

# PENNSYLVANIA BULLETIN

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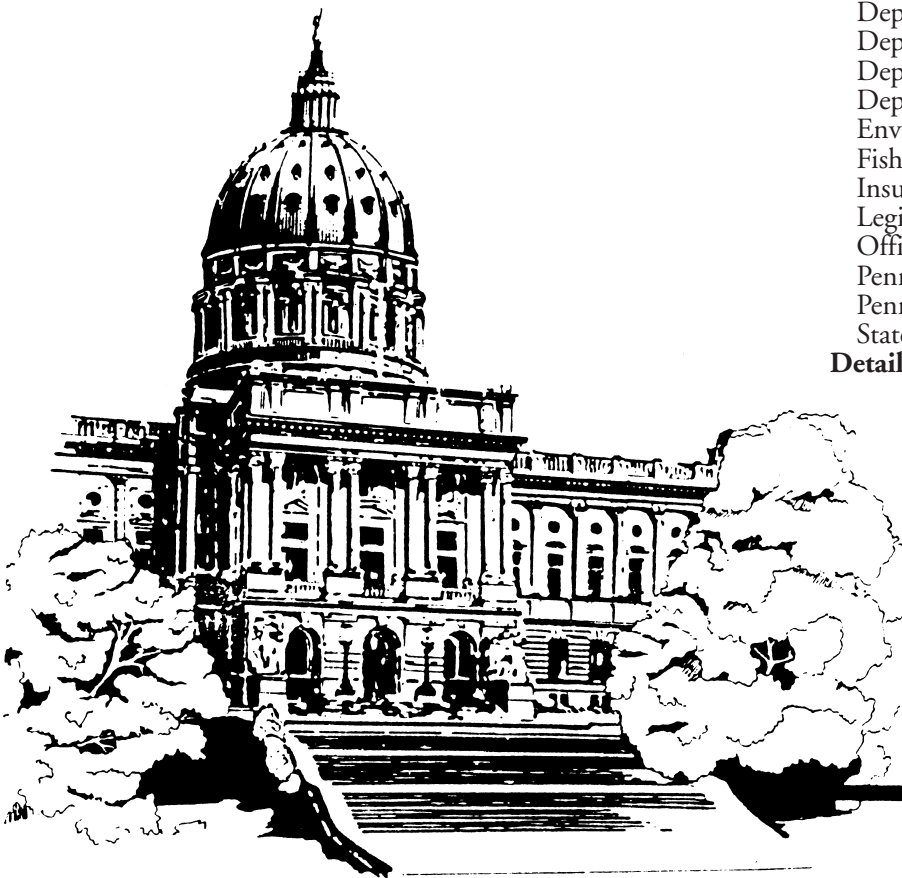
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## Part I

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**Latest Pennsylvania Code Reporter  
(Master Transmittal Sheet):**

**No. 532, March 2019**

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# READER'S GUIDE TO THE PENNSYLVANIA BULLETIN AND THE PENNSYLVANIA CODE

## *Pennsylvania Bulletin*

The *Pennsylvania Bulletin* is the official gazette of the Commonwealth of Pennsylvania. It is published weekly. A cumulative subject matter index is published quarterly.

The *Pennsylvania Bulletin* serves several purposes. It is the temporary supplement to the *Pennsylvania Code*, which is the official codification of agency rules and regulations, Statewide court rules, and other statutorily authorized documents. Changes in the codified text, whether by adoption, amendment, rescission, repeal or emergency action, must be published in the *Pennsylvania Bulletin*.

The following documents are published in the *Pennsylvania Bulletin*: Governor's Executive Orders; 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 rescind regulations must first publish in the *Pennsylvania Bulletin* a Proposed Rulemaking. There are limited instances when the agency may omit the proposal step; it still must publish the adopted version.

The 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. A Final Rulemaking must be published in the *Pennsylvania Bulletin* before the changes can take effect. If the agency wishes to adopt changes to the 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, Statewide court rules and other statutorily authorized documents. The *Pennsylvania Bulletin* is the temporary supplement to the *Pennsylvania Code*, printing changes when they are adopted. 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.

### **How to Find Rules and Regulations**

Search for your area of interest in the *Pennsylvania Code*. The *Pennsylvania Code* is available at [www.pacode.com](http://www.pacode.com).

Source Notes give the history of regulations. 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/cfdocs/legis/CH/Public/pcde\\_index.cfm](http://www.legis.state.pa.us/cfdocs/legis/CH/Public/pcde_index.cfm).

A quarterly List of *Pennsylvania Code* Sections Affected lists the regulations in numerical order, followed by the citation to the *Pennsylvania Bulletin* in which the change occurred.

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#### *Rules, Regulations and Statements of Policy in Titles 1—107 of the Pennsylvania Code*

Text proposed to be added is printed in **underscored bold face**. Text proposed to be deleted is enclosed in brackets [ ] and printed in **bold face**.

Proposed new chapters and sections are printed in regular type to enhance readability. Final rulemakings and statements of policy are printed in regular type.

Ellipses, a series of five asterisks, indicate text that is not amended.

In Proposed Rulemakings and proposed Statements of Policy, existing text corresponds to the official codified text in the *Pennsylvania Code*.

#### *Court Rules in Titles 201—246 of the Pennsylvania Code*

Added text in proposed and adopted court rules is printed in **underscored bold face**. Deleted text in proposed and adopted court rules is enclosed in brackets [ ] and printed in **bold face**.

Proposed new chapters and rules are printed in regular type to enhance readability.

Ellipses, a series of five asterisks, indicate text that is not amended.

### Fiscal Notes

Section 612 of The Administrative Code of 1929 (71 P. S. § 232) requires the Governor's Budget Office to prepare a fiscal note for regulatory actions and administrative procedures of the administrative departments, boards, commissions and authorities receiving money from the State Treasury. The fiscal note states whether the action or procedure causes a loss of revenue or an increase in the cost of programs for the Commonwealth or its political subdivisions. The fiscal note is required to be published in the *Pennsylvania Bulletin* at the same time as the change is advertised.

A fiscal note provides 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 5 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 5 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; and (8) recommendation, if any, of the Secretary of the Budget and the reasons therefor.

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, 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 item (8) the recommendation, if any, made by the Secretary of the Budget is published with the fiscal note. "No fiscal impact" means no additional cost or revenue loss to the Commonwealth or its local political subdivision is intended. See 4 Pa. Code Chapter 7, Subchapter R (relating to fiscal notes).

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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 2019.

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# THE COURTS

## Title 234—RULES OF CRIMINAL PROCEDURE

[ 234 PA. CODE CH. 4 ]

### Order Amending Rules 490 and 490.1 of the Pennsylvania Rules of Criminal Procedure; No. 510 Criminal Procedural Rules Doc.

#### Order

##### *Per Curiam*

*And Now*, this 1st day of March, 2019, upon the recommendation of the Criminal Procedural Rules Committee; the proposal having been published before adoption at See 48 Pa.B. 1930 (April 7, 2018), and a Final Report to be published with this Order:

It is Ordered pursuant to Article V, Section 10 of the Constitution of Pennsylvania that Pennsylvania Rules of Criminal Procedure 490 and 490.1 are amended, in the following form.

This Order shall be processed in accordance with Pa.R.J.A. No. 103(b), and shall be effective July 1, 2019.

#### Annex A

### TITLE 234. RULES OF CRIMINAL PROCEDURE CHAPTER 4. PROCEDURES IN SUMMARY CASES PART H. Summary Case Expungement Procedures Rule 490. Procedure for Obtaining Expungement in Summary Cases; Expungement Order.

#### (A) PETITION FOR EXPUNGEMENT

(1) Except as provided in Rule 320, an individual who satisfies the requirements of 18 Pa.C.S. § 9122 **and 18 Pa.C.S. § 9123(a)** for expungement of a summary case may request expungement by filing a petition with the clerk of the courts of the judicial district in which the charges were disposed.

