>Applicant Name & Address</i>	<i>County</i>	<i>Municipality</i>	<i>Receiving Water/Use</i>
PAI046007001R	Donald O Hower 69 Maple St Mifflinburg PA 17844	Union	West Buffalo Township	Rapid Run HQ

VII. Approvals to Use NPDES and/or Other General Permits

The EPA Region III Administrator has waived the right to review or object to this permit action under the waiver provision 40 CFR 123.23(d).

List of NPDES and/or Other General Permit Types

PAG-1	General Permit for Discharges From Stripper Oil Well Facilities
PAG-2	General Permit for Discharges of Stormwater Associated With Construction Activities
PAG-3	General Permit for Discharges of Stormwater From Industrial Activities
PAG-4	General Permit for Discharges From Small Flow Treatment Facilities
PAG-5	General Permit for Discharges From Gasoline Contaminated Ground Water Remediation Systems
PAG-6	General Permit for Wet Weather Overflow Discharges From Combined Sewer Systems (CSO)
PAG-7	General Permit for Beneficial Use of Exceptional Quality Sewage Sludge by Land Application
PAG-8	General Permit for Beneficial Use of Non-Exceptional Quality Sewage Sludge by Land Application to Agricultural Land, Forest, a Public Contact Site or a Land Reclamation Site
PAG-8 (SSN)	Site Suitability Notice for Land Application Under Approved PAG-8 General Permit Coverage
PAG-9	General Permit for Beneficial Use of Residential Septage by Land Application to Agricultural Land, Forest, or a Land Reclamation Site
PAG-9 (SSN)	Site Suitability Notice for Land Application Under Approved PAG-9 General Permit Coverage
PAG-10	General Permit for Discharge Resulting from Hydrostatic Testing of Tanks and Pipelines
PAG-11	(To Be Announced)
PAG-12	Concentrated Animal Feeding Operations (CAFOs)
PAG-13	Stormwater Discharges from Municipal Separate Storm Sewer Systems (MS4)
PAG-14	(To Be Announced)
PAG-15	General Permit for Discharges From the Application of Pesticides

General Permit Type—PAG-02

Facility Location:

<i>Municipality & County</i>	<i>Permit No.</i>	<i>Applicant Name & Address</i>	<i>Receiving Water/Use</i>	<i>Contact Office & Phone No.</i>
Warrington Township Bucks County	PAG0200 0912010	Westport Holdings Corporation 1200 South Church Street, Ste 4 Mt. Laurel, NJ 08054	Neshaminy Creek (WWF)	Southeast Regional Office 2 East Main Street Norristown, PA 19401 484-250-5900

<i>Facility Location: Municipality & County</i>	<i>Permit No.</i>	<i>Applicant Name & Address</i>	<i>Receiving Water/Use</i>	<i>Contact Office & Phone No.</i>
Lower Makefield Township Bucks County	PAG0200 0912003	Matrix Bucks County, LLC CN 4000 Forsgate Drive Cranbury, NJ 08512	Mill and Brock Creeks (WWF)	Southeast Regional Office 2 East Main Street Norristown, PA 19401 484-250-5900
West Rockhill Township Bucks County	PAG0200 0911078	Hidden Meadows Assisted Independent Living, LLC 340 Farmers Lane Sellersville, PA 18960-1546	East Branch Perkiomen Creek (TSF)	Southeast Regional Office 2 East Main Street Norristown, PA 19401 484-250-5900
Valley Township Chester County	PAG0200 1512006	Pacer Industries, Inc. 200 Red Road Coatesville, PA 19320	Sucker Run (WWF-MF)	Southeast Regional Office 2 East Main Street Norristown, PA 19401 484-250-5900
West Goshen Township Chester County	PAG0200 1511039	Jerrihan, A PA General Partnership 101 West Washington Street Conshohocken, PA 19428	Taylor Run (TSF-MF)	Southeast Regional Office 2 East Main Street Norristown, PA 19401 484-250-5900
East Goshen Township Chester County	PAG0200 1512015	SNC Lavalin Project Services 436 Creamery Way, Suite 100 Exton, PA 19341 and Mars Corporation 1301 Wilson Drive West Chester, PA 19380	Unnamed Tributary East Branch Chester Creek (TSF)	Southeast Regional Office 2 East Main Street Norristown, PA 19401 484-250-5900
East Fallowfield Township Chester County	PAG0200 1512017	ONB, Inc. 1250 Wrights Lane West Chester, PA 19380 and Stephen W. Ortega 40 South 8th Avenue Coatesville, PA 19320	Dennis Run (WWF)	Southeast Regional Office 2 East Main Street Norristown, PA 19401 484-250-5900
West Whiteland Township Chester County	PAG0200 1512011	CFS, the School at Church Farm 1001 Lincoln Highway Exton, PA 19341	Valley Creek/East Branch Brandywine Creek (CWF-MF)	Southeast Regional Office 2 East Main Street Norristown, PA 19401 484-250-5900
Haverford Township Delaware County	PAG0200 2312007	Leigh Wood 201 Highland Lane Bryn Mawr, PA 19010	Darby Creek (CWF-MF)	Southeast Regional Office 2 East Main Street Norristown, PA 19401 484-250-5900
City of Philadelphia Philadelphia County	PAG0201 5108037-R	City of Philadelphia Streets Dept 7th Fl—Municipal Services Bldg 1401 JFK Boulevard Philadelphia, PA 19102-1676	Frankford Creek (WWF)	Southeast Regional Office 2 East Main Street Norristown, PA 19401 484-250-5900
City of Philadelphia Philadelphia County	PAG0201 5111043-1	Westmont North Associates, LP 350 Sentry Parkway Building 630, Suite 300 Blue Bell, PA 19422	Delaware River (WWF)	Southeast Regional Office 2 East Main Street Norristown, PA 19401 484-250-5900

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*Facility Location:
Municipality &
County*

<i>Facility Location: Municipality & County</i>	<i>Permit No.</i>	<i>Applicant Name & Address</i>	<i>Receiving Water / Use</i>	<i>Contact Office & Phone No.</i>
City of Philadelphia Philadelphia County	PAG0201 5111211	US Army Corps of Engineers Philadelphia District 100 Penn Square East Philadelphia, PA 19107	West and East Branch Indian Creek (WWF-MF)	Southeast Regional Office 2 East Main Street Norristown, PA 19401 484-250-5900
Moosic Borough, Lackawanna County	PAG02003512006	SLPS Realty LLP 3505 Lawrence Ave. Moosic, PA 18507	Lackawanna River, CWF, MF	Lackawanna County Cons. Dist. 570-281-9495
Ransom Twp., Lackawanna County	PAG2003507002R	John Buranich 2421 Bald Mtn. Rd. Clarks Summit, PA 18411	UNT to Gardner Creek, CWF	Lackawanna County Cons. Dist. 570-281-9495
Northampton Borough, Northampton County	PAG02004811013	Matthew J. Sorrentino Castle Builders, Inc. 6616B Ruppssville Rd. Allentown, PA 18106	Dry Run, CWF, MF	Northampton Co. Cons. Dist. 610-746-1971
Summit Hill Borough, Carbon County	PAG02001312001	PPL Electric Utilities Corp. 344 S. Poplar St. Hazleton, PA 18201	Panther Creek, CWF, MF	Carbon Co. Cons. Dist. 610-377-4894
Plains Twp., Luzerne County	PAG02004012012	Downs Racing, LP Robert Soper 1280 Highway 315 Plains, PA 18705	Mill Creek, CWF	Luzerne Co. Cons. Dist. 570-674-7991

Waterways & Wetlands Program, 909 Elmerton Avenue, Harrisburg, PA 17110-8200, 717.705.4802

*Facility Location:
Municipality &
County*

<i>Facility Location: Municipality & County</i>	<i>Permit No.</i>	<i>Applicant Name & Address</i>	<i>Receiving Water / Use</i>	<i>Contact Office & Phone No.</i>
Gettysburg Boro. Adams County	PAG02000112017	John Spangler Lutheran Theological Seminary 61 Seminary Ridge Gettysburg, PA 17325	UNT to Willoughby Run/WWF, MF	Adams Co. Conservation District 670 Old Harrisburg Rd, Suite 201 Gettysburg, PA 17325 717.334.0636
Gettysburg Boro. Adams County	PAG02000111022	Larry Redding GASD 900 Biglerville Road Gettysburg, PA 17325	Rock Creek/ WWF	Adams Co. Conservation District 670 Old Harrisburg Rd, Suite 201 Gettysburg, PA 17325 717.334.0636
West St. Clair Township Bedford County	PAG2000505006R	Grandview Development Partnership 291 Fernwood Drive New Paris, PA 15554	Dunnings Creek/ WWF	Bedford Co. Conservation Dist. 702 West Pitt Street Bedford, PA 15522 814.623.7900
Caernarvon Twp. Berks County	PAG02000612020	Len Korzon Timet 900 Hemlock Road Morgantown, PA 19543	UNT to Conestoga River/ WWF	Berks County Conservation Dist. 1238 County Welfare Rd, Ste 200 Leesport, PA 19533-9710 610.372.4657, Ext. 142

<i>Facility Location: Municipality & County</i>	<i>Permit No.</i>	<i>Applicant Name & Address</i>	<i>Receiving Water / Use</i>	<i>Contact Office & Phone No.</i>
Union Township Berks County	PAG02000612006	Louis J. Mascaro Ethan Michael, Inc. 2650 Audubon Road Audubon, PA 19403	Three (3) UNTs to Schuylkill River/ WWF, MF; UNT to Sixpenny Creek/CWF, MF; and Schuylkill River/WWF, MF	Berks County Conservation Dist. 1238 County Welfare Rd, Ste 200 Leesport, PA 19533-9710 610.372.4657, Ext. 142
Lower Paxton Township Dauphin County	PAG02002210020R	Lower Paxton Twp. Authority 425 Prince Street, Suite 139 Harrisburg, PA 17109	Paxton Creek/ WWF	Dauphin Co Conservation District 1451 Peters Mountain Rd Dauphin, PA 17018 717.921.8100
Lower Paxton Township Dauphin County	PAG02002212020	Molinari & Greenburg, LLC 4083 Wimbledon Drive Harrisburg, PA 17112	Paxton Creek/ WWF	Dauphin Co Conservation District 1451 Peters Mountain Rd Dauphin, PA 17018 717.921.8100
Swatara Township Dauphin County	PAG02002212027	Aman Parekh 2218 Eaglesmoor Lane Enola, PA 17025	Spring Creek/ CWF	Dauphin Co Conservation District 1451 Peters Mountain Rd Dauphin, PA 17018 717.921.8100
Lower Paxton Township Dauphin County	PAG02002212015	Sheetz, Inc. 3515 Sheetz Way Claysburg, PA 16625	Spring Creek/ CWF	Dauphin Co Conservation District 1451 Peters Mountain Rd Dauphin, PA 17018 717.921.8100
Conewago Twp. Dauphin County	PAG02002212024	Jeff Horst Iona Investment Group One Krall Road Myerstown, PA 17067	Hoffer Creek/TSF	Dauphin Co Conservation District 1451 Peters Mountain Rd Dauphin, PA 17018 717.921.8100
Susquehanna Twp. Dauphin County	PAG02002207040R	AP Williams Holding Group, LLC 2325 Paxton Church Road Harrisburg, PA 17110	Paxton Creek/ WWF	Dauphin Co Conservation District 1451 Peters Mountain Rd Dauphin, PA 17018 717.921.8100
South Hanover Township Dauphin County	PAG02002210017R	Cliff Weaver 1737 West Main Street Palmyra, PA 17522	Kellock Run/ WWF	Dauphin Co Conservation District 1451 Peters Mountain Rd Dauphin, PA 17018 717.921.8100

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<i>Facility Location: Municipality & County</i>	<i>Permit No.</i>	<i>Applicant Name & Address</i>	<i>Receiving Water/Use</i>	<i>Contact Office & Phone No.</i>
Paradise Twp. Lancaster County	PAG02003607039R	BB Real Estate Partners 5306 Lincoln Highway Gap, PA 17527	UNT Pequea Creek/ WWF	Lancaster Co Conservation Dist. 1383 Arcadia Road, Room 200 Lancaster, PA 17601 717.299.5361, Ext. 5
West Donegal Twp. Lancaster County	PAG02003610034R	Joseph Murphy Masonic Village One Masonic Drive Elizabethtown, PA 17022	Conoy Creek/ TSF, MF	Lancaster Co Conservation Dist. 1383 Arcadia Road, Room 200 Lancaster, PA 17601 717.299.5361, Ext. 5
Upper Leacock Twp. Lancaster County	PAG02003612043	Lancaster New Holland Real Estate 2200 Rittenhouse Street Des Moines, IA 50321	UNT Conestoga River/WWF	Lancaster Co Conservation Dist. 1383 Arcadia Road, Room 200 Lancaster, PA 17601 717.299.5361, Ext. 5

*Northcentral Region: Waterways & Wetlands Program Manager, 208 W Third Street, Williamsport, Pa 17701
570.327.3636*

<i>Facility Location: Municipality & County</i>	<i>Permit No.</i>	<i>Applicant Name & Address</i>	<i>Receiving Water/Use</i>	<i>Contact Office & Phone No.</i>
Muncy Township Lycoming County	PAG02004112012	Dan Klingerman Turkey Run Properties LP 1500 Sycamore Rd Montoursville PA 17754	Twin Run WWF	Lycoming County Conservation District 542 County Farm Rd Ste 202 Montoursville PA 17754 (570) 433-3003
Middlesex Township Butler County	PAG2001009005 phase 1B	Dominic Gigliotti Gigliotti Holdings LP 11279 Perry Highway, Suite 509 Pittsburgh PA 15220-3434	Glade Run WWF	Butler County Conservation District 724-284-5270
Cranberry Township Butler County	PAG02001007008R	Timothy Kelly Level II Dev. Corp. LLC Suite 101 Baymore II 1603 Carmody Court Sewickley PA 15143	UNT Brush Creek WWF	Butler County Conservation District 724-284-5270
Slippery Rock Borough Butler County	PAG02001012028	Department of General Services Attn: Gary Taylor 213 Headquarter Building 18th and Herr Streets Harrisburg PA 17120	UNT Slippery Rock Creek CWF	Butler County Conservation District 724-284-5270

General Permit Type—PAG-03

<i>Facility Location: Municipality & County</i>	<i>Permit No.</i>	<i>Applicant's Name & Address</i>	<i>Receiving Water/Use</i>	<i>Contact Office & Telephone No.</i>
Caln Township Chester County	PAR230022	Sabic Innovative Plastics U.S., LLC 251 South Bailey Road Thorndale, PA 19372	Unnamed Tributary of Beaver Creek—3H	Southeast Region Clean Water Program 484.250.5970
Springfield Township Bucks County	PAR600094	JKLM Corporation d.b.a. Prospect Metal Company 1575 Route 309 Quakertown, PA 18951	Unnamed Tributary of Tohickon Creek—2D	Southeast Region Clean Water Program 484.250.5970

*Facility Location:
Municipality &
County*

<i>Facility Location: Municipality & County</i>	<i>Permit No.</i>	<i>Applicant's Name & Address</i>	<i>Receiving Water / Use</i>	<i>Contact Office & Telephone No.</i>
Bristol Township Bucks County	PAR120005	Rosenberger's Dairies, LLC 847 Forty Foot Road Hatfield, PA 19440	Mill Creek—2E	Southeast Region Clean Water Program 484.250.5970
Foster Township, Schuylkill County	PAR502208	Commonwealth Environmental Systems, L.P. 249 Dunham Dr. Dunmore, PA 18512	Swatara Creek, CWF; Middle Creek, CWF	PA DEP Northeast Regional Office 2 Public Square Wilkes-Barre, PA 18701-1915 570-826-2511
Dunmore Borough & Throop Borough, Lackawanna County	PAR502203	Keystone Sanitary Landfill, Inc. 249 Dunham Drive Dunmore, PA 18512	Eddy Creek, WWF, MF	PA DEP Northeast Regional Office 2 Public Square Wilkes-Barre, PA 18701-1915 570-826-2511
Delaware Township Juniata County	PAR223528	Armstrong Cabinet Products 12393 William Penn Highway Thompsontown, PA 17094	UNT Locust Run / CWF, MF	DEP—SCRO 909 Elmerton Avenue Harrisburg, PA 17110-8200 717-705-4707
Covington Township Tioga County	PAR314820	Petta Enterprises 299 S Main Street Mansfield, PA 16933	Tioga River—4-A	DEP Northcentral Regional Office Clean Water Program 208 W Third Street Suite 101, Williamsport, PA 17701-6448 570.327.3664

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

*Facility Location:
Municipality &
County*

<i>Facility Location: Municipality & County</i>	<i>Permit No.</i>	<i>Applicant Name & Address</i>	<i>Receiving Water / Use</i>	<i>Contact Office & Phone No.</i>
Sugarcreek Borough Venango County	PAR608328	Lowry Auto Wrecking, Inc. 163 Lowry Drive P. O. Box 1105, Franklin, PA 16323	Unnamed Tributary to Sugar Creek 16-D	DEP NWRO Water Management 230 Chestnut Street Meadville, PA 16335-3481 814/332-6942

General Permit Type—PAG-4

*Facility Location:
Municipality &
County*

<i>Facility Location: Municipality & County</i>	<i>Permit No.</i>	<i>Applicant Name & Address</i>	<i>Receiving Water / Use</i>	<i>Contact Office & Phone No.</i>
Lower Frederick Township Montgomery County	PAG040183	Tiffany M & Bryan H Lambert 116 Meng Road Schwenksville, PA 19473-1723	Unnamed Tributary to Mine Run	Southeast Region Clean Water Program Manager 2 E. Main Street Norristown, PA 19401 484-250-5970

*Facility Location:
Municipality &
County*Cumberland
County /
Upper Mifflin
Township*Permit No.*

PAG043924

*Applicant Name &
Address*Ruth A. Thrush
1105 Roxbury Road
Newburg, PA 17241*Receiving
Water / Use*UNT Three Square
Hollow Run /
WWF / 7-B*Contact Office &
Phone No.*DEP—SCRO—
Clean Water
Program
909 Elmerton
Avenue
Harrisburg, PA
17110
717-705-4707Bedford County /
West Providence
Township*Permit No.*
(Transfer)

PAG043530

Rodney Boyd
8220 Black Valley Road
Everett, PA 15537UNT Clear Creek /
11-CDEP—SCRO—
Clean Water
Program
909 Elmerton
Avenue
Harrisburg, PA
17110
717-705-4707*General Permit Type—PAG-8 (SSN)**Facility Location:
Municipality &
County*Covington and
Karthaus
Townships,
Clearfield County*Permit No.*

PAG 08 9908

*Applicant Name &
Address*Kyler Environmental
1269 Piedmont Road
Somerset, PA 15501*Site Name &
Location*Woolridge Mine
Reclamation Site
Covington and
Karthaus
Townships,
Clearfield County*Contact Office &
Phone No.*NCRO
570-327-0526*General Permit Type—PAG-9 (SSN)**Facility Location:
Municipality &
County*Canaan Twp., and
South Canaan Twp.,
Wayne County*Permit No.*

PAG09-2213

*Applicant Name &
Address*Koberlein Inc
2809 Easton Turnpike
Waymart, PA 18472*Site Name &
Location*Sile Bay Farms
2809 Easton
Turnpike
Waymart, PA*Contact Office &
Phone No.*PA DEP
NERO
2 Public Square
Wilkes-Barre, PA
18711-0790
570-826-2511*General Permit Type—PAG-10**Facility Location:
Municipality &
County*

Philadelphia County

Permit No.

PAG100036

*Applicant Name &
Address*Westway Terminal Co., LLC
2900 East Allegheny Avenue
Philadelphia, PA 19134*Receiving Stream or
Body of Water*

Delaware River-3J

*Contact Office &
Phone No.*Southeast Region
Clean Water
Program
484-250-5970*General Permit Type—PAG-12**Facility Location:
Municipality &
County*Salem Township
Luzerne County*Permit No.*

PAG122212

*Applicant Name &
Address*Will-O-Bett Farm
137 Bomboy Lane
Berwick, PA 18603*Receiving
Water / Use*Unnamed Tributary
of Susquehanna
River, 5-D*Contact Office &
Phone No.*DEP Northeast
Regional Office
Clean Water
Program
2 Public Square,
Wilkes-Barre, PA
18701-1915
570.826.2553

PUBLIC WATER SUPPLY PERMITS

The Department has taken the following actions on applications received under the Pennsylvania Safe Drinking Water Act (35 P. S. §§ 721.1—721.17) for the construction, substantial modification or operation of a public water system.

Persons aggrieved by an action may appeal that action to the Environmental Hearing Board (Board) under section 4 of the Environmental Hearing Board Act and 2 Pa.C.S. §§ 501—508 and 701—704. The appeal should be sent to the Environmental Hearing Board, Second Floor, Rachel Carson State Office Building, 400 Market Street, PO Box 8457, Harrisburg, PA 17105-8457, (717) 787-3483. TDD users may contact the Board through the Pennsylvania Relay Service, (800) 654-5984. Appeals must be filed with the Board within 30 days of publication of this notice in the *Pennsylvania Bulletin* unless the appropriate statute provides a different time period. Copies of the appeal form and the Board's rules of practice and procedure may be obtained from the Board. The appeal form and the Board's rules of practice and procedure are also available in Braille or on audiotape from the Secretary to the Board at (717) 787-3483. This paragraph does not, in and of itself, create a right of appeal beyond that permitted by applicable statutes and decisional law.

For individuals who wish to challenge an action, the appeal must reach the Board within 30 days. A lawyer is not needed to file an appeal with the Board.

Important legal rights are at stake, however, so individuals should show this document to a lawyer at once. Persons who cannot afford a lawyer may qualify for pro bono representation. Call the Secretary to the Board at (717) 787-3483 for more information.

SAFE DRINKING WATER

Actions taken under the Pennsylvania Safe Drinking Water Act

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

Permit No. 0112502, Public Water Supply.

Applicant	Bonneauville Borough Municipal Authority
Municipality	Bonneauville Borough
County	Adams
Responsible Official	Bernie Shanebrook, Borough Manager 86 West Hanover Street Gettysburg, PA 17325
Type of Facility	Installation of greensand filters for manganese removal at Well No. 9.
Consulting Engineer	Daniel Cargnel, P.E. Buchart Horn, Inc. 445 West Philadelphia Street York, PA 17404
Permit to Construct Issued:	7/24/2012

Operations Permit issued to: **Franklin Township Municipal Authority**, 7010032, Franklin Township, **Adams County** on 7/24/2012 for the operation of facilities approved under Construction Permit No. 0111525 MA.

Northcentral Region: Safe Drinking Water Program Manager, 208 West Third Street, Suite 101, Williamsport, PA 17701-6448

Permit No. Minor Amendment—Construction Public Water Supply.

Applicant	Lower Mahanoy Township Municipal Authority
[Township or Borough]	Lower Mahanoy Township
County	Northumberland
Responsible Official	Joseph J. Villone Authority Chairman Lower Mahanoy Township Municipal Authority 132 River Road Dalmatia, PA 17017
Type of Facility	Public Water Supply
Consulting Engineer	Erin N. Threet, P.E. Herbert, Rowland & Grubic, Inc. 130 Buffalo Road, Suite 103 Lewisburg, PA 17837
Permit Issued	July 26, 2012
Description of Action	Construction of a roof to replace the one that covers the finished water storage reservoir.

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

Permit No. 2011505 Public Water Supply

Applicant	Gregory A. Kasemer d/b/a Fountain House Mobile Home Park
Township or Borough	Woodcock Township
County	Crawford
Type of Facility	Public Water Supply
Consulting Engineer	Steven R. Halmi, P.E. Deiss & Halmi Engineering, Inc. 105 Meadville Street Edinboro, PA 16412
Permit to Construct Issued	July 20, 2012

Permit No. 2501503-MA1 Public Water Supply

Applicant	Borough of Wattsburg
Township or Borough	Venango Township
County	Erie
Type of Facility	Public Water Supply
Consulting Engineer	Steven R. Halmi, P.E. Deiss & Halmi Engineering, Inc. 105 Meadville Street Edinboro, PA 16412
Permit to Construct Issued	July 25, 2012

Operation Permit issued to **Summerville Borough Municipal Authority**, PWSID #6330012, Summerville Borough, **Jefferson County**. Permit Number 3311501 issued July 26, 2012 for the operation of the modifications at Well No. 3 (a/k/a Mohny Well) treatment facilities. This permit is issued in response to an operation inspection conducted by Department of Environmental Protection personnel on July 13, 2012.

Operation Permit issued to **Aqua Pennsylvania, Inc.**, PWSID #6430054, City of Sharon, **Mercer County**. Permit Number 4310505 issued July 27, 2012 for the operation of the Ultraviolet-Hydrogen Peroxide Advanced Oxidation system at the Shenango Valley Water Treatment Plant. This permit is issued in response to an operation inspection conducted by Department of Environmental Protection personnel on July 17, 2012.

Permit No. 1612503 Public Water Supply

Applicant	West Freedom Water Association
Township or Borough	Perry Township
County	Clarion
Type of Facility	Public Water Supply
Consulting Engineer	Don Gilmore, P.E. Dakota Engineering Associates, Inc. 35 Wilson Street, Suite 200 Pittsburgh, PA 15223
Permit to Construct Issued	July 27, 2012

Transfer of Operation Permit issued to **Joe Lamonica d/b/a Countryside Estates Mobile Home Park**, PWSID #6370005, Mahoning Township, **Lawrence County** on July 27, 2012. Action is for change in ownership; the potable water supplier will do business as Countryside Estates Mobile Home Park. The new permit number is 3794501-T1.

SEWAGE FACILITIES ACT PLAN APPROVAL

Plan Approvals Granted Under the Pennsylvania Sewage Facilities Act (35 P. S. § 750.5)

Southwest Regional Office, Regional Clean Water Program Manager, 400 Waterfront Drive, Pittsburgh, PA 15222-4745, Telephone 412-442-4000

Plan Location:

Borough or Township	Borough or Township Address	County
Cook Township	Cook Township Ms. Debbie Rhodes, Secretary P. O. Box 221 1716 Route 711 Stahlstown, PA 15687	Westmoreland

Plan Description: The approved plan revision provides for the construction of a single residence sewage treatment facility (SRSTF) to serve the Albert T. & Debra L. Cejka residence. The property is located at 495 Hoods Mill Road, Cook Township, Westmoreland County. The treated effluent will be discharged into an UNT of Four Mile Run, which is classified as a TSF stream.

Any required NPDES Permits or WQM Permits must be obtained in the name of the applicant as appropriate.

The Department's review of the sewage facilities revision has not identified any significant environmental impacts results from this proposal. The installation of this SRSTF will address a malfunctioning septic system.

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

Plan Location:

Borough or Township	Borough or Township Address	County
Newport Borough	231 Market Street, Newport, PA 17074	Perry

Plan Description: The approved plan provides for the relocation of the effluent discharge outfall from the Juniata River to the Little Buffalo Creek immediately upstream of the Norfolk Southern Railway Bridge. The Department's review of the sewage facilities update revision has not identified any significant environmental impacts resulting from this proposal. Any required NPDES Permits or WQM Permits must be obtained in the name of the municipality or authority as appropriate.

LAND RECYCLING AND ENVIRONMENTAL REMEDIATION UNDER ACT 2, 1995

PREAMBLE 2

The following plans and reports were submitted under the Land Recycling and Environmental Remediation Standards Act (35 P. S. §§ 6026.101—6026.907).

Provisions of Sections 301—308 of the Land Recycling and Environmental Remediation Standards Act (act) (35 P. S. §§ 6026.301—6026.308) require the Department to publish in the *Pennsylvania Bulletin* a notice of submission of plans and reports. A final report is submitted to document cleanup of a release of a regulated substance at a site to one of the act's remediation standards. A final report provides a description of the site investigation to characterize the nature and extent of contaminants in environmental media, the basis for selecting the environmental media of concern, documentation supporting the selection of residential or nonresidential exposure factors, a description of the remediation performed and summaries of sampling analytical results which demonstrate that remediation has attained the cleanup standard selected. Submission of plans and reports, other than the final report, will also be published in the *Pennsylvania Bulletin*. These include the remedial investigation report, risk assessment report and cleanup plan for a site-specific standard remediation. A remedial investigation report includes conclusions from the site investigation; concentration of regulated substances in environmental media; benefits of reuse of the property; and, in some circumstances, a fate and transport analysis. If required, a risk assessment report describes potential adverse effects caused by the presence of regulated substances. If required, a cleanup plan evaluates the abilities of potential remedies to achieve remedy requirements.

For further information concerning plans or reports, contact the environmental cleanup program manager in the Department regional office under which the notice of receipt of plans or reports appears. If information concerning plans or reports is required in an alternative form, contact the community relations coordinator at the appropriate regional office. TDD users may telephone the Department through the AT&T Relay Service at (800) 654-5984.

The Department has received the following plans and reports:

Northeast Region: Eric Supey, Environmental Cleanup and Brownfields Program Manager, 2 Public Square, Wilkes-Barre, PA 18701-1915.

Bethlehem Commerce Center-Laubach Yard, Bethlehem City, **Northampton County**. James J. Koval, HDR Engineering, 1720 Spillman Drive, Suite 280, Bethlehem, PA 18015-2165 has submitted a Final Report on behalf of his client, Lehigh Valley Industrial Park, Inc., 1720 Spillman Drive, Suite 150, Bethlehem, PA 18015-2164, concerning the remediation of soil found to have been impacted by VOCs, Semi-VOCs and Inorganic constituents as a result of historical operations at the former Bethlehem Steel Plant. The report was submitted to document attainment of the Site-Specific Standard for soil. A public notice regarding the submission of the Final Report was published in *The Express Times* on July 12, 2012.

Camp Rock Hill Facility, Route 739 (Dingman's Turnpike), Dingman Township, **Pike County**. Phillip Getty, Boucher & James, Inc., 2738 Rim Rock Road, Stroudsburg, PA 18360 has submitted a combined Remedial Investigation Report/Risk Assessment Report/Cleanup Plan on behalf of his client, Boy Scouts of America, P. O. Box 670, Oakland, NJ 07436, concerning the remediation of soil found to have been impacted by lead as a result of historical rifle range activities at the Boy Scout camp. The combined report was submitted in partial fulfillment of the Site-Specific Standard for soil. A public notice regarding the submission of the combined Remedial Investigation Report/Risk Assessment Report/Cleanup Plan was published in the *Pike County Dispatch* on July 12, 2012.

Southcentral Region: Environmental Cleanup and Brownfields Program Manager, 909 Elmerton Avenue, Harrisburg, PA 17110

456 Old York Road, New Cumberland, PA 17070, Fairview Township, **York County**. Patriot Environmental Management, LLC, PO Box 629, Douglassville, PA 19518, on behalf of Orrstown Bank, 2695 Philadelphia Avenue, Chambersburg, PA 17201, submitted a Final Report concerning remediation of site soils and groundwater contaminated with gasoline. The report is intended to document remediation of the site to meet the Residential Statewide Health standard.

1170 Loucks Road, York, PA 17404, York City, **York County**. ESC Mid-Atlantic, LLC, 56 Grumbacher Road, Suite D, York, PA 17402, on behalf of 1170 Loucks Road, LLC, 2867 Westwind Lane, York, PA 17404, and PWI, Inc., PO Box 67, New Oxford, PA 17350, submitted a Final Report concerning remediation of site soils contaminated with gasoline. The report is intended to document remediation of the site to meet the Non-Residential Statewide Health standard.