(2) The petition shall set forth:

(a) the petitioner's name and any aliases that the petitioner has used, address, date of birth, and social security number;

(b) the name and address of the issuing authority who accepted the guilty plea or heard the case;

(c) the name and mailing address of the affiant as shown on the complaint or citation, if available;

(d) the magisterial district court number;

(e) the docket number;

(f) the date on the citation or complaint, or the date of arrest, and, if available, the criminal justice agency that made the arrest;

(g) the specific charges, as they appear on the charging document, to be expunged;

(h) the disposition and, if the sentence includes a fine, costs, or restitution, whether the amount due has been paid;

(i) the reason(s) for expungement; and

(j) a verification by the petitioner that facts set forth in the petition are true and correct to the best of the petitioner's personal knowledge or information and belief.

The verification may be by a sworn affidavit or by an unsworn written statement that the facts are verified subject to the penalties for unsworn falsification to authorities under the Crimes Code § 4904, 18 Pa.C.S. § 4904.

Additional information shall not be required by local rule or practice.

(3) Unless the attorney for the Commonwealth agrees to waive this requirement, a current copy of the petitioner's Pennsylvania State Police criminal history report shall be attached to the petition. The copy shall be obtained from the Pennsylvania State Police within 60 days before filing the petition. Absent a waiver by the attorney for the Commonwealth, the judge shall not rule upon the petition until the Pennsylvania State Police criminal history report is filed.

(4) A copy of the petition shall be served on the attorney for the Commonwealth concurrently with filing.

#### (B) OBJECTIONS; HEARING

(1) Within 30 days after service of the petition, the attorney for the Commonwealth shall file a consent or objection to the petition or take no action. The attorney for the Commonwealth's consent or objection shall be filed with the clerk of courts, and copies shall be served on the petitioner's attorney, or the petitioner if unrepresented.

(2) Upon receipt of the attorney for the Commonwealth's response, or no later than 14 days after the expiration of the 30-day period in paragraph (B)(1), the judge shall grant or deny the petition or shall schedule a hearing.

(3) At the hearing, if any, the parties shall be afforded an opportunity to be heard. Following the hearing, the judge promptly shall enter an order granting or denying the petition.

(4) If the judge grants the petition for expungement, the judge shall enter an order directing expungement.

(a) The order shall contain the information required in paragraph (C).

(b) Except when the attorney for the Commonwealth has filed a consent to the petition pursuant to paragraph (B)(1), the order shall be stayed for 30 days pending an appeal. If a timely notice of appeal is filed, the expungement order is stayed pending the disposition of the appeal and further order of court.

(5) If the judge denies the petition for expungement, the judge shall enter an order denying the petition and stating the reasons for the denial.

#### (C) ORDER

(1) Every order for expungement shall include:

(a) the petitioner's name and any aliases that the petitioner has used, address, date of birth, and social security number;

(b) the name and address of the issuing authority who accepted the guilty plea or heard the case;

(c) the name and mailing address of the affiant as shown on the complaint or citation, if available;

(d) the magisterial district court number;

(e) the docket number;



(f) the date on the citation or complaint, or the date of arrest, and, if available, the criminal justice agency that made the arrest;

(g) the specific charges, as they appear on the charging document, to be expunged;

(h) the disposition and, if the sentence includes a fine, costs, or restitution, whether the amount due has been paid;

(i) the reason(s) for expungement; and

(j) the criminal justice agencies upon which certified copies of the order shall be served.

Additional information shall not be required by local rule or practice.

(2) The clerk of courts shall serve a certified copy of the Order to each criminal justice agency identified in the court's Order.

### Comment

This rule, adopted in 2010, provides the procedures for requesting and ordering expungement in summary cases. Any case in which a summary offense is filed with a misdemeanor, felony, or murder of the first, second, or third degree is a court case (see Rule 103). The petition for expungement of the summary offense in such a case would proceed under Rule 790.

**This rule was amended in 2019 to clarify that the procedures under this rule are to be used for summary convictions for offenses committed when the defendant is under 18 years of age. This would include any summary conviction that also has been certified to juvenile court pursuant to Pa.R.J.C.P. 200(3) and 42 Pa.C.S. § 6304.1. In such cases, two expungement petitions would need to be filed: one would be filed pursuant to Pa.R.J.C.P. 170 to expunge the record of the juvenile proceeding and the second would be filed pursuant to Pa.R.Crim.P. 490 to expunge the underlying summary conviction.**

See also Rule 320 for the procedures for expungement following the successful completion of an ARD program in a summary case and Rule 790 for court case expungement procedures.

This rule sets forth the only information that is to be included in every expungement petition and order.

Paragraph (A)(3) requires the petitioner to attach a copy of his or her criminal history report to the petition. The attorney for the Commonwealth may waive the requirement that the criminal history report be attached to the petition. The Commonwealth's agreement to the waiver may be made orally or in writing, or averred in the petition.

A form petition and form order of expungement has been created by the Administrative Office of Pennsylvania Courts, in consultation with the Committee, and is available at the following website: <http://www.pacourts.us/forms/for-the-public>.

"Petition," as used in this rule, is a "motion" for purposes of Rules 575, 576, and 577.

The "reason for expungement" in paragraph (A)(2)(i) and (C)(1)(i) means, for example, acquittal, arrest or prosecution free for five years following the conviction for that summary offense, or age.

For the procedures for filing and service of petitions, see Rule 576.

For the procedures for filing and service of orders, see Rule 114.

For purposes of this rule, "criminal justice agency" includes police departments, county detectives, and other law enforcement agencies. See also 18 Pa.C.S. § 9102.

Concerning standing, see *In Re Administrative Order No. 1-MD-2003*, 936 A.2d 1 (Pa. 2007); *Commonwealth v. J.H.*, 759 A.2d 1269 (Pa. 2000).

**Official Note:** Adopted September 22, 2010 effective in 90 days; amended November 1, 2016, effective November 14, 2016; **amended March 1, 2019, effective July 1, 2019.**

*Committee Explanatory Reports:*

Final Report explaining the September 22, 2010 promulgation of new Rule 490 providing the procedures for expungements in summary cases published with the Court's Order at 40 Pa.B. 5740 (October 9, 2010).

Final Report explaining the November 9, 2016 amendment regarding the stay of expungement when the Commonwealth has consented and petition and order forms published for comment at 46 Pa.B. 7442 (November 26, 2016).

**Final Report explaining the March 1, 2019 amendment regarding expungement of summary offenses when the defendant is under 18 years of age published with the Court's Order at 49 Pa.B. 1121 (March 16, 2019).**

**Rule 490.1. Procedure for Obtaining Expungement of Truancy Cases; Expungement Order.**

(A) PETITION FOR EXPUNGEMENT

(1) An individual who satisfies the requirements of 24 P.S. § 13-1333.3(h) for expungement of a summary truancy case may request expungement by filing a petition with the issuing authority by whom the charges were disposed.

(2) The petition shall set forth:

(a) the petitioner's name and any aliases that the petitioner has used, address, date of birth, and social security number;

(b) the name and address of the issuing authority who accepted the guilty plea or heard the case;

(c) the name and mailing address of the affiant as shown on the complaint or citation, if available;

(d) the magisterial district court number;

(e) the docket number;

(f) the school from which the petitioner had been found to be truant;

(g) the date on the citation or complaint, or the date of arrest, and, if available, and the criminal justice agency that made the arrest;

(h) the specific charges, as they appear on the charging document, to be expunged;

(i) the disposition and, if the sentence includes a fine, costs, or restitution, whether the amount due has been paid;

(j) that the petitioner has satisfied the requirements of 24 P.S. § 13-1333.3(h) for expungement; and

(k) a verification by the petitioner that facts set forth in the petition are true and correct to the best of the petitioner's personal knowledge or information and belief. The verification may be by a sworn affidavit or by an

unsworn written statement that the facts are verified subject to the penalties for unsworn falsification to authorities under the Crimes Code § 4904, 18 Pa.C.S. § 4904.

Additional information shall not be required by local rule or practice.

(3) A copy of the petitioner's high school diploma, a Commonwealth secondary school diploma or another department of education-approved equivalent, or documentation that the petitioner is subject to an exception to compulsory attendance under 24 P.S. § 13-1330 shall be attached to the petition.

(4) A copy of the petition shall be served on the affiant and the attorney for the Commonwealth and the school from which the petitioner had been found to be truant concurrently with filing.