Northcentral Region: Environmental Cleanup Program Manager, 208 West Third Street, Williamsport, PA 17701

Lycoming County Hunting & Fishing Club—Brine Release, Cogan House Township, **Lycoming County**. Groundwater Environmental Services, on behalf of QC Energy Resources has submitted a Final Report concerning remediation of site soils contaminated with Aluminum, Barium, Boron, Iron, Lithium, Manganese, Selenium, Zinc on property owned by Lycoming County Hunting & Fishing Club. The report is intended to document remediation of the site to meet the Statewide Health Standard.

COP Tract 285 Pad F—Production Water Release, Chapman Township, **Clinton County**. Groundwater Environmental Services, on behalf of Anadarko E&P Company LP, has submitted a Final Report concerning remediation of site soils contaminated with Aluminum,

ammonia, Arsenic, Barium, Boron, Copper, Iron, Lead, Lithium, Manganese, Selenium, Zinc on COP Tract 285 Pad F. The report is intended to document remediation of the site to meet the Statewide Health Standard.

Field adjacent to Feusner Well Pad, Columbia Township, **Bradford County**. ERM, 350 Eagleview Blvd., Suite 200, Exton, Pa 19341 on behalf of John Feusner, 749 Porter Road, Troy, Pa 16947 has submitted a Final Report concerning remediation of site soils contaminated with Barium and compounds. The report is intended to document remediation of the site to meet the Statewide Health Standard.

Reel, LLC, Lamar Township, **Clinton County**. Northridge Group, Inc., 1172 Ridge Road, Northumberland, Pa 17857 on behalf of Reel, LLC, Mr. Nazmi Hoxha, 2930 Schaffer Avenue Southeast, Suite C, Kentwood, MI 49512 has submitted a Final Report concerning remediation of site soils contaminated with Benzene, Toluene, Ethylbenzene, Cumene, Naphthalene, 1,3,5-Trimethylbenzene, 1,2,4-Trimethylbenzene, Methyl Tertiary Butyl Ether. The report is intended to document remediation of the site to meet the Statewide Health Standard.

White Transportation Services, Greene Township, **Clinton County**. Northridge Group, Inc., 1172 Ridge Road, Northumberland, Pa 17857 on behalf of White Transportation Service, 3121 East Slaton Road, Lubbock, Texas 79404 has submitted a Final Report concerning remediation of site soil contaminated with a diesel fuel release. The report is intended to document remediation of the site to meet the Statewide Health Standard.

Northwest Region: Environmental Cleanup Program Manager, 230 Chestnut Street, Meadville, PA 16335-3481

Piccola Residence, Summit Township, **Butler County**. Moody & Associates, Inc., 11548 Cotton Road, Meadville, PA 16335 on behalf of Wanda Piccola, 230 Freeport Road, Butler, PA 16001 has submitted a Final Report concerning remediation of site soils contaminated with Benzene, Toluene, Ethylbenzene, Methyl tert-butyl Ether, Xylenes (total), Isopropylbenzene (Cumene), Naphthalene, n-Propylbenzene, 1,3,5-Trimethylbenzene, 1,2,4-Trimethylbenzene, n-Butylbenzene and groundwater contaminated with Methyl tert-butyl Ether, 1,2,4-Trimethylbenzene, Chloroform, Benzene, Toluene, Ethylbenzene, Xylenes (total), Isopropylbenzene (Cumene), Naphthalene, n-Propylbenzene, 1,3,5-Trimethylbenzene, 4-Isopropyltoluene, sec-Butylbenzene, n-Butylbenzene, 1,2,4-Trichlorobenzene, 1,2,4-Trimethylbenzene, Acetone, 2-Hexanone, 2-Butanone (MEK). The report is intended to document remediation of the site to meet the Statewide Health Standard.

Southwest Region: Environmental Cleanup & Brownfield Development Program Manager, 400 Waterfront Drive, Pittsburgh, PA 15222-4745

#1 Cochran Automotive—West Liberty Avenue, City of Pittsburgh, **Allegheny County**. Herbert, Rowland & Grubic, Inc., 369 East Park Drive, Harrisburg, Pa 17111 on behalf of Cochran South Hills, Inc., 4520 William Penn Highway, Monroeville, PA 15146 has submitted a Remedial Investigation Report and Cleanup Plan concerning the remediation of site soil and groundwater contaminated with gasoline constituents.

Chelsea Building Products, 565 Cedar Way, Borough of Oakmont, **Allegheny County**. KU Resources, Inc., 22 South Linden Ave., Duquesne, PA 15110 on behalf of Tessengerlo USA, Inc. 2255 N. 44th Street, Suite 300 Phoenix, AZ 85008-3279 has submitted a Risk Assessment

Report and Cleanup Plan concerning the remediation of site soil and groundwater contaminated with volatile organic compounds.

LAND RECYCLING AND ENVIRONMENTAL REMEDIATION

UNDER ACT 2, 1995

PREAMBLE 3

The Department has taken action on the following plans and reports under the Land Recycling and Environmental Remediation Standards Act (35 P. S. §§ 6026.101—6026.907).

Section 250.8 of 25 Pa. Code and administration of the Land Recycling and Environmental Remediation Standards Act (act) require the Department to publish in the *Pennsylvania Bulletin* a notice of its final actions on plans and reports. A final report is submitted to document cleanup of a release of a regulated substance at a site to one of the remediation standards of the act. A final report provides a description of the site investigation to characterize the nature and extent of contaminants in environmental media, the basis of selecting the environmental media of concern, documentation supporting the selection of residential or nonresidential exposure factors, a description of the remediation performed and summaries of sampling methodology and analytical results which demonstrate that the remediation has attained the cleanup standard selected. Plans and reports required by the act for compliance with selection of remediation to a site-specific standard, in addition to a final report, include a remedial investigation report, risk assessment report and cleanup plan. A remedial investigation report includes conclusions from the site investigation; concentration of regulated substances in environmental media; benefits of reuse of the property; and, in some circumstances, a fate and transport analysis. If required, a risk assessment report describes potential adverse effects caused by the presence of regulated substances. If required, a cleanup plan evaluates the abilities of potential remedies to achieve remedy requirements. A work plan for conducting a baseline remedial investigation is required by the act for compliance with selection of a special industrial area remediation. The baseline remedial investigation, based on the work plan, is compiled into the baseline environmental report to establish a reference point to show existing contamination, describe proposed remediation to be done and include a description of existing or potential public benefits of the use or reuse of the property. The Department may approve or disapprove plans and reports submitted. This notice provides the Department's decision and, if relevant, the basis for disapproval.

For further information concerning the plans and reports, contact the environmental cleanup program manager in the Department regional office under which the notice of the plan or report appears. If information concerning a final report is required in an alternative form, contact the community relations coordinator at the appropriate regional office. TDD users may telephone the Department through the AT&T Relay Service at (800) 654-5984.

The Department has received the following plans and reports:

Northeast Region: Eric Supey, Environmental Cleanup and Brownfields Program Manager, 2 Public Square, Wilkes-Barre, PA 18701-1915.

The Preserve at College Hill, NE of the Intersection of Apple Blossom and Mitman Roads, Forks Township,

Northampton County. David Farrington, Brickhouse Environmental, 515 S. Franklin Street, West Chester, PA 19382 submitted a Final Report on behalf of his client, The Preserve at Forks Township, Inc., 3298 Jacksonville Road, Bethlehem, PA 18017, concerning the remediation of soil found to have been impacted by arsenic and lead. The report documented attainment of the Residential Statewide Health Standard and the Site-Specific Standard for soil and was approved on July 27, 2012.

Southwest Region: Environmental Cleanup & Brownfield Development Program Manager, 400 Waterfront Drive, Pittsburgh, PA 15222-4745

J. J. Hamilton No. 21 Gas Well, Perry Township, **Jefferson County.** Hull & Associates, Inc., 300 Business Center Drive, Suite 320, Pittsburgh, PA 15205 on behalf of XTO Energy—Appalachia Division, 395 Airport Road, Indiana, PA 15701 has submitted a Final Report concerning the remediation of site soils contaminated with Barium, Boron, Manganese, Selenium, Zinc, Benzene, Toluene, Ethylbenzene, Xylene (total), 1,2,4-trimethylbenzene, 1,3,5-trimethylbenzene, Cyclohexane, and Hexane. The site was remediated within 90 days of the release. The Final Report demonstrated attainment of the Statewide Health Standard and was approved by the Department on July 20, 2012.

REGISTRATION FOR GENERAL PERMIT—RESIDUAL WASTE

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

Northcentral Region: Regional Solid Waste Manager, 208 West Third Street, Williamsport, PA 17701

General Permit Registration No. WMGR123NC010. Hydro Recovery, LP, 7 Riverside Plaza, Blossburg, PA 16912. Registration to operate under General Permit No. WMGR123 for storage and reuse of gas well frac water and production water. The registration was approved by NorthCentral Regional Office on July 27, 2012.

Persons interested in reviewing the general permit may contact Lisa D. Houser, P.E., Facilities Manager, Williamsport Regional Office, 208 West Third Street, Suite 101, Williamsport, PA 17701, (570) 327-3740. TDD users may contact the Department through the Pennsylvania Relay service, (800) 654-5984.

OPERATE WASTE PROCESSING OR DISPOSAL AREA OR SITE

Permit Reissuance Under the Solid Waste Management Act, the Municipal Waste Planning, Recycling and Waste Reduction Act and Regulations to Operate Solid Waste Processing or Disposal Area or Site.

Southeast Region: Regional Solid Waste Manager, 2 East Main Street, Norristown, PA 19401

Permit Application No. 400459. Merck Sharp & Dohme Corp., 770 Sumneytown Pike, West Point PA 19486. This is an application for Permit Reissuance due to permittee's name change from Merck & Co., Inc., to Merck Sharp & Dohme Corp. at Merck Sharp & Dohme Corp's West Point Facility located at 770 Sumneytown

Pike, West Point, PA, in Upper Gwynedd Township, **Montgomery County**. The application was received by the Southeast Regional Office on June 26, 2012.

Permit No. 101541. Delaware Valley Recycling Inc., 3107 South 61st Street, Philadelphia PA 19153-3501. This major permit modification is to increase storage capacities for several material types to meet market demand and maintain operational needs at the Delaware Valley Recycling Facility, an existing construction and demolition (C&D) waste processing facility, located in the City of Philadelphia, **Philadelphia County**. The permit was issued by the Southeast Regional Office on July 23, 2012.

Proposed Consent Decree under the Solid Waste Management Act (35 P. S. §§ 6018.104(7) and 6018.602 and 6018.610) and Resource Conservation and Recovery Act to close a solid waste disposal facility.

Southwest Regional Office, Environmental Program Manager, 400 Waterfront Drive, Pittsburgh, PA 15222-4745, Telephone 412-442-4000.

On July 27, 2012, the **Department of Environmental Protection** filed a Complaint and proposed Consent Decree with the U.S. District Court for the Western District of Pennsylvania against FirstEnergy Generation Corp. of Akron, Ohio regarding the residual waste disposal impoundment known as "Little Blue Run," located in Greene Township, **Beaver County**, Pennsylvania and Hancock County, West Virginia. The Complaint alleged violations of the Resource Conservation and Recovery Act, 42 U.S.C.A. § 6972(a)(1)(B), and the Pennsylvania Solid Waste Management Act, 35 P. S. § 6018.610 and sought injunctive relief and civil penalties. The major provisions of the proposed Consent Decree include requirements that FirstEnergy Generation Corp. monitor for and manage contaminated seeps, offer to make public drinking water available to certain residences near the impoundment including residences along Cullen Drive in Greene Township, Beaver County, address seeps in Lawrenceville, West Virginia, investigate potential groundwater and surface water contamination, prevent violations of water quality standards and maintain water quality uses of surface waters in the area, monitor fugitive air contaminants from the impoundment, submit within one year a plan to close the impoundment, and cease disposing of currently approved waste materials at the impoundment by December 31, 2016. First Energy will also pay to the Department a civil penalty of \$800,000.00. The Department will accept comments on the proposed Consent Decree for thirty (30) days following publication of this notice. Following consideration of all comments received, the Department may request the Court to enter the proposed Consent Decree as an order of the Court. Comments may be submitted to, and a copy of the Complaint and proposed Consent Decree obtained from: Michael G. Forbeck, Environmental Program Manager, Waste Management, Department of Environmental Protection, 400 Waterfront Drive, Pittsburgh, PA 15222-4745.

AIR QUALITY

General Plan Approval and Operating Permit Usage Authorized under the Air Pollution Control Act (35 P. S. §§ 4001—4015) and 25 Pa. Code Chapter 127 to construct, modify, reactivate or operate air contamination sources and associated air cleaning devices.

Northeast Region: Air Quality Program, 2 Public Square, Wilkes-Barre, PA 18711-0790

Contact: Ray Kempa, New Source Review Chief—Telephone: 570-826-2507

66-310-032GP3: Meshoppen Stone, Inc. (PO BOX 127, Frantz Road, Meshoppen, PA 18630) on July 24, 2012, to construct and operate a Portable Crushing Operation with watersprays at the Kuback Wind Farm in Eaton Township, **Wyoming County**.

66-329-019GP9: Meshoppen Stone, Inc. (PO BOX 127, Frantz Road, Meshoppen, PA 18630) on July 24, 2012, to install and operate of a Diesel I/C engine at the Kuback Wind Farm in Eaton Township, **Wyoming County**.

58-399-043GP5: Williams Field Services, LLC (51 Warren Street, Tunkhannock, PA 18657) on July 24, 2012, to construct and operate six IC Engines, one Emergency Generator and four dehy/reboilers at their Kane Road FRP natural Gas Compressor Station site in Forest Lake Township, **Susquehanna County**.

58-399-044GP5: Williams Field Services LLC (51 Warren Street, Tunkhannock, PA 18657) on July 24, 2012, to construct and operate six (6) IC Engines, one Emergency Generator and four (4) dehy/reboilers at the Northeast FRP natural Gas Compressor Station site in Liberty Township, **Susquehanna County**.

58-399-045GP5: Williams Field Services LLC (51 Warren Street, Tunkhannock, PA 18657) on July 24, 2012, to construct and operate six (6) IC Engines, one Emergency Generator and four dehy/reboilers at the Snake Creek FRP natural Gas Compressor Station site in Liberty Township, **Susquehanna County**.

Southcentral Region: Air Quality Program, 909 Elmerton Avenue, Harrisburg, PA 17110

Contact: Thomas J. Hanlon, Facility Permitting Chief—Telephone: 717-705-4862 or Daniel Husted, New Source Review Chief—Telephone: 717-705-4863

GP1-01-03003B: Mott's LLP (PO Box, 68, 45 Aspers North Road, Aspers, PA 17034-0068) on July 26, 2012, for two (2) existing natural gas-fired boilers, each with heat input of 30.4 MMBtu/hr, under GP1, in Menallen Township, **Adams County**. The GP1 authorization was renewed.

GP1-01-03027B: TimBar Packaging & Display—Oxford Division (PO Box 98, Commerce Street, New Oxford, PA 17350) on July 26, 2012, to install and operate a 25 MMBtu/hr York Shipley boiler, fired with natural gas and #2 oil, under GP1, at the packaging manufacturing facility in New Oxford Borough, **Adams County**.

Northcentral Region: Air Quality Program, 208 West Third Street, Williamsport, PA 17701

Contact: Muhammad Q. Zaman, Environmental Program Manager—Telephone: 570-327-3648

GP5-59-232: SWEPI, LP (190 Thorn Hill Road, Warrendale, PA 15086) on July 19, 2012, to construct and operate of four (4) 1380 hp natural gas fired Caterpillar G3516B LE four (4)-stroke ultra-lean-burn (4SULB) compressor engines each equipped with an Miratech model IQ-RE-30EH(element)/IQ-30-16-HSG(housing) oxidation catalyst, two 60.0 MMSCFD glycol dehydration units each equipped with a 0.55 MMBtu/hr reboiler, one 15,000 gallon drained water tank, and two (2) 80 hp Arrow VRG 380 (4SRB) natural gas fired generator engines at their Breon Compressor Station in Sullivan Township, **Tioga County**.

GP5-59-233: SWEPI, LP (190 Thorn Hill Road, Warrendale, PA 15086) on July 19, 2012, to construct and operate two (2) 1380 hp natural gas fired Caterpillar G3516B LE four-stroke ultra-lean-burn (4SULB) compressor engines each equipped with an Miratech model IQ-RE-30EH(element)/IQ-30-16-HSG(housing) oxidation catalyst, one 60.0 MMSCFD glycol dehydration unit equipped with a 0.55 MMBtu/hr reboiler, one 15,000 gallon drained water tank, and two 80 hp Arrow VRG 380 (4SRB) natural gas fired generator engines at their Jackson Compressor Station in Union Township, **Tioga County**.

GP5-59-234: SWEPI, LP (190 Thorn Hill Road, Warrendale, PA 15086) on July 19, 2012, to construct and operate four (4) 1380 hp natural gas fired Caterpillar G3516B LE four-stroke ultra-lean-burn (4SULB) compressor engines each equipped with an Miratech model IQ-RE-30EH(element)/IQ-30-16-HSG(housing) oxidation catalyst, two 60.0 MMSCFD dehydration units each equipped with a 0.55 MMBtu/hr reboiler, one 15,000 gallon drained water tank, and two 80 hp Arrow VRG 380 (4SRB) natural gas fired generator engines at the Lovell Compressor Station in Liberty Township, **Tioga County**.

GP5-59-235: SWEPI, LP (190 Thorn Hill Road, Warrendale, PA 15086) on July 19, 2012, to construct and operate four (4) 1380 hp natural gas fired Caterpillar G3516B LE four-stroke ultra-lean-burn (4SULB) compressor engines each equipped with an Miratech model IQ-RE-30EH(element)/IQ-30-16-HSG(housing) oxidation catalyst, two 60.0 MMSCFD glycol dehydration units each equipped with a 0.55 MMBtu/hr reboiler, one 15,000 gallon drained water tank, and two 80 hp Arrow VRG 380 (4SRB) natural gas fired generator engines at their Wood Compressor Station located in Rutland Township, **Tioga County**.

GP5-17-488C: RW Gathering, LLC (6000 Town Center Boulevard, Suite 300, Canonsburg, PA 15317) on July 17, 2012, to construct and operate a 1,380 brake-horsepower Caterpillar model G3516 ULB internal combustion compressor engine equipped with an EMIT oxidation catalyst, a 1,340 brake-horsepower Caterpillar model G3516 LE internal combustion compressor engine equipped with an EMIT oxidation catalyst, a Midco tri-ethylene glycol dehydrator incorporating a 0.35 million Btu per hour reboiler, a Velarus tri-ethylene glycol dehydrator incorporating a 0.825 million Btu per hour reboiler and three 12,600 gallon produced water storage tanks under the General Plan Approval and/or General Operating Permit for Natural Gas, Coal Bed Methane Or Gob Gas Production Or Recovery Facilities (BAQ-GPA/GP-5) at their Moshannon Compressor Station in Cooper Township, **Clearfield County**.

GP5-41-698: PVR Marcellus Gas Gathering, LLC (100 Penn Tower, 25 West Third Street, Williamsport, PA 17701) on July 23, 2012, to construct and operate three (3) 1,380 brake-horsepower Caterpillar model G3516B compressor engines equipped with Miratech oxidation catalysts, an Exterran tri-ethylene glycol dehydrator incorporating a 0.75 million Btu per hour reboiler and a 10,000 gallon produced water storage tank under the General Plan Approval and/or General Operating Permit for Natural Gas, Coal Bed Methane Or Gob Gas Production Or Recovery Facilities (BAQ-GPA/GP-5) at their Quaker Compressor Station in Fairfield Township, **Lycoming County**.

Southwest Region: Air Quality Program, 400 Waterfront Drive, Pittsburgh, PA 15222-4745

Contact: Mark Gorog and Barb Hatch, Environmental Engineer Managers—Telephone: 412-442-4163/5226

GP13-56-00160: Keystone Lime Co., Inc. (P. O. Box 278, Springs, PA 15562-0278) on July 25, 2012, to install and operate Eichorn Hot Mix Plant rated at 300 tons per hour in Addison Township, **Somerset County, PA**.

GP5-65-01020: Keyrock Energy, LLC. 106, Ferrell Avenue, Suite 5, Kingsport, TN 37663 on July 31, 2012, to allow the installation and operation of one (1) compressor engine rated at 195 bhp and one (1) condensate/storage tank with a capacity of 4,200 gallons at their Hribal compressor station located in East Huntingdon Township **Westmoreland County, PA**.

Plan Approvals Issued under the Air Pollution Control Act and regulations in 25 Pa. Code Chapter 127, Subchapter B relating to construction, modification and reactivation of air contamination sources and associated air cleaning devices.

Southcentral Region: Air Quality Program, 909 Elmerton Avenue, Harrisburg, PA 17110

Contact: Thomas J. Hanlon, Facility Permitting Chief—Telephone: 717-705-4862 or Daniel Husted, New Source Review Chief—Telephone: 717-705-4863

67-03165A: Evergreen on Lincoln (654 Lincoln Drive, York, PA 17404) on July 23, 2012, for resuming operation of a human crematory previously operated by Yorktowne Caskets, Inc., at a facility in the City of York, **York County**.

07-05021A: Albemarle Corp. (2858 Back Vail Road, Tyrone, PA 16686-8100) on July 23, 2012, to construct additional chemical manufacturing equipment and install a flare at their facility in Tyrone Borough, **Blair County**.

05-03020A: Northern Bedford County School District (152 NBC Drive, Loysburg, PA 16659-9549) on July 24, 2012, to install a 7.793 mmBtu/hr wood-fired boiler controlled by multiclone mechanical collectors in series, in South Woodbury Township, **Bedford County**.

Northcentral Region: Air Quality Program, 208 West Third Street, Williamsport, PA 17701

Contact: Muhammad Q. Zaman, Environmental Program Manager—Telephone: 570-327-3648

55-00014A: Bingaman & Son Lumber, Inc. (1195 Creek Mountain Road, Kreamer, PA 17833) on July 24, 2012, to construct a 29.15 MMBtu per hour wood-fired boiler controlled by a multi-clone and fabric collector in series at their facility in Middle Creek Township, **Snyder County**.

08-00031B: Appalachia Midstream Services (PO Box 18496, Oklahoma City, OK 73154-0496) on July 27, 2012, to construct two (2) engine-compressors and one (1) dehydration unit at the Granville No. 2 Compressor Station in Granville Township, **Bradford County**.

Plan Approval Revisions Issued including Extensions, Minor Modifications and Transfers of Ownership under the Air Pollution Control Act and 25 Pa. Code §§ 127.13, 127.13a and 127.32.

Southcentral Region: Air Quality Program, 909 Elmerton Avenue, Harrisburg, PA 17110

Contact: Thomas J. Hanlon, Facility Permitting Chief—Telephone: 717-705-4862 or Daniel Husted, New Source Review Chief—Telephone: 717-705-4863

06-05069Q: East Penn Manufacturing Co., Inc. (Deka Road, PO Box 147, Lyon Station, PA 19536) on July 23, 2012, for modifications and additions to their A-4

battery assembly plant and lead oxide mills at the lead acid battery manufacturing facility in Richmond Township, **Berks County**. The plan approval was extended.

06-05079E: United Corrstack, LLC (720 Laurel Street, Reading, PA 19602-2718) on July 23, 2012, to construct a 482 MMBtu/hr circulating fluidized bed boiler and a 30 MW steam turbine in the City of Reading, **Berks County**. The plan approval was extended.

Northcentral Region: Air Quality Program, 208 West Third Street, Williamsport, PA 17701

Contact: Muhammad Q. Zaman, Environmental Program Manager—Telephone: 570-327-3648

19-00006C: Del Monte Corp. (6670 Low Street, Bloomsburg, PA 17815) on July 19, 2012, to authorize the construction and operation of a pet food manufacturing line to January 25, 2013 in Bloomsburg, **Columbia County**. The plan approval has been extended.

08-00003H: CraftMaster Manufacturing, Inc. (PO Box 311, Shiner Road, Towanda PA 18848) on July 3, 2012, to extend the authorization to exhaust the cavity steam from the Line 2 Press (Source ID 172P) to regenerative thermal oxidizer (RTO, ID C142) on a temporary basis to February 4, 2013, at the facility in Wysox Township, **Bradford County**. The plan approval has been extended.

Southwest Region: Air Quality Program, 400 Waterfront Drive, Pittsburgh, PA 15222-4745

Contact: M. Gorog & B. Hatch, Environmental Engineer Managers—Telephone: 412-442-4163/5226

03-00250: Rosebud Mining Co. (301 Market Street, Kittanning, PA 16201-1504) on July 18, 2012, to initiate the 180-day period of temporary operation at the Long Run Mine, Coal Preparation Plant in West Franklin Township, **Armstrong County**. The plan approval has been extended

04-00699: NGC Industries, LLC—formerly National Gypsum Co. (168 Shippingport Hill Road, Shippingport, PA 15077-0346) on August 20, 2010, to authorize the use of ammonium sulfate as a board hardening accelerating agent at NGC's wallboard manufacturing facility in Shippingport, **Beaver County**. This process commenced operation on February 13, 2012, starting the 180-day period of temporary operation, changing expiration date to August 11, 2012. Effective August 12, 2012, the expiration date of PA-63-00699G was extended to February 8, 2013 to allow additional time to resolve quality control issues and complete stack testing.

Title V Operating Permits Issued under the Air Pollution Control Act and 25 Pa. Code Chapter 127, Subchapter G.

Northcentral Region: Air Quality Program, 208 West Third Street, Williamsport, PA 17701

Contact: Muhammad Zaman, Environmental Program Manager—Telephone: 570-327-3648

19-00006: Del Monte Corp. (6670 Low Street, Bloomsburg, PA 17815) on July 25, 2012, issued a renewal of the Title V operating permit for their Bloomsburg facility in South Centre Township, **Columbia County**. The facility's sources include two (2) #2 fuel oil/natural gas-fired boilers, two (2) #6 fuel oil/natural gas-fired boilers, twenty three (23) natural gas-fired heaters, four (4) parts washers, two (2) propane-fired welders, meat scrap storage, wastewater treatment operation, three (3) storage tanks, bulk material handling

system, gravy mixing operation, "A" & "C" line meat mixers, four (4) natural gas-fired dryer lines which have the potential to emit major quantities of sulfur oxide (SO_x) emissions. The facility has the potential to emit carbon monoxide (CO), nitrogen oxides (NO_x) volatile organic compounds (VOCs), volatile hazardous air pollutants (VHAPs) and particulate matter (PM/PM₁₀) below the major emission thresholds. The Title V operating permit renewal contains all applicable regulatory requirements including monitoring, recordkeeping and reporting conditions.

Northwest Region: Air Quality Program, 230 Chestnut Street, Meadville, PA 16335-3481

Contact: Matthew Williams, Facilities Permitting Chief—Telephone: 814-332-6131

10-00285: Waste Management Disposal Services—Northwest Sanitary Landfill (1436 West Sunbury Road, West Sunbury, PA 16061-2934) on July 27, 2012, issued an administrative amendment to their Title V Operating Permit to incorporate the change of responsible official and permit contact for the facility in Clay Township, **Butler County**.

25-00025: GE Transportation—Erie Plant (2901 East Lake Road, Building 9 RM 201, Erie, PA 16531) on July 18, 2012, issued an administrative amendment to the Title V Operating Permit to incorporate the conditions of plan approval 25-025R for the facility located in Lawrence Park Township, **Erie County**.

25-00920: Waste Management PA—Lakeview Landfill (851 Robison Road East, Erie, PA 16509-5339) on July 27, 2012, issued an administrative amendment to the Title V Operating Permit to incorporate the change of responsible official and permit contact for the facility located in Summit Township, **Erie County**.

Department of Public Health, Air Management Services: 321 University Avenue, Philadelphia, PA 19104

Contact: Thomas Huynh, Chief—Telephone: 215-685-9476

V11-003: Exelon Generating Co.—Richmond Station (3901 North Delaware Avenue, Philadelphia, PA 19137) on July 30, 2012, to issue a Title V State only operating permit in the City of Philadelphia, **Philadelphia County**. The facility's air emission sources include two (2) 838 MMBTU/hr combustion turbines and a 1.77 MMBTU/hr boiler.

Operating Permits for Non-Title V Facilities Issued under the Air Pollution Control Act and 25 Pa. Code Chapter 127, Subchapter F.

Northeast Region: Air Quality Program, 2 Public Square, Wilkes-Barre, PA 18711-0790

Contact: Ray Kempa, New Source Review Chief—Telephone: 570-826-2507

40-00042: SPCA of Luzerne County (524 E Main Street, Wilkes-Barre, PA 18702) on July 23, 2012, to operate an animal crematory in Plains Township, **Luzerne County**. This is a renewal of the State-Only Natural Minor operating permit. The State-Only operating permit includes emissions, work practice standards and testing, monitoring, recordkeeping and reporting requirements designed to keep the facility operating within all applicable air quality requirements.

35-00003: General Dynamics Ordnance Systems, OTS—Scranton Army Ammunition Plant, (156 Cedar Avenue, Scranton, PA 18505) on July 30, 2012, for

manufacture of ammunition, except for small arms, in Scranton, **Lackawanna County**. The sources consist of three (3) natural gas fired Boilers, Space Heaters, Forge Presses, and Spray Paint Booths. The sources are considered minor emission sources of nitrogen oxide (NO_x), sulfur oxides (SO_x), carbon monoxide (CO), total suspended particulate (TSP) and VOC's. This is a renewal of the State-Only Synthetic Minor operating permit. The State-Only operating permit includes applicable state and federal requirements, work practice standards, testing, monitoring, recordkeeping and reporting requirements.

48-00087: Federal White Cement, Inc. (72 West 21st Street, Northampton, PA 18067-1276) for a Portland cement distribution terminal in Northampton Borough, **Northampton County**. The facility's main sources include two cement distribution silos. This is a renewal of a State-Only Operating Permit. The issued State-only (Synthetic Minor) Operating Permit contains applicable requirements for emissions limitations, monitoring, recordkeeping, reporting and work practice standards designed to ensure facility compliance with Federal and State air pollution regulations.

35-00029: Community Health Systems (746 Jefferson Avenue Scranton, PA 18510) on July 24, 2012, for the operation of a general medical and surgical hospital in the City of Scranton **Lackawanna County**. The sources consist of three (3) boilers and two (2) emergency generators. The sources are consider minor sources of nitrogen oxides (NO_x) and sulfur oxide (SO_x) emissions. This is a renewal of a State-Only Operating Permit. The State-Only operating permit includes emissions, work practice standards and testing, monitoring, recordkeeping and reporting requirements designed to keep the facility operating within all applicable air quality requirements.

Southcentral Region: Air Quality Program, 909 Elmerton Avenue, Harrisburg, PA 17110

Contact: Thomas J. Hanlon, Facility Permitting Chief—Telephone: 717-705-4862 or Daniel Husted, New Source Review Chief—Telephone: 717-705-4863

22-05029: Exelon Generation Co., LLC (PO Box 480, Route 441 S, Middletown, PA 17057-0480) on July 23, 2012, for the auxiliary boilers, cooling towers, fire pumps, generators and gasoline tank at the Three Mile Island Nuclear Station located in Londonderry Township, **Dauphin County**. The State-only permit was renewed.

36-03167: Photonis USA PA, Inc. (1000 New Holland Avenue, Lancaster, PA 17601-5688) on July 24, 2012, for the electron tube manufacturing facility in Lancaster City, **Lancaster County**. The State-only permit was renewed.

38-03029: Elk Corp. of Texas (401 Weavertown Road, PO Box 228, Myerstown, PA 17067) on July 24, 2012, for the asphalt shingle manufacturing facility in Jackson Township, **Lebanon County**. The State-only permit was renewed.