#### (B) OBJECTIONS; HEARING

(1) Within 30 days after service of the petition, the school, the affiant, or the attorney for the Commonwealth shall file a consent or objection to the petition or take no action. The school's, affiant's, or attorney for the Commonwealth's consent or objection shall be filed with the issuing authority, and copies shall be served on the petitioner's attorney, or the petitioner if unrepresented.

(2) Upon receipt of the school, the affiant, or the attorney for the Commonwealth's response, or no later than 14 days after the expiration of the 30-day period in paragraph (B)(1), the issuing authority shall grant or deny the petition or shall schedule a hearing.

(3) At the hearing, if any, the petitioner, the affiant and the attorney for the Commonwealth and the school from which the petitioner had been found to be truant shall be afforded an opportunity to be heard. Following the hearing, the issuing authority promptly shall enter an order granting or denying the petition.

(4) If the issuing authority grants the petition for expungement, the issuing authority shall enter an order directing expungement.

(a) The order shall contain the information required in paragraph (C).

(b) Except when the school, the affiant, or the attorney for the Commonwealth has filed a consent to the petition pursuant to paragraph (B)(1), the order shall be stayed for 30 days pending an appeal. If a timely notice of appeal is filed, the expungement order is stayed pending the disposition of the appeal and further order of court.

(5) If the issuing authority denies the petition for expungement, the issuing authority shall enter an order denying the petition and stating the reasons for the denial.

(6) The issuing authority shall issue the order granting or denying the petition in writing, with copies to the school, the affiant, or the attorney for the Commonwealth, and shall make the order a part of the docket.

#### (C) ORDER

(1) Every order for expungement shall include:

(a) the petitioner's name and any aliases that the petitioner has used, address, date of birth, and social security number;

(b) the name and address of the issuing authority who accepted the guilty plea or heard the case;

(c) the name and mailing address of the affiant as shown on the complaint or citation, if available;

(d) the magisterial district court number;

(e) the docket number;

(f) the school from which the petitioner had been found to be truant;

(g) the date on the citation or complaint, or the date of arrest, and, if available, the criminal justice agency that made the arrest;

(h) the specific charges, as they appear on the charging document, to be expunged;

(i) the disposition and, if the sentence includes a fine, costs, or restitution, whether the amount due has been paid;

(j) a statement that the petitioner has satisfied the requirements of 24 P.S. § 13-1333.3(h) for expungement; and

(k) the criminal justice agencies upon which certified copies of the order shall be served.

Additional information shall not be required by local rule or practice.

(2) The issuing authority shall serve a certified copy of the order to the school from which the petitioner had been found to be truant, the Pennsylvania Department of Transportation and to each criminal justice agency identified in the order.

#### Comment

This rule, adopted in 2018, provides the procedures for requesting and ordering expungement in summary truancy cases as provided in 24 P.S. § 13-1333.3(h). If the issuing authority finds the petitioner has satisfied the statutory conditions, the issuing authority shall grant the petition.

As provided by statute, expungement petitions in truancy cases may be filed in a magisterial district court, a court of common pleas, or the Philadelphia Municipal Court. *See* 24 P.S. § 13-1333.2. The use of the term "issuing authority" in this rule is intended to encompass all of these courts.

Although magisterial district courts are not courts of record, provisions requiring certain occurrences, such as the entry of the expungement order, to be made "on the record" may be accomplished in the magisterial district court by documentation of these occurrences in the case record and the case docket. *See* Rule 135.

Paragraph (A)(4) provides for service of the petition upon the affiant or the attorney for the Commonwealth and the school from which the petitioner had been found to be truant. This is to provide an opportunity to challenge the petition and the facts supporting the petition.

*See* Rule 490 for the procedures for expungement of summary cases other than truancy, **including those cases in which a summary case has resulted in the filing of a delinquency or dependency petition in juvenile court as a result of a failure to comply with the summary case sentence.** *See also* Rule 320 for the procedures for expungement following the successful completion of an ARD program in a summary case and Rule 790 for court case expungement procedures.

This rule sets forth the only information that is to be included in every expungement petition and order.

A form petition and form order of expungement has been created by the Administrative Office of Pennsylvania

Courts, in consultation with the Committee, and is available at the following website: <http://www.pacourts.us/forms/for-the-public>.

“Petition,” as used in this rule, is a “motion” for purposes of Rules 575, 576, and 577. The term “petition” is used in recognition that motion practice usually is not conducted in magisterial district courts and that the expungement procedure under this rule is an exception to this general concept.

For the procedures for filing and service of petitions, see Rule 576.

For the procedures for filing and service of orders, see Rule 114.

For purposes of this rule, “criminal justice agency” includes police departments, county detectives, and other law enforcement agencies. See also 18 Pa.C.S. § 9102.

Concerning standing, see *In Re Administrative Order No. 1-MD-2003*, 936 A.2d 1 (Pa. 2007); *Commonwealth v. J.H.*, 759 A.2d 1269 (Pa. 2000).

**Official Note:** Adopted December 20, 2018, effective April 1, 2018; **Comment revised March 1, 2019, effective July 1, 2019.**

*Committee Explanatory Reports:*

Final Report explaining new Rule 490.1 regarding procedures for expungement in truancy cases published with the Court’s Order at 49 Pa.B. 196 (January 12, 2019).

**Final Report explaining the March 1, 2019 Comment revision regarding procedures for expungement in non-truancy cases published with the Court’s Order at 49 Pa.B. 1121 (March 16, 2019).**

## FINAL REPORT<sup>1</sup>

### *Amendment of Rules 490 and 490.1*

#### Summary Expungement for Defendants under the Age of 18

On March 1, 2019, effective July 1, 2019, upon the recommendation of the Criminal Procedural Rules Committee, the Court amended Rules 490 (Procedure for Obtaining Expungement of Summary Cases; Expungement Order) and 490.1 (Procedure for Obtaining Expungement of Truancy Cases; Expungement Order) to clarify the procedures for the expungement of summary cases for defendants under the age of 18 in two circumstances: (1) expungement under 18 Pa.C.S. § 9123(a); and (2) the expungement of summary convictions and delinquency adjudications that result from a failure to comply with the sentence on the underlying summary convictions. These amendments have adopted in conjunction with amendments to Pa.R.J.C.P. 170 and 172.

The Criminal Procedural Rules Committee and the Juvenile Court Procedural Rules Committee, by means of a joint subcommittee, explored rule changes to address two issues regarding the expungement of summary offenses when the defendant is under 18 years old: (1) expungement under 18 Pa.C.S. § 9123(a); and (2) the expungement of summary convictions and delinquency adjudications that result from a failure to comply with the sentence on the underlying summary convictions.

There are two statutes that permit the expungement of summary convictions. The first statute, 18 Pa.C.S. § 9122(b)(3)(i), generally applies without reference to the

age of the defendant and requires the defendant to be free from arrest or prosecution for five years. This statute also contains a provision for the expungement of underage drinking convictions when the defendant is 20 years or older, provided the violation occurred when the defendant was at least 18 years old.

The second statute, 18 Pa.C.S. § 9123(a), applies to “juvenile records” and permits the expungement of a conviction for a summary offense if the defendant is 18 years or older and six months have elapsed after satisfying the sentence. The statute also contains a provision for the expungement of underage drinking convictions when the defendant is 18 years or older, provided the violation occurred when the defendant was under 18 years old.

Prior to this amendment, Pa.R.Crim.P. 490 (Procedure for Obtaining Expungement in Summary Cases; Expungement Order) cited to Section 9122 and not Section 9123(a). Summary offenses are specifically excluded from the Juvenile Act and Pa.R.J.C.P. 170 (Motion to Expunge or Destroy Records) did not recognize Section 9123(a) as it pertains to summary convictions when the defendant is under 18 years of age.

The Committees did not see merit in establishing two different procedures to expunge the same conviction in the magisterial district (“MDJ”) court based on the age of the defendant. Therefore, Pa.R.Crim.P. 490 has been amended to include reference to 18 Pa.C.S. § 9123(a) so that these expungements proceed in accordance with the Criminal Rules. A cross-reference to Rule 490 has been added to the Comment to Pa.R.J.C.P. 170.

The other issue that the Committees examined was what procedures should be used to expunge both the summary conviction and the juvenile record when the conviction is certified pursuant to Pa.R.J.C.P. 200(3) and 42 Pa.C.S. § 6304.1. Pa.R.J.C.P. 200(3) and 42 Pa.C.S. § 6304.1 provide that a delinquency petition may be filed in a case where a juvenile has failed to comply with the sentence arising from a summary conviction. The question was whether a petition pursuant to Pa.R.Crim.P. 490 needed to be filed to expunge the summary conviction and another petition pursuant to Pa.R.J.C.P. 170 needed to be filed to expunge the certification and any subsequent juvenile court record.

The Committees recognize that requiring an expungement petition in the criminal court for the summary offense and another expungement petition in the juvenile court may be burdensome. However, it was observed that eligibility for expungement of the MDJ record and the juvenile record are so different that one court should not expunge both records. For example, a curfew violation may result in a summary conviction and fine. If the minor fails to comply with the sentence (*i.e.*, pay the fine), then the matter may be certified to the juvenile court. A majority of these types of certifications result in an informal adjustment, consent decree, or entry into a diversion program rather than a petition being filed. Consequently, the minor would be entitled to expungement of the juvenile record pursuant to 18 Pa.C.S. § 9123(a)(2) six months after completing the program. However, the underlying summary offense could not be expunged until the defendant was at least 18 years of age. See 18 Pa.C.S. §§ 9123(2.1), (2.2). The minor could be eligible for expungement of the juvenile record before being eligible for expungement of the summary conviction. Accordingly, the Committees agreed to recommend a two-petition procedure. The Comment to Pa.R.Crim.P. 490 has been revised to inform readers of the dual tracks for the expungement of certified failure to comply cases and the underlying summary offense.

<sup>1</sup> The Committee’s Final Reports should not be confused with the official Committee Comments to the rules. Also, note that the Supreme Court does not adopt the Committee’s Comments or the contents of the Committee’s explanatory Final Reports.



Finally, a cross-reference to the Rule 490 procedures for expungement of summary cases other than truancy has been added to the Comment to Rule 490.1 Procedure for Obtaining Expungement of Truancy Cases; Expungement Order).

[Pa.B. Doc. No. 19-358. Filed for public inspection March 15, 2019, 9:00 a.m.]

## Title 234—RULES OF CRIMINAL PROCEDURE

[ 234 PA. CODE CH. 4 ]

### Proposed Amendment of Pa.Rs.Crim.P. 403, 407— 409, 411—414, 422—424, 454, 456 and 470

The Criminal Procedural Rules Committee is considering proposing to the Supreme Court of Pennsylvania the amendment of Rules 403 (Contents of Citation), Rule 407 (Pleas in Response to Citation), 408 (Not Guilty Pleas—Notice of Trial), 409 (Guilty Pleas), 411 (Procedures Following Filing of Citation—Issuance of Summons), 412 (Pleas in Response to Summons), 413 (Not Guilty Pleas—Notice of Trial), 414 (Guilty Pleas), 422 (Pleas in Response to Summons), 423 (Not Guilty Pleas—Notice of Trial), 424 (Guilty Pleas), 454 (Trial in Summary Cases), 456 (Default Procedures: Restitution, Fines, and Costs), 470 (Procedures Related to License Suspension after Failure to Respond to Citation or Summons or Failure to Pay Fine and Costs) for the reasons set forth in the accompanying explanatory report. Pursuant to Pa.R.J.A. No. 103(a)(1), the proposal is being published in the *Pennsylvania Bulletin* for comments, suggestions, or objections prior to submission to the Supreme Court. This supplemental proposal resulted from the Committee's further review of the proposed rule changes in response to the extensive correspondence received after publication of our original explanatory Report.

Any reports, notes, or comments in the proposal have been inserted by the Committee for the convenience of those using the rules. They neither will constitute a part of the rules nor will be officially adopted by the Supreme Court.

Additions to the text of the proposal are bolded and underlined; deletions to the text are bolded and bracketed.

The Committee invites all interested persons to submit comments, suggestions, or objections in writing to:

Jeffrey M. Wasileski, Counsel  
Supreme Court of Pennsylvania  
Criminal Procedural Rules Committee  
601 Commonwealth Avenue, Suite 6200  
Harrisburg, PA 17106-2635  
fax: (717) 231-9521  
e-mail: criminalrules@pacourts.us

All communications in reference to the proposal should be received by no later than Friday, May 3, 2019. E-mail is the preferred method for submitting comments, suggestions, or objections; any e-mailed submission need not be reproduced and resubmitted via mail. The Committee will acknowledge receipt of all submissions.

*By the Criminal Procedural  
Rules Committee*

BRIAN W. PERRY,  
*Chair*

## Annex A

### TITLE 234. RULES OF CRIMINAL PROCEDURE CHAPTER 4. PROCEDURES IN SUMMARY CASES

#### PART B. Citation Procedures

#### Rule 403. Contents of Citation.

(A) Every citation shall contain:

(1) the name and address of the organization, and badge number, if any, of the law enforcement officer;

(2) the name and address of the defendant;

(3) a notation if the defendant is under 18 years of age and whether the parents or guardians have been notified of the charge(s);

(4) the date and time when the offense is alleged to have been committed, provided however, if the day of the week is an essential element of the offense charged, such day must be specifically set forth;

(5) the place where the offense is alleged to have been committed;

(6) a citation of the specific section and subsection of the statute or ordinance allegedly violated, together with a summary of the facts sufficient to advise the defendant of the nature of the offense charged;

(7) the date of issuance;

(8) a notation if criminal laboratory services are requested in the case;

(9) a verification by the law enforcement officer that the facts set forth in the citation are true and correct to the officer's personal knowledge, or information and belief, and that any false statements therein are made subject to the penalties of the Crimes Code, 18 Pa.C.S. § 4904, relating to unsworn falsification to authorities.

(10) a certification that the citation complies with the provisions of the *Case Records Public Access Policy of the Unified Judicial System of Pennsylvania* regarding confidential information and documents.

(B) The copy delivered to the defendant shall also contain a notice to the defendant:

(1) that the original copy of the citation will be filed before the issuing authority of the magisterial district designated in the citation, the address and number of which shall be contained in the citation; and

(2) that the defendant shall, within [ **10** ] **30** days after issuance of the citation:

(a) plead not guilty by:

(i) notifying the proper issuing authority in writing of the plea [ **and forwarding as collateral for appearance at trial an amount equal to the fine and costs specified in the citation, plus any additional fee required by law. If the amount is not specified, the defendant shall forward the sum of \$50 as collateral for appearance at trial** ], **providing a current mailing address and telephone number, and**

**(a) forwarding as collateral for appearance at trial an amount equal to the fine and costs specified in the citation, plus any additional fee required by law, or**

**(b) forwarding as collateral for appearance at trial the sum of \$50 if the fine and costs are not specific on the citation, or**

**(c) certifying in writing that they do not have the financial means to deposit the amount of collateral specified in the citation, or \$50 when no amount is specified;** or

(ii) appearing before the proper issuing authority, entering the plea, and depositing such collateral for appearance at trial as the issuing authority shall require **[. If the defendant cannot afford to pay the collateral specified in the citation or the \$50, the defendant must appear before the issuing authority to enter a plea ]**; or

(b) plead guilty by:

(i) notifying the proper issuing authority in writing of the plea and forwarding an amount equal to the fine and costs when specified in the statute or ordinance, the amount of which shall be set forth in the citation; or

(ii) appearing before the proper issuing authority for the entry of the plea and imposition of sentence, when the fine and costs are not specified in the citation, **or when a payment plan is necessary**, or when required to appear pursuant to Rule 409(B)(3), 414(B)(3), or 424(B)(3); or

(c) appear before the proper issuing authority to request consideration for inclusion in an accelerated rehabilitative disposition program;

(3) that all checks forwarded for the fine and costs or for collateral shall be made payable to the magisterial district number set forth on the citation;

(4) that failure to respond to the citation as provided above within the time specified:

(a) shall result in the issuance of a summons when a violation of an ordinance or any parking offense is charged, or when the defendant is under 18 years of age, and in all other cases shall result in the issuance of a warrant for the arrest of the defendant; and

(b) shall result in the suspension of the defendant's driver's license when a violation of the Vehicle Code is charged;

(5) that failure to indicate a plea when forwarding an amount equal to the fine and costs specified on the citation shall result in a guilty plea being recorded; and

(6) that, if the defendant is convicted or has pleaded guilty, the defendant may appeal within 30 days for a trial *de novo*.