Southwest Region: Air Quality Program, 400 Waterfront Drive, Pittsburgh, PA 15222-4745

Contact: Barbara Hatch, Facilities Permitting Chief—Telephone: 412-442-4174

11-00241: Pennsylvania Department of Corrections (1920 Technology Parkway, Mechanicsburg, PA 17050) on July 24, 2012, for operation of the SCI-Cresson Prison. The facility contains air contamination sources, consisting of one 20,000 ton per year wood-fired boiler, three 29.4 MMBtu/hr natural gas or fuel oil-fired boilers, and one 1,490-bhp emergency diesel generator engine.

The facility is subject to the applicable requirements of 40 CFR 60, Subpart Dc and Subpart JJJJJJ, and Pa. Code Title 25, Chapters 121—145. The permit also includes emission limitations, operational requirements, monitoring requirements testing requirements, recordkeeping requirements, and reporting requirements for the facility located in Cresson Township, **Cambria County**.

Operating Permit Revisions Issued including Administrative Amendments, Minor Modifications or Transfers of Ownership under the Air Pollution Control Act and 25 Pa. Code §§ 127.412, 127.450, 127.462 and 127.464.

Southcentral Region: Air Quality Program, 909 Elmerton Avenue, Harrisburg, PA 17110

Contact: Thomas J. Hanlon, Facility Permitting Chief—Telephone: 717-705-4862 or Daniel Husted, New Source Review Chief—Telephone: 717-705-4863

01-05018: McClarin Plastics, Inc. (15 Industrial Drive, Hanover, PA 17331-9530) on July 26, 2012, for the thermoformed plastic and fiberglass reinforced plastic products manufacturing facility in Conewago Township, **Adams County**. The state-only permit was administratively amended to incorporate the provisions of plan approval No. 01-05018A.

07-05041: Core Label, LLC (13985 South Eagle Valley Road, Tyrone, PA 16686-7905) on July 26, 2012, for their flexible packaging manufacturing and printing facility in Snyder Township, **Blair County**. The state-only permit was administratively amended to reflect a change of ownership.

ACTIONS ON COAL AND NONCOAL MINING ACTIVITY APPLICATIONS

Actions on applications under the Surface Mining Conservation and Reclamation Act (52 P. S. §§ 1396.1—1396.19a); the Noncoal Surface Mining Conservation and Reclamation Act (52 P. S. §§ 3301—3326); The Clean Streams Law; the Coal Refuse Disposal Control Act (52 P. S. §§ 30.51—30.66); and The Bituminous Mine Subsidence and Land Conservation Act (52 P. S. §§ 1406.1—1406.20a). The final action on each application also constitutes action on the NPDES permit application and, if noted, the request for a Section 401 Water Quality Certification. Mining activity permits issued in response to applications will also address the application permitting requirements of the following statutes: the Air Quality Pollution Act (35 P. S. §§ 4001—4014); the Dam Safety and Encroachments Act (32 P. S. §§ 693.1—693.27); and the Solid Waste Management Act (35 P. S. §§ 6018.101—6018.1002).

Coal Permits Actions

Cambria District Mining Office: 286 Industrial Park Road, Ebensburg, PA 15931, 814-472-1900

56110103 and NPDES No. PA0263192. Wilson Creek Energy, LLC, 140 West Union Street, Somerset, PA 15501, commencement, operation and restoration of a bituminous surface mine in Jenner Township, **Somerset County**, affecting 49.8 acres. Receiving stream(s): UTS to Quemahoning Creek classified for the following use(s): cold water fishery. The first downstream potable water supply intake from the point of discharge is Cambria Somerset Authority. Application received: March 7, 2011. Permit issued: July 17, 2012.

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

30960101 and NPDES Permit No. PA0201626. C. J. & L. Coal (P. O. Box 133, Jefferson, PA 15344). Renewal permit issued for continued mining and auger to an existing bituminous surface mine, located in Morgan Township, **Greene County**, affecting 136 acres. Receiving stream: unnamed tributary to South Fork of Ten Mile Creek. Application received: July 22, 2011. Permit issued: July 25, 2012.

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

16060102 and NPDES Permit No. PA0258121. Glenn O. Hawbaker, Inc. (1952 Waddle Road, State College, PA 16803) Renewal of an existing bituminous surface mine in Beaver & Licking Townships, **Clarion County** affecting 29.0 acres. Receiving streams: unnamed tributary to the Clarion River. This renewal is for reclamation only. Application received: February 29, 2012. Permit Issued: July 26, 2012.

33850118 and NPDES Permit No. PA0106682. P. and N. Coal Co., Inc. (P. O. Box 332, Punxsutawney, PA 15767) Transfer of an existing bituminous surface mine from Alvin Gearhart in Winslow Township, **Jefferson County** affecting 173.3 acres. Receiving streams: Three unnamed tributaries to Soldier Run. Application received: November 3, 2011. Permit Issued: July 24, 2012.

Pottsville District Mining Office: 5 West Laurel Boulevard, Pottsville, PA 17901, 570-621-3118

54863043R5. Jeddo-Highland Coal Company, (46 Public Square, Suite 600, Wilkes-Barre, PA 18701), renewal of an existing anthracite surface mine and coal refuse reprocessing operation in Mahanoy Township, **Schuylkill County** affecting 1328.0 acres, receiving streams: Mahanoy Creek and North Mahanoy Creek. Application received: March 4, 2011. Renewal issued: July 24, 2012.

54683043GP104. Jeddo-Highland Coal Company, (46 Public Square, Suite 600, Wilkes-Barre, PA 18701), General NPDES Permit for stormwater discharges associated with mining activities on Surface Mining Permit No. 54683043 in Mahanoy Township, **Schuylkill County**, receiving streams: Mahanoy Creek and North Mahanoy Creek. Application received: April 25, 2011. Permit issued: July 24, 2012.

54060101R. Blaschak Coal Corp., (P. O. Box 12, Mahanoy City, PA 17948), renewal of an existing anthracite surface mine and refuse disposal operation in Mahanoy Township, **Schuylkill County** affecting 1043.2 acres, receiving stream: Mahanoy Creek. Application received: March 8, 2011. Renewal issued: July 25, 2012.

54060101GP104. Blaschak Coal Corp., (P. O. Box 12, Mahanoy City, PA 17948), General NPDES Permit for stormwater discharges associated with mining activities on Surface Mining Permit No. 54060101 in Mahanoy Township, **Schuylkill County**, receiving stream: Mahanoy Creek. Application received: April 21, 2011. Permit issued: July 25, 2012.

Noncoal Permits Actions

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

10072802. Natural Sand Company, Inc. (4783 Harlansburg Road, Slippery Rock, PA 16057) Renewal of existing NPDES Permit No. PA0258431 in Buffalo Town-

ship, **Butler County**. Receiving streams: Unnamed tributary to Little Bull Creek. Application received: May 12, 2012. Permit Issued: July 24, 2012.

3779103 and NPDES Permit No. PA0109258. Cemex Construction Materials Atlantic, LLC (920 Memorial City Way, Suite 100, Houston, TX 77024) Transfer of an existing large industrial minerals mine from Cemex, Inc. in Shenango & Taylor Townships, **Lawrence County** affecting 391.0 acres. Receiving streams: Unnamed tributary to McKee Run and unnamed tributary to Beaver River. Application received: October 31, 2011. Permit Issued: July 24, 2012.

Moshannon District Mining Office: 186 Enterprise Drive, Philipsburg, PA 16866, 814-342-8200

59110301 and NPDES No. PA0257745. Atlas Land & Royalty, Inc. (2 Village Drive, Suite 200, Abilene, TX 79606-8206). Commencement, operation and restoration of a large industrial mineral surface mine located in Lawrence Township, **Tioga County** affecting 17.1 acres. Receiving streams: Unnamed Tributary to the Tioga River to the Tioga River classified for Warm Water Fishes. There are no potable water supply intakes within 10 miles downstream. Application received: July 5, 2011. Permit issued: July 19, 2012.

ACTIONS ON BLASTING ACTIVITY APPLICATIONS

Actions on applications under the Explosives Acts of 1937 and 1957 and 25 Pa. Code § 211.124. Blasting activity performed as part of a coal or noncoal mining activity will be regulated by the mining permit for that coal or noncoal mining activity.

Blasting Permits Actions

Moshannon District Mining Office: 186 Enterprise Drive, Philipsburg, PA 16866, 814-342-8200

08124140. Hayduck Enterprises, Inc. (257 Riverside Drive, Factoryville, PA 18419). Blasting for pipeline located in Wilmot Township, **Bradford County**; Cherry and Shrewsbury Townships, Sullivan County. Permit issued: July 20, 2012. Permit expires: December 31, 2012.

14124003. Douglas Explosives, Inc. (P. O. Box 77, Philipsburg, PA 16866). Drilling and blasting for Graysdale Retention Pond located in Patton Township, **Centre County**. Permit issued: July 25, 2012. Permit expires: July 24, 2013.

14124110. Douglas Explosives, Inc. (P. O. Box 77, Philipsburg, PA 16866). Blasting for residential development located in Ferguson Township, **Centre County**. Permit issued: July 26, 2012. Permit expires: August 1, 2013.

41124006. John Brainard Explosives LLC (3978 SR 2073, Kingsley, PA 18826-0980). Blasting at Knorr Drive-way located in Moreland Township, **Lycoming County**. Permit issued: July 24, 2012. Permit expires: August 31, 2012.

41124007. Dynamic Drilling, LLC (10373 Taylor Hawks Road, Herron, MI 46744). Seismic exploration for Lundy 2D located in Gamble and Cascade Townships **Lycoming County**. Permit issued: July 26, 2012. Permit expires: August 1, 2013.

41124110. Rock Work Inc. (1257 Dekalb Pike, Blue Bell, PA 19422-1864). Blasting for natural gas well pad

and access road located in Upper Fairfield Township, **Lycoming County**. Permit issued: July 24, 2012. Permit expires: July 20, 2013.

41124111. Midstream Explosives LLC (289 Southside Drive, Newville, PA 17241). Blasting for pipeline located in Cascade and Gamble Townships, **Lycoming County**. Permit issued: July 24, 2012. Permit expires: July 23, 2013.

59124107. M & J Explosives, Inc. (P. O. Box 608, Carlisle, PA 17013-0608). Blasting for well pad located in Liberty Township, **Tioga County**. Permit issued: July 25, 2012. Permit expires: July 23, 2013.

Pottsville District Mining Office: 5 West Laurel Boulevard, Pottsville, PA 17901, 570-621-3118

58124164. Maine Drilling & Blasting, (P. O. Box 1140, Gardiner, ME 04345), construction blasting for Crystella Pipeline in Dimock Township, **Susquehanna County** with an expiration date of July 17, 2013. Permit issued: July 20, 2012.

58124165. Maine Drilling & Blasting, (P. O. Box 1140, Gardiner, ME 04345), construction blasting for Jeffers Farm Pipeline in Lenox Township, **Susquehanna County** with an expiration date of July 17, 2013. Permit issued: July 20, 2012.

58124166. Maine Drilling & Blasting, (P. O. Box 1140, Gardiner, ME 04345), construction blasting for Bush 10 Inch Pipeline in Bridgewater and Forest Lake Townships, **Susquehanna County** with an expiration date of July 20, 2013. Permit issued: July 20, 2012.

58124167. Maine Drilling & Blasting, (P. O. Box 1140, Gardiner, ME 04345), construction blasting for Lyman Gas Pipeline in Springville Township, **Susquehanna County** with an expiration date of July 30, 2013. Permit issued: July 20, 2012.

64124103. Holbert Explosives, Inc., (237 Mast Hope Plank Road, Lackawaxen, PA 18435), construction blasting for a single dwelling in Lebanon Township, **Wayne County** with an expiration date of August 1, 2013. Permit issued: July 20, 2012.

36124139. Maine Drilling & Blasting, (PO Box 1140, Gardiner, ME 04345), construction blasting for Bishop Woods in West Donegal Township, **Lancaster County** with an expiration date of July 19, 2013. Permit issued: July 24, 2012.

36124140. Keystone Blasting Service, (15 Hopeland Road, Lititz, PA 17543), construction blasting for Melvin Fisher manure pit in Strasburg Township, **Lancaster County** with an expiration date of October 30, 2012. Permit issued: July 24, 2012.

58124168. Holbert Explosives, Inc., (237 Mast Hope Plank Road, Lackawaxen, PA 18435), construction blasting for NE Water System in Liberty and Great Bend Townships, **Susquehanna County** with an expiration date of July 24, 2013. Permit issued: July 25, 2012.

FEDERAL WATER POLLUTION CONTROL ACT SECTION 401

The Department has taken the following actions on previously received permit applications, requests for Environmental Assessment approval and requests for Water Quality Certification under section 401 of the Federal Water Pollution Control Act (FWPCA) (33 U.S.C.A. § 1341).

Except as otherwise noted, the Department has granted 401 Water Quality Certification certifying that the con-

struction and operation described will comply with sections 301—303, 306 and 307 of the FWPCA (33 U.S.C.A. §§ 1311—1313, 1316 and 1317) and that the construction will not violate applicable Federal and State water quality standards.

Persons aggrieved by an action may appeal that action to the Environmental Hearing Board (Board) under section 4 of the Environmental Hearing Board Act and 2 Pa.C.S. §§ 501—508 and 701—704. The appeal should be sent to the Environmental Hearing Board, Second Floor, Rachel Carson State Office Building, 400 Market Street, PO Box 8457, Harrisburg, PA 17105-8457, (717) 787-3483. TDD users may contact the Board through the Pennsylvania Relay Service, (800) 654-5984. Appeals must be filed with the Board within 30 days of publication of this notice in the *Pennsylvania Bulletin* unless the appropriate statute provides a different time period. Copies of the appeal form and the Board's rules of practice and procedure may be obtained from the Board. The appeal form and the Board's rules of practice and procedure are also available in Braille or on audiotape from the Secretary to the Board at (717) 787-3483. This paragraph does not, in and of itself, create a right of appeal beyond that permitted by applicable statutes and decisional law.

For individuals who wish to challenge an action, the appeal must reach the Board within 30 days. A lawyer is not needed to file an appeal with the Board.

Important legal rights are at stake, however, so individuals should show this notice to a lawyer at once. Persons who cannot afford a lawyer may qualify for pro bono representation. Call the Secretary to the Board at (717) 787-3483 for more information.

Actions on applications for the following activities filed under the Dam Safety and Encroachments Act (32 P. S. §§ 693.1—693.27), section 302 of the Flood Plain Management Act (32 P. S. § 679.302) and The Clean Streams Law and Notice of Final Action for Certification under section 401 of the FWPCA.

Permits, Environmental Assessments and 401 Water Quality Certifications Issued:

WATER OBSTRUCTIONS AND ENCROACHMENTS

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

E09-946. U.S. Army Corps of Engineers, Philadelphia District, 100 Penn Square East, Wanamaker Building, Philadelphia, PA 19002, Upper Southampton Township, **Bucks County**, ACOE Philadelphia district.

To restore and realign and maintain approximately 1,300 linear feet of Southampton Creek by utilizing fluvial geomorphology based stream restoration techniques. This work includes log vanes, mud sills, and rock cross vanes.

The project starts at the intersection of Street and Davisville Roads, and terminates at Steam Boat Drive (Hatboro, PA USGS Quadrangle N: 4.00 inches; W: 3:00 inches).

The issuance of this permit also constitutes approval of a water Quality Certification under Section 401 of the Federal Water Pollution Control Act [33 U.S.C.A. 1341(a)].

E15-826. Anselma Crossing, L.P., 2323 Chester Springs Road, Chester Springs, PA 19425, West Pikeland Township, **Chester County**, ACOE Philadelphia District.

To perform the following water obstruction and encroachment activities associated with the construction of the proposed development in the floodway of Pickering Creek (HQ-TSF):

1. To place fill-in approximately 1,885 square feet of the floodway associated with the construction of the proposed building No. 1.
2. To grade within floodway associated with the construction of approximately 20-foot wide, 290-foot long section of the of proposed roadway access.
3. To install and maintain a various utility pipes within the floodway.
4. To construct and maintain a 24-inch water main across Pickering Creek.
5. To modify and extend the existing 30-inch culvert associated with access road widening.
6. To construct and maintain an outfall structure located at the northern end of the property.

The project will permanently impact approximately 20 linear feet of stream. The site is located approximately 1,526 feet southwest of the intersection of Byers and Conestoga Roads in West Pikeland Township, Chester County (Malvern, PA, USGS Quadrangle N:15.20 inches; W:2.5 inches).

The issuance of this permit also constitutes approval of a water Quality Certification under Section 401 of the Federal Water Pollution Control Act [33 U.S.C.A. 1341(a)].

E15-830. Easttown Municipal Authority, 566 Beaumont Road, Devon, PA 19333, Easttown Township, Chester County, ACOE Philadelphia District.

To remove the existing Berwyn pump station and to construct and maintain the new pump station approximately 20 feet east of the existing location, in and along the 100-year floodplain of an unnamed tributary to Darby Creek (CWF-MF).

The site is located approximately 180 feet west of the intersection of Sugartown (S.R. 2026) and Church (S.R. 2028) Roads (Valley Forge, PA, USGS Quadrangle N: 6.00 inches, W: 8 inches).

The issuance of this permit also constitutes approval of a water Quality Certification under Section 401 of the Federal Water Pollution Control Act [33 U.S.C.A. 1341(a)].

E15-831. Phoenixville Borough, 140 Church Street, Phoenixville, PA 19460, Phoenixville Borough, Chester County, ACOE Philadelphia District.

To remove the existing office buildings and to construct and maintain the proposed Phoenixville Borough Hall in the floodplain of French Creek. This work includes construction and maintenance of a stormwater management facility. The site is located approximately in the northwest intersection of Bridge Street (S.R. 113) and Taylor Alley (Phoenixville, PA, USGS Quadrangle N: 1.5 inches, W: 3.00 inches).

The issuance of this permit also constitutes approval of a water Quality Certification under Section 401 of the Federal Water Pollution Control Act [33 U.S.C.A. 1341(a)].

EROSION AND SEDIMENT CONTROL

The following Erosion and Sediment Control permits have been issued.

Persons aggrieved by an action may appeal that action to the Environmental Hearing Board (Board) under section 4 of the Environmental Hearing Board Act and 2 Pa.C.S. §§ 501—508 and 701—704. The appeal should be sent to the Environmental Hearing Board, Second Floor, Rachel Carson State Office Building, 400 Market Street, PO Box 8457, Harrisburg, PA 17105-8457, (717) 787-3483. TDD users may contact the Board through the Pennsylvania Relay Service, (800) 654-5984. Appeals must be filed with the Board within 30 days of publication of this notice in the *Pennsylvania Bulletin* unless the appropriate statute provides a different time period. Copies of the appeal form and the Board's rules of practice and procedure may be obtained from the Board. The appeal form and the Board's rules of practice and procedure are also available in Braille or on audiotape from the Secretary to the Board at (717) 787-3483. This paragraph does not, in and of itself, create a right of appeal beyond that permitted by applicable statutes and decisional law.

For individuals who wish to challenge an action, the appeal must reach the Board within 30 days. A lawyer is not needed to file an appeal with the Board.

Important legal rights are at stake, however, so individuals should show this notice to a lawyer at once. Persons who cannot afford a lawyer may qualify for pro bono representation. Call the Secretary to the Board at (717) 787-3483 for more information.

Eastern Region: Oil & Gas Management Program Manager, 208 West Third Street, Williamsport, PA 17701

ESCGP-1 # ESX12-113-0027

Applicant Name Chesapeake Appalachia, LLC

Contact Person Eric Haskins

Address 101 North Main Street

City, State, Zip Athens, PA 18810

County Sullivan County

Township(s) Cherry

Receiving Stream(s) and Classification(s) Lick Creek Watershed (EV), UNT to Little Loyalsock Creek Watershed (EV);

Secondary: Loyalsock Creek Watershed (EV)

ESCGP-1 # ESX12-115-0122

Applicant Name Williams Field Services Company, LLC

Contact Person Tom Page

Address 1605 Coraopolis Heights Road

City, State, Zip Moon Township, PA 15108

County Susquehanna County

Township(s) Bridgewater Township

Receiving Stream(s) and Classification(s) UNTs to Trib 29450 to Meshoppen Creek, UNTs to Trib 29452 to Meshoppen Creek, Trib 29450 to Meshoppen Creek, Trib 29452 to Meshoppen Creek, Meshoppen Creek (All CWF, MF), Trib 29874 to Pettis Creek (WWF, MF);

Secondary: Pettis Creek (WWF, MF), Meshoppen Creek (CWF)

ESCGP-1 # ESX12-115-0082

Applicant Name WPX Energy Appalachia, LLC

Contact Person David Freudenrich

Address 6000 Town Center Blvd., Suite 300

City, State, Zip Canonsburg, PA 15317

County Susquehanna County

Township(s) Choconut and Silver Lake Townships

Receiving Stream(s) and Classification(s) Two UNTs to Choconut Creek; Choconut Creek Watershed, Choconut Creek/Susquehanna River Watershed (WWF, MF)

ESCGP-1 # ESX12-115-0111

Applicant Name Talisman Energy USA, Inc.
 Contact Person Tracy Gregory
 Address 337 Daniel Zenker Drive
 City, State, Zip Horseheads, NY 14845
 County Susquehanna and Bradford Counties
 Township(s) Rush and Pike Townships
 Receiving Stream(s) and Classification(s) Gaylord Creek
 (CWF, MF)

ESCGP-1 # ESX12-113-0029

Applicant Name Appalachia Midstream Services, LLC
 Contact Person Patrick Myers, Jr.
 Address 100 Ist Center
 City, State, Zip Horseheads, NY 14845
 County Sullivan County
 Township(s) Elkland Township
 Receiving Stream(s) and Classification(s) Drains to: Trib.
 20100 to Blackwater Run (EV), Bribes 20175 and 20176
 to Mill Creek (EV), Loyalsock Creek Watershed, (EV);
 Secondary: Blackwater Run (EV) and Mill Creek (EV)

ESCGP-1 # ESX12-015-0153

Applicant Name Appalachia Midstream Services, LLC
 Contact Person Patrick Myers, Jr.
 Address 100 Ist Center
 City, State, Zip Horseheads, NY 14845
 County Bradford County
 Township(s) Overton Township
 Receiving Stream(s) and Classification(s) UNT to the
 Level Branch (EV/MF)

ESCGP-1 # ESX12-015-0152

Applicant Name Appalachia Midstream Services, LLC
 Contact Person Patrick Myers, Jr.
 Address 100 Ist Center
 City, State, Zip Horseheads, NY 14845
 County Bradford County
 Township(s) Burlington Borough, Burlington Township
 Receiving Stream(s) and Classification(s) Wallace Run
 (WWF, MF) and Tomjack Creek (TSF, MF)

ESCGP-1 # ESX12-015-0151

Applicant Name Chesapeake Appalachia, LLC
 Contact Person Eric Haskins
 Address 101 North Main Street
 City, State, Zip Athens, PA 18810
 County Bradford County
 Township(s) Wilmot Township
 Receiving Stream(s) and Classification(s) UNT to Panther
 Lick Creek, which is trib. to Sugar Run Creek (CWF/
 MF);
 Secondary: Sugar Run Creek (CWF/MF)

ESCGP-1 # ESX12-015-0143

Applicant Name Chesapeake Appalachia, LLC
 Contact Person Eric Haskins
 Address 101 North Main Street
 City, State, Zip Athens, PA 18810
 County Bradford County
 Township(s) Wyalusing Township
 Receiving Stream(s) and Classification(s) UNTs to
 Susquehanna River (CWF) and UNTs to Wyalusing
 Creek (WWF);
 Secondary: Susquehanna River (CWF) and Wyalusing
 Creek (WWF)

ESCGP-1 # ESX11-015-0309 (01)

Applicant Name Talisman Energy USA, Inc.
 Contact Person Tracy Gregory
 Address 337 Daniel Zenker Drive
 City, State, Zip Horseheads, NY 14845
 County Bradford County

Township(s) Orwell and Windham Townships
 Receiving Stream(s) and Classification(s) Trib to Wysox
 Creek (CWF,MF), Trout Stream (CWF, MF)

ESCGP-1 # ESX12-015-0150

Applicant Name Appalachia Midstream Services, LLC
 Contact Person Patrick Myers, Jr.
 Address 100 Ist Center
 City, State, Zip Horseheads, NY 14845
 County Bradford County
 Township(s) Herrick, Standing Stone, Wysox and Wyalus-
 ing Townships
 Receiving Stream(s) and Classification(s) Susquehanna
 River, UNT to Susquehanna River, Brewer Creek, UNT
 to Brewer Creek, Vought Creek, Kings Creek, Rum-
 merfield Creek, Trib 29971, 29979, 29980, and 29978 to
 Rummerfield Creek, Trib 30050 to Wysox Creek, Bill-
 ings Creek, UNT to Billings Creek, UNT to Camp
 Creek, UNT to Wyalusing Creek (All WWF, MF);
 Secondary: Susquehanna River Watershed

ESCGP-1 # ESX12-081-0095

Applicant Name Anadarko E&P Company, LP
 Contact Person Nathan Bennett
 Address 33 W. Third Street, Suite 200
 City, State, Zip Williamsport, PA 17701
 County Lycoming County
 Township(s) Cascade Township
 Receiving Stream(s) and Classification(s) UNT to East
 Branch Wallis Run/East Branch Wallis Run, UNT to
 Engle Run/Engle Run (EV)

ESCGP-1 # ESG12-015-0129

Applicant Name Chief Gathering, LLC
 Contact Person Nicholas Bryan
 Address 999 North Loyalsock Avenue, Suite 3
 City, State, Zip Montoursville, PA 17754
 County Bradford County
 Township(s) Burlington Township
 Receiving Stream(s) and Classification(s) Bailey Run
 (WWF/MF)

ESCGP-1 # ESX11-015-0174 (01)

Applicant Name Angelina Gathering Company, LLC
 Contact Person Danny Spaulding
 Address 2350 N. Sam Houston Pkwy E., Suite 125
 City, State, Zip Houston, TX 77032
 County Bradford County
 Township(s) Herrick Township
 Receiving Stream(s) and Classification(s) UNT to Rum-
 mersfield Creek (WWF/MF)

ESCGP-1 # ESXX12-115-0107

Applicant Name WPX Energy Appalachia, LLC
 Contact Person David Freudenrich
 Address 6000 Town Center Blvd., Suite 300
 City, State, Zip Canonsburg, PA 15317
 County Susquehanna County
 Township(s) Silver Lake Township
 Receiving Stream(s) and Classification(s) UNT Fall Brook
 (Other/EV);
 Secondary: Silver Creek

ESCGP-1 # ESX12-081-0045 (01)

Applicant Name PVR Marcellus Gas Gathering, LLC
 Contact Person Kevin Roberts
 Address 25 W. Third Street, 100 Penn Tower, Suite
 201-202
 City, State, Zip Williamsport, PA 17701
 County Lycoming County
 Township(s) Fairfield Township
 Receiving Stream(s) and Classification(s) Mill Creek East
 (HQ)

ESCGP-1 # ESX12-081-0043 (01)
 Applicant Name PVR Marcellus Gas Gathering, LLC
 Contact Person Kevin Roberts
 Address 25 W. Third Street, 100 Penn Tower, Suite
 201-202
 City, State, Zip Williamsport, PA 17701
 County Lycoming County
 Township(s) Fairfield and Upper Fairfield Townships
 Receiving Stream(s) and Classification(s) Mill Creek East
 (HQ)

ESCGP-1 # ESX12-131-0015
 Applicant Name Chesapeake Appalachia, LLC
 Contact Person Eric Haskins
 Address 101 North Main Street
 City, State, Zip Athens, PA 18810
 County Wyoming County
 Township(s) Mehoopany Township
 Receiving Stream(s) and Classification(s) Susquehanna
 River (WWF, MF)

ESCGP-1 # ESG12-115-0061
 Applicant Name Susquehanna Gathering Company, LLC
 Contact Person John Miller
 Address P. O. Box 839
 City, State, Zip New Milford, PA 18834
 County Susquehanna County
 Township(s) New Milford Township
 Receiving Stream(s) and Classification(s) UNT to
 Wellman's Creek (HQ-Other);
 Secondary: Wellman's Creek Trib to Salt Lick Creek

ESCGP-1 # ESX12-081-0099
 Applicant Name Anadarko E&P Company, LP
 Contact Person Nathan Bennett
 Address 33 W. Third Street, Suite 200
 City, State, Zip Williamsport, PA 17701
 County Lycoming County
 Township(s) Cogan House Township
 Receiving Stream(s) and Classification(s) Birch Run (HQ/
 CWF), UNT to Hoagland Run (HQ/CWF);
 Secondary: Susquehanna River/Lycoming Creek

ESCGP-1 # ESX11-115-0172 (02)
 Applicant Name Williams Field Services Company, LLC
 Contact Person Kristy Flavin
 Address 1605 Coraopolis Heights Road
 City, State, Zip Moon Township, PA 15108-4310
 County Susquehanna County
 Township(s) Springville Township
 Receiving Stream(s) and Classification(s) Thomas, North
 Branch of Meshoppen, and Meshoppen Creeks, Includ-
 ing UNTs to those creeks/Tunkhannock Watershed
 (other)

ESCGP-1 # ESX12-081-0097
 Applicant Name SWEPI LP
 Contact Person H. James Sewell
 Address 190 Thorn Hill Road
 City, State, Zip Warrendale, PA 15086
 County Lycoming County
 Township(s) McIntyre Township
 Receiving Stream(s) and Classification(s) UNT to Red
 Run (CWF/MF)

ESCGP-1 # ESX12-115-0070
 Applicant Name Southwestern Energy Production Com-
 pany
 Contact Person Dave Sweeley
 Address 917 State Route 92 North
 City, State, Zip Tunkhannock, PA 18657
 County Susquehanna County
 Township(s) New Milford Township

Receiving Stream(s) and Classification(s) UNT to Nine
 Partners Creek (CWF/MF);
 Secondary: Tunkhannock Creek

ESCGP-1 # ESX12-225-0125
 Applicant Name Southwestern Energy Production Com-
 pany
 Contact Person Dave Sweeley
 Address 917 State Route 92 North
 City, State, Zip Tunkhannock, PA 18657
 County Susquehanna County
 Township(s) Oakland Township
 Receiving Stream(s) and Classification(s) Lewis Creek
 (CWF), Deacon Brook (CWF)

ESCGP-1 # ESX12-115-0124
 Applicant Name Southwestern Energy Production Com-
 pany
 Contact Person Dave Sweeley
 Address 917 State Route 92 North
 City, State, Zip Tunkhannock, PA 18657
 County Susquehanna County
 Township(s) New Milford Township
 Receiving Stream(s) and Classification(s) Salt Lick Creek
 (HQ/CWF);
 Secondary: Susquehanna River (WWF)

ESCGP-1 # ESX12-081-0096
 Applicant Name NFG Midstream Trout Run LLC
 Contact Person Duane Wassum
 Address 6363 Main Street
 City, State, Zip Williamsville, NY 14221
 County Lycoming County
 Township(s) McIntyre & Lewis Townships
 Receiving Stream(s) and Classification(s) Lower West
 Branch Susquehanna Watershed, Grays Run, Splash
 Dam Run, Bartoff Hollow, Darr Hollow, Trib. 20652 to
 Lycoming Creek, Trib 20701 to Heylsum Run (HQ);
 Secondary: Lower Susquehanna Penns

ESCGP-1 # ESX12-115-0110
 Applicant Name Susquehanna Gathering Company, LLC
 Contact Person John Miller
 Address P. O. Box 839
 City, State, Zip New Milford, PA 18834
 County Susquehanna County
 Township(s) Jackson and Thompson Townships
 Receiving Stream(s) and Classification(s) Canawacta
 Creek (CWF/MF)