#### Comment

A law enforcement officer may prepare, verify, and transmit a citation electronically. The law enforcement officer contemporaneously must give the defendant a paper copy of the citation containing all the information required by this rule. Nothing in this rule is intended to require the defendant to sign the citation.

See Rule 113.1 regarding the *Case Records Public Access Policy of the Unified Judicial System of Pennsylvania* and the requirements regarding filings and documents that contain confidential information.

Paragraph (A)(3) requires the law enforcement officer who issues a citation to indicate on the citation if the defendant is a juvenile and, if so, whether the juvenile's parents were notified. See the Judicial Code, 42 Pa.C.S. § 1522, concerning parental notification in certain summary cases involving juveniles.

Paragraph (A)(8) requires the law enforcement officer who issues a citation to indicate on the citation whether criminal laboratory services are requested in the case. This information is necessary to inform the magisterial

district judge that, in addition to any fines, restitution, or costs, the magisterial district judge may be required to sentence the defendant to pay a criminal laboratory user fee. See 42 Pa.C.S. § 1725.3 which requires that a defendant be sentenced to pay a criminal laboratory user fee in certain specified cases when laboratory services are required to prosecute the case.

As provided in paragraph (B)(2)(b)(i), the defendant may plead guilty by mail only when the fine and costs are set forth in the citation. The law enforcement officer may specify the fine and costs in the citation only when the penalty provided by law does not include a possible sentence of imprisonment and the statute or ordinance fixes the specific amount for the fine.

Paragraph (B)(4)(a) provides for notice to the defendant who is under 18 years of age that a summons will be issued if the defendant fails to respond to the citation.

Paragraph (B)(4)(b) provides notice to the defendant that his or her license will be suspended if the defendant fails to respond to the citation or summons within the time specified in the rules. See 75 Pa.C.S. § 1533.

Paragraph (B)(5) provides a uniform procedure for handling cases in which a defendant returns the fine and costs but fails to sign the citation and, therefore, does not indicate a plea. See Rule 407.

Paragraph (B)(6) was amended in 2000 to make it clear in a summary criminal case that the defendant may file an appeal for a trial *de novo* following the entry of a guilty plea. See Rule 460 (Notice of Appeal).

It is intended that the notice to the defendant, required by paragraph (B) to be on the copy of the citation delivered to the defendant, shall be simply worded so the plain meaning of the notice is easily understandable.

For consequences of defects in a citation, see Rule 109.

With regard to the "proper" issuing authority as used in these rules, see Rule 130.

See Rule 401 for procedures for instituting cases in which there is a parking violation. When the parking violation information is electronically transmitted as permitted by Rule 401(A), only a summons is issued as provided in Rule 411.

**Official Note:** Previous rule, originally numbered Rule 133(a) and Rule 133(b), adopted January 31, 1970, effective May 1, 1970; renumbered Rule 53(a) and 53(b) September 18, 1973, effective January 1, 1974; amended January 23, 1975, effective September 1, 1975; Comment revised January 28, 1983, effective July 1, 1983; rescinded July 12, 1985, effective January 1, 1986, and not replaced in these rules. Present Rule 53 adopted July 12, 1985, effective January 1, 1986. The January 1, 1986 effective dates all are extended to July 1, 1986; amended February 1, 1989, effective as to cases instituted on or after July 1, 1989; amended January 31, 1991, effective July 1, 1991; amended June 3, 1993, effective as to new citations printed on or after July 1, 1994; amended July 25, 1994, effective January 1, 1995; renumbered Rule 403 and Comment revised March 1, 2000, effective April 1, 2001; amended March 3, 2000, effective July 1, 2000; Comment revised February 6, 2003, effective July 1, 2003; amended August 7, 2003, effective July 1, 2004; amended January 26, 2007, effective February 1, 2008; **amended , 2019, effective , 2019.**

*Committee Explanatory Reports:*

Report explaining the January 31, 1991 amendments published at 20 Pa.B. 4788 (September 15, 1990); Supplemental Report published at 21 Pa.B. 621 (February 16, 1991).



Report explaining the June 3, 1993 amendments published with the Court's Order at 23 Pa.B. 2809 (June 19, 1993).

Report explaining the July 25, 1994 amendments published with Court's Order at 24 Pa.B. 4068 (August 13, 1994).

Final Report explaining the March 1, 2000 reorganization and renumbering of the rules published with the Court's Order at 30 Pa.B. 1478 (March 18, 2000).

Final Report explaining the March 3, 2000 amendments concerning appeals from guilty pleas published with the Court's Order at 30 Pa.B. 1509 (March 18, 2000).

Final Report explaining the February 6, 2003 Comment revisions cross-referencing Rule 401 concerning electronic transmission of parking citations published with the Court's Order at 33 Pa.B. 973 (February 22, 2003).

Final Report explaining the August 7, 2003 amendments to paragraph (B)(4)(a) concerning juveniles published with the Court's Order at 33 Pa.B. 4293 (August 30, 2003).

Final Report explaining the January 26, 2007 amendments to paragraph (B)(2)(b)(ii) and revisions to the Comment published with the Court's Order at 37 Pa.B. 760 (February 17, 2007).

Amendments regarding the Court's public access policy published with the Court's Order at 48 Pa.B. 3575 (June 16, 2018).

**Report explaining the proposed amendments regarding responses in writing asserting an inability to pay published for comment at 48 Pa.B. 496 (January 20, 2018); Supplemental Report published for comment at 49 Pa.B. 1140 (March 16, 2019).**

**PART B(1). Procedures When Citation Is Issued to Defendant**

**Rule 407. Pleas in Response to Citation.**

Within [ 10 ] 30 days after issuance of a citation, the defendant shall notify the issuing authority by mail or in person that the defendant either pleads not guilty or pleads guilty.

**Comment**

For the consequences of failure to respond as provided in this rule, see Rules 430 and 431.

To notify the issuing authority of the plea, the defendant should sign and return the citation. When a defendant fails to sign the citation to indicate the plea, the issuing authority should record the unsigned citation as a guilty plea. See Rule 403(B)(5).

**Official Note:** Previous Rule 57 adopted September 18, 1973, effective January 1, 1974; title of rule amended January 23, 1975, effective September 1, 1975; rescinded July 12, 1985, effective January 1, 1986, and replaced by present Rules 411—414 and 421—424. Present Rule 57 adopted July 12, 1985, effective January 1, 1986. The January 1, 1986 effective dates all are extended to July 1, 1986; amended February 1, 1989, effective as to cases instituted on or after July 1, 1989; renumbered Rule 407 and amended March 1, 2000, effective April 1, 2001; **amended** , 2019, effective , 2019.

*Committee Explanatory Reports:*

Final Report explaining the March 1, 2000 reorganization and renumbering of the rules published with the Court's Order at 30 Pa.B. 1478 (March 18, 2000).

**Report explaining the proposed amendments increasing the period to respond to 30 days published for comment at 49 Pa.B. 1140 (March 16, 2019).**

**Rule 408. Not Guilty Pleas—Notice of Trial.**

(A) A defendant may plead not guilty by:

(1) appearing before the issuing authority, entering the plea, and depositing such collateral for appearance at trial as the issuing authority shall require; or

(2) notifying the issuing authority in writing of the plea, **providing a current mailing address and telephone number**, and

(a) forwarding as collateral for appearance at trial an amount equal to the fine and costs specified in the citation, plus any additional fee required by law[ . ];

[ If ] (b) if the fine and costs are not specified, [ the defendant shall forward ] forwarding the sum of \$50 as collateral for appearance at trial[ . ]; or

(c) certifying that the defendant does not have the financial means to deposit the amount of the collateral specified in the citation or the \$50 when no amount is specified.

(B) The issuing authority, upon receiving a plea of not guilty, shall:

(1) fix a date and hour for trial;

(2) notify the defendant and the law enforcement officer of the date and hour fixed for trial; and

(3) advise the defendant that failure to appear for trial shall constitute consent to trial in the defendant's absence and if the defendant is found guilty, the collateral deposited shall be forfeited and applied toward the fine, costs, and restitution, and the defendant shall have the right to appeal within 30 days for a trial *de novo*.

**Comment**

[ It is intended that the defendant will appear in person before the issuing authority to plead not guilty when the defendant cannot afford to deposit the amount of collateral specified in the citation or the \$50 when no amount is specified. A plea entered by mail must be accompanied by the full amount of collateral. See Rule 452. ] All checks deposited as collateral shall be made payable to the magisterial district number set forth on the citation.

When fixing the date and hour for trial, the issuing authority should determine whether the trial must be delayed because the defendant's criminal record must be ascertained prior to trial as specifically required by statute for purposes of grading the offense charged.

Paragraph (B)(3) was amended in 2016 to clarify that collateral may be forfeited for the payment of restitution as well as for the fine and costs that have been assessed by an issuing authority. See 18 Pa.C.S. § 1106(d) for the authority of a magisterial district judge to impose restitution on a defendant.

**Official Note:** Previous Rule 58, adopted September 18, 1973, effective January 1, 1974; amended to correct printing error June 28, 1976, effective immediately; rescinded July 12, 1985, effective January 1, 1986, and not replaced in the present rules. Present Rule 58 adopted July 12, 1985, effective January 1, 1986. The January 1, 1986 effective dates all are extended to July 1, 1986; amended January 31, 1991, effective July 1, 1991; renumbered Rule 408 and amended March 1, 2000, effective April 1, 2001; amended June 10, 2016, effective August 1, 2016; **amended** , 2019, effective , 2019.

*Committee Explanatory Reports:*

Report explaining the January 31, 1991 amendments published at 20 Pa.B. 4788 (September 15, 1990); Supplemental Report published at 21 Pa.B. 621 (February 16, 1991).

Final Report explaining the March 1, 2000 reorganization and renumbering of the rules published with the Court's Order at 30 Pa.B. 1478 (March 18, 2000).

Final Report explaining the June 10, 2016 amendments clarifying that forfeited collateral may be applied to restitution published with the Court's Order at 46 Pa.B. 3238 (June 25, 2016).

**Report explaining the proposed amendments regarding responses by mail when the defendant is unable to post collateral published for comment at 48 Pa.B. 496 (January 20, 2018); Supplemental Report published for comment at 49 Pa.B. 1140 (March 16, 2019).**

**Rule 409. Guilty Pleas.**

(A) A defendant may plead guilty by:

(1) notifying the issuing authority in writing of the plea and forwarding to the issuing authority an amount equal to the fine and costs specified in the citation; or

(2) appearing before the issuing authority for the entry of the plea and imposition of sentence when:

**(a) the fine and costs are not specified in the citation [ or ];**

**(b) after receipt of notice that a guilty plea by mail has not been accepted by the issuing authority pursuant to paragraph (B)(3) [ . ]; or**

**(c) the defendant is without the financial means immediately to pay the fine and costs specified in the citation.**

(B) When the defendant pleads guilty pursuant to paragraph (A)(1):

(1) The defendant **[ must ] shall** sign the guilty plea acknowledging that the plea is entered voluntarily and understandingly. **The defendant shall provide confirmation of a current mailing address and telephone number.**

(2) The issuing authority may issue a warrant for the arrest of the defendant as provided in Rules 430 and 431 if the amount forwarded with the plea is less than the amount of the fine and costs specified in the citation.

(3) Restrictions on the acceptance of guilty plea by mail:

(a) The issuing authority shall not accept a guilty plea that is submitted by mail when the offense carries a mandatory sentence of imprisonment.

(b) In those cases in which the charge carries a possible sentence of imprisonment, the issuing authority may accept a guilty plea submitted by mail.

(c) In any case in which the issuing authority does not accept a guilty plea submitted by mail, the issuing authority shall notify the defendant (1) that the guilty plea has not been accepted, (2) to appear personally before the issuing authority on a date and time certain, and (3) of the right to counsel. Notice of the rejection of the guilty plea by mail also shall be provided to the affiant.

(C) When the defendant is required to personally appear before the issuing authority to plead guilty pursuant to paragraph (A)(2), the issuing authority shall:

(1) advise the defendant of the right to counsel when there is a likelihood of imprisonment and give the defendant, upon request, a reasonable opportunity to secure counsel;

(2) determine by inquiring of the defendant that the plea is voluntarily and understandingly entered;

(3) have the defendant sign the plea form with a representation that the plea is entered voluntarily and understandingly;

(4) impose sentence, or **[ , in cases in which the defendant may be sentenced to intermediate punishment, ]** the issuing authority may delay the proceedings **(a) pending confirmation of the defendant's ability to pay, and (b) in cases in which the defendant may be sentenced to intermediate punishment, pending confirmation** of the defendant's eligibility for intermediate punishment **[ ; and ]**.

(5) **[ provide for installment payments when a defendant who is sentenced to pay a fine and costs is without the financial means immediately to pay the fine and costs. ] If the defendant is without the financial means to pay the full amount of the fine, costs, and restitution in a single remittance, the issuing authority shall provide for installment payments and shall:**

**(a) state the date on which each installment is due; and**

**(b) shall advise the defendant of the procedures in Rule 456 in the event of any default in payment.**

**(c) The amount of each installment shall be based upon a determination of a defendant's financial ability to pay. The issuing authority is prohibited from establishing mandatory minimum installment payments that are not based on the individual defendant's ability to pay.**

**Comment**

The rule **[ was amended in 2007 to make ] makes** it clear **[ (1) ]** that a defendant may not enter a guilty plea by mail **(1)** to an offense that carries a mandatory sentence of imprisonment, **[ and (2) in ] or (2) when the defendant is without the financial means immediately to pay the fine and costs.** In those cases in which the offense carries a possible sentence of imprisonment, the issuing authority has the discretion whether or not to accept a guilty plea submitted by mail.

Nothing in this rule is intended to require that an issuing authority should proceed as provided in paragraph (C) when the defendant returns the written guilty plea and the fine and costs in person to the issuing authority's office pursuant to paragraphs (A)(1) and (B). The issuing authority's staff should record receipt of the plea and monies in the same manner as those received by mail.

Paragraph (C)(4) was added in 2007 to permit an issuing authority to delay imposition of sentence in order to investigate a defendant's eligibility for intermediate punishment. For example, under 42 Pa.C.S. § 9763 and § 9804, defendants may be sentenced to intermediate punishment for certain offenses, including summary violations of 75 Pa.C.S. § 1543(b) (driving while license is

under a DUI-related suspension) but only if they meet certain eligibility requirements, such as undergoing a drug and alcohol assessment. Often this information will not be available to the issuing authority at the time of sentencing, especially when the defendant appears personally to enter a guilty plea.

In determining whether a defendant is without the financial means immediately to pay the fine, costs, and restitution, the issuing authority must consider the defendant's financial situation. Some factors that should be considered in this determination include, but are not limited to:

(1) the defendant's current employment status, including current salary and gross income from this year and previous recent years, if any, from the current employer(s) or previous employer(s);

(2) income from other sources such as interest, dividends, pension and annuities, social security benefits, support payments, disability payments, unemployment compensation and supplemental benefits, workers' compensation, public assistance;

(3) the value of all property owned, including money available in cash, or bank accounts, real estate (including home), and other significant property such as motor vehicles;

(4) debts and obligations including mortgages, rent, loans; court assessments, and any other miscellaneous recurring expenses;

(5) other contributions to household support from spouse, parents, children, or others; and

(6) all persons dependent upon the defendant for support and the defendant's actual contribution to that support

The issuing authority may require the defendant to present documents or other evidence to verify the defendant's financial situation.