ESCGP-1 # ESG11-131-0027 (01)
 Applicant Name PVR NEPA Gas Gathering, LLC
 Contact Person Nicholas Bryan
 Address 999 Loyalsock Ave. Suite G
 City, State, Zip Montoursville, PA 17754
 County Susquehanna and Wyoming Counties
 Township(s) Nicholson and Lathrop Townships
 Receiving Stream(s) and Classification(s) Field Brook,
 UNT to Field Brook (Both CWF/MF)

ESCGP-1 # ESX12-015-0156
 Applicant Name Chesapeake Appalachia, LLC
 Contact Person Eric Haskins
 Address 101 North Main Street
 City, State, Zip Athens, PA 18810
 County Bradford County
 Township(s) Wyalusing Township
 Receiving Stream(s) and Classification(s) UNT to Wyalus-
 ing Creek, UNT to Wyalusing Creek (Both CWF);
 Secondary: Wyalusing Creek (CWF)

ESCGP-1 # ESX12-033-0020
 Applicant Name Campbell Oil & Gas, Inc.
 Contact Person Erik Wood

Address P. O. Box 278
 City, State, Zip Indiana, PA 15701
 County Clearfield County
 Township(s) Bigler and Knox Townships
 Receiving Stream(s) and Classification(s) Pine Run and
 UNT (EV), Lost Run and UNT (CWF), Potts Run
 (CWF);
 Secondary: Clearfield Creek (WWF)

*Northwest Region: Oil and Gas Program Manager, 230
 Chestnut St., Meadville, PA 16335*

ESCGP-1 #ESX12-019-0146-Rape Gas Well
 Applicant RE Gas Development
 Contact Michael Endler
 Address 310 Seven Fields Blvd, Suite 151
 City Seven Fields State PA Zip Code 16046
 County Butler Township(s) Forward(s)
 Receiving Stream(s) and Classification(s) UNT's to Con-
 noquenessing Creek-WWF, Slippery Rock Creek Water-
 shed

ESCGP-1 #ESX12-123-0018-WT 2921
 Applicant Swepi LP
 Contact James Sewell
 Address 190 Thorn Hill Road
 City Warrendale State PA Zip Code 15086
 County Warren Township(s) Mead(s)
 Receiving Stream(s) and Classification(s) UNT to Ward
 Run(CWF-MF)

*Southwest Region: Oil & Gas Program Mgr. 400 Water-
 front Dr. Pittsburgh PA*

6/28/12
 ESCGP-1 No.: ESX12-125-0077
 Applicant Name: RICE DRILLING B LLC
 Contact Person MS TONYA R WINKLER
 Address: 171 HILLPOINTE DRIVE SUITE 301
 City: CANONSBURG State: PA Zip Code: 15317
 County: WASHINGTON Township: WEST PIKE RUN
 Receiving Stream (s) And Classifications: UT 49984 TO
 UT 96332 TO PIKE RUN; OTHER

6/13/12
 ESCGP-1 No.: ESX12-125-0072
 Applicant Name: MARKWEST LIBERTY MIDSTREAM &
 RESOURCES LLC
 Contact Person: MR RICHARD A LOWRY
 Address: 824 MORGANZA ROAD
 City: CANONSBURG State: PA Zip Code: 15317
 County: WASHINGTON Township(s): ROBINSON AND
 SMITH
 Receiving Stream(s) and Classifications: LITTLE RAC-
 COON RUN AND ROBINSON RUN (WARM WATER
 FISHES); OTHER

4/2/12
 ESCGP-1 No.: ESX11-125-0103 MAJOR REVISION
 Applicant Name: MARKWEST LIBERTY MIDSTREAM &
 RESOURCES LLC
 Contact Person: MR RICHARD A LOWRY
 Address: 824 MORGANZA ROAD
 City: CANONSBURG State: PA Zip Code: 15317
 County: WASHINGTON Township(s): AMWELL AND
 MORRIS
 Receiving Stream(s) and Classifications: UNT TO PLEAS-
 ANT VALLEY RUN (TSF), PLEASANT VALLEY RUN
 (TSF), FORK OF BANE CREEK (TSF), UNTs TO
 TENMILE CREEK (TSF), TENMILE CREEK (TSF),
 UNTs TO FORK OF BANE CREEK (TSF), UNT TO
 SHORT CREEK (TSF) AND BELLS LAKES; OTHER

4/30/12
 ESCGP-1 No.: ESX12-059-0026
 Applicant Name: VANTAGE ENERGY APPALACHIA
 LLC
 Contact Person: MR NICK MONGELLUZZO
 Address: 226 ELM DRIVE SUITE 102
 City: WAYNESBURG State: PA Zip Code: 15370
 County: GREENE Township(s): FRANKLIN
 Receiving Stream(s) and Classifications: 3 UNTs TO
 SOUTH FORK TENMILE; OTHER

5/14/12
 ESCGP-1 No.: ESX11-005-0021 MAJOR REVISION
 Applicant Name: EQT GATHERING LLC
 Contact Person: MR BRIAN M CLAUTO
 Address: 455 RACETRACK ROAD
 City: WASHINGTON State: PA Zip Code: 15301
 COUNTY ARMSTRONG Township(s): KITTANNING
 Receiving Stream(s) and Classifications: UNT TO
 NORTH BRANCH CHERRY RUN, NORTH BRANCH
 CHERRY RUN, UNT TO PINE RUN, HORNEY CAMP
 RUN; SEE ATTACHMENT E FOR STREAM TABLE;
 OTHER

4/23/12
 ESCGP-1 No.: ESX12-007-0011
 Applicant Name: CHESAPEAKE APPALACHIA LLC
 Contact Person: MR ERIC W HASKINS
 Address: 101 NORTH MAIN STREET
 City: ATHENS State: PA Zip Code: 18810
 County: BEAVER Township(s): SOUTH BEAVER
 Receiving Stream(s) and Classifications: BRUSH RUN—
 HQ-CWF; HQ

SPECIAL NOTICES

HAZARDOUS SITES CLEAN-UP UNDER THE ACT OF OCTOBER 18, 1988

Notice of Interim Response

Spangler Site Jenner Township, Somerset County

The Pennsylvania Department of Environmental Protection ("Department"), under the authority of the Hazardous Sites Cleanup Act, 35 P. S. Section 6020.101 et. seq. ("HSCA"), is proposing to initiate an interim response at the Spangler Site ("Site"). This response is being initiated pursuant to Sections 501(a), and 501(g) of the HSCA, 35 P. S. §§ 6020.501(a) and 6020.501(g).

The Site is located on Spangler Road in Jenner Township, Somerset County, and consists of areas where containers of petroleum products, home heating oil and gasoline are stored. On January 26, 2012, as a result of a leak from one or more containers, a fuel oil spill occurred at 494 Spangler Road. At that time, local firefighters and Somerset County Hazmat constructed a shallow containment trench, underflow dams, and deployed booms and pads, to contain the heating oil and minimize further release into a nearby stream and wetland. Soil impacted by the fuel oil spill remains on the Site and numerous containers of fuel oil and gasoline continue to be stored on the Site. Some of the remaining containers on the Site may be leaking and are not suitable for storage of oil and gasoline. Past leaking and /or spilling is visible around some of the containers.

The current and/or potential threat from the Site to human health or welfare is direct contact with the oil and gasoline, and the potential for fire and/or explosion due to the flammable nature of the material, and contamination of groundwater. The Site is within a few feet of Spangler Road and access is unrestricted. The potential for vandalism and trespasser's contact with the material is present.

The current and/or potential threat that could adversely affect the environment is contamination of the soil, groundwater, and surface water from releases from the open and/or damaged containers. Moreover, a release has occurred and continues to occur from this Site. Soil is contaminated and surface water has been impacted. Without a cleanup of this Site, the release will continue and can only increase as the containers continue to deteriorate.

The Department considered the following three alternatives to address the spilled petroleum products at the Site: (Alternative 1) taking no action; (Alternative 2) find the ruptured tank and any other leaking tanks, remove remaining liquid from these tanks, and excavate impacted soil; and (Alternative 3) remove and properly dispose/recycle all liquid petroleum products, containers, and any other hazardous waste found at the Site. Excavate soil and/or other material impacted by the release and properly dispose.

The Department proposes Alternative 3 because it complies with the applicable, relevant, and appropriate requirements.

This notice is being provided under Section 506(b) of the Hazardous Sites Cleanup Act. The Administrative Record, which contains information forming the basis of the Department's selection of this response action, is available for public review and comment at the Department's Southwest Regional Office, 400 Waterfront Drive, Pittsburgh, PA 15222, and is available for review between 9 a.m. and 4 p.m.

The Administrative Record will be open for comment until November 9, 2012. Persons may submit written comments into the record, during this time only, by sending them or delivering them to Dawna Saunders, Project Manager, Department of Environmental Protection, 400 Waterfront Drive, Pittsburgh, PA 15222.

In addition, persons may present oral comments for inclusion in the Administrative Record at a public hearing scheduled for September 25, 2012 at 6:30 p.m. at the Jenner Township Building located at 2058 Lincoln Highway, Boswell, PA 15531-4012. Persons wishing to present comments must register with John Poister at the Department's Southwest Regional Office, in writing at: 400

Waterfront Drive, Pittsburgh, PA 15222 or by telephone at (412) 442- 4203 before noon, September 25, 2012.

Persons with a disability who wish to attend the hearing and require an auxiliary aid, service or other accommodations to participate in the proceeding, should contact John Poister at (412) 442-4203 or through the Pennsylvania AT&T Relay Service at (800) 654-5954 (TDD) to discuss how the Department may accommodate their needs.

Approval of Registration/Applications under General Permit for Short-Term Construction Project BMR-GP-103

Moshannon District Mining Office: 186 Enterprise Drive, Philipsburg, PA 16866, 814-342-8200

53111002 and NPDES No. PA0257711. Duffy, Inc. (P. O. Box 374, Smethport, PA 16749), authorization to extract sandstone in West Branch Township, **Potter County** to construct Marshland Marcellus Play. Receiving stream: Unnamed Tributary to Pine Creek classified as High Quality Waters—Cold Water Fishes. Application received: June 21, 2011. Authorization approved: July 13, 2012.

Request for Comments on the Proposed Total Maximum Daily Loads (TMDLs) Developed for Sediment-impaired Segments of the Deerlick Run Watershed, Columbia County

The Department of Environmental Protection will accept comments on the proposed TMDLs developed for the sediment-impaired segments of the Deerlick Run Watershed in Columbia County, PA. These TMDLs were established in accordance with the requirements of Section 303(d) of the Clean Water Act. The Pennsylvania Integrated Water Quality Monitoring and Assessment Report listed Deerlick Run in 2002 for impairments caused by excessive siltation from agricultural activities and road runoff. There currently are no state or federal instream numerical water quality criteria for siltation. Therefore, the Department utilized a reference watershed approach to implement the applicable narrative criteria. These proposed TMDLs set allowable loadings of sediment within the Deerlick Run Watershed. The sediment loading was allocated among the land uses of cropland, hay/pasture land, transitional land, and associated stream bank present in the watershed. Data used in establishing these TMDLs was generated using a water quality analysis model (AVGWLF) designed by the Pennsylvania State University.

The following table shows the estimated current sediment loadings for the watershed. Overall load reductions necessary in order to meet the TMDLs are also identified.

Summary of TMDL Based Load Reductions in Deerlick Run

<i>Pollutant</i>	<i>Existing Load (lbs./yr.)</i>	<i>Existing Load (lbs./day)</i>	<i>TMDL Final Allocation (lbs./yr.)</i>	<i>TMDL Final Allocation (lbs./day)</i>	<i>Percent Reduction</i>
Sediment	8,522,400	23,349	4,701,097	12,880	45%

The data and all supporting documentation used to develop the proposed TMDLs are available from the Department. The proposed TMDLs and information on the TMDL program can be viewed on the Department's website (www.dep.state.pa.us/watermanagement_apps/tmdl/). To request a copy of any of the proposed TMDLs contact Scott Alexander, Water Program Specialist, Bu-

reau of Point and Non-Point Source Management, Central Office, Department of Environmental Protection, Rachel Carson State Office Building, Harrisburg, PA 17105, 717-772-5670, salexander@pa.gov

The Department will consider all comments in developing the final TMDLs, which will be submitted to EPA for

approval. Written comments will be accepted at the above address and must be postmarked by 30 days after publication in the *Pennsylvania Bulletin*.

Request for Comments on the Proposed Total Maximum Daily Loads (TMDLs) Developed for the Sediment-impaired Segments of the Turtle Creek Watershed, Union County

The Department of Environmental Protection will accept comments on the proposed TMDLs developed for the sediment-impaired segments of the Turtle Creek Watershed in Union County, PA. These TMDLs were established in accordance with the requirements of Section 303(d) of the Clean Water Act. The Pennsylvania Integrated Water Quality Monitoring and Assessment Report included impaired stream segments in this watershed. The listings of these waterbodies were due to use impair-

ments caused by excessive siltation. There currently are no state or federal instream numerical water quality criteria for siltation. Therefore, the Department utilized a reference watershed approach to implement the applicable narrative criteria. These proposed TMDLs set allowable loadings of sediment within specifically impaired streams of the Chest Creek Watershed. The sediment loading was allocated among the land uses of cropland, hay/pasture land, transitional land, and associated stream bank present in the watershed. Data used in establishing these TMDLs was generated using a water quality analysis model (AVGWLF) designed by the Pennsylvania State University.

The following table shows the estimated current sediment loadings for the watershed. Overall load reductions necessary in order to meet the TMDLs are also identified.

Summary of the TMDL Allowable Load Allocation of Sediment in the Turtle Creek Watershed:

<i>Pollutant</i>	<i>Existing Load (lbs./yr.)</i>	<i>Existing Load (lbs./day)</i>	<i>TMDL, ALA (lbs./yr.)</i>	<i>TMDL, ALA (lbs./day)</i>	<i>Percent Reduction</i>
Sediment	2,325,800	6,372	1,391,552	3,813	37.2%

The data and all supporting documentation used to develop the proposed TMDLs are available from the Department. The proposed TMDLs and information on the TMDL program can be viewed on the Department's website (www.dep.state.pa.us/watermanagement_apps/tmdl/). To request a copy of any of the proposed TMDLs contact Scott Alexander, Water Program Specialist, Bureau of Point and Non-Point Source Management, Central Office, Department of Environmental Protection, Rachel Carson State Office Building, Harrisburg, PA 17105, 717-772-5670, salexander@pa.gov

The Department will consider all comments in developing the final TMDLs, which will be submitted to EPA for approval. Written comments will be accepted at the above address and must be postmarked by 30 days after publication in the *Pennsylvania Bulletin*.

[Pa.B. Doc. No. 12-1525. Filed for public inspection August 10, 2012, 9:00 a.m.]

Comments and questions should be directed to the contact listed as follows. Comments will be accepted through September 14, 2012.

The report is available at www.dep.state.pa.us/dep/deputate/minres/bmr/reports.

For further information, contact William S. Allen, Jr., Department of Environmental Protection, Bureau of Mining Programs, Rachel Carson State Office Building, 5th Floor, P. O. Box 8461, Harrisburg, PA 17105-8461, (717) 787-5103, wallen@pa.gov. Persons with a disability may contact the Department by using the Pennsylvania AT&T Relay Service at (800) 654-5984 (TDL users) or (800) 654-5988 (voice users).

MICHAEL L. KRANCER,
Secretary

[Pa.B. Doc. No. 12-1526. Filed for public inspection August 10, 2012, 9:00 a.m.]

Availability of the Fiscal Year Report for the Reclamation Fee O & M Trust Account

The Department of Environmental Protection (Department) announces the availability of a draft Fiscal Year Report (report) for the Reclamation Fee O & M Trust Account (account). This account was established to provide the money for the operation and maintenance of mine drainage treatment facilities at mine sites with post-mining discharges at ABS Legacy Sites as defined at 25 Pa. Code § 86.1 (relating to definitions). This report is required by 25 Pa. Code § 86.17 (relating to permit and reclamation fees). The report contains a financial analysis of the revenue and expenditures from the account for Fiscal Year (FY) 2011-2012 and provides projections for FY 2012-2013. The report and any comments provided will be reviewed with the Mine Reclamation Advisory Board at the meeting scheduled for October 25, 2012.

Availability of Technical Guidance

Technical guidance documents are available on the Department of Environmental Protection's (Department) web site at <http://www.eLibrary.dep.state.pa.us>. The "Technical Guidance Final Documents" heading is the link to a menu of the various Department bureaus where each bureau's final technical guidance documents are posted. The "Technical Guidance Draft Documents" heading is the link to the Department's draft technical guidance documents.

Ordering Paper Copies of Department Technical Guidance

The Department encourages the use of the Internet to view and download technical guidance documents. When this option is not available, persons can order a paper copy of any of the Department's draft or final technical guidance documents by contacting the Department at (717) 783-8727.

In addition, bound copies of some of the Department's documents are available as Department publications.

Check with the appropriate bureau for more information about the availability of a particular document as a publication.

Changes to Technical Guidance Documents

Following is the current list of recent changes. Persons who have questions or comments about a particular document should call the contact person whose name and phone number is listed with each document.

Draft Technical Guidance—Substantive Revision

DEP ID: 254-5401-001. **Title:** Best Practices for Environmental Protection in the Mushroom Farming Community. **Description:** This is an update of a guidance manual originally published in 1997 intended to provide a person or municipality with the information necessary for the proper use, process or disposal of mushroom compost generated in the course of normal farming operations.

Effective Date: Upon publication of notice as final in the *Pennsylvania Bulletin*.

Written Comments: Interested persons may submit written comments on this Draft Technical Guidance Document by September 10, 2012. Comments submitted by facsimile will not be accepted. Comments, including comments submitted by electronic mail must include the originator's name and address. Written comments should be submitted to Jeffrey Olsen, Solid Waste Program Specialist, Bureau of Waste Management, 400 Market Street, P. O. Box 69170, Rachel Carson State Office Building, Harrisburg, PA 17101-8465, (717) 787-3103, jeolsen@pa.gov.

Contact: Jeffrey Olsen, (717) 787-3103 or jeolsen@pa.gov.

MICHAEL L. KRANCER,
Secretary

[Pa.B. Doc. No. 12-1527. Filed for public inspection August 10, 2012, 9:00 a.m.]

Nutrient Credit Trading Program; Actions

The Department of Environmental Protection (Department) provides notice of the following actions under the Nutrient Credit Trading Program (Trading Program). These actions were taken under 25 Pa. Code § 96.8 (relating to use of offsets and tradable credits from pollution reduction activities in the Chesapeake Bay Watershed), published at 40 Pa.B. 5790 (October 9, 2010).

Nutrient trading is a market-based program that provides incentives for entities to create nutrient reduction credits (credits) by going beyond statutory, regulatory or voluntary obligations and goals to remove nutrients from a watershed. The credits can be traded to help others more cost-effectively meet their obligations or goals. The primary purpose of the Trading Program is to provide for more efficient ways for National Pollutant Discharge Elimination System permittees to meet their effluent limits for nutrients.

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

through the Pennsylvania AT&T Relay Service, (800) 654-5984. Appeals must be filed with the Board within 30 days of publication of this notice in the *Pennsylvania Bulletin*, unless the appropriate statute provides a different time period. Copies of the appeal form and the Board's rules of practice and procedure may be obtained from the Board. The appeal form and the Board's rules of practice and procedure are also available in Braille or on audiotape from the Secretary of the Board at (717) 787-3483. This paragraph does not, in and of itself, create any right of appeal beyond that permitted by applicable statutes and decision law.

For individuals who wish to challenge an action, appeals must reach the Board within 30 days. A lawyer is not needed to file an appeal with the Board. Important legal rights are at stake, however, so individuals should show this notice to a lawyer at once. Persons who cannot afford a lawyer may qualify for pro bono representation. Call the Secretary to the Board at (717) 787-3483 for more information.

For further information about this action or the Trading Program, contact Karen Price, Interstate Waters Office, Department of Environmental Protection, P. O. Box 8465, Harrisburg, PA 17105-8465, (717) 772-4785, kprice@pa.gov or visit the Department's web site at www.dep.state.pa.us (DEP Keywords: "Nutrient Trading").

The following certification requests have been approved by the Department. The approval of these requests is considered a final action of the Department.

Red Barn Trading Company (1383 Arcadia Road, Lancaster, PA 17601). This approval is applicable to nitrogen reduction credits to be generated by the Steve Groff Farm from the pollutant reduction activities of 19.4 acres of continuous no-till and cover crops on corn fields. This approval includes a verification plan and authorizes the generation of 428 nitrogen reduction credits. This certification of annual credits is valid until September 30, 2016, as long as the pollution reduction activities are implemented, maintained and verified under the terms and conditions contained in the certification. After September 30, 2016, credits for the pollution reduction activities may only be generated if recertification, which will be based on the program requirements in place on the date of the recertification submission, is obtained. Notice of the certification request was published for comment at 41 Pa.B. 6747 (December 10, 2011).

Red Barn Trading Company (1383 Arcadia Road, Lancaster, PA 17601). This approval is applicable to nitrogen reduction credits to be generated by the A. Dale Herr Farm from the pollutant reduction activities of 85.4 acres of continuous no-till and cover crops on corn fields, 9.9 acres of riparian buffers and 16.4 acres of Off-Stream Watering with Stream Fencing. This approval includes a verification plan and authorizes the generation of 876 nitrogen reduction credits. This certification of annual credits is valid until September 30, 2016, as long as the pollution reduction activities are implemented, maintained and verified under the terms and conditions contained in the certification. After September 30, 2016, credits for the pollution reduction activities may only be generated if recertification, which will be based on the program requirements in place on the date of the recertification submission, is obtained. Notice of the certification request was published for comment at 41 Pa.B. 6747.

Red Barn Trading Company (1383 Arcadia Road, Lancaster, PA 17601). This approval is applicable to nitrogen reduction credits to be generated by the Townsend Moore Farm from the pollutant reduction activities of 15.6 acres of precision grazing and off-stream watering with stream fencing. This approval includes a verification plan and authorizes the generation of 19 nitrogen reduction credits. This certification of annual credits is valid until September 30, 2016, as long as the pollution reduction activities are implemented, maintained and verified under the terms and conditions contained in the certification. After September 30, 2016, credits for the pollution reduction activities may only be generated if recertification, which will be based on the program requirements in place on the date of the recertification submission, is obtained. Notice of the certification request was published for comment at 41 Pa.B. 6747.

Red Barn Trading Company (1383 Arcadia Road, Lancaster, PA 17601). This approval is applicable to nitrogen reduction credits to be generated by the Roman Stoltzfoos Farm from the pollutant reduction activities of 169.9 acres of precision grazing and off-stream watering with stream fencing and rotational grazing. This approval includes a verification plan and authorizes the generation of 1,339 nitrogen reduction credits. This certification of annual credits is valid until September 30, 2016, as long as the pollution reduction activities are implemented, maintained and verified under the terms and conditions contained in the certification. After September 30, 2016, credits for the pollution reduction activities may only be generated if recertification, which will be based on the program requirements in place on the date of the recertification submission, is obtained. Notice of the certification request was published for comment at 41 Pa.B. 6747.

Red Barn Trading Company (1383 Arcadia Road, Lancaster, PA 17601). This approval is applicable to nitrogen reduction credits to be generated by the Charles and Elaine Craig Farm from the pollutant reduction activities of 52.9 acres of continuous no-till and cover crops on corn fields. This approval includes a verification plan and authorizes the generation of 1,071 nitrogen reduction credits. This certification of annual credits is valid until September 30, 2016, as long as the pollution reduction activities are implemented, maintained and verified under the terms and conditions contained in the certification. After September 30, 2016, credits for the pollution reduction activities may only be generated if recertification, which will be based on the program requirements in place on the date of the recertification submission, is obtained. Notice of the certification request was published for comment at 41 Pa.B. 6747.

Red Barn Trading Company (1383 Arcadia Road, Lancaster, PA 17601). This approval is applicable to nitrogen reduction credits to be generated by the Dwight Brubaker Farm from the pollutant reduction activities of 30.7 acres of continuous no-till and cover crops on corn fields. This approval includes a verification plan and authorizes the generation of 549 nitrogen reduction credits. This certification of annual credits is valid until September 30, 2016, as long as the pollution reduction activities are implemented, maintained and verified under the terms and conditions contained in the certification. After September 30, 2016, credits for the pollution reduction activities may only be generated if recertification, which will be based on the program requirements in

place on the date of the recertification submission, is obtained. Notice of the certification request was published for comment at 41 Pa.B. 6747.

MICHAEL L. KRANCER,
Secretary

[Pa.B. Doc. No. 12-1528. Filed for public inspection August 10, 2012, 9:00 a.m.]

Nutrient Credit Trading Program; Notice of Certification Request

The Department of Environmental Protection (Department) provides notice of the following certification request that has been submitted under the Nutrient Credit Trading Program (Trading Program). See 25 Pa. Code § 96.8 (relating to use of offsets and tradable credits from pollution reduction activities in the Chesapeake Bay Watershed), published at 40 Pa.B. 5790 (October 9, 2010).

Nutrient credit trading is a market-based program that provides incentives for entities to create nutrient reduction credits (credits) by going beyond statutory, regulatory or voluntary obligations and goals to remove nutrients from a watershed. The credits can be traded to help others more cost-effectively meet their obligations or goals. The primary purpose of the Trading Program is to provide for more efficient ways for National Pollutant Discharge Elimination System (NPDES) permittees to meet their effluent limits for nutrients.

The information described in this notice relates to a submitted certification request received on March 23, 2012.

Background

Before a credit can be used by an NPDES permittee, a three-step process is followed: (1) the certification request must be approved; (2) generation of the credits must be verified; and (3) the credits must be registered.

Approval is also known as certification, which is a written approval by the Department for the use of a pollutant reduction activity to generate credits. Certifications are based on at least: (1) a written request describing the qualifying pollutant reduction activity that will reduce the pollutant loadings delivered to the applicable watershed; (2) the calculation to quantify the pounds of reductions expected; and (3) a verification plan that, when implemented, ensures that the qualifying pollutant reduction activity has taken place.

Once the credits are certified, they must be verified to be applied toward an NPDES permit for compliance with effluent limits. Verification means implementation of the verification plan contained in the certification. Verification plans require annual submittal of documentation to the Department that demonstrates that the qualifying pollutant reduction activity has taken place for the applicable compliance year.

The credits also need to be registered by the Department before they can be applied toward an NPDES permit for compliance with effluent limits. Registration occurs only after credits have been certified, verified and a contract has been submitted. The Department registers credits for use during the compliance year in which the qualifying pollutant reduction activity has taken place. The Department provides registered credits with an annual registry number for reporting and tracking purposes.

Certification Request

The following request is being reviewed by the Department. The Department will accept written comments on this proposed pollutant reduction activity for 30 days.

<i>Applicant</i>	<i>Pollution Reduction Activity Description</i>
Lititz Sewer Authority (Lancaster County) NPDES Permit No. PA-0020320	This certification request is for nutrient reduction credits to be generated from the pollutant reduction activity at the Lititz Sewer Authority's wastewater treatment facility

Written Comments

Interested persons may submit written comments on this proposed pollutant reduction activity by September 10, 2012. The Department will accept comments submitted by e-mail, but comments submitted by facsimile will not be accepted. A return name and address must be included in each e-mail transmission. Written comments should be submitted to Brian Schlauderaff, Bureau of Point and Non-Point Source Regulation, Department of Environmental Protection, P. O. Box 8774, Harrisburg, PA 17105-8774, (717) 772-5620, bschlauder@pa.gov.

For further information about this certification request or the Trading Program contact Brian Schlauderaff, at the previously listed address or phone number, or visit the Department's web site at www.dep.state.pa.us (DEP Keywords: "Nutrient Trading").

MICHAEL L. KRANCER,
Secretary

[Pa.B. Doc. No. 12-1529. Filed for public inspection August 10, 2012, 9:00 a.m.]

Potomac Regional Water Resources Committee Meeting

The Potomac Regional Water Resources Committee, associated with the Department of Environmental Protection (Department), will meet on August 21, 2012, from 9:30 a.m. to 12 p.m. at the Adams County Agricultural Center, 670 Old Harrisburg Road, Gettysburg, PA 17325.

Questions concerning the schedule or agenda items can be directed to Heidi Moltz at (301) 274-8116 or hmoltz@icprb.org. This schedule, an agenda for the meeting and meeting materials will be available through the Public Participation Center on the Department's web site at <http://www.dep.state.pa.us>.

Persons with a disability who require accommodations to attend the meeting listed previously should contact the Department at (717) 783-2402 or through the Pennsylvania AT&T Relay Service at (800) 654-5984 (TDD) to discuss how the Department may accommodate their needs.

MICHAEL L. KRANCER,
Secretary

[Pa.B. Doc. No. 12-1530. Filed for public inspection August 10, 2012, 9:00 a.m.]

DEPARTMENT OF GENERAL SERVICES

Real Estate for Sale Chester County

Commonwealth-owned real estate is for sale in the Townships of West Bradford and Newlin, Chester County. The Department of General Services (Department) will accept bids for the purchase of the former Embreeville Center Property that consists of 225.115 acres of land and numerous buildings, which is located at 1818 West Strasburg Road, West Bradford Township, Chester County. Bids are due Wednesday, December 19, 2012. Interested parties wishing to receive a copy of Solicitation No. 94457 should view the Department's web site at www.dgs.state.pa.us or call Michael Showers at (717) 772-8842.

SHERI PHILLIPS,
Secretary

[Pa.B. Doc. No. 12-1531. Filed for public inspection August 10, 2012, 9:00 a.m.]

DEPARTMENT OF HEALTH

Application of Advanced Surgical Hospital for Exception

Under 28 Pa. Code § 51.33 (relating to requests for exceptions), the Department of Health (Department) gives notice that Advanced Surgical Hospital has requested an exception to the requirements of 28 Pa. Code § 109.2(b) (relating to director of nursing services).

This request is on file with the Department. Persons may receive a copy of a request for exception by requesting a copy from the Department of Health, Division of Acute and Ambulatory Care, Room 532, Health and Welfare Building, Harrisburg, PA 17120, (717) 783-8980, fax (717) 772-2163, ra-paexcept@pa.gov.

Persons who wish to comment on an exception request may do so by sending a letter by mail, e-mail or facsimile to the Division at the address listed previously.

Comments received by the Department within 10 days after the date of publication of this notice will be reviewed by the Department before it decides whether to approve or disapprove the request for exception.

Persons with a disability who wish to obtain a copy of a request and/or provide comments to the Department and require an auxiliary aid, service or other accommodation to do so should contact the Director, Division of Acute and Ambulatory Care at (717) 783-8980, or for speech and/or hearing impaired persons V/TT (717) 783-6154, or the Pennsylvania AT&T Relay Service (800) 654-5984 (TT).

ELI N. AVILA, MD, JD, MPH, FCLM,
Secretary

[Pa.B. Doc. No. 12-1532. Filed for public inspection August 10, 2012, 9:00 a.m.]

Application of Allegheny Reproductive Health Center for Exception

Under 28 Pa. Code § 51.33 (relating to requests for exceptions), the Department of Health (Department) gives notice that Allegheny Reproductive Health Center has requested an exception to the requirements of 28 Pa. Code § 571.1 (relating to minimum standards), which requires compliance with minimum standards contained in the following publication: *Guidelines for Design and Construction of Hospitals and Healthcare Facilities*. The facility specifically requests exception from the following standards contained in this publication: 3.1-7.1.1.1(1) NFPA 101, subsection 20.1.6.3, 20.2.6.2 and 20.3.7.1 (relating to minimum construction requirements; travel distance; and subdivision of building space).

This request is on file with the Department. Persons may receive a copy of a request for exception by requesting a copy from the Department of Health, Division of Acute and Ambulatory Care, Room 532, Health and Welfare Building, Harrisburg, PA 17120, (717) 783-8980, fax (717) 772-2163, ra-paexcept@pa.gov.

Persons who wish to comment on an exception request may do so by sending a letter by mail, e-mail or facsimile to the Division at the address listed previously.

Comments received by the Department within 10 days after the date of publication of this notice will be reviewed by the Department before it decides whether to approve or disapprove the request for exception.

Persons with a disability who wish to obtain a copy of a request and/or provide comments to the Department and require an auxiliary aid, service or other accommodation to do so should contact the Director, Division of Acute and Ambulatory Care at (717) 783-8980, for speech and/or hearing impaired persons V/TT (717) 783-6154, or the Pennsylvania AT&T Relay Service (800) 654-5984 (TT).

ELI N. AVILA, MD, JD, MPH, FCLM,
Secretary

[Pa.B. Doc. No. 12-1533. Filed for public inspection August 10, 2012, 9:00 a.m.]

Application of Center for Same Day Surgery @ WBGH for Exception

Under 28 Pa. Code § 51.33 (relating to requests for exceptions), the Department of Health (Department) gives notice that Center for Same Day Surgery @ WBGH has requested an exception to the requirements of 28 Pa. Code § 551.21(d)(3) (relating to criteria for ambulatory surgery).

This request is on file with the Department. Persons may receive a copy of a request for exception by requesting a copy from the Department of Health, Division of Acute and Ambulatory Care, Room 532, Health and Welfare Building, Harrisburg, PA 17120, (717) 783-8980, fax (717) 772-2163, ra-paexcept@pa.gov.

Persons who wish to comment on an exception request may do so by sending a letter by mail, e-mail or facsimile to the Division at the address listed previously.

Comments received by the Department within 10 days after the date of publication of this notice will be reviewed by the Department before it decides whether to approve or disapprove the request for exception.

Persons with a disability who wish to obtain a copy of a request and/or provide comments to the Department and require an auxiliary aid, service or other accommodation to do so should contact the Director, Division of Acute and Ambulatory Care at (717) 783-8980, or for speech and/or hearing impaired persons V/TT (717) 783-6154, or the Pennsylvania AT&T Relay Service (800) 654-5984 (TT).

ELI N. AVILA, MD, JD, MPH, FCLM,
Secretary

[Pa.B. Doc. No. 12-1534. Filed for public inspection August 10, 2012, 9:00 a.m.]

Application of Crozer Keystone Surgery Center at Brinton Lake for Exception

Under 28 Pa. Code § 51.33 (relating to requests for exceptions), the Department of Health (Department) gives notice that Crozer Keystone Surgery Center at Brinton Lake has requested an exception to the requirements of 28 Pa. Code §§ 555.3, 557.3, 567.2 and 567.3.

This request is on file with the Department. Persons may receive a copy of a request for exception by requesting a copy from the Department of Health, Division of Acute and Ambulatory Care, Room 532, Health and Welfare Building, Harrisburg, PA 17120, (717) 783-8980, fax (717) 772-2163, ra-paexcept@pa.gov.

Persons who wish to comment on an exception request may do so by sending a letter by mail, e-mail or facsimile to the Division at the address listed previously.

Comments received by the Department within 10 days after the date of publication of this notice will be reviewed by the Department before it decides whether to approve or disapprove the request for exception.

Persons with a disability who wish to obtain a copy of a request and/or provide comments to the Department and require an auxiliary aid, service or other accommodation to do so should contact the Director, Division of Acute and Ambulatory Care at (717) 783-8980, or for speech and/or hearing impaired persons V/TT (717) 783-6154, or the Pennsylvania AT&T Relay Service (800) 654-5984 (TT).

ELI N. AVILA, MD, JD, MPH, FCLM,
Secretary

[Pa.B. Doc. No. 12-1535. Filed for public inspection August 10, 2012, 9:00 a.m.]

Application of Doylestown Hospital Surgery Center for Exception

Under 28 Pa. Code § 51.33 (relating to requests for exceptions), the Department of Health (Department) gives notice that Doylestown Hospital Surgery Center has requested an exception to the requirements of 28 Pa. Code §§ 553.1, 553.31, 555.1 and 555.21.

This request is on file with the Department. Persons may receive a copy of a request for exception by requesting a copy from the Department of Health, Division of Acute and Ambulatory Care, Room 532, Health and Welfare Building, Harrisburg, PA 17120, (717) 783-8980, fax (717) 772-2163, ra-paexcept@pa.gov.

Persons who wish to comment on an exception request may do so by sending a letter by mail, e-mail or facsimile to the Division at the address listed previously.

Comments received by the Department within 10 days after the date of publication of this notice will be reviewed by the Department before it decides whether to approve or disapprove the request for exception.

Persons with a disability who wish to obtain a copy of a request and/or provide comments to the Department and require an auxiliary aid, service or other accommodation to do so should contact the Director, Division of Acute and Ambulatory Care at (717) 783-8980, or for speech and/or hearing impaired persons V/TT (717) 783-6154, or the Pennsylvania AT&T Relay Service (800) 654-5984 (TT).

ELI N. AVILA, MD, JD, MPH, FCLM,
Secretary

[Pa.B. Doc. No. 12-1536. Filed for public inspection August 10, 2012, 9:00 a.m.]

Application of Einstein Medical Center Montgomery for Exception

Under 28 Pa. Code § 51.33 (relating to requests for exceptions), the Department of Health (Department) gives notice that Einstein Medical Center Montgomery has requested an exception to the requirements of 28 Pa. Code § 123.25(2) (relating to regulations for control of anesthetic explosion hazards).

The facility is requesting a waiver of the comment period, as set forth in 28 Pa. Code § 51.33(c) for this request.

This facility is also requesting an exception to the requirements of 28 Pa. Code § 107.2 (relating to medical staff membership).

This request is on file with the Department. Persons may receive a copy of a request for exception by requesting a copy from the Department of Health, Division of Acute and Ambulatory Care, Room 532, Health and Welfare Building, Harrisburg, PA 17120, (717) 783-8980, fax (717) 772-2163, ra-paexcept@pa.gov.

Persons with a disability who wish to obtain a copy of a request and/or provide comments to the Department and require an auxiliary aid, service or other accommodation to do so should contact the Division at the previously listed address or phone number, or for speech and/or hearing impaired persons V/TT (717) 783-6154, or the Pennsylvania AT&T Relay Service (800) 654-5984 (TT).

ELI N. AVILA, MD, JD, MPH, FCLM,
Secretary

[Pa.B. Doc. No. 12-1537. Filed for public inspection August 10, 2012, 9:00 a.m.]

Application of Endoscopy Center of Central Pennsylvania, LLC for Exception

Under 28 Pa. Code § 51.33 (relating to requests for exceptions), the Department of Health (Department) gives notice that Endoscopy Center of Central Pennsylvania, LLC, has requested an exception to the requirements of 28 Pa. Code § 551.3 (relating to definitions).

This request is on file with the Department. Persons may receive a copy of a request for exception by requesting a copy from the Department of Health, Division of Acute and Ambulatory Care, Room 532, Health and

Welfare Building, Harrisburg, PA 17120, (717) 783-8980, fax (717) 772-2163, ra-paexcept@pa.gov.

Persons who wish to comment on an exception request may do so by sending a letter by mail, e-mail or facsimile to the Division at the address listed previously.

Comments received by the Department within 10 days after the date of publication of this notice will be reviewed by the Department before it decides whether to approve or disapprove the request for exception.

Persons with a disability who wish to obtain a copy of a request and/or provide comments to the Department and require an auxiliary aid, service or other accommodation to do so should contact the Director, Division of Acute and Ambulatory Care at (717) 783-8980, or for speech and/or hearing impaired persons V/TT (717) 783-6154, or the Pennsylvania AT&T Relay Service (800) 654-5984 (TT).

ELI N. AVILA, MD, JD, MPH, FCLM,
Secretary

[Pa.B. Doc. No. 12-1538. Filed for public inspection August 10, 2012, 9:00 a.m.]

Application for Exception to 28 Pa. Code § 569.35

Under 28 Pa. Code § 51.33 (relating to requests for exceptions), the Department of Health (Department) gives notice that the following facilities have requested an exception to the requirement of 28 Pa. Code § 569.35 (relating to general safety precautions):

Crozer Keystone Surgery Center at Brinton Lake
Doylestown Hospital Surgery Center

These requests are on file with the Department. Persons may receive a copy of a request for exception by requesting a copy from the Department of Health, Division of Acute and Ambulatory Care, Room 532, Health and Welfare Building, Harrisburg, PA 17120, (717) 783-8980, fax (717) 772-2163, ra-paexcept@pa.gov.

The facilities are requesting a waiver of the comment period as set forth in 28 Pa. Code § 51.33(c).

Persons with a disability who wish to obtain a copy of a request and/or provide comments to the Department and require an auxiliary aid, service or other accommodation to do so should contact the Director, Division of Acute and Ambulatory Care at (717) 783-8980, for speech and/or hearing impaired persons V/TT (717) 783-6154, or the Pennsylvania AT&T Relay Service (800) 654-5984 (TT).

ELI N. AVILA, MD, JD, MPH, FCLM,
Secretary

[Pa.B. Doc. No. 12-1539. Filed for public inspection August 10, 2012, 9:00 a.m.]

Application of The Good Samaritan Hospital for Exception

Under 28 Pa. Code § 51.33 (relating to requests for exceptions), the Department of Health (Department) gives notice that The Good Samaritan Hospital has requested an exception to the requirements of 28 Pa. Code § 127.32 (relating to written orders).

This request is on file with the Department. Persons may receive a copy of a request for exception by request-

ing a copy from the Department of Health, Division of Acute and Ambulatory Care, Room 532, Health and Welfare Building, Harrisburg, PA 17120, (717) 783-8980, fax (717) 772-2163, ra-paexcept@pa.gov.

The facility is requesting a waiver of the comment period, as set forth in 28 Pa. Code § 51.33(c).

Persons with a disability who wish to obtain a copy of a request and/or provide comments to the Department and require an auxiliary aid, service or other accommodation to do so should contact the Director, Division of Acute and Ambulatory Care at (717) 783-8980, or for speech and/or hearing impaired persons V/TT (717) 783-6154, or the Pennsylvania AT&T Relay Service (800) 654-5984 (TT).

ELI N. AVILA, MD, JD, MPH, FCLM,
Secretary

[Pa.B. Doc. No. 12-1540. Filed for public inspection August 10, 2012, 9:00 a.m.]

Application of Heinz Rehab Hospital for Exception

Under 28 Pa. Code § 51.33 (relating to requests for exceptions), the Department of Health (Department) gives notice that Heinz Rehab Hospital has requested an exception to the requirements of 28 Pa. Code § 103.36 (relating to personnel records).

This request is on file with the Department. Persons may receive a copy of a request for exception by requesting a copy from the Department of Health, Division of Acute and Ambulatory Care, Room 532, Health and Welfare Building, Harrisburg, PA 17120, (717) 783-8980, fax (717) 772-2163, ra-paexcept@pa.gov.

Persons who wish to comment on an exception request may do so by sending a letter by mail, e-mail or facsimile to the Division at the address listed previously.

Comments received by the Department within 10 days after the date of publication of this notice will be reviewed by the Department before it decides whether to approve or disapprove the request for exception.

Persons with a disability who wish to obtain a copy of a request and/or provide comments to the Department and require an auxiliary aid, service or other accommodation to do so should contact the Director, Division of Acute and Ambulatory Care at (717) 783-8980, or for speech and/or hearing impaired persons V/TT (717) 783-6154, or the Pennsylvania AT&T Relay Service (800) 654-5984 (TT).

ELI N. AVILA, MD, JD, MPH, FCLM,
Secretary

[Pa.B. Doc. No. 12-1541. Filed for public inspection August 10, 2012, 9:00 a.m.]

Application of Highlands Hospital for Exception

Under 28 Pa. Code § 51.33 (relating to requests for exceptions), the Department of Health (Department) gives notice that Highlands Hospital has requested an exception to the requirements of 28 Pa. Code § 153.1 (relating to minimum standards), which requires compliance with

minimum standards contained in the following publication: *Guidelines for Design and Construction of Hospitals and Healthcare Facilities*. The facility specifically requests exception from the following standards contained in this publication: 2.2-2.2.2.1(2)(a) and 2.5-2.2.2.6 (relating to clearances; and patient toilets).

This request is on file with the Department. Persons may receive a copy of a request for exception by requesting a copy from the Department of Health, Division of Acute and Ambulatory Care, Room 532, Health and Welfare Building, Harrisburg, PA 17120, (717) 783-8980, fax (717) 772-2163, ra-paexcept@pa.gov.

Persons who wish to comment on an exception request may do so by sending a letter by mail, e-mail or facsimile to the Division at the address listed previously.

Comments received by the Department within 10 days after the date of publication of this notice will be reviewed by the Department before it decides whether to approve or disapprove the request for exception.

Persons with a disability who wish to obtain a copy of a request and/or provide comments to the Department and require an auxiliary aid, service or other accommodation to do so should contact the Director, Division of Acute and Ambulatory Care at (717) 783-8980, for speech and/or hearing impaired persons V/TT (717) 783-6154, or the Pennsylvania AT&T Relay Service (800) 654-5984 (TT).

ELI N. AVILA, MD, JD, MPH, FCLM,
Secretary

[Pa.B. Doc. No. 12-1542. Filed for public inspection August 10, 2012, 9:00 a.m.]

Application of Mount Nittany Medical Center for Exception

Under 28 Pa. Code § 51.33 (relating to requests for exceptions), the Department of Health (Department) gives notice that Mount Nittany Medical Center has requested an exception to the requirements of 28 Pa. Code § 138.18 (relating to EPS studies).

This request is on file with the Department. Persons may receive a copy of a request for exception by requesting a copy from the Department of Health, Division of Acute and Ambulatory Care, Room 532, Health and Welfare Building, Harrisburg, PA 17120, (717) 783-8980, fax (717) 772-2163, ra-paexcept@pa.gov.

Persons who wish to comment on an exception request may do so by sending a letter by mail, e-mail or facsimile to the Division at the address listed previously.

Comments received by the Department within 10 days after the date of publication of this notice will be reviewed by the Department before it decides whether to approve or disapprove the request for exception.

Persons with a disability who wish to obtain a copy of a request and/or provide comments to the Department and require an auxiliary aid, service or other accommodation to do so should contact the Director, Division of Acute and Ambulatory Care at (717) 783-8980, or for speech and/or

hearing impaired persons V/TT (717) 783-6154, or the Pennsylvania AT&T Relay Service (800) 654-5984 (TT).

ELI N. AVILA, MD, JD, MPH, FCLM,
Secretary

[Pa.B. Doc. No. 12-1543. Filed for public inspection August 10, 2012, 9:00 a.m.]

Application of Select Specialty Hospital Central PA for Exception

Under 28 Pa. Code § 51.33 (relating to requests for exceptions), the Department of Health (Department) gives notice that Select Specialty Hospital Central PA has requested an exception to the requirements of 28 Pa. Code § 153.1 (relating to minimum standards), which requires compliance with minimum standards contained in the following publication: *Guidelines for Design and Construction of Hospitals and Healthcare Facilities*. The facility specifically requests exception from the following standards contained in this publication: 2.1-8.5.3.2 (relating to size of technology distribution rooms).

This request is on file with the Department. Persons may receive a copy of a request for exception by requesting a copy from the Department of Health, Division of Acute and Ambulatory Care, Room 532, Health and Welfare Building, Harrisburg, PA 17120, (717) 783-8980, fax (717) 772-2163, ra-paexcept@pa.gov.

Persons who wish to comment on an exception request may do so by sending a letter by mail, e-mail or facsimile to the Division at the address listed previously.

Comments received by the Department within 10 days after the date of publication of this notice will be reviewed by the Department before it decides whether to approve or disapprove the request for exception.

Persons with a disability who wish to obtain a copy of a request and/or provide comments to the Department and require an auxiliary aid, service or other accommodation to do so should contact the Director, Division of Acute and Ambulatory Care at (717) 783-8980, for speech and/or hearing impaired persons V/TT (717) 783-6154, or the Pennsylvania AT&T Relay Service (800) 654-5984 (TT).

ELI N. AVILA, MD, JD, MPH, FCLM,
Secretary

[Pa.B. Doc. No. 12-1544. Filed for public inspection August 10, 2012, 9:00 a.m.]

Application of St. Clair Hospital for Exception

Under 28 Pa. Code § 51.33 (relating to requests for exceptions), the Department of Health (Department) gives notice that St. Clair Hospital has requested an exception to the requirements of 28 Pa. Code §§ 105.11(b) and 107.62(b) (relating to access; and oral orders).

This request is on file with the Department. Persons may receive a copy of a request for exception by requesting a copy from the Department of Health, Division of Acute and Ambulatory Care, Room 532, Health and Welfare Building, Harrisburg, PA 17120, (717) 783-8980, fax (717) 772-2163, ra-paexcept@pa.gov.

Persons who wish to comment on an exception request may do so by sending a letter by mail, e-mail or facsimile to the Division at the address listed previously.

Comments received by the Department within 10 days after the date of publication of this notice will be reviewed by the Department before it decides whether to approve or disapprove the request for exception.

Persons with a disability who wish to obtain a copy of a request and/or provide comments to the Department and require an auxiliary aid, service or other accommodation to do so should contact the Director, Division of Acute and Ambulatory Care at (717) 783-8980, or for speech and/or hearing impaired persons V/TT (717) 783-6154, or the Pennsylvania AT&T Relay Service (800) 654-5984 (TT).

ELI N. AVILA, MD, JD, MPH, FCLM,
Secretary

[Pa.B. Doc. No. 12-1545. Filed for public inspection August 10, 2012, 9:00 a.m.]

Application of Wilkes-Barre General Hospital for Exception

Under 28 Pa. Code § 51.33 (relating to requests for exceptions), the Department of Health (Department) gives notice that Wilkes-Barre General Hospital has requested an exception to the requirements of 28 Pa. Code § 153.1 (relating to minimum standards), which requires compliance with minimum standards contained in the following publication: *Guidelines for Design and Construction of Hospitals and Healthcare Facilities*. The facility specifically requests exception from the following standards contained in this publication: 2.2-3.1.3(6) (relating to trauma room).

This request is on file with the Department. Persons may receive a copy of a request for exception by requesting a copy from the Department of Health, Division of Acute and Ambulatory Care, Room 532, Health and Welfare Building, Harrisburg, PA 17120, (717) 783-8980, fax (717) 772-2163, ra-paexcept@pa.gov.

Persons who wish to comment on an exception request may do so by sending a letter by mail, e-mail or facsimile to the Division at the address listed previously.

Comments received by the Department within 10 days after the date of publication of this notice will be reviewed by the Department before it decides whether to approve or disapprove the request for exception.

Persons with a disability who wish to obtain a copy of a request and/or provide comments to the Department and require an auxiliary aid, service or other accommodation to do so should contact the Director, Division of Acute and Ambulatory Care at (717) 783-8980, for speech and/or hearing impaired persons V/TT (717) 783-6154, or the Pennsylvania AT&T Relay Service (800) 654-5984 (TT).

ELI N. AVILA, MD, JD, MPH, FCLM,
Secretary

[Pa.B. Doc. No. 12-1546. Filed for public inspection August 10, 2012, 9:00 a.m.]

Application of Williamsport Regional Medical Center for Exception

Under 28 Pa. Code § 51.33 (relating to requests for exceptions), the Department of Health (Department) gives notice that Williamsport Regional Medical Center has

requested an exception to the requirements of 28 Pa. Code § 153.1 (relating to minimum standards), which requires compliance with minimum standards contained in the following publication: *Guidelines for Design and Construction of Hospitals and Healthcare Facilities*. The facility specifically requests exception from the following standards contained in this publication: 2.2-3.4.4.2(3) and 2.2-3.4.4.5 (relating to anteroom requirement; and patient preparation holding).

This request is on file with the Department. Persons may receive a copy of a request for exception by requesting a copy from the Department of Health, Division of Acute and Ambulatory Care, Room 532, Health and Welfare Building, Harrisburg, PA 17120, (717) 783-8980, fax (717) 772-2163, ra-paexcept@pa.gov.

Persons who wish to comment on an exception request may do so by sending a letter by mail, e-mail or facsimile to the Division at the address listed previously.

Comments received by the Department within 10 days after the date of publication of this notice will be reviewed by the Department before it decides whether to approve or disapprove the request for exception.

Persons with a disability who wish to obtain a copy of a request and/or provide comments to the Department and require an auxiliary aid, service or other accommodation to do so should contact the Director, Division of Acute and Ambulatory Care at (717) 783-8980, for speech and/or hearing impaired persons V/TT (717) 783-6154, or the Pennsylvania AT&T Relay Service (800) 654-5984 (TT).

ELI N. AVILA, MD, JD, MPH, FCLM,
Secretary

[Pa.B. Doc. No. 12-1547. Filed for public inspection August 10, 2012, 9:00 a.m.]

Lead Hazard Control Program; Intent to Request Release of Funds

On or about August 20, 2012, the Department of Health (Department) will submit a request to the United States Department of Housing and Urban Development (HUD) for the release of Lead-Based Paint Hazard Control Grant Program funds for the following multiyear program/project: Lead Hazard Control Program (program), for the purpose of assisting income-eligible occupants to receive lead hazard control and remediation of environmental health hazards in privately owned units, with a priority on units occupied by families with children under 6 years of age. Target areas include the Counties of Berks and Fayette and the Cities of Bethlehem, Johnstown, Lancaster and Allentown. The Department is requesting the release of \$2,480,000 in Federal Assistance and \$575,000 in matching contributions for the period of performance of June 1, 2012 through May 31, 2015.

The proposed hazard control activities to be funded under this program are categorically excluded from the National Environmental Policy Act (NEPA) requirements, but subject to compliance with some of the environmental laws and authorities listed at 24 CFR 58.5 (relating to related Federal laws and authorities). In accordance with 24 CFR 58.15 (relating to tiering), a tiered review process

has been structured, whereby some environmental laws and authorities have been reviewed and studied for the intended target areas listed previously. Other applicable environmental laws and authorities will be complied with, when individual projects are ripe for review. Specifically, the target areas have been studied and compliance with the following laws and authorities have been established in this Tier 1 review: Floodplain Management, Coastal Barriers Resource Act and Coastal Zone Management Act. In the Tiered 2 review, compliance with the following environmental laws and authorities will take place for proposed projects funded under the program listed previously: Historic Preservation, National Flood Insurance Program requirements, Explosive and Flammable Operations, toxics/hazardous materials. Should individual aggregate projects exceed the threshold for categorical exclusion detailed at 24 CFR 58.35(a) (relating to categorical exclusions), an Environmental Assessment will be completed and a separate Finding of No Significant Impact and Request for Release of Funds published. Copies of the compliance documentation worksheets are available at the following address. An Environmental Review Record (ERR) that documents the environmental determinations for this project and more fully describes the tiered review process cited previously, is on file at the Bureau of Family Health, Division of Child and Adult Health Services, Health and Welfare Building, 7th Floor, East Wing, 625 Forster Street, Harrisburg, PA 17120 and may be examined or copied weekdays from 8 a.m. to 4:30 p.m.

Public Comments

Any individual, group or agency may submit written comments on the ERR to the Department. Comments received by August 19, 2012, will be considered by the Department prior to authorizing submission of a Request for Release of Funds and Environmental Certification to HUD.

Release of Funds

The Department certifies to HUD that Terri A. Matio in her official capacity as Director, Bureau of Administrative and Financial Services, consents to accept the jurisdiction of the Federal Courts if an action is brought to enforce responsibilities in relation to the environmental review process and that these responsibilities have been satisfied. HUD's approval of the certification satisfies its responsibilities under NEPA and related laws and authorities, and allows the Department to utilize Federal funds and implement the program.

Objections to Release of Funds

HUD will consider objections to its release of funds and the Department certification for a period of 15 days following either the anticipated submission date or HUD's actual receipt of the request (whichever is later) only if the objections are on one of the following bases: (a) that the certification was not executed by the certifying officer of the Department; (b) the Department has omitted a step or failed to make a decision or finding required by HUD regulations at 24 CFR Part 58 (relating to environmental review procedures for entities assuming HUD environmental responsibilities); (c) the Department has committed funds or incurred costs not authorized by 24 CFR Part 58 before approval of a release of funds by HUD; (d) another Federal agency acting under 40 CFR Part 1504 (relating to predecision referrals to the Council of Pro-

posed Federal Actions determined to be environmentally unsatisfactory) has submitted a written finding that the project is unsatisfactory from the standpoint of environmental quality. Objections must be prepared and submitted in accordance with the required procedures (24 CFR Part 58) and may be addressed to HUD as follows: Karen M. Griego, Office of Healthy Homes and Lead Hazard Control Program Environmental Clearance Officer, United States Department of Housing and Urban Development, 611 West 6th Street, Suite 801, Los Angeles, CA 90017. Potential objectors may contact HUD directly to verify the actual last day of the objection/comment period.

Persons with a disability who require an alternate format of this document (for example, large print, audiotape, Braille) or who wish to comment in an alternate format and seek assistance to do so should contact Todd Christophel or Cindy Dundas, Public Health Program Administrators, Bureau of Family Health, Division of Child and Adult Health Services, Health and Welfare Building, 7th Floor, East Wing, 625 Forster Street, Harrisburg, PA 17120 or (717) 772-2762, or for speech and/or hearing impaired persons V/TT (717) 783-6514, or the Pennsylvania AT&T Relay Service at (800) 654-5984.

ELI N. AVILA, MD, JD, MPH, FCLM,
Secretary

[Pa.B. Doc. No. 12-1548. Filed for public inspection August 10, 2012, 9:00 a.m.]

These requests are on file with the Department. Persons may receive a copy of a request for exception by requesting a copy from the Department of Health, Division of Nursing Care Facilities, Room 526, Health and Welfare Building, Harrisburg, PA 17120, (717) 787-1816, fax (717) 772-2163, ra-paexcept@pa.gov.

Persons who wish to comment on an exception request may do so by sending a letter by mail, e-mail or facsimile to the Division at the address listed previously.

Comments received by the Department within 10 days after the date of publication of this notice will be reviewed by the Department before it decides whether to approve or disapprove the request for exception.

Persons with a disability who wish to obtain a copy of the request and/or provide comments to the Department and require an auxiliary aid, service or other accommodation to do so should contact the Division at the address listed previously, or for speech and/or hearing impaired persons V/TT (717) 783-6514, or the Pennsylvania AT&T Relay Service (800) 654-5984 (TT).

ELI N. AVILA, MD, JD, MPH, FCLM,
Secretary

[Pa.B. Doc. No. 12-1549. Filed for public inspection August 10, 2012, 9:00 a.m.]

Long-Term Care Nursing Facilities; Request for Exception

The following long-term care nursing facility is seeking an exception to 28 Pa. Code § 201.3 (relating to definitions):

Windy Hill Village of the Presbyterian Homes
100 Dogwood Drive
Philipsburg, PA 16866
FAC ID 164302

The following long-term care nursing facilities are seeking an exception to 28 Pa. Code § 201.18(e) (relating to management):

HRH transitional Care Unit (a d/b/a Entity of HRHS)
1648 Huntingdon Pike
Meadowbrook, PA 19046
FAC ID 083902

St. Joseph's Manor (a d/b/a Entity of HRHS)
1616 Huntingdon Pike
Meadowbrook, PA 19046
FAC ID 451002

The following long-term care nursing facility is seeking an exception to 28 Pa. Code § 205.6(a) (relating to function of building):

Willowcrest
5501 Old York Road
Philadelphia, PA 19141
FAC ID 232002

The following long-term care nursing facility is seeking an exception to 28 Pa. Code § 205.19(b) (relating to windows and windowsills):

Southwestern Nursing Center
500 Lewis Run Road
Pittsburgh, PA 15122

Notice to Public of Action Located Within Floodplains

A notice was published at 42 Pa.B. 4670 (July 21, 2012), inviting participation in the floodplain management decision making process. Specifically, the Department of Health (Department) invited comments regarding a program being proposed by the Department of Health.

Program: Lead Hazard Control Program (program), Grant Number: PALHB0517-12, \$2,480,000 award, Period of Performance: June 1, 2012—May 31, 2015.

Purpose: The purpose of the program is to eliminate lead hazards in eligible low-income housing in this Commonwealth. The program will accomplish its goals by utilizing State-certified inspectors to assess units for lead paint hazards. Units found to have a lead presence will undergo lead-based paint hazard reduction through interim controls or hazard abatement.

Location: The program would involve lead hazard control activities and associated minor rehabilitation on residential properties within the City limits of Johnstown and the Counties of Berks and Fayette.

The Department completed an evaluation concerning potential impacts on the floodplain and possible alternative actions. The proposed program could involve projects located within a 100-year floodplain. The conclusion was that there is no practicable alternative to the possibility of potential residential projects located within Flood Zones A, AE, A1-A30 or A99 as designated by the Federal Emergency Management Agency Flood Insurance Rate Maps. It has been determined that the program must occur within the intended target area/areas, as previously described.

The alternatives considered included: 1) funding the proposed program in other areas of the jurisdiction; 2) relocation of housing units and families; and 3) no action.

These alternatives were rejected for the following reasons: 1) the greatest need for the intended program was found to be in the designated target area/areas and those units/families in need of the housing services exist in all areas of the target area/areas; 2) it is cost prohibitive and not feasible to physically move or raise structures out of the floodplain; and 3) a no action alternative would certainly not serve to maintain affordable, safe (from lead-based paint or other housing-based health hazards as appropriate) housing for families.

To minimize risk and potential loss (to life, health and financial investment), owners and tenants will be notified that their units are located in the floodplain and flood insurance will be a required contingency to participation in the grant program. The amount and period of coverage will conform to the National Flood Insurance Program requirements.

An Environmental Review Record (ERR) respecting the subject program has been made by the previously-named jurisdiction which documents floodplain information and contains a full description of the proposed actions. The ERR is on file at the following address and is available for public examination and copying upon request between 8 a.m. and 4:30 p.m. Monday through Friday.

Final approval of the program will not be approved until/unless interested groups, individuals or agencies have had an opportunity to comment. Written comments for consideration by the Department may be sent to Todd Christophel or Cindy Dundas at the following address. Comments should be received on or before August 18, 2012.

For further information regarding the United States Department of Housing and Urban Development's regulations concerning floodplain management, contact Karen M. Griego, Program Environmental Clearance Officer, Office of Healthy Homes and Lead Hazard Control, United States Department of Housing and Urban Development, 611 West 6th Street, Suite 801, Los Angeles, CA 90017, (213) 534-2458 (this is not a toll-free number), karen.m.griego-west@hud.gov. Hearing- or speech-challenged individuals may access this number through TTY by calling the toll-free Federal Information Relay Service at (800) 877-8339.

Persons with a disability who require an alternate format of this document (for example, large print, audiotape, Braille) or who wish to comment in an alternate format and seek assistance to do so should contact Todd Christophel or Cindy Dundas, Public Health Program Administrators, Bureau of Family Health, Division of Child and Adult Health Services, Health and Welfare Building, 7th Floor, East Wing, 625 Forster Street, Harrisburg, PA 17120 or (717) 772-2762, or for speech and/or hearing impaired persons V/TT (717) 783-6514, or the Pennsylvania AT&T Relay Service at (800) 654-5984.

ELI N. AVILA, MD, JD, MPH, FCLM,
Secretary

[Pa.B. Doc. No. 12-1550. Filed for public inspection August 10, 2012, 9:00 a.m.]

DEPARTMENT OF PUBLIC WELFARE

Amendment to the Commonwealth's Medicaid State Plan for Children with Disabilities

The Department of Public Welfare (Department) is announcing its intent to amend the Commonwealth's Medicaid State Plan to apply copayments to services provided to certain Medical Assistance (MA) eligible children with disabilities.