It is recommended that the issuing authority seek the following information to assist in making an evaluation as to the defendant's ability to pay:

(1) the defendant's employment status, including whether the defendant has been unemployed due to recent incarceration;

(2) the defendant's income including monthly salary or wages, or income from self-employment;

(3) assets or property owned including real estate, motor vehicles, stocks, bonds, cash, and checking or savings accounts;

(4) the amount of the defendant's income that is from a benefit or means-based public assistance such as

(a) unemployment compensation,

(b) Workers' Compensation,

(c) Social Security benefits including Supplemental Security Income and Social Security Disability,

(d) food stamps,

(e) cash assistance,

(f) pensions and annuities,

(g) any other benefits;

(5) Monthly expenses including:

(a) mortgage or rent,

(b) loans,

(c) utilities,

(d) cost of health insurance,

(e) cost of uninsured health care,

(f) cost of transportation, including car payments,

(g) costs of dependent care,

(h) spousal/child support,

(i) utilities, including the cost of cell or other telephone service,

(j) food,

(k) other expenses.

The Administrative Office of Pennsylvania Courts has developed a form available through the court's computer systems that will assist the issuing authority in soliciting the above information.

In determining whether the defendant has the ability to pay, the issuing authority must consider the totality of the defendant's financial resources and the nature of the burden that the payments will impose on the defendant's finances.

When the defendant was under 18 years of age at the time of the offense and is charged with a summary offense that would otherwise carry a mandatory sentence of imprisonment as prescribed by statute, the issuing authority is required to conduct the summary trial but may not sentence the defendant to a term of imprisonment. See 42 Pa.C.S. §§ 6302 and 6303 and 75 Pa.C.S. § 6303(b).

See Rule 454(F) for the information that must be included in the sentencing order when restitution is included in the sentence.

For the procedure upon default in payment of the fine or costs, see Rule 456.

For appeal procedures in summary cases, see Rules 460, 461, and 462.

For procedures regarding arrest warrants, see Rules 430 and 431.

Concerning the appointment or waiver of counsel, see Rules 121 and 122.

**Official Note:** Previous Rule 59 adopted September 18, 1973, effective January 1, 1974; rescinded July 12, 1985, effective January 1, 1986, and replaced by present Rule 75. Present Rule 59 adopted July 12, 1985, effective January 1, 1986; amended September 23, 1985, effective January 1, 1986. The January 1, 1986 effective dates are all extended to July 1, 1986; amended May 28, 1987, effective July 1, 1987; amended January 31, 1991, effective July 1, 1991; renumbered Rule 409 and amended March 1, 2000, effective April 1, 2001; Comment revised August 7, 2003, effective July 1, 2004; amended January 26, 2007, effective February 1, 2008; Comment revised July 17, 2013, effective August 17, 2013; Comment revised March 9, 2016, effective July 1, 2016; **amended , 2019, effective , 2019.**

*Committee Explanatory Reports:*

Report explaining the January 31, 1991 amendments published at 20 Pa.B. 4788 (September 15, 1990); Supplemental Report published at 21 Pa.B. 621 (February 16, 1991).



Final Report explaining the March 1, 2000 reorganization and renumbering of the rules published with the Court's Order at 30 Pa.B. 1478 (March 18, 2000).

Final Report explaining the August 7, 2003 new Comment language concerning defendants under the age of 18 published with the Court's Order at 33 Pa.B. 4293 (August 30, 2003).

Final Report explaining the January 26, 2007 amendments to paragraphs (A)(2), (B)(3), and (C)(4) published with the Court's Order at 37 Pa.B. 760 (February 17, 2007).

Final Report explaining the July 17, 2013 Comment revision concerning mandatory incarceration offenses and juveniles published with the Court's Order at 43 Pa.B. 4325 (August 3, 2013).

Final Report explaining the March 9, 2016 Comment revision concerning the Rule 454 restitution procedures published with the Court's Order at 46 Pa.B. 1540 (March 26, 2016).

**Report explaining the proposed amendments regarding inability to pay published for comment at 48 Pa.B. 496 (January 20, 2018); Supplemental Report published for comment at 49 Pa.B. 1140 (March 16, 2019).**

## PART B(2). Procedures When Citation Filed

### Rule 411. Procedures Following Filing of Citation—Issuance of Summons.

(A) Upon the filing of the citation, including receipt of electronically transmitted citation or parking violation information, the issuing authority shall issue a summons commanding the defendant to respond within [ 10 ] 30 days of receipt of the summons, unless the issuing authority has reasonable grounds to believe that the defendant will not obey a summons in which case an arrest warrant shall be issued. The summons shall be served as provided in these rules.

(B) A copy of the citation shall be served with the summons, except in cases charging parking violations when the parking violation information is electronically filed.

(C) In cases charging parking violations in which the parking violation information is electronically filed, the summons shall also include:

- (1) the date, time, and location of the parking violation;
- (2) a description of the vehicle and the license number; and
- (3) a description of the parking violation.

#### Comment

No fine or costs should be specified in the summons in cases in which the issuing authority determines that there is a likelihood of imprisonment.

This rule facilitates the electronic transmission of parking violation information by (1) eliminating the requirement that a copy of the citation be served with the summons in cases in which the parking violation information is electronically filed pursuant to Rule 401(A), and (2) requiring additional information be added to the summons. See Rule 401 (Proceedings in Summary Cases Charging Parking Violations). However, nothing in this rule or Rule 401 is intended to preclude a municipality from continuing to have its officers prepare a citation in addition to electronically transmitting the parking violation information.

**Official Note:** Previous Rule 117, adopted June 30, 1964, effective January 1, 1965; suspended effective May 1, 1970; revised January 31, 1970, effective May 1, 1970; renumbered and amended to apply only to summary cases September 18, 1973, effective January 1, 1974; amended April 26, 1979, effective July 1, 1979; amended January 28, 1983, effective July 1, 1983; rescinded July 12, 1985, effective January 1, 1986, and replaced by present Rule 431. Present Rule 61 adopted July 12, 1985, effective January 1, 1986. The January 1, 1986 effective dates all are extended to July 1, 1986; amended July 17, 1996, effective January 1, 1997; renumbered Rule 411 and Comment revised March 1, 2000, effective April 1, 2001; amended \_\_\_\_\_, 2003, effective \_\_\_\_\_, 2003; **amended \_\_\_\_\_, 2019, effective \_\_\_\_\_, 2019.**

#### Committee Explanatory Reports:

Final Report explaining the July 17, 1996 amendments published with the Court's Order at 26 Pa.B. 3629 (August 3, 1996).

Final Report explaining the March 1, 2000 reorganization and renumbering of the rules published with the Court's Order at 30 Pa.B. 1478 (March 18, 2000).

Final Report explaining the February 6, 2003 amendments concerning electronic transmission of citation and parking violation information published with the Court's Order at 33 Pa.B. 973 (February, 22, 2003).

**Report explaining the proposed amendments increasing the period to respond to 30 days published for comment at 48 Pa.B. 496 (January 20, 2018); Supplemental Report published for comment at 49 Pa.B. 1140 (March 16, 2019).**

### Rule 412. Pleas in Response to Summons.

Within [ 10 ] 30 days after receipt of a summons, the defendant shall notify the issuing authority by mail or in person that the defendant either pleads not guilty or pleads guilty.

#### Comment

To notify the issuing authority of the plea, the defendant should sign and return the summons. When a defendant fails to sign the summons to indicate the plea, the issuing authority should record the unsigned summons as a guilty plea. See Rule 403(B)(5).

For the consequences of failure to respond as provided in this rule, see Rule 430(A).

**Official Note:** Previous rule, originally numbered Rule 118 and 118(b), adopted June 30, 1964, effective January 1, 1965; suspended effective May 1, 1970; revised January 31, 1970, effective May 1, 1970; renumbered as Rule 62 and amended to apply only to summary cases September 18, 1973, effective January 1, 1974; amended April 26, 1979, effective July 1, 1979; amended April 24, 1981, effective July 1, 1981; amended January 28, 1983, effective July 1, 1983; rescinded July 12, 1985, effective January 1, 1986, and replaced by present Rule 441. Present Rule 62 adopted July 12, 1985, effective January 1, 1986. The January 1, 1986 effective dates all are extended to July 1, 1986; amended February 1, 1989, effective as to cases instituted on or after July 1, 1989; renumbered Rule 412 and amended March 1, 2000, effective April 1, 2001; **amended \_\_\_\_\_, 2019, effective \_\_\_\_\_, 2019.**

#### Committee Explanatory Reports:

Final Report explaining the March 1, 2000 reorganization and renumbering of the rules published with the Court's Order at 30 Pa.B. 1478 (March 18, 2000).