Discussion

On July 1, 2011, the General Assembly enacted the act of June 30, 2011 (P.L. 89, No. 22) (Act 22), which amended the Public Welfare Code (code) (62 P.S. §§ 101—1503). Section 7 of Act 22 amended section 454(a) of the code (62 P.S. § 454(a)) by requiring the Department to establish, by publication of a notice in the *Pennsylvania Bulletin*, copayments for MA services provided to children with disabilities whose household income is above 200% of the Federal poverty income guidelines based on family size.

The Department intends to amend the State Plan consistent with section 454 of the code and applicable Federal law to apply these copayments as follows:

- Except for those services and items identified as follows, MA copayments will be applied to children with disabilities, who are under 18 years of age and whose household income is above 200% of the Federal Poverty Limit based on family size.
- The Department will determine family income based on the family's gross annual income, prorated for monthly periods.
- The following services will not have copayments:
 - Preventive services
 - Early Intervention services
 - Emergency services
 - Laboratory services
 - Family planning services and supplies
 - Home health agency services
 - Rental of durable medical equipment
 - Services when the MA fee is less than \$2.00
 - Medical exams for persons under 21 years of age provided through the Early and Periodic Screening, Diagnosis and Treatment Program (EPSDT)
 - Targeted case management services
 - Tobacco cessation counseling services
 - School-Based Access Program services
 - Home and Community Based Waiver services
 - The doctor's fee for x-rays, diagnostic tests, nuclear medicine or radiation therapy
 - Psychiatric partial hospitalization program services
 - Medical exams requested by the Department
 - Renal dialysis services
 - Blood and blood products
 - Oxygen
 - Ostomy supplies
 - More than one set of specific allergy tests in a 24-hour period

- The following services will have a fixed copayment:

<i>Fixed Copayments</i>			
<i>MA Service</i>	<i>Copayment Amount</i>	<i>MA Service</i>	<i>Copayment Amount</i>
Diagnostic Radiology	\$1.00	Inpatient Hospital Services	\$20.00 per day (up to \$140.00 per stay)
Nuclear Medicine	\$1.00		
Medical Diagnostic Test	\$1.00		
Radiation Therapy	\$1.00		
Prescription and Prescription Drug Refills	\$1.00 Generic \$3.00 Brand	Outpatient Psychotherapy Services	\$0.50 per unit

- For all other services, copayments will be on a sliding scale based on the MA fee for the service, as follows:

<i>Sliding Scale Copayments</i>			
<i>MA Fee for the Service</i>	<i>Copayment Amount</i>	<i>MA Fee for the Service</i>	<i>Copayment Amount</i>
\$2.00—\$10.00	\$.65	\$200.01—\$300.00	\$40.00
\$10.01—\$25.00	\$2.00	\$300.01—\$400.00	\$60.00
\$25.01—\$50.00	\$5.00	\$400.01—\$500.00	\$80.00
\$50.01—\$100.00	\$10.00	\$500.01 or greater	\$100.00
\$100.01—\$200.00	\$20.00		

• Copayments will be collected by the MA provider. In accordance with Federal regulations in 42 CFR 447.82(a) (relating to restrictions on payments to providers) the copayment amount will be deducted from the Department's payment to the provider.

• MA providers may not deny covered care or services, nor may they waive or reduce the copayment, because of an individual's inability to pay the copayment amount.

• The total aggregate amount of the copayments will not exceed 5% of the family's gross annual income, prorated and applied on a monthly basis.

• The Department will track the copayments that have been incurred by using the information in the claim processing system to identify the copayment amounts that have been deducted from the payments made to providers. Providers will be advised through the eligibility verification system that the copayment maximum has been reached and should not collect further copayments.

• The Department will send a written notice to recipients subject to these copayments informing them of the copayments and their maximum copayment liability. The Department will issue a bulletin to providers to inform them of the copayment. In addition, the Department will post copayment information on its web site.

The Department intends to make these changes effective for dates of service on and after October 1, 2012, for the newly eligible beneficiaries and November 1, 2012, for current beneficiaries.

Fiscal Impact

The estimated cost savings for Fiscal Year (FY) 2012-2013 is \$9.405 million (\$4.300 million in State funds). The annualized cost savings for FY 2013-2014 is \$12.540 million (\$5.813 million in State funds).

Public Comment

Interested persons are invited to submit written comments regarding this notice to the Department of Public Welfare, Office of Medical Assistance Programs, c/o Deputy Secretary's Office, Attention: Regulations Coordi-

nator, Room 515, Health and Welfare Building, Harrisburg, PA 17120. Comments received within 30 days will be reviewed and considered in the development of the State Plan amendment and the final public notice. Persons with a disability who require an auxiliary aid or service may submit comments using the Pennsylvania AT&T Relay Service (800) 654-5984 (TDD users) or (800) 654-5988 (voice users).

GARY D. ALEXANDER,
Secretary

Fiscal Note: 14-NOT-781. This change is expected to result in savings of \$4.3 million in State funds in FY 2012-13; (8) recommends adoption.

[Pa.B. Doc. No. 12-1551. Filed for public inspection August 10, 2012, 9:00 a.m.]

Inpatient Hospitals Qualifying for Medical Assistance Disproportionate Share Payments

On July 1, 1988, the Department of Public Welfare (Department) implemented a disproportionate share payment system. The Department is required to annually publish the names of each inpatient acute care general hospital, rehabilitation hospital and private psychiatric hospital qualifying for a disproportionate share payment and their respective disproportionate share payment percentage as set forth in 55 Pa. Code §§ 1151.54(i), 1163.67(k) and 1163.459(j) (relating to disproportionate share payments).

A. Disproportionate Share for Acute Care General Hospitals, Rehabilitation Hospitals and Private Psychiatric Hospitals.

The following lists identify the inpatient acute care general hospitals, psychiatric units, drug and alcohol units and rehabilitation units of acute care general hospitals, rehabilitation hospitals, private psychiatric hospitals and private drug and alcohol hospitals eligible for

disproportionate share payments for the period July 1, 2011, through June 30, 2012, and their respective payment percentages. For all inpatient facilities, disproportionate share payments are calculated as a percentage of projected Medical Assistance (MA) inpatient income.

Payment period July 1, 2011, to June 30, 2012, disproportionate share payment percentages:

Acute Care General Hospitals

ALBERT EINSTEIN MEDICAL CENTER	4.92%
ALFRED I. DUPONT INSTITUTE	7.64%
BARNES KASSON HOSPITAL	1.43%
BRADFORD REGIONAL MED. CTR.	10.00%
CHARLES COLE MEMORIAL HOSPITAL	1.00%
CHILDREN'S HOSPITAL OF PHILADELPHIA	7.19%
CHILDREN'S HOSPITAL OF PITTSBURGH	9.14%
CLEARFIELD HOSPITAL	0.00%
CROZER CHESTER MEDICAL CENTER	3.10%
DELAWARE COUNTY MEMORIAL HOSPITAL	2.18%
DIVINE PROVIDENCE HOSPITAL	5.54%
DUBOIS REGIONAL MEDICAL CENTER	9.00%
GEISINGER MEDICAL CENTER	6.84%
HIGHLANDS HOSPITAL & HEALTH CENTER	4.56%
INDIANA REGIONAL MEDICAL CENTER	0.00%
JAMESON MEMORIAL HOSPITAL	0.00%
J.C. BLAIR MEMORIAL HOSPITAL	4.78%
KENSINGTON HOSPITAL	14.00%
LOCK HAVEN HOSPITAL	3.16%
MAGEE WOMEN'S HOSPITAL	5.55%
MEMORIAL HOSPITAL—TOWANDA	3.36%
MERCY FITZGERALD HOSPITAL	2.69%
MERCY HOSPITAL OF PHILADELPHIA	5.19%
MILLCREEK COMMUNITY HOSPITAL	5.00%
NPHS—ST. JOSEPH'S HOSPITAL	7.51%
PENN PRESBYTERIAN MEDICAL CENTER	2.88%
PENNSYLVANIA HOSPITAL	3.66%
PUNXSUTAWNEY AREA HOSPITAL	0.00%
SCHUYLKILL MED. CTR. SOUTH JACKSON	6.68%
SOLDIERS & SAILORS MEMORIAL HOSPITAL	8.75%
SUNBURY COMMUNITY HOSPITAL	6.26%
TEMPLE UNIVERSITY HOSPITAL	6.66%
THS—HAHNEMANN UNIV HOSPITAL	4.52%
THS—ST. CHRISTOPHER'S HOSPITAL	15.00%
THOMAS JEFFERSON UNIVERSITY & HOSP	2.60%
TITUSVILLE AREA HOSPITAL	2.84%
TROY COMMUNITY HOSPITAL	3.98%
UNIONTOWN HOSPITAL	1.84%
UPMC—BEDFORD MEMORIAL	2.96%
UPMC MERCY HOSPITAL	1.65%
UPMC—PRESBYTERIAN-SHADYSIDE	2.48%
UNIVERSITY OF PENNA HOSPITAL	3.13%
VALLEY FORGE MEDICAL CENTER & HOSP	5.05%
WAYNE MEMORIAL HOSPITAL	0.00%
WEST PENN ALLEGHENY GENERAL HOSP	1.37%
WEST VIRGINIA UNIV HOSPITALS, INC.	5.76%
WESTERN PENNSYLVANIA HOSPITAL	2.44%

Psychiatric Units of Inpatient Hospitals

ALBERT EINSTEIN MEDICAL CENTER	2.97%
BRADFORD REGIONAL MEDICAL CENTER	2.81%
CROZER CHESTER MEDICAL CENTER	2.02%
DIVINE PROVIDENCE HOSPITAL	3.30%
DUBOIS REGIONAL MEDICAL CENTER	2.52%
EAGLEVILLE HOSPITAL	1.74%
GEISINGER MEDICAL CENTER	2.06%
HIGHLANDS HOSPITAL & HEALTH CENTER	2.78%
INDIANA REGIONAL MEDICAL CENTER	0.00%
JAMESON MEMORIAL HOSPITAL	0.00%
J.C. BLAIR MEMORIAL HOSPITAL	1.63%

Psychiatric Units of Inpatient Hospitals

MERCY FITZGERALD	1.80%
MERCY HOSPITAL OF PHILADELPHIA	3.11%
MILLCREEK COMMUNITY HOSPITAL	3.02%
NPHS—GIRARD	2.98%
PENN PRESBYTERIAN MEDICAL CENTER	1.90%
PENNSYLVANIA HOSPITAL/UPHS	2.31%
SCHUYLKILL MED. CTR. SOUTH JACKSON	2.03%
SOLDIERS & SAILORS MEMORIAL HOSPITAL	2.47%
SUNBURY COMMUNITY HOSPITAL	1.94%
TEMPLE UNIVERSITY HOSPITAL	3.89%
THOMAS JEFFERSON UNIVERSITY & HOSP	1.75%
THS—HAHNEMANN UNIVERSITY HOSPITAL	2.76%
UPMC MERCY HOSPITAL	1.26%
UPMC PRESBYTERIAN SHADYSIDE	1.69%
WEST PENN ALLEGHENY GENERAL HOSPITAL	1.11%
WESTERN PENNSYLVANIA HOSPITAL	1.67%

Drug and Alcohol Units of Acute Care Hospitals

NPHS—ST. JOSEPH'S HOSPITAL	5.54%
PENN PRESBYTERIAN MEDICAL CENTER	1.95%
VALLEY FORGE MEDICAL CENTER & HOSP	3.63%

Medical Rehab Units of Acute Care Hospitals

ALBERT EINSTEIN MEDICAL CENTER	3.53%
ALFRED I. DUPONT INSTITUTE	5.65%
CHILDREN'S HOSPITAL OF PHILADELPHIA	5.29%
CROZER CHESTER MEDICAL CENTER	2.12%
DELAWARE COUNTY MEMORIAL HOSPITAL	1.41%
DUBOIS REGIONAL MEDICAL CENTER	2.87%
JAMESON MEMORIAL HOSPITAL	0.00%
MERCY FITZGERALD HOSPITAL	1.80%
SCHUYLKILL MED. CTR. SOUTH JACKSON	2.14%
TEMPLE UNIVERSITY HOSPITAL	4.88%
THOMAS JEFFERSON UNIVERSITY & HOSPITAL	1.73%
UNIVERSITY OF PENNA HOSPITAL	2.14%
UPMC MERCY HOSPITAL	1.00%
UPMC PRESBYTERIAN SHADYSIDE	1.64%

Freestanding Rehab Hospitals

CHILDREN'S HOME OF PITTSBURGH	10.00%
CHILDRENS INSTITUTE OF PITTSBURGH	6.33%

Private Psychiatric Hospitals

BELMONT CENTER FOR COMP. TREATMENT	3.97%
BROOKE GLEN BEHAVIORAL HEALTH	3.09%
CLARION PSYCHIATRIC CENTER	5.81%
DEVEREUX CHILDRENS BEHAV. HLTH	10.00%
FAIRMOUNT BEHAVIORAL HEALTH SYSTEM	4.70%
FIRST HOSPITAL WYOMING VALLEY	4.73%
FOUNDATIONS BEHAVIORAL HEALTH	5.27%
FRIENDS HOSPITAL	4.01%
HORSHAM PSYCHIATRIC HOSPITAL	4.15%
KIDSPACE HOSPITAL	7.48%
KIRKBRIDE CENTER	4.27%
MEADOWS PSYCHIATRIC CENTER	5.95%
MONTGOMERY COUNTY MH/MR ER SVS	4.90%
PHILHAVEN HOSPITAL	4.04%
ROXBURY PSYCHIATRIC HOSPITAL	1.00%
SOUTHWOOD PSYCHIATRIC HOSPITAL	9.00%

Private Drug and Alcohol Hospitals

EAGLEVILLE HOSPITAL	1.72%
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B. Additional Disproportionate Share Payments

Additional disproportionate share payments are made to inpatient facilities, with a Medicaid inpatient utilization rate of not less than 1%, which have provided

services to persons who have been determined to be low income by meeting the income and resource standards for the State's General Assistance Program.

The payment adjustments are paid directly proportional to the payment received for either general assistance recipients for all hospital services or Title XIX recipients, 21 years of age or older but under 65 years of age, for services rendered by institutions for mental diseases under the fee-for-service and capitation programs.

The following hospitals are eligible for this payment adjustment:

Acute Care General Hospitals

ABINGTON MEMORIAL HOSPITAL
 ADVANCED SURGICAL HOSPITAL
 ALBERT EINSTEIN MEDICAL CENTER
 ALFRED I. DUPONT INSTITUTE
 ALLE-KISKI MEDICAL CENTER
 ALTOONA REGIONAL HEALTH SYSTEM
 AMERICAN ONCOLOGIC HOSPITAL
 ARIA HEALTH HOSPITAL
 ARMSTRONG COUNTY MEMORIAL HOSPITAL
 BARNES KASSON HOSPITAL
 BLOOMSBURG HOSPITAL
 BRADFORD REGIONAL MEDICAL CENTER
 BRANDYWINE HOSPITAL
 BROOKVILLE HOSPITAL
 BRYN MAWR HOSPITAL
 BUCKTAIL MEDICAL CENTER
 BUTLER MEMORIAL HOSPITAL
 CANONSBURG GENERAL HOSPITAL
 CARLISLE HOSPITAL
 CH HOSPITAL OF ALLENTOWN
 CHAMBERSBURG HOSPITAL
 CHARLES COLE MEMORIAL HOSPITAL
 CHESTER COUNTY HOSPITAL
 CHHS HOSP CO/CHESTNUT HILL HOSPITAL
 CHILDREN'S HOSPITAL OF PHILADELPHIA
 CHILDREN'S HOSPITAL OF PITTSBURGH
 CHS—BERWICK HOSPITAL CENTER
 CLARION HOSPITAL
 CLEARFIELD HOSPITAL
 COMMUNITY MEDICAL CENTER—SCRANTON
 CONEMAUGH VALLEY MEMORIAL HOSPITAL
 COORDINATED HEALTH ORTHOPEDIC HOSPITAL
 CORRY MEMORIAL HOSPITAL
 CROZER—CHESTER MEDICAL CENTER
 DELAWARE COUNTY MEMORIAL
 DIVINE PROVIDENCE HOSPITAL
 DOYLESTOWN HOSPITAL
 DUBOIS REGIONAL MEDICAL CENTER
 EASTON HOSPITAL
 EDGEWOOD SURGICAL HOSPITAL
 ELK REGIONAL HEALTH CENTER
 ELLWOOD CITY HOSPITAL
 ENDLESS MOUNTAINS HEALTH SYSTEM
 EPHRATA COMMUNITY HOSPITAL
 EVANGELICAL COMMUNITY HOSPITAL
 FRICK COMMUNITY HEALTH CENTER
 FULTON COUNTY MEDICAL CENTER
 GEISINGER MEDICAL CENTER
 GEISINGER WYOMING MEDICAL CENTER
 GETTYSBURG HOSPITAL
 GNADEN HUETTEN MEMORIAL HOSPITAL
 GOOD SAMARITAN HOSPITAL—LEBANON
 GRAND VIEW HOSPITAL
 GROVE CITY MEDICAL CENTER
 HAMOT MEDICAL CENTER
 HANOVER HOSPITAL
 HAZLETON GENERAL HOSPITAL

HEART OF LANCASTER REGIONAL MEDICAL
 CENTER
 HERITAGE VALLEY BEAVER
 HIGHLANDS HOSPITAL AND HEALTH CENTER
 HOLY REDEEMER HOSPITAL
 HOLY SPIRIT HOSPITAL
 INDIANA REGIONAL MEDICAL CENTER
 JAMESON MEMORIAL HOSPITAL
 JC BLAIR HOSPITAL
 JEANES HOSPITAL
 JEFFERSON HEALTH SERVICES
 JENNERSVILLE REGIONAL HOSPITAL
 JERSEY SHORE HOSPITAL
 KANE COMMUNITY HOSPITAL
 KENSINGTON HOSPITAL
 LANCASTER GENERAL HOSPITAL
 LANCASTER REGIONAL MEDICAL CENTER
 LANSDALE HOSPITAL
 LATROBE AREA HOSPITAL
 LEHIGH VALLEY HOSPITAL—MUHLENBERG
 LEHIGH VALLEY HOSPITAL
 LEWISTOWN HOSPITAL
 LIFECARE HOSPITALS OF MECHANICSBURG
 LIFECARE HOSPITALS OF PITTSBURGH
 LIFECARE HOSPITALS OF PITTSBURGH—
 MONROEVILLE
 LOCK HAVEN HOSPITAL
 LOWER BUCKS HOSPITAL
 M S HERSHEY MEDICAL CENTER
 MAGEE WOMEN'S HOSPITAL
 MAIN LINE LANKENAU HOSPITAL
 MARIAN COMMUNITY HOSPITAL
 MEADVILLE MEDICAL CENTER
 MEMORIAL HOSP—YORK
 MEMORIAL HOSPITAL—TOWANDA
 MERCY FITZGERALD
 MERCY HOSPITAL OF PHILADELPHIA
 MERCY SUBURBAN—NORRISTOWN
 MEYERSDALE COMMUNITY HOSPITAL
 MID VALLEY HOSPITAL
 MILLCREEK COMMUNITY HOSPITAL
 MINERS HOSPITAL OF NORTHERN CAMBRIA
 MONONGAHELA VALLEY HOSPITAL
 MONTGOMERY HOSPITAL MEDICAL CENTER
 MOSES TAYLOR HOSPITAL
 MOUNT NITTANY MEDICAL CENTER
 MUNCY VALLEY HOSPITAL
 NASON HOSPITAL
 NAZARETH HOSPITAL
 NPHS—ST. JOSEPH'S HOSPITAL
 OHIO VALLEY GENERAL HOSPITAL
 OSS ORTHOPAEDIC HOSPITAL
 PALMERTON HOSPITAL
 PAOLI MEMORIAL HOSPITAL
 PENN PRESBYTERIAN MEDICAL CENTER
 PENNSYLVANIA HOSPITAL/UPHS
 PHOENIXVILLE HOSPITAL COMMUNITY
 PHYSICIANS CARE SURGICAL HOSPITAL
 PINNACLE HEALTH HOSPITALS
 POCONO MEDICAL CENTER
 POTTSTOWN MEMORIAL MEDICAL CENTER
 PUNXSUTAWNEY AREA HOSPITAL
 READING HOSPITAL AND MEDICAL CENTER
 REGIONAL HOSPITAL OF SCRANTON
 RIDDLE MEMORIAL HOSPITAL
 ROBERT PACKER HOSPITAL
 ROXBOROUGH MEMORIAL HOSPITAL
 SACRED HEART HOSPITAL—ALLENTOWN
 SAINT CATHERINE HOSPITAL OF PENNSYLVANIA

SCHUYLKILL MEDICAL CENTER EAST NORWEGIAN
ST
SCHUYLKILL MEDICAL CENTER SOUTH JACKSON
ST
SEWICKLEY VALLEY HOSPITAL
SHAMOKIN AREA COMMUNITY HOSPITAL
SHARON REGIONAL HEALTH SYSTEM
SHRINERS HOSPITAL FOR CHILDREN
SOLDIERS AND SAILORS MEMORIAL
SOMERSET HOSPITAL
SOUTHWEST REGIONAL MEDICAL CENTER
SPECIAL CARE HOSPITAL
ST. CLAIR MEMORIAL HOSPITAL
ST. JOSEPH REGIONAL HEALTH NETWORK
ST. LUKE'S HOSPITAL—ANDERSON CAMPUS
ST. LUKE'S HOSPITAL—BETHLEHEM
ST. LUKE'S HOSPITAL—QUAKERTOWN
ST. LUKE'S MINERS MEMORIAL MEDICAL CENTER
ST. MARY'S HOSPITAL
ST. VINCENT HEALTH CENTER
SUNBURY COMMUNITY HOSPITAL
SURGICAL INSTITUTE OF READING
TEMPLE UNIVERSITY HOSPITAL
THOMAS JEFFERSON UNIVERSITY HOSPITAL
THS—HAHNEMANN UNIVERSITY HOSPITAL
THS—ST. CHRISTOPHER'S HOSPITAL
TITUSVILLE AREA HOSPITAL
TROY COMMUNITY HOSPITAL
TYLER MEMORIAL HOSPITAL
TYRONE HOSPITAL
UNIONTOWN HOSPITAL
UNIVERSITY OF PENNA HOSPITAL
UPMC—BEDFORD MEMORIAL
UPMC—HORIZON
UPMC—MCKEESPORT
UPMC MERCY HOSPITAL—PITTSBURGH
UPMC—NORTHWEST MEDICAL CENTER
UPMC—PASSAVANT
UPMC—PRESBYTERIAN—SHADYSIDE
UPMC—ST. MARGARET
VALLEY FORGE MEDICAL CENTER AND HOSPITAL
WARREN GENERAL HOSPITAL
WASHINGTON HOSPITAL
WAYNE MEMORIAL HOSPITAL
WAYNESBORO HOSPITAL
WEST VIRGINIA UNIV HOSPITALS, INC.
WEST PENN—ALLEGHENY GENERAL HOSPITAL
WESTERN PENN—FORBES REGIONAL CAMPUS
WESTERN PENNSYLVANIA HOSPITAL
WESTFIELD MEDICAL CENTER
WESTMORELAND REGIONAL HOSPITAL
WILKES BARRE GENERAL HOSPITAL
WILLIAMSPORT HOSPITAL & MEDICAL CENTER
WINDBER MEDICAL CENTER
YORK HOSPITAL

Psychiatric Units of Inpatient Hospitals

ABINGTON MEMORIAL HOSPITAL
ALBERT EINSTEIN MEDICAL CENTER
ALLE—KISKI MEDICAL CENTER
ALTOONA REGIONAL HEALTH SYSTEM
ARIA HEALTH HOSPITAL
ARMSTRONG COUNTY MEMORIAL HOSPITAL
BLOOMSBURG HOSPITAL
BRADFORD REGIONAL MEDICAL CENTER
BRANDYWINE HOSPITAL
BRYN MAWR HOSPITAL
BUTLER MEMORIAL HOSPITAL
CHAMBERSBURG HOSPITAL
CHS BERWICK HOSPITAL CENTER

CLEARFIELD HOSPITAL
COMMUNITY MEDICAL CENTER
CONEMAUGH VALLEY MEMORIAL HOSPITAL
CORRY MEMORIAL HOSPITAL
CROZER—CHESTER MEDICAL CENTER
DIVINE PROVIDENCE HOSPITAL
DUBOIS REGIONAL MEDICAL CENTER
EAGLEVILLE HOSPITAL
ELK REGIONAL HEALTH CENTER
EPHRATA COMMUNITY HOSPITAL
GEISINGER MEDICAL CENTER
GNADEN HUETTEN MEMORIAL HOSPITAL
HERITAGE VALLEY BEAVER
HIGHLANDS HOSPITAL & HEALTH CENTER
HOLY SPIRIT HOSPITAL
INDIANA REGIONAL MEDICAL CENTER
J C BLAIR HOSPITAL
JAMESON MEMORIAL HOSPITAL
JEFFERSON HEALTH SERVICES
LANCASTER GENERAL HOSPITAL
LANCASTER REGIONAL MEDICAL CENTER
LATROBE AREA HOSPITAL
LEHIGH VALLEY HOSPITAL
LEWISTOWN HOSPITAL
LOWER BUCKS HOSPITAL
MARIAN COMMUNITY HOSPITAL
MEADVILLE MEDICAL CENTER
MERCY FITZGERALD
MERCY HOSPITAL OF PHILADELPHIA
MILLCREEK COMMUNITY HOSPITAL
MONONGAHELA VALLEY HOSPITAL
MONTGOMERY HOSPITAL
MOSES TAYLOR HOSPITAL
MOUNT NITTANY MEDICAL CENTER
NPHS—GIRARD
OHIO VALLEY GENERAL HOSPITAL
PALMERTON HOSPITAL
PENN PRESBYTERIAN MED CENTER
PENNSYLVANIA HOSPITAL—UPHS
POCONO HOSPITAL
POTTSTOWN MEMORIAL MEDICAL CENTER
READING HOSPITAL
ROBERT PACKER HOSPITAL
SACRED HEART HOSPITAL—ALLENTOWN
SAINT CATHERINE HOSPITAL OF PENNSYLVANIA
SCHUYLKILL MEDICAL CENTER SOUTH JACKSON
STREET
SEWICKLEY VALLEY HOSPITAL
SHAMOKIN AREA COMM HOSPITAL
SHARON REGIONAL HEALTH SYSTEM
SOLDIERS AND SAILORS MEMORIAL HOSPITAL
SOMERSET HOSPITAL CENTER FOR HEALTH
SOUTHWEST REGIONAL MEDICAL CENTER
SPECIAL CARE HOSPITAL
ST. CLAIR MEMORIAL HOSPITAL
ST. LUKES HOSPITAL OF BETHLEHEM
ST. LUKES HOSPITAL—QUAKERTOWN
ST. VINCENT HEALTH CENTER
SUNBURY COMMUNITY HOSPITAL
TEMPLE UNIVERSITY HOSPITAL
THOMAS JEFFERSON UNIVERSITY HOSPITAL
THS—HAHNEMANN UNIVERSITY HOSPITAL
UNIONTOWN HOSPITAL
UPMC—MCKEESPORT
UPMC—MERCY HOSPITAL
UPMC—NORTHWEST MEDICAL CENTER
UPMC PRESBYTERIAN SHADYSIDE
WARREN GENERAL HOSPITAL
WASHINGTON HOSPITAL
WEST PENN—ALLEGHENY GENERAL HOSPITAL

WESTERN PENNSYLVANIA HOSPITAL
 WESTERN PENN HOSPITAL—FORBES REGIONAL
 CAMPUS
 WESTMORELAND REGIONAL HOSPITAL
 YORK HOSPITAL

Drug and Alcohol Units of Inpatient Hospitals

BELMONT CENTER FOR COMP. TREATMENT
 BUTLER MEMORIAL HOSPITAL
 MEADVILLE MEDICAL CENTER
 NPHS—ST JOSEPH'S HOSPITAL
 PENN PRESBYTERIAN MEDICAL CENTER
 VALLEY FORGE MEDICAL CENTER AND HOSPITAL

Medical Rehab Units of Inpatient Hospitals

ALFRED I DUPONT INSTITUTE
 ABINGTON MEMORIAL HOSPITAL
 ALBERT EINSTEIN MEDICAL CENTER
 CANONSBURG GENERAL HOSPITAL
 CARLISLE REGIONAL MEDICAL CENTER
 CHAMBERSBURG HOSPITAL
 CHILDREN'S HOSPITAL OF PHILADELPHIA
 CONEMAUGH VALLEY HOSPITAL
 CROZER—CHESTER MEDICAL CENTER
 DELAWARE COUNTY MEMORIAL HOSPITAL
 DUBOIS REG MEDICAL CENTER
 EASTON HOSPITAL
 GEISINGER—WYOMING MEDICAL CENTER
 GNADEN HUETTEN MEMORIAL HOSPITAL
 GOOD SAMARITAN HOSPITAL—LEBANON
 HANOVER HOSPITAL
 HAZLETON GENERAL HOSPITAL
 HERITAGE VALLEY BEAVER
 INDIANA REGIONAL MEDICAL CENTER
 JAMESON MEMORIAL HOSPITAL
 JEFFERSON HEALTH SERVICES
 LANCASTER GENERAL HOSPITAL
 LANCASTER REGIONAL MEDICAL CENTER
 MERCY FITZGERALD
 MILTON S. HERSHEY MEDICAL CENTER
 MONONGAHELA VALLEY HOSPITAL
 NAZARETH HOSPITAL
 OHIO VALLEY HOSPITAL
 PINNACLE HEALTH HOSPITALS
 READING HOSPITAL
 SCHUYLKILL MEDICAL CENTER EAST NORWEGIAN
 ST
 SCHUYLKILL MEDICAL CENTER SOUTH JACKSON
 ST
 SEWICKLEY VALLEY HOSPITAL
 ST. MARY'S HOSPITAL
 ST. LUKES HOSPITAL OF BETHLEHEM
 ST. VINCENT HEALTH CENTER
 TEMPLE UNIVERSITY HOSPITAL
 THOMAS JEFFERSON UNIVERSITY & HOSPITAL
 UNIVERSITY OF PENNA HOSPITAL
 UPMC—HORIZON
 UPMC—MCKEESPORT
 UPMC MERCY HOSPITAL—PITTSBURGH
 UPMC—NORTHWEST MEDICAL CENTER
 UPMC—PASSAVANT
 UPMC—PRESBYTERIAN SHADYSIDE
 UPMC—ST. MARGARET
 WASHINGTON HOSPITAL
 WESTERN PENNSYLVANIA HOSPITAL
 WEST PENN HOSPITAL—FORBES REGIONAL
 CAMPUS
 WESTMORELAND HOSPITAL
 WILLIAMSPORT HOSPITAL

Freestanding Rehab Hospitals

ALLIED SERVICES REHAB HOSPITAL
 BRYN MAWR REHAB HOSPITAL
 CHILDREN'S HOME OF PITTSBURGH
 CHILDREN'S INSTITUTE OF PITTSBURGH
 GOOD SHEPHERD REHAB HOSPITAL
 HEALTH SOUTH HARMARVILLE
 HEALTH SOUTH LAKE ERIE INSTITUTE REHAB
 HEALTH SOUTH MECHANICSBURG REHAB
 HEALTH SOUTH PENN STATE GEISENGER REHAB
 HOSPITAL
 HEALTH SOUTH READING REHAB HOSPITAL
 HEALTH SOUTH REHAB HOSPITAL OF YORK
 HEALTH SOUTH REHAB OF ALTOONA
 HEALTH SOUTH REHAB OF NITTANY VALLEY
 HEALTH SOUTH REHAB OF SEWICKLEY
 JOHN HEINZ INSTITUTE
 LANCASTER REHAB HOSPITAL
 PENN STATE HERSHEY REHAB
 MAGEE MEMORIAL REHAB HOSPITAL

Private Psychiatric Hospitals

BELMONT CENTER FOR COMP TREATMENT
 BROOKE GLEN BEHAVIORAL HOSPITAL
 CLARION PSYCHIATRIC CENTER
 DEVEREUX CHILDRENS BEHAVIORAL HEALTH
 CENTER
 FAIRMOUNT BEHAVIORAL HEALTH SYSTEM
 FIRST HOSPITAL WYOMING VALLEY
 FOUNDATIONS BEHAVIORAL HEALTH
 FRIENDS HOSPITAL
 HAVEN BEHAVIORAL HOSPITAL OF EASTERN
 PENNSYLVANIA
 HORSHAM CLINIC
 KIDSPACE HOSPITAL
 KIRKBRIDE CENTER
 MEADOWS PSYCHIATRIC CENTER
 MONTGOMERY COUNTY EMERGENCY SERVICE, INC
 PENNSYLVANIA PSYCH INSTITUTE
 PHILHAVEN HOSPITAL
 ROXBURY PSYCHIATRIC
 SOUTHWOOD PSYCH HOSPITAL

Private Drug and Alcohol Hospitals

EAGLEVILLE HOSPITAL

C. Additional Class of Disproportionate Share Payments

Effective March 1, 1998, the Department established a new class of disproportionate share payments to hospitals which render uncompensated care and which the Department has determined are experiencing significant revenue loss as a result of MA program revisions under the act of May 16, 1996 (P. L. 175, No. 35).

Effective January 15, 1999, the Department established a new class of disproportionate share payments to include a Charity Care component of the Community Access Fund. A disproportionate share payment will be made to qualifying hospitals based on each hospital's percentage of charity care cost to the total charity care costs of all qualifying hospitals. The Department also established a disproportionate share payment for those hospitals which the Department has determined advanced its goal of enhanced access to multiple types of medical care in economically distressed areas of this Commonwealth.

The following hospitals qualify for this payment:

ALFRED I DUPONT INSTITUTE
 ABINGTON MEMORIAL HOSPITAL
 ALBERT EINSTEIN MEDICAL CENTER
 ALTOONA REGIONAL HEALTH SYSTEMS
 ARIA HEALTH HOSPITAL
 BARNES KASSON HOSPITAL
 CHARLES COLE MEMORIAL HOSPITAL
 CHILDRENS HOSPITAL OF PHILADELPHIA
 CLARION HOSPITAL
 CLEARFIELD HOSPITAL
 CROZER—CHESTER MEDICAL CENTER
 DOYLESTOWN HOSPITAL
 DUBOIS REGIONAL MEDICAL CENTER
 EAGLEVILLE HOSPITAL
 EASTON HOSPITAL
 EVANGELICAL COMMUNITY HOSPITAL
 FULTON COUNTY MEDICAL CENTER
 GEISINGER MEDICAL CENTER
 HAMOT MEDICAL CENTER
 HAZLETON GENERAL HOSPITAL
 INDIANA REGIONAL MEDICAL CENTER
 J C BLAIR HOSPITAL
 JAMESON MEMORIAL HOSPITAL
 LEHIGH VALLEY HOSPITAL
 LOCK HAVEN HOSPITAL
 MAGEE WOMENS HOSPITAL
 MAIN LINE LANKENAU HOSPITAL
 MEADVILLE MEDICAL CENTER
 MEMORIAL HOSPITAL—TOWANDA
 MERCY FITZGERALD
 MERCY HOSPITAL OF PHILADELPHIA
 MILTON S. HERSHEY MEDICAL CENTER
 NPHS—ST. JOSEPH'S HOSPITAL
 PENN PRESBYTERIAN MEDICAL CENTER
 PENNSYLVANIA HOSPITAL/UPHS
 PUNXSUTAWNEY AREA HOSPITAL
 READING HOSPITAL
 SOLDIERS AND SAILORS MEMORIAL HOSPITAL
 ST LUKES HOSPITAL OF BETHLEHEM
 TEMPLE UNIVERSITY HOSPITAL
 THOMAS JEFFERSON UNIVERSITY & HOSP
 THS—HAHNEMANN HOSPITAL
 TITUSVILLE AREA HOSPITAL
 UNIVERSITY OF PENNA HOSPITAL
 UPMC BEDFORD MEMORIAL
 UPMC MERCY HOSPITAL
 UPMC PRESBYTERIAN SHADYSIDE
 VALLEY FORGE MEDICAL CENTER & HOSP
 WAYNE MEMORIAL HOSPITAL
 WEST PENN—ALLEGHENY GENERAL HOSPITAL
 WEST VIRGINIA UNIV HOSPITALS, INC.
 WESTERN PENNSYLVANIA
 YORK HOSPITAL

Public Comment

Interested persons are invited to submit written comments regarding this notice to the Department of Public Welfare, Office of Medical Assistance Programs, c/o Regulations Coordinator, Room 515, Health and Welfare Building, Harrisburg, PA 17120. Comments received within 30 days will be reviewed and considered for any subsequent revision of the notice.

Persons with a disability who require an auxiliary aid or service may submit comments using the Pennsylvania AT&T Relay Service at (800) 654-5984 (TDD users) or (800) 654-5988 (voice users).

GARY D. ALEXANDER,
Secretary

Fiscal Note: 14-NOT-779. No fiscal impact; (8) recommends adoption.

[Pa.B. Doc. No. 12-1552. Filed for public inspection August 10, 2012, 9:00 a.m.]

Pharmacy Prior Authorization

The Department of Public Welfare (Department) announces it will add Growth Factors to the Medical Assistance (MA) Program's list of services and items requiring prior authorization when designated as preferred on the Department's Preferred Drug List.

Section 443.6(b)(7) of the Public Welfare Code (62 P. S. § 443.6(b)(7)) authorizes the Department to add items and services to the list of services requiring prior authorization by publication of notice in the *Pennsylvania Bulletin*.

The MA Program will require prior authorization of all prescriptions for preferred Growth Factors dispensed on or after August 13, 2012.

The Department will issue an MA Bulletin to providers enrolled in the MA Program specifying the procedures for obtaining prior authorization of prescriptions for preferred Growth Factors.

Fiscal Impact

This prior authorization requirement is estimated to have no fiscal impact.

Public Comment

Interested persons are invited to submit written comments regarding this notice to the Department of Public Welfare, Office of Medical Assistance Programs, c/o Regulations Coordinator, Room 515, Health and Welfare Building, Harrisburg, PA 17120. Comments received within 30 days will be reviewed and considered for any subsequent revisions to these prior authorization requirements.

Persons with a disability who require an auxiliary aid or service may submit comments using the Pennsylvania AT&T Relay Service at (800) 654-5984 (TDD users) or (800) 654-5988 (voice users).

GARY D. ALEXANDER,
Secretary

Fiscal Note: 14-NOT-780. No fiscal impact; (8) recommends adoption.

[Pa.B. Doc. No. 12-1553. Filed for public inspection August 10, 2012, 9:00 a.m.]

DEPARTMENT OF REVENUE

Realty Transfer Tax; 2011 Common Level Ratio; Real Estate Valuation Factors

The following real estate valuation factors are based on sales data compiled by the State Tax Equalization Board (Board) in 2011. These factors are the mathematical reciprocals of the actual common level ratio (CLR). For Pennsylvania Realty Transfer Tax purposes, these factors are applicable for documents accepted from July 1, 2012, to June 30, 2013, except as indicated as follows. The date

of acceptance of a document is rebuttably presumed to be its date of execution, that is, the date specified in the body of the document as the date of the instrument (61 Pa. Code § 91.102).

<i>County</i>	<i>CLR Factor</i>
Adams	.85
Allegheny	1.17
Armstrong	2.40
Beaver	2.93
Bedford	1.28
Berks	1.28
Blair	5.99
Bradford	3.00
Bucks	9.26
Butler	5.88
Cambria	2.91
Cameron	2.31
Carbon	2.18
Centre	3.47
Chester	1.70
Clarion	2.89
Clearfield	4.95
Clinton	1.03
Columbia	3.60
Crawford	2.43
Cumberland	1.00
Dauphin	1.38
Delaware	1.39
Elk	2.16
Erie	1.18
Fayette	1.25
Forest	3.56
Franklin	7.04
Fulton	2.56
Greene	1.35
Huntingdon	3.72
Indiana	5.62
Jefferson	1.92
Juniata	5.43
Lackawanna	5.18
Lancaster	1.27
Lawrence	1.03
Lebanon	6.14
Lehigh	2.81
Luzerne	.91
Lycoming	1.25
McKean	1.11
Mercer	2.77
Mifflin	1.80
Monroe	5.15
Montgomery	1.61
Montour	1.16
Northampton	2.67
Northumberland	3.58
Perry	1.00
Philadelphia (1)	*3.97
Pike	4.05
Potter	2.73
Schuylkill	2.15
Snyder	4.83
Somerset	2.45
Sullivan	1.54
Susquehanna	3.06
Tioga	1.36
Union	1.20
Venango	1.06
Warren	2.80
Washington	6.80

<i>County</i>	<i>CLR Factor</i>
Wayne	1.19
Westmoreland	4.41
Wyoming	5.00
York	1.16

(1) CLR for 2010 was adjusted by the Department of Revenue to reflect the Board appeal decision issued on April 21, 2012.

* CLR for 2011 has not yet been determined by the Board. The 2010 factor shown is tentative, pending Board certification of the 2011 factor.

DANIEL MEUSER,
Secretary

[Pa.B. Doc. No. 12-1554. Filed for public inspection August 10, 2012, 9:00 a.m.]

GAME COMMISSION

Actions for Protection of Remaining Populations of Northern Long-Eared Bat, Tri-Colored Bat (Formerly Known as the Eastern Pipistrelle) and the Little Brown Bat; Request for Public Comment

The Game Commission (Commission) is considering actions to protect the current population of three cave-dwelling bat species in this Commonwealth.

This consideration is prompted by the outbreak and spread of white nose syndrome (WNS) in this Commonwealth and throughout the eastern United States. WNS is a fungal disease affecting bats during hibernation. WNS was first identified in this Commonwealth in December 2008 and by 2012 has spread across all regions of this Commonwealth. WNS has been confirmed in 23 counties and its presence is suspect in 7 counties. These counties include all the known major bat hibernacula in this Commonwealth. Massive mortalities of hibernating bats began in the 2009-2010 winter and have continued each winter.

The northern long-eared bat is a habitat specialist that inhabits caves, mines and tunnels in winter and forested habitats in summer. This bat hibernates with several other bat species but tends to be less gregarious than other *Myotis* species, hibernating singly or in small clusters. Comparative pre- and post-WNS hibernacula surveys show a 99% decline in northern long-eared bats in this Commonwealth since 2008. Summer mist-netting in 2011 showed a 93% increase in effort was required to capture this species as compared to pre-WNS.

The tri-colored bat, formerly known as the eastern pipistrelle, is one of the smaller and previously more common bats in this Commonwealth. Tri-colored bats are one of the first bats to enter caves, mines and tunnels for hibernation and one of the last to depart in spring, thus having the longest exposure to the WNS fungus each winter. This bat tends to be less social and does not hibernate in clusters. Comparative pre- and post-WNS hibernacula surveys show a 98% decline in tri-colored bats in this Commonwealth since 2008. Summer mist-netting in 2011 showed a 185% increase in effort was required to capture this species as compared to pre-WNS. This species also has been a significant component of bat mortalities associated with wind turbines.

Until recently the little brown bat was the most common (abundant and widely distributed) bat in this Commonwealth. This species inhabits caves, mines and tunnels in winter and trees, barns, attics and caves in summer. A very social animal the little brown bat gathers in caves, mines and tunnels in large clusters for winter hibernation. Massive mortalities of this species began to occur in the 2009-2010 winter. Comparative pre- and post-WNS hibernacula surveys show a 99% decline in little brown bats in these hibernacula since 2008. Summer mist-netting in 2011 showed a 463% increase in effort was required to capture this species as compared to pre-WNS. As with the tri-colored bat, little browns have also been a component of bat mortalities associated with wind turbines.

With precipitous population declines remaining individuals are critical to the preservation and restoration of the species in this Commonwealth. These three bat species clearly are in imminent danger and their numbers and distribution has been severely reduced. Research is ongoing to investigate the spread of bat deaths associated with WNS, and to develop management strategies to minimize the impacts of WNS on bat populations. Possible mitigation actions likely will include seasonal restrictions on timber cutting in close proximity to known maternity sites, protection of hibernacula, restrictions on winter hibernacula human entry and use, seasonal cur-

tailment of wind turbines in critical areas and others. Also considered is State listing of these bats as endangered. State listing does not have the same impact to projects undergoing environmental reviews as does Federal listing. State listing is a first step in avoiding Federal listing, which results in stringent conservation regulations. It is anticipated and proposed that protective, avoidance and enhancement guidelines will have a high focus on hibernacula to promote survivorship, summer maternity sites to enhance reproduction and activities known to take the species. Since this is a unique issue dealing with once very common species, it will be necessary to essentially begin anew in collecting summer records for these species.

The Commission will take written public comment on the various proposals outlined previously, as well as any other comments on protective measures for these three bats, postmarked within 30 days of publication in the *Pennsylvania Bulletin*, addressed to Calvin DuBrock, Director, Wildlife Management, Game Commission, 2001 Elmerton Avenue, Harrisburg, PA 17110.

CARL G. ROE,
Executive Director

[Pa.B. Doc. No. 12-1555. Filed for public inspection August 10, 2012, 9:00 a.m.]

INDEPENDENT REGULATORY REVIEW COMMISSION

Notice of Filing of Final Rulemakings

The Independent Regulatory Review Commission (Commission) received the following regulation. It is scheduled to be considered on the date noted. The Commission's public meetings are held at 333 Market Street, 14th Floor, Harrisburg, PA at 10 a.m. To obtain a copy of the regulation, interested parties should first contact the promulgating agency. If a copy cannot be obtained from the promulgating agency, the Commission will provide a copy or a copy can be obtained from www.irrc.state.pa.us.

<i>Final-Form Reg. No.</i>	<i>Agency/Title</i>	<i>Received</i>	<i>Public Meeting</i>
7-460	Environmental Quality Board Noncoal Mining Fees	7/26/12	8/16/12

SILVAN B. LUTKEWITTE, III,
Chairperson

[Pa.B. Doc. No. 12-1556. Filed for public inspection August 10, 2012, 9:00 a.m.]

INSURANCE DEPARTMENT

Blue Cross of Northeastern Pennsylvania; Proposed Rate Increase for the Special Care Program; Rate Filing

Blue Cross of Northeastern Pennsylvania submitted a filing requesting the Insurance Department's (Department) approval to increase the monthly rates by 9.9% for the Blue Cross Special Care Program effective January 1, 2013. The estimated additional revenue generated from this rate increase is \$600,000 and requires a contribution from company surplus of approximately \$8,200,000. The projected average number of members per month during the January 1, 2013, through December 31, 2013, period is approximately 6,200 members.

Unless formal administrative action is taken prior to October 25, 2012, the subject filing may be deemed approved by operation of law.

A copy of the filing is available on the Department's web site at www.insurance.pa.gov. Under the tab "How to Find . . ." click on the link "PA Bulletin."

A copy of the filing is also available for public inspection, by appointment, during normal working hours at the Department's regional office in Harrisburg.

Interested parties are invited to submit written comments, suggestions or objections to James Laverty, Actuary, Insurance Department, Insurance Product Regulation and Market Enforcement, Room 1311, Strawberry Square, Harrisburg, PA 17120, jlaverty@pa.gov within 30 days after publication of this notice in the *Pennsylvania Bulletin*.

MICHAEL F. CONSEDINE,
Insurance Commissioner

[Pa.B. Doc. No. 12-1557. Filed for public inspection August 10, 2012, 9:00 a.m.]

Coventry Health and Life Insurance, d/b/a HealthAmerica; Preferred Provider Organization and Coordinated Care PPO; Rate Filing

On July 19, 2012, Coventry Health and Life Insurance submitted a rate filing to increase the premium rates for the Preferred Provider Organization and Coordinated Care PPO Products. The filing proposes a rate increase of 13.0% and will affect approximately 700 members. The proposed rate increase will generate approximately \$70,000 of additional annual revenue. The requested effective date of the change is October 1, 2012.

Unless formal administrative action is taken prior to October 25, 2012, the subject filing may be deemed approved by operation of law.

A copy of the filing is available on the Insurance Department's (Department) web site at www.insurance.pa.gov. Under the tab "How to Find . . ." click on the link "PA Bulletin."

A copy of the filing is also available for public inspection, by appointment, during normal working hours at the Department's regional office in Harrisburg.

Interested parties are invited to submit written or e-mail comments, suggestions or objections to Cherri Sanders-Jones, Insurance Department, Insurance Product Regulation, 1311 Strawberry Square, Harrisburg, PA 17120, csandersjo@pa.gov within 30 days after publication of this notice in the *Pennsylvania Bulletin*.

MICHAEL F. CONSEDINE,
Insurance Commissioner

[Pa.B. Doc. No. 12-1558. Filed for public inspection August 10, 2012, 9:00 a.m.]

HealthAssurance Pennsylvania, Inc.; Preferred Provider Organization and Coordinated Care PPO; Rate Filing

On July 19, 2012, HealthAssurance Pennsylvania, Inc. submitted a rate filing to increase the premium rates for the PPO and CCPPO Products for employers in the small group market. The filing proposes a rate increase of 13.0% and will affect approximately 80,000 members. The proposed rate increase will generate approximately \$7.1 million of additional annual revenue. The requested effective date of the change is October 1, 2012.

Unless formal administrative action is taken prior to October 25, 2012, the subject filing may be deemed approved by operation of law.

A copy of the filing is available on the Insurance Department's (Department) web site at www.insurance.pa.gov. Under the tab "How to Find . . ." click on the link "PA Bulletin."

A copy of the filing is also available for public inspection, by appointment, during normal working hours at the Department's regional office in Harrisburg.

Interested parties are invited to submit written or e-mail comments, suggestions or objections to Cherri Sanders-Jones, Insurance Department, Insurance Product Regulation, 1311 Strawberry Square, Harrisburg, PA

17120, csandersjo@pa.gov within 30 days after publication of this notice in the *Pennsylvania Bulletin*.

MICHAEL F. CONSEDINE,
Insurance Commissioner

[Pa.B. Doc. No. 12-1559. Filed for public inspection August 10, 2012, 9:00 a.m.]

Highmark Blue Cross Blue Shield; Direct Pay ClassicBlue Hospital Plan (Western Region); Rate Filing

On July 25, 2012, Highmark Blue Cross Blue Shield submitted a rate filing (1A-CPE-12-HBCBS) to increase the rates for the Direct Pay ClassicBlue Hospital Plan (Western Region) product by 9.4%. This will affect approximately 840 subscribers and will produce additional annual premium income of \$456,000. The requested effective date is January 1, 2013.

Unless formal administrative action is taken prior to November 23, 2012, the subject filing may be deemed approved by operation of law.

A copy of the filing is available on the Insurance Department's (Department) web site at www.insurance.pa.gov. Under the tab "How to Find . . ." click on the link "PA Bulletin."

A copy of the filing is also available for public inspection by appointment during normal working hours at the Department's regional office in Harrisburg.

Interested parties are invited to submit written or e-mail comments, suggestions or objections to James Sabater, Insurance Department, 1311 Strawberry Square, Harrisburg, PA 17120, jsabater@pa.gov within 30 days after publication of this notice in the *Pennsylvania Bulletin*.

MICHAEL F. CONSEDINE,
Insurance Commissioner

[Pa.B. Doc. No. 12-1560. Filed for public inspection August 10, 2012, 9:00 a.m.]

Highmark Blue Cross Blue Shield; Direct Pay ClassicBlue Major Medical Plan (Western Region); Rate Filing

On July 25, 2012, Highmark Blue Cross Blue Shield submitted a rate filing (1A-PMM-12-HBCBS) to increase the rates for the Direct Pay ClassicBlue Major Medical Plan (Western Region) product by 9.4%. This will affect approximately 630 subscribers and will produce additional annual premium income of \$132,000. The requested effective date is January 1, 2013.

Unless formal administrative action is taken prior to November 23, 2012, the subject filing may be deemed approved by operation of law.

A copy of the filing is available on the Insurance Department's (Department) web site at www.insurance.pa.gov. Under the tab "How to Find . . ." click on the link "PA Bulletin."

A copy of the filing is also available for public inspection by appointment during normal working hours at the Department's regional office in Harrisburg.

Interested parties are invited to submit written or e-mail comments, suggestions or objections to James Sabater, Insurance Department, 1311 Strawberry Square, Harrisburg, PA 17120, jsabater@pa.gov within 30 days after publication of this notice in the *Pennsylvania Bulletin*.

MICHAEL F. CONSEDINE,
Insurance Commissioner

[Pa.B. Doc. No. 12-1561. Filed for public inspection August 10, 2012, 9:00 a.m.]

Highmark Blue Cross Blue Shield; Direct Pay Guaranteed Issue PPO High Deductible Health Plan (Western Region); Rate Filing

On July 25, 2012, Highmark Blue Cross Blue Shield submitted a rate filing (1A-HDHP/WDP/GI-12-HBCBS) to increase the rates for the Direct Pay Guaranteed Issue PPO High Deductible Health Plan (Western Region) product by 9.5%. This will affect approximately 1,100 subscribers and will produce additional annual premium income of \$948,000. The requested effective date is January 1, 2013.

Unless formal administrative action is taken prior to November 23, 2012, the subject filing may be deemed approved by operation of law.

A copy of the filing is available on the Insurance Department's (Department) web site at www.insurance.pa.gov. Under the tab "How to Find . . ." click on the link "PA Bulletin."

A copy of the filing is also available for public inspection by appointment during normal working hours at the Department's regional office in Harrisburg.

Interested parties are invited to submit written or e-mail comments, suggestions or objections to James Sabater, Insurance Department, 1311 Strawberry Square, Harrisburg, PA 17120, jsabater@pa.gov within 30 days after publication of this notice in the *Pennsylvania Bulletin*.

MICHAEL F. CONSEDINE,
Insurance Commissioner

[Pa.B. Doc. No. 12-1562. Filed for public inspection August 10, 2012, 9:00 a.m.]

Highmark Blue Cross Blue Shield; Guaranteed Issue PreferredBlue Individual PPO (Western Region); Rate Filing

By filing No. 1A-GI INGPPPO-12-HBCBS, Highmark, Inc. (Western Region) requests approval to increase the premium rates for its Guaranteed Issue PreferredBlue Individual PPO. The filing requests an average increase of about 9.5% or \$67.88 per contract per month. This filing will affect approximately 5,100 contract holders and will produce additional income of about \$4.18 million annually. The requested effective date of the change is January 1, 2013.

Unless formal administrative action is taken prior to October 25, 2012, the subject filing may be deemed approved by operation of law.

A copy of the filing is available on the Insurance Department's (Department) web site at www.insurance.pa.gov. Under the tab "How to Find . . ." click on the link "PA Bulletin."

A copy of the filing is also available for public inspection, by appointment, during normal working hours at the Department's Harrisburg office.

Interested parties are invited to submit written or e-mail comments, suggestions or objections to Cheri Sanders-Jones, Insurance Department, Insurance Product Regulation, 1311 Strawberry Square, Harrisburg, PA 17120, csandersjo@pa.gov within 30 days after publication of this notice in the *Pennsylvania Bulletin*.

MICHAEL F. CONSEDINE,
Insurance Commissioner

[Pa.B. Doc. No. 12-1563. Filed for public inspection August 10, 2012, 9:00 a.m.]

Highmark Blue Shield; ClassicBlue Hospital, Medical/Surgical and Major Medical Plans (Central Region); Rate Filing

By filing No. 1A-CMM-12-HBS, Highmark, Inc., d/b/a Highmark Blue Shield, requests approval to adjust rates for its ClassicBlue Comprehensive Major Medical Plan. The average requested rate increase is 9.5% or \$54.84 per contract per month. The proposed rate increase would affect approximately 5,000 contract holders and would produce additional revenue of about \$3.3 million annually. The requested effective date of the change is January 1, 2013.

Unless formal administrative action is taken prior to October 25, 2012, the subject filing may be deemed approved by operation of law.

A copy of the filing is available on the Insurance Department's (Department) web site at www.insurance.pa.gov. Under the tab "How to Find . . ." click on the link "PA Bulletin."

A copy of the filing is also available for public inspection, by appointment, during normal working hours at the Department's Harrisburg office.

Interested parties are invited to submit written or e-mail comments, suggestions or objections to Rashmi Mathur, Insurance Department, Insurance Product Regulation, 1311 Strawberry Square, Harrisburg, PA 17120, rmathur@pa.gov within 30 days after publication of this notice in the *Pennsylvania Bulletin*.

MICHAEL F. CONSEDINE,
Insurance Commissioner

[Pa.B. Doc. No. 12-1564. Filed for public inspection August 10, 2012, 9:00 a.m.]

Highmark Blue Shield; ClassicBlue Hospital, Medical/Surgical and Major Medical Plans (Central Region); Rate Filing

By filing No. 1A-TRAD-12-HBS, Highmark, Inc., d/b/a Highmark Blue Shield, requests approval to adjust rates for its ClassicBlue Hospital, Medical/Surgical and Major Medical Plans. The average requested rate increase is 9.4% or \$84.30 per contract per month. The proposed rate

increase would affect approximately 63 contract holders and would produce additional revenue of about \$63,600 annually. The requested effective date of the change is January 1, 2013.

Unless formal administrative action is taken prior to October 25, 2012, the subject filing may be deemed approved by operation of law.

A copy of the filing is available on the Insurance Department's (Department) web site at www.insurance.pa.gov. Under the tab "How to Find . . ." click on the link "PA Bulletin."

A copy of the filing is also available for public inspection, by appointment, during normal working hours at the Department's Harrisburg office.

Interested parties are invited to submit written or e-mail comments, suggestions or objections to Rashmi Mathur, Insurance Department, Insurance Product Regulation, 1311 Strawberry Square, Harrisburg, PA 17120, rmathur@pa.gov within 30 days after publication of this notice in the *Pennsylvania Bulletin*.

MICHAEL F. CONSEDINE,
Insurance Commissioner

[Pa.B. Doc. No. 12-1565. Filed for public inspection August 10, 2012, 9:00 a.m.]

Highmark Blue Shield; Direct Pay Guaranteed Issue PPO High Deductible Health Plans (Central Region); Rate Filing

By filing No. 1A-HDHP/CDP/GI-12-HBS, Highmark, Inc., d/b/a Highmark Blue Shield, requests approval to adjust rates for its Direct Pay Guaranteed Issue PPO High Deductible Health Plan. The average requested rate increase is 9.5% or \$62.54 per contract per month. The proposed rate increase would affect approximately 1,200 contract holders and would produce additional revenue of about \$876,000 annually. The requested effective date of the change is January 1, 2013.

Unless formal administrative action is taken prior to October 25, 2012, the subject filing may be deemed approved by operation of law.

A copy of the filing is available on the Insurance Department's (Department) web site at www.insurance.pa.gov. Under the tab "How to Find . . ." click on the link "PA Bulletin."

A copy of the filing is also available for public inspection, by appointment, during normal working hours at the Department's Harrisburg office.

Interested parties are invited to submit written or e-mail comments, suggestions or objections to Rashmi Mathur, Insurance Department, Insurance Product Regulation, 1311 Strawberry Square, Harrisburg, PA 17120, rmathur@pa.gov within 30 days after publication of this notice in the *Pennsylvania Bulletin*.

MICHAEL F. CONSEDINE,
Insurance Commissioner

[Pa.B. Doc. No. 12-1566. Filed for public inspection August 10, 2012, 9:00 a.m.]

Highmark, Inc. Filing No. 1A-SCMS-12-HI; Request for Approval to Increase Rates for Special Care Medical Surgical Plans; Rate Filing

By filing No. 1A-SCMS-12-HI, Highmark, Inc., d/b/a Highmark Blue Cross Blue Shield and Highmark Blue Shield, requests approval to revise premium rates for its Special Care Medical/Surgical programs in the Central, Western, Southeastern and Northeastern Pennsylvania regions.

Highmark is requesting a 9.5% increase in Central Pennsylvania. This will affect 4,100 contracts and generate an additional \$28,000 per month in premium.

Highmark is requesting a 9.5% increase in Western Pennsylvania. This will affect 11,000 contracts and generate an additional \$86,000 per month in premium.

Highmark is requesting a 9.5% increase in Southeastern Pennsylvania. This will affect 7,200 contracts and generate an additional \$53,000 per month in premium.

Highmark is requesting a 9.5% increase in Northeastern Pennsylvania. This will affect 5,500 contracts and generate an additional \$39,000 per month in premium.

The filing requests an average increase of 9.5% or \$7.40 per contract per month. This will affect about 27,800 contract holders in total and produce an additional premium income of about \$206,000 per month. The requested effective date of the change is January 1, 2013.

Unless formal administrative action is taken prior to October 24, 2012, the subject filing may be deemed approved by operation of law.

A copy of the filing is available on the Insurance Department's (Department) web site at www.insurance.pa.gov. Under the tab "How to Find . . ." click on the link "PA Bulletin."

A copy of the filing is also available for public inspection, by appointment, during normal working hours at the Department's regional office in Harrisburg.

Interested parties are invited to submit written comments, suggestions or objections to James Laverty, Actuary, Insurance Department, Insurance Product Regulation and Market Enforcement, Room 1311, Strawberry Square, Harrisburg, PA 17120, jlaverty@pa.gov within 30 days after publication of this notice in the *Pennsylvania Bulletin*.

MICHAEL F. CONSEDINE,
Insurance Commissioner

[Pa.B. Doc. No. 12-1567. Filed for public inspection August 10, 2012, 9:00 a.m.]

Highmark, Inc. Filing No. 1A-SSC-12-HBCBS; Request for Approval to Increase Rates for the Direct Pay Special Care Hospital Plans (Western Region); Rate Filing

By filing No. 1A-SSC-12-HBCBS, Highmark, Inc., d/b/a Highmark Blue Shield requests approval to revise premium rates for its Direct Pay Special Care Hospital Plan in the Western Pennsylvania region.

Highmark is requesting a 9.5% increase or \$13.52 per contract per month. This will affect 11,000 contracts and generate an additional \$149,000 per month in premium. The requested effective date of the change is January 1, 2013.

Unless formal administrative action is taken prior to October 25, 2012, the subject filing may be deemed approved by operation of law.

A copy of the filing is available on the Insurance Department's (Department) web site at www.insurance.pa.gov. Under the tab "How to Find . . ." click on the link "PA Bulletin."

A copy of the filing is also available for public inspection, by appointment, during normal working hours at the Department's regional office in Harrisburg.

Interested parties are invited to submit written comments, suggestions or objections to James Laverty, Actuary, Insurance Department, Insurance Product Regulation and Market Enforcement, Room 1311, Strawberry Square, Harrisburg, PA 17120, jlaverty@pa.gov within 30 days after publication of this notice in the *Pennsylvania Bulletin*.

MICHAEL F. CONSEDINE,
Insurance Commissioner

[Pa.B. Doc. No. 12-1568. Filed for public inspection August 10, 2012, 9:00 a.m.]

Highmark, Inc. Filing No. 1A-SSC-12-HBS; Request for Approval to Increase Rates for the Direct Pay Special Care Hospital Plans (Central Region); Rate Filing

By filing No. 1A-SSC-12-HBS, Highmark, Inc., d/b/a Highmark Blue Shield requests approval to revise premium rates for its Direct Pay Special Care Hospital Plan in the Central Pennsylvania region.

Highmark is requesting a 9.5% increase or \$12.15 per contract per month. This will affect 4,100 contracts and generate an additional \$50,000 per month in premium. The requested effective date of the change is January 1, 2013.

Unless formal administrative action is taken prior to October 25, 2012, the subject filing may be deemed approved by operation of law.

A copy of the filing is available on the Insurance Department's (Department) web site at www.insurance.pa.gov. Under the tab "How to Find . . ." click on the link "PA Bulletin."

A copy of the filing is also available for public inspection, by appointment, during normal working hours at the Department's regional office in Harrisburg.

Interested parties are invited to submit written comments, suggestions or objections to James Laverty, Actuary, Insurance Department, Insurance Product Regulation and Market Enforcement, Room 1311, Strawberry Square, Harrisburg, PA 17120, jlaverty@pa.gov within 30 days after publication of this notice in the *Pennsylvania Bulletin*.

MICHAEL F. CONSEDINE,
Insurance Commissioner

[Pa.B. Doc. No. 12-1569. Filed for public inspection August 10, 2012, 9:00 a.m.]

John Hancock Life Insurance Company; Proposed Rate Increase for Several LTC Forms; Rate Filing

John Hancock Life Insurance Company is requesting approval to increase the premium an aggregate 18.7% on the following individual LTC forms: LTC-PA-91, NH-PA-91, LTC-94 PA, LTC-94 PA 2/95, NH-94 PA, NH-94 PA 2/95, LTC-96 PA 9/96, LTC-96 PA 6/98, LTC-98FR PA 6/98, LTC-96CL PA 9/96, NH-99 PA 4/99, NH-99FR PA 4/99, LTC2000 PA 4/00, LTC-02 PA, BSC-02 PA, LTC-02FR PA and BSC-02FR PA. The increase will only apply to policies without the simple or compound inflation riders. The increase will affect 3,298 Commonwealth policyholders.

Unless formal administrative action is taken prior to October 25, 2012, the subject filing may be deemed approved by operation of law.

A copy of the filing is available on the Insurance Department's (Department) web site at www.insurance.pa.gov. Under the tab "How to Find . . ." click on the link "PA Bulletin."

A copy of the filing is also available for public inspection, by appointment, during normal working hours at the Department's regional office in Harrisburg.

Interested parties are invited to submit written comments, suggestions or objections to James Laverty, Actuary, Insurance Department, Insurance Product Regulation and Market Enforcement, Room 1311, Strawberry Square, Harrisburg, PA 17120, jlaverty@pa.gov within 30 days after publication of this notice in the *Pennsylvania Bulletin*.

MICHAEL F. CONSEDINE,
Insurance Commissioner

[Pa.B. Doc. No. 12-1570. Filed for public inspection August 10, 2012, 9:00 a.m.]

Keystone Health Plan West; Individual Conversion; Rate Filing

On July 24, 2012, Keystone Health Plan West submitted a rate filing (1-CONV-12-KHPW) to increase the premium rates for the Conversion Product. The filing proposes a rate increase of 9.5% or \$43.65 per contract per month for the medical benefit and an increase of 9.4% or \$6.55 per contract per month for the pharmacy. This filing will generate approximately \$516,000 of additional annual revenue and will affect approximately 925 contract holders. The requested effective date of the change is January 1, 2013.

Unless formal administrative action is taken prior to October 25, 2012, the subject filing may be deemed approved by operation of law.

A copy of the filing is available on the Insurance Department's (Department) web site at www.insurance.pa.gov. Under the tab "How to Find . . ." click on the link "PA Bulletin."

A copy of the filing is also available for public inspection, by appointment, during normal working hours at the Department's regional office in Harrisburg.

Interested parties are invited to submit written or e-mail comments, suggestions or objections to Cherri Sanders-Jones, Insurance Department, Insurance Product Regulation, 1311 Strawberry Square, Harrisburg, PA

17120, csandersjo@pa.gov within 30 days after publication of this notice in the *Pennsylvania Bulletin*.

MICHAEL F. CONSEDINE,
Insurance Commissioner

[Pa.B. Doc. No. 12-1571. Filed for public inspection August 10, 2012, 9:00 a.m.]

Keystone Health Plan West; KeystoneBlue for Kids; Rate Filing

On July 24, 2012, Keystone Health Plan West submitted a rate filing (1A-CHK-12-KHPW) to increase the premium rates for the Direct Pay KeystoneBlue for Kids Plan. The filing proposes a rate increase of about 9.5% or \$13.72 per member per month and will affect approximately 600 members. The proposed rate increase will generate approximately \$108,000 of additional annual revenue. The requested effective date of the change is January 1, 2013.

Unless formal administrative action is taken prior to October 25, 2012, the subject filing may be deemed approved by operation of law.

A copy of the filing is available on the Insurance Department's (Department) web site at www.insurance.pa.gov. Under the tab "How to Find . . ." click on the link "PA Bulletin."

A copy of the filing is also available for public inspection, by appointment, during normal working hours at the Department's regional office in Harrisburg.

Interested parties are invited to submit written or e-mail comments, suggestions or objections to Cherri Sanders-Jones, Insurance Department, Insurance Product Regulation, 1311 Strawberry Square, Harrisburg, PA 17120, csandersjo@pa.gov within 30 days after publication of this notice in the *Pennsylvania Bulletin*.

MICHAEL F. CONSEDINE,
Insurance Commissioner

[Pa.B. Doc. No. 12-1572. Filed for public inspection August 10, 2012, 9:00 a.m.]

Provident Life and Accident Insurance Company; Proposed Multi-Step Rate Increase for Several LTC Forms; Rate Filing

Provident Life and Accident Insurance Company is requesting approval to increase the premium on the following individual LTC forms: RLTC03, RLTCP03, LTC03, LTCP03 and LTCT03. The requested increase would be accomplished over 3 years with the first increase of 30%, a second increase 1 year later of 25% and a final increase of 25% implemented 1 year after the second increase. The increase will affect 439 policyholders in this Commonwealth.

Unless formal administrative action is taken prior to October 25, 2012, the subject filing may be deemed approved by operation of law.

A copy of the filing is available on the Insurance Department's (Department) web site at www.insurance.pa.gov. Under the tab "How to Find . . ." click on the link "PA Bulletin."

A copy of the filing is also available for public inspection, by appointment, during normal working hours at the Department's regional office in Harrisburg.

Interested parties are invited to submit written comments, suggestions or objections to James Lavery, Actuary, Insurance Department, Insurance Product Regulation and Market Enforcement, Room 1311, Strawberry Square, Harrisburg, PA 17120, jlavery@pa.gov within 30 days after publication of this notice in the *Pennsylvania Bulletin*.

MICHAEL F. CONSEDINE,
Insurance Commissioner

[Pa.B. Doc. No. 12-1573. Filed for public inspection August 10, 2012, 9:00 a.m.]

The Travelers Home and Marine Insurance Company; TravCo Insurance Company; Private Passenger Automobile; Rate Revision

On July 26, 2012, the Insurance Department (Department) received from The Travelers Home and Marine Insurance Company and TravCo Insurance Company a filing for rate level changes for private passenger automobile insurance.

The companies request an overall 5.29% increase, amounting to \$13,392,210, to be effective October 26, 2012. This overall figure represents an average; the effect of this filing on the rates for individual consumers may vary.

Unless formal administrative action is taken prior to September 24, 2012, the subject filing may be deemed approved by operation of law.

A copy of the filing is available on the Department's web site at www.insurance.pa.gov. Under the tab "How to Find . . ." click on "PA Bulletin."

Interested parties are invited to submit written comments regarding the filing to Michael McKenney, Insurance Department, Office of Insurance Product Regulation, 1311 Strawberry Square, Harrisburg, PA 17120, mmckenney@pa.gov within 30 days after publication of this notice in the *Pennsylvania Bulletin*.

MICHAEL F. CONSEDINE,
Insurance Commissioner

[Pa.B. Doc. No. 12-1574. Filed for public inspection August 10, 2012, 9:00 a.m.]

LIQUOR CONTROL BOARD

Expiration of Leases

The Liquor Control Board seeks the following new sites:

Montgomery County, Wine & Spirits Store # 4602, Ardmore, PA 19003

Lease expiration date: August 31, 2012

Lease retail commercial space to the Commonwealth. Proposals are invited to provide the Liquor Control Board with approximately 18,000 net useable square feet of new or existing retail commercial space within a 0.50-mile radius of the intersection of Route 30 and Greenfield Avenue in Ardmore, PA.

Proposals due: August 31, 2012, at 12 p.m.

Department: Liquor Control Board
Location: Real Estate Region #1, 7116 Ridge Avenue, Philadelphia, PA 19128-3250
Contact: Henry Blocker, Jr., (215) 482-9670, hblocker@pa.gov

Montgomery County, Wine & Spirits Store # 4606, Maple Glen, PA 19002

Lease expiration date: May 31, 2017

Lease retail commercial space to the Commonwealth. Proposals are invited to provide the Liquor Control Board with approximately 5,000 to 10,000 net useable square feet of new or existing retail commercial space within a 1-mile radius of the intersection of Route 63 and Norristown Road in Horsham Township, PA.

Proposals due: August 31, 2012, at 12 p.m.

Department: Liquor Control Board
Location: Real Estate Region #1, 7116 Ridge Avenue, Philadelphia, PA 19128-3250
Contact: Henry Blocker, Jr., (215) 482-9670, hblocker@pa.gov

Philadelphia County, Wine & Spirits Store # (TBD) (New Store), Philadelphia, PA

Lease retail commercial space to the Commonwealth. Proposals are invited to provide the Liquor Control Board with approximately 8,000 net useable square feet of new or existing retail commercial space within a 0.50-mile radius of the intersection of North Broad Street and Oxford Street in Philadelphia, PA.

Proposals due: August 31, 2012, at 12 p.m.

Department: Liquor Control Board
Location: Real Estate Region #1, 7116 Ridge Avenue, Philadelphia, PA 19128-3250
Contact: Henry Blocker, Jr., (215) 482-9670, hblocker@pa.gov

Philadelphia County, Wine & Spirits Store # (TBD) (New Store), Philadelphia, PA

Lease retail commercial space to the Commonwealth. Proposals are invited to provide the Liquor Control Board with approximately 9,000 net useable square feet of new or existing retail commercial space within a 0.75-mile radius of Broad Street and Walnut Street in Philadelphia, PA.

Proposals due: August 31, 2012, at 12 p.m.

Department: Liquor Control Board
Location: Real Estate Region #1, 7116 Ridge Avenue, Philadelphia, PA 19128-3250
Contact: Henry Blocker, Jr., (215) 482-9670, hblocker@pa.gov

JOSEPH E. BRION,
Chairperson

[Pa.B. Doc. No. 12-1575. Filed for public inspection August 10, 2012, 9:00 a.m.]

PENNSYLVANIA PUBLIC UTILITY COMMISSION

Indirect Transfer of Control

A-2012-2316621; A-2012-2316622; A-2012-2316623; A-2012-2316624; A-2012-2316625; A-2012-2316557. Broadview Networks, Inc., Broadview NP Acquisition Corporation, ATX Licensing, Inc., Bridgecom International, Inc., Eureka Telecom, Inc. and A.R.C. Networks, Inc. Joint application of Broadview Networks, Inc., Broadview NP Acquisition Corporation, ATX Licens-

ing, Inc., Bridgecom International, Inc., Eureka Telecom, Inc. and A.R.C. Networks, Inc. for approval of an indirect transfer of control.

Formal protests and petitions to intervene must be filed in accordance with 52 Pa. Code (relating to public utilities). Filings must be made with the Secretary of the Pennsylvania Public Utility Commission, P. O. Box 3265, Harrisburg, PA 17105-3265, with a copy served on the applicant, on or before August 27, 2012. The documents filed in support of the application are available for inspection and copying at the Office of the Secretary between 8 a.m. and 4:30 p.m., Monday through Friday, on the Pennsylvania Public Utility Commission's web site at www.puc.state.pa.us, and at the applicant's business address.

Applicant: Broadview Networks, Inc., Broadview NP Acquisition Corporation, ATX Licensing, Inc., Bridgecom International, Inc., Eureka Telecom, Inc. and A.R.C. Networks Inc.

Through and By Counsel: Catherine Wang, Esquire, Danielle Burt, Esquire, Bingham McCutchen, LLP, 2020 K Street NW, Washington DC 20006-1806

ROSEMARY CHIAVETTA,
Secretary

[Pa.B. Doc. No. 12-1576. Filed for public inspection August 10, 2012, 9:00 a.m.]

Service of Notice of Motor Carrier Applications

The following temporary authority and/or permanent authority applications for the right to render service as a common carrier or contract carrier in this Commonwealth have been filed with the Pennsylvania Public Utility Commission. Formal protests and petitions to intervene must be filed in accordance with 52 Pa. Code (relating to public utilities). A protest shall indicate whether it applies to the temporary authority application, the permanent authority application, or both. Filings must be made with the Secretary, Pennsylvania Public Utility Commission, P. O. Box 3265, Harrisburg, PA 17105-3265, with a copy served on the applicant by August 27, 2012. Documents filed in support of the applications are available for inspection and copying at the Office of the Secretary between 8 a.m. and 4:30 p.m., Monday through Friday, and at the business address of the respective applicant.

Applications of the following for approval to begin operating as common carriers for transportation of persons as described under each application.

A-2012-2301492. Palmerton Community Ambulance Association (P. O. Box 2, 501 Delaware Avenue, Palmerton, Carbon County, PA 18071)—for the right to begin to transport, as a common carrier, by motor vehicle, persons in paratransit service, from points in the Counties of Carbon, Lehigh, Monroe, Northampton and Schuylkill, to points in Pennsylvania, and return.

A-2012-2301506. Bonnie L. Anderson (P. O. Box 178, 2478 Route 35 South, East Waterford, Juniata County, PA 17021)—for the right to begin to transport, as a common carrier, by motor vehicle, persons in paratransit service, limited to persons whose personal convictions prevent them from owning or operating motor vehicles, from points in the Counties of Center, Dauphin, Lancaster, Northumberland and Perry, to points in Pennsylvania, and return.

A-2012-2301707. Airport Limousine Service, Inc., t/a Freedom Transportation (1825 Liverpool Street, Pittsburgh, Allegheny County, PA 15233)—persons, in paratransit service, from points in Allegheny County to points in the Counties of Beaver, Butler, Fayette, Greene, Lawrence, Mercer, Washington and Westmoreland, and return. *Attorney:* Paul S. Guarnieri, Malone, Middleman, P.C., 117 VIP Drive, Northridge Office Plaza, Suite 320, Wexford, PA 15090.

A-2012-2302918. Eminent Medical Transport, Inc. (61 Morton Avenue, Morton PA 19070) for the right to begin to transport, as a common carrier, by motor vehicle, persons in paratransit service, from points in the Counties of Montgomery, Bucks, Delaware, Chester and Philadelphia, to points in Pennsylvania and return. *Attorney:* Dave P. Temple, Esquire, 1760 Market Street, Suite 1100, Philadelphia, PA 19103.

A-2012-2304150. William H. Judy, Sr. (240 Spain Road, Herndon, Dauphin County, PA 17830)—persons in paratransit service, limited to persons whose personal convictions prevent them from owning or operating motor vehicles, from points in the Counties of Dauphin, Northumberland and Schuylkill, to points in Pennsylvania, and return.

Applications of the following for approval of the beginning of the exercise of the right and privilege of operating motor vehicles as common carriers for the transportation of household goods as described under each application.

A-2012-2302016. Big Brother Little Brother Enterprises, LLC (2249 North Broad Street, Philadelphia, PA 19132)—household goods in use, between points in Pennsylvania.

A-2012-2303135. Sharp Moving and Transport, LLC (11155 Silverthorn Road, Edinboro, Erie County, PA 16412)—a limited liability corporation of the Commonwealth of Pennsylvania—household goods in use, from points in Erie County to points in Pennsylvania; and vice versa. *Attorney:* Steven K. Haas, 100 North Tenth Street, Harrisburg, PA 17101.

A-2012-2303500. Jared R. Fetrow, t/d/b/a Moving Made Awesome (2853 Robin Road, York, PA 17404) for the right to begin to transport, as a common carrier, by motor vehicle, household goods in use, from points in York County, to points in Pennsylvania.

Application of the following for the approval of the right and privilege to *discontinue/abandon* operating as *common carriers* by motor vehicle and for cancellation of the certificate of public convenience as described under the application.

A-2012-2307983. Ruth T. and Clarence N. Kauffman, Tenants by Entirety, t/d/b/a Kauffman Transport (483 Deer Run Drive, McAlisterville, Juniata County, PA 17049)—discontinuance of service—persons, in paratransit service, limited to persons whose personal convictions prevent them from owning or operating motor vehicles, from points in the Counties of Juniata and Mifflin, to points in Pennsylvania, and return.

ROSEMARY CHIAVETTA,
Secretary

[Pa.B. Doc. No. 12-1577. Filed for public inspection August 10, 2012, 9:00 a.m.]

Telecommunications

A-2012-2316802. Verizon North, LLC and Cellco Partnership. Joint petition of Verizon North, LLC and Cellco Partnership for approval of amendment No. 4 to the interconnection agreement under section 252(e) of the Telecommunications Act of 1996.

Verizon North, LLC and Cellco Partnership, by its counsel, filed on July 27, 2012, at the Pennsylvania Public Utility Commission (Commission), a joint petition for approval of amendment No. 4 to the interconnection agreement under sections 251 and 252 of the Telecommunications Act of 1996.

Interested parties may file comments concerning the petition and agreement with the Secretary, Pennsylvania Public Utility Commission, P. O. Box 3265, Harrisburg, PA 17105-3265. Comments are due on or before 10 days after the date of publication of this notice. Copies of the Verizon North, LLC and Cellco Partnership joint petition are on file with the Commission and are available for public inspection.

The contact person is Cheryl Walker Davis, Director, Office of Special Assistants, (717) 787-1827.

ROSEMARY CHIAVETTA,
Secretary

[Pa.B. Doc. No. 12-1578. Filed for public inspection August 10, 2012, 9:00 a.m.]

Telecommunications

A-2012-2316779. Verizon North, LLC and T-Mobile Northeast, LLC. Joint petition of Verizon North, LLC and T-Mobile Northeast, LLC for approval of amendment No. 2 to the interconnection agreement under section 252(e) of the Telecommunications Act of 1996.

Verizon North, LLC and T-Mobile Northeast, LLC, by its counsel, filed on July 27, 2012, at the Pennsylvania Public Utility Commission (Commission), a joint petition for approval of amendment No. 2 to the interconnection agreement under sections 251 and 252 of the Telecommunications Act of 1996.

Interested parties may file comments concerning the petition and agreement with the Secretary, Pennsylvania Public Utility Commission, P. O. Box 3265, Harrisburg, PA 17105-3265. Comments are due on or before 10 days after the date of publication of this notice. Copies of the Verizon North, LLC and T-Mobile Northeast, LLC joint petition are on file with the Commission and are available for public inspection.

The contact person is Cheryl Walker Davis, Director, Office of Special Assistants, (717) 787-1827.

ROSEMARY CHIAVETTA,
Secretary

[Pa.B. Doc. No. 12-1579. Filed for public inspection August 10, 2012, 9:00 a.m.]

Telecommunications

A-2012-2315790. Verizon North, LLC and Vista PCS, LLC. Joint petition of Verizon North, LLC and Vista PCS, LLC for approval of amendment No. 1 to the

interconnection agreement under section 252(e) of the Telecommunications Act of 1996.

Verizon North, LLC and Vista PCS, LLC, by its counsel, filed on July 24, 2012, at the Pennsylvania Public Utility Commission (Commission), a joint petition for approval of amendment No. 1 to the interconnection agreement under sections 251 and 252 of the Telecommunications Act of 1996.

Interested parties may file comments concerning the petition and agreement with the Secretary, Pennsylvania Public Utility Commission, P. O. Box 3265, Harrisburg, PA 17105-3265. Comments are due on or before 10 days after the date of publication of this notice. Copies of the Verizon North, LLC and Vista PCS, LLC joint petition are on file with the Commission and are available for public inspection.

The contact person is Cheryl Walker Davis, Director, Office of Special Assistants, (717) 787-1827.

ROSEMARY CHIAVETTA,
Secretary

[Pa.B. Doc. No. 12-1580. Filed for public inspection August 10, 2012, 9:00 a.m.]

Telecommunications

A-2012-2316800. Verizon Pennsylvania, Inc. and Celco Partnership. Joint petition of Verizon Pennsylvania, Inc. and Celco Partnership for approval of amendment No. 4 to the interconnection agreement under section 252(e) of the Telecommunications Act of 1996.

Verizon Pennsylvania, Inc. and Celco Partnership, by its counsel, filed on July 27, 2012, at the Pennsylvania Public Utility Commission (Commission), a joint petition for approval of amendment No. 4 to the interconnection agreement under sections 251 and 252 of the Telecommunications Act of 1996.

Interested parties may file comments concerning the petition and agreement with the Secretary, Pennsylvania Public Utility Commission, P. O. Box 3265, Harrisburg, PA 17105-3265. Comments are due on or before 10 days after the date of publication of this notice. Copies of the Verizon Pennsylvania, Inc. and Celco Partnership joint petition are on file with the Commission and are available for public inspection.

The contact person is Cheryl Walker Davis, Director, Office of Special Assistants, (717) 787-1827.

ROSEMARY CHIAVETTA,
Secretary

[Pa.B. Doc. No. 12-1581. Filed for public inspection August 10, 2012, 9:00 a.m.]

Telecommunications

A-2012-2316577. Verizon Pennsylvania, Inc. and T-Mobile Northeast, LLC. Joint petition of Verizon Pennsylvania, Inc. and T-Mobile Northeast, LLC for approval of amendment No. 2 to the interconnection agreement under section 252(e) of the Telecommunications Act of 1996.

Verizon Pennsylvania, Inc. and T-Mobile Northeast, LLC, by its counsel, filed on July 27, 2012, at the Pennsylvania Public Utility Commission (Commission), a joint petition for approval of amendment No. 2 to the

interconnection agreement under sections 251 and 252 of the Telecommunications Act of 1996.

Interested parties may file comments concerning the petition and agreement with the Secretary, Pennsylvania Public Utility Commission, P. O. Box 3265, Harrisburg, PA 17105-3265. Comments are due on or before 10 days after the date of publication of this notice. Copies of the Verizon Pennsylvania, Inc. and T-Mobile Northeast, LLC joint petition are on file with the Commission and are available for public inspection.

The contact person is Cheryl Walker Davis, Director, Office of Special Assistants, (717) 787-1827.

ROSEMARY CHIAVETTA,
Secretary

[Pa.B. Doc. No. 12-1582. Filed for public inspection August 10, 2012, 9:00 a.m.]

Telecommunications

A-2012-2315770. Verizon Pennsylvania, Inc. and Vista PCS, LLC. Joint petition of Verizon Pennsylvania, Inc. and Vista PCS, LLC for approval of amendment No. 1 to the interconnection agreement under section 252(e) of the Telecommunications Act of 1996.

Verizon Pennsylvania, Inc. and Vista PCS, LLC, by its counsel, filed on July 24, 2012, at the Pennsylvania Public Utility Commission (Commission), a joint petition for approval of amendment No. 1 to the interconnection agreement under sections 251 and 252 of the Telecommunications Act of 1996.

Interested parties may file comments concerning the petition and agreement with the Secretary, Pennsylvania Public Utility Commission, P. O. Box 3265, Harrisburg, PA 17105-3265. Comments are due on or before 10 days after the date of publication of this notice. Copies of the Verizon Pennsylvania, Inc. and Vista PCS, LLC joint petition are on file with the Commission and are available for public inspection.

The contact person is Cheryl Walker Davis, Director, Office of Special Assistants, (717) 787-1827.

ROSEMARY CHIAVETTA,
Secretary

[Pa.B. Doc. No. 12-1583. Filed for public inspection August 10, 2012, 9:00 a.m.]

Water Service

A-2012-2285320. Pennsylvania American Water Company. Amended application of Pennsylvania American Water Company for approval of the: 1) transfer by sale of the water works property and rights of the Paint Township Municipal Water Authority to Pennsylvania American Water; and 2) the beginning by Pennsylvania American Water of water serviced to the public in a portion of Paint Township, Clarion County, presently being served by the Paint Township Municipal Water Authority.

Formal protests and petitions to intervene must be filed in accordance with 52 Pa. Code (relating to public utilities). Filings must be made with the Secretary of the Pennsylvania Public Utility Commission, P. O. Box 3265, Harrisburg, PA 17105-3265, with a copy served on the applicant, on or before August 27, 2012. The documents filed in support of the application are available for

inspection and copying at the Office of the Secretary between 8 a.m. and 4:30 p.m., Monday through Friday, on the Pennsylvania Public Utility Commission's web site at www.puc.state.pa.us, and at the applicant's business address.

Applicant: Pennsylvania American Water Company

Through and By Counsel: Velma A. Redmond, Esquire, Susan Simms Marsh, Esquire, Seth A. Mendelsohn, Esquire, 800 West Hersheypark Drive, Hershey, PA 17033

ROSEMARY CHIAVETTA,
Secretary

[Pa.B. Doc. No. 12-1584. Filed for public inspection August 10, 2012, 9:00 a.m.]

PHILADELPHIA PARKING AUTHORITY

Motor Carrier Medallion Transfer Application for Service in the City of Philadelphia

Permanent or temporary authority to render services as a common carrier in the City of Philadelphia has been filed with the Philadelphia Parking Authority (PPA) Taxicab and Limousine Division (TLD) by the following named applicant. The company has applied to transfer the rights held by Jaydan, Inc. (CPC No. 1010643-01, Medallion P-1588) to transport persons in taxicab service between points within the City of Philadelphia and from points in the City of Philadelphia to points in Pennsylvania, and return.

A-12-07-03. Pooni Cab Co., 101 South Pennock Street, Upper Darby, PA 19082 registered with the Commonwealth on July 18, 1994.

Formal protests must be filed in accordance with 52 Pa. Code Part II (relating to Philadelphia Parking Authority). Filings must be made at the offices of the TLD with the Clerk, 2415 South Swanson Street, Philadelphia, PA 19148, with a copy served on the applicant by August 27, 2012. Documents filed in support of the application are available for inspection at the TLD office (contact Charles Milstein) between 9 a.m. and 4:30 p.m. Monday to Friday or may be inspected at the business address of the applicant. The protest fee is \$2,500 (certified check or money order payable to PPA).

VINCENT J. FENERTY, Jr.,
Executive Director

[Pa.B. Doc. No. 12-1585. Filed for public inspection August 10, 2012, 9:00 a.m.]

STATE CONSERVATION COMMISSION

Dirt and Gravel Roads Pollution Prevention Maintenance Program

As required by 25 Pa. Code § 83.604(f) (relating to apportionment criteria), the State Conservation Commission (Commission) is providing public notice of the apportionment of Fiscal Year (FY) 2012-2013 Dirt and Gravel

Road Pollution Prevention Maintenance Program funds to participating County Conservation Districts. This apportionment is authorized under 75 Pa.C.S. § 9106 (relating to dirt and gravel road maintenance).

A. *Effective Date*

This apportionment is effective upon publication in the *Pennsylvania Bulletin*. Allocations will be disbursed when funds are released from the Treasury after July 1, 2012.

B. *Background*

The Commission approved the following allocations at their public meeting on May 15, 2012: \$3,528,000 of FY 2012-2013 funds are apportioned according to stipulations in 75 Pa.C.S. § 9106(c). Copies of the referenced statement of policy in 25 Pa. Code § 83.604 and 75 Pa.C.S. § 9106 are available from Karen Books at the State Conservation Commission Office, Room 310, Agriculture Building, 2301 North Cameron Street, Harrisburg, PA 17110-9408, (717) 787-8821.

The following allocations are being made to the County Conservation Districts participating in the program. Not all counties receive an allocation as provided for at 25 Pa. Code § 83.613(a) (relating to performance standards). Listed alphabetically, the allocations are:

<i>District</i>	<i>FY 2012-13 Allocations</i>	<i>District</i>	<i>FY 2012-13 Allocations</i>
1 Adams	\$ 18,333	1 Lawrence	\$ 18,333
Allegheny	\$ -	1 Lebanon	\$ 18,333
Armstrong	\$ 158,347	3 Lehigh	\$ -
1 Beaver	\$ 18,333	Luzerne	\$ 34,140
Bedford	\$ 50,211	Lycoming	\$ 85,150
1 Berks	\$ 18,333	McKean	\$ 31,583
Blair	\$ 20,366	Mercer	\$ 43,549
2 Bradford	\$ 290,291	Mifflin	\$ 20,405
Bucks	\$ 18,966	3 Monroe	\$ -
3 Butler	\$ -	1 Montgomery	\$ 18,333
Cambria	\$ 18,465	Montour	\$ 19,402
Cameron	\$ 25,976	3 Northampton	\$ -
Carbon	\$ 22,130	Northumberland	\$ 42,597
Centre	\$ 29,295	Perry	\$ 33,543
Chester	\$ 19,151	Pike	\$ 35,289
Clarion	\$ 69,108	Potter	\$ 152,197
Clearfield	\$ 68,845	Schuylkill	\$ 42,084
Clinton	\$ 31,599	Snyder	\$ 25,451
Columbia	\$ 79,253	Somerset	\$ 49,024
Crawford	\$ 153,676	Sullivan	\$ 72,605
1 Cumberland	\$ 18,333	2 Susquehanna	\$ 229,399
Dauphin	\$ 21,328	Tioga	\$ 248,101
Elk	\$ 28,449	Union	\$ 21,958
Erie	\$ 60,535	Venango	\$ 89,995
Fayette	\$ 38,223	Warren	\$ 147,578
Forest	\$ 21,091	Washington	\$ 73,062
Franklin	\$ 18,520	Wayne	\$ 105,792
Fulton	\$ 28,446	Westmoreland	\$ 29,417
Greene	\$ 67,079	Wyoming	\$ 58,466
Huntingdon	\$ 61,983	York	\$ 83,535
Indiana	\$ 95,312	TOTAL	\$3,528,000
Jefferson	\$ 56,056		
Juniata	\$ 26,130		
Lackawanna	\$ 27,505		
Lancaster	\$ 19,011		

Notes:

- 1: minimum allocation (\$18,333 for FY 2012-13)
- 2: impacted by phasing to maximum allocation cap of \$275,000
- 3: spending requirements not met

MICHAEL L. KRANCER,
Chairperson

[Pa.B. Doc. No. 12-1586. Filed for public inspection August 10, 2012, 9:00 a.m.]

STATE EMPLOYEES' RETIREMENT BOARD

Hearings Scheduled

The following hearings have been scheduled, as authorized by 71 Pa.C.S. Part XXV (relating to State Employees' Retirement Code), in connection with the State Employees' Retirement System's denial of Claimants, requests concerning the indicated accounts.

The hearings will be held before a hearing officer at the State Employees' Retirement System, 30 North Third Street, Fifth Floor, Harrisburg, PA 17101:

September 10, 2012	Robert D. Mull Benefit Recalculation	1 p.m.
September 19, 2012	Leona C. Caviston (D) Death Benefit	10 a.m.

Parties in each respective case may appear with or without counsel and offer relevant testimony or evidence to support their respective positions. The hearings will be held in accordance with the requirements of 2 Pa.C.S. §§ 501—508 and 701—704 (relating to Administrative Agency Law). Under 4 Pa. Code § 250.1 (relating to applicability of general rules), procedural matters will be in conformance with 1 Pa. Code Part II (relating to General Rules of Administrative Practice and Procedure), unless specific exemption is granted.

DAVID E. DURBIN,
Secretary

[Pa.B. Doc. No. 12-1587. Filed for public inspection August 10, 2012, 9:00 a.m.]