**Report explaining the proposed amendments increasing the period to respond to 30 days published for comment at 48 Pa.B. 496 (January 20, 2018); Supplemental Report published for comment at 49 Pa.B. 1140 (March 16, 2019).**

**Rule 413. Not Guilty Pleas—Notice of Trial.**

(A) A defendant may plead not guilty by:

(1) appearing before the issuing authority, entering the plea, and depositing such collateral for appearance at trial as the issuing authority shall require; or

(2) notifying the issuing authority in writing of the plea, **providing a current mailing address and telephone number, and**

(a) forwarding as collateral for appearance at trial an amount equal to the fine and costs specified in the citation, plus any additional fee required by law[ . ];

[ **If** ] (b) if the fine and costs are not specified, [ **the defendant shall forward** ] forwarding the sum of \$50 as collateral for appearance at trial[ . ]; **or**

(c) **certifying that the defendant does not have the financial means to deposit the amount of the collateral specified in the citation or the \$50 when no amount is specified.**

(B) The issuing authority, upon receiving a plea of not guilty, shall:

(1) fix a date and hour for trial;

(2) notify the defendant and the law enforcement officer of the date and hour fixed for the trial; and

(3) advise the defendant that failure to appear for trial shall constitute consent to trial in the defendant's absence and if the defendant is found guilty, the collateral deposited shall be forfeited and applied toward the fine, costs, and restitution, and the defendant shall have the right to appeal within 30 days for a trial *de novo*.

**Comment**

[ **It is intended that the defendant will appear in person before the issuing authority to plead not guilty when the defendant cannot afford to deposit the amount of collateral specified in the citation or the \$50 when no amount is specified. A plea entered by mail must be accompanied by the full amount of collateral. See Rule 452.** ] All checks deposited as collateral shall be made payable to the magisterial district number set forth on the citation.

When fixing the date and hour for trial, the issuing authority should determine whether the trial must be delayed because the defendant's criminal record must be ascertained prior to trial as specifically required by statute for purposes of grading the offense charged.

Paragraph (B)(3) was amended in 2016 to clarify that collateral may be forfeited for the payment of restitution as well as for the fine and costs that have been assessed by an issuing authority. See 18 Pa.C.S. § 1106(d) for the authority of a magisterial district judge to impose restitution on a defendant.

**Official Note:** Previous rule, originally numbered Rules 141 and 142, adopted January 31, 1970, effective May 1, 1970; combined, and renumbered Rule 63, and amended September 18, 1973, effective January 1, 1974; amended April 26, 1979, effective July 1, 1979; rescinded July 12, 1985, effective January 1, 1986, and replaced by present Rule 454. Present Rule 63 adopted July 12, 1985,

effective January 1, 1986. The January 1, 1986 effective dates all are extended to July 1, 1986; amended January 31, 1991, effective July 1, 1991; renumbered Rule 413 and amended March 1, 2000, effective April 1, 2001; amended June 10, 2016, effective August 1, 2016; **amended , 2019, effective , 2019.**

**Committee Explanatory Reports:**

Report explaining the January 31, 1991 amendments published at 20 Pa.B. 4788 (September 15, 1990); Supplemental Report published at 21 Pa.B. 621 (February 16, 1991).

Final Report explaining the March 1, 2000 reorganization and renumbering of the rules published with the Court's Order at 30 Pa.B. 1478 (March 18, 2000).

Final Report explaining the June 10, 2016 amendments clarifying that forfeited collateral may be applied to restitution published with the Court's Order at 46 Pa.B. 3238 (June 26, 2016).

**Report explaining the proposed amendments regarding responses by mail when the defendant is unable to post collateral published for comment at 48 Pa.B. 496 (January 20, 2018); Supplemental Report published for comment at 49 Pa.B. 1140 (March 16, 2019).**

**Rule 414. Guilty Pleas.**

(A) A defendant may plead guilty by:

(1) notifying the issuing authority in writing of the plea and forwarding to the issuing authority an amount equal to the fine and costs specified in the summons; or

(2) appearing before the issuing authority for the entry of the plea and imposition of sentence when:

(a) the fine and costs are not specified in the summons [ **or** ];

(b) after receipt of notice that a guilty plea by mail has not been accepted by the issuing authority pursuant to paragraph (B)(3)[ . ]; **or**

(c) **the defendant is without the financial means immediately to pay the fine and costs specified in the citation.**

(B) When the defendant pleads guilty pursuant to paragraph (A)(1):

(1) The defendant [ **must** ] **shall** sign the guilty plea acknowledging that the plea is entered voluntarily and understandingly. **The defendant shall provide confirmation of a current mailing address and telephone number.**

(2) The issuing authority may issue a warrant for the arrest of the defendant as provided in Rules 430 and 431 if the amount forwarded with the plea is less than the amount of the fine and costs specified in the summons.

(3) Restrictions on the acceptance of guilty plea by mail:

(a) The issuing authority shall not accept a guilty plea that is submitted by mail when the offense carries a mandatory sentence of imprisonment.

(b) In those cases in which the charge carries a possible sentence of imprisonment, the issuing authority may accept a guilty plea submitted by mail.

(c) In any case in which the issuing authority does not accept a guilty plea submitted by mail, the issuing authority shall notify the defendant (1) that the guilty plea has not been accepted, (2) to appear personally



before the issuing authority on a date and time certain, and (3) of the right to counsel. Notice of the rejection of the guilty plea by mail also shall be provided to the affiant.

(C) When the defendant is required to personally appear before the issuing authority to plead guilty pursuant to paragraph (A)(2) the issuing authority shall:

(1) advise the defendant of the right to counsel when there is a likelihood of imprisonment and give the defendant, upon request, a reasonable opportunity to secure counsel;

(2) determine by inquiring of the defendant that the plea is voluntarily and understandingly entered;

(3) have the defendant sign the plea form with a representation that the plea is entered voluntarily and understandingly;

(4) impose sentence, or, in cases in which the defendant may be sentenced to intermediate punishment, the issuing authority may delay the proceedings pending confirmation **of the defendant's ability to pay or** of the defendant's eligibility for intermediate punishment[; and ].

(5) **[ provide for installment payments when a defendant who is sentenced to pay a fine and costs is without the financial means immediately to pay the fine and costs. ] If the defendant is without the financial means to pay the full amount of the fine, costs, and restitution in a single remittance, the issuing authority shall provide for installment payments and shall:**

**(a) state the date on which each installment is due; and**

**(b) shall advise the defendant of the procedures in Rule 456 in the event of any default in payment.**

**(c) The amount of each installment shall be based upon a determination of a defendant's financial ability to pay. The issuing authority is prohibited from establishing mandatory minimum installment payments that are not based on the individual defendant's ability to pay.**

#### Comment

The rule **[ was amended in 2007 to make ]** makes it clear **[ (1) ]** that a defendant may not enter a guilty plea by mail **(1)** to an offense that carries a mandatory sentence of imprisonment, **[ and (2) in ]** or **(2) when the defendant is without the financial means immediately to pay the fine and costs.** In those cases in which the offense carries a possible sentence of imprisonment, the issuing authority has the discretion whether or not to accept a guilty plea submitted by mail.

Nothing in this rule is intended to require that an issuing authority should proceed as provided in paragraph (C) when the defendant returns the written guilty plea and the fine and costs in person to the issuing authority's office pursuant to paragraphs (A)(1) and (B). The issuing authority's staff should record receipt of the plea and monies in the same manner as those received by mail.

Paragraph (C)(4) was added in 2007 to permit an issuing authority to delay imposition of sentence in order to investigate a defendant's eligibility for intermediate punishment. For example, under 42 Pa.C.S. § 9763 and § 9804, defendants may be sentenced to intermediate

punishment for certain offenses, including summary violations of 75 Pa.C.S. § 1543(b) (driving while license is under a DUI-related suspension) but only if they meet certain eligibility requirements, such as undergoing a drug and alcohol assessment. Often this information will not be available to the issuing authority at the time of sentencing, especially when the defendant appears personally to enter a guilty plea.

**In determining whether a defendant is without the financial means immediately to pay the fine and costs, the issuing authority must consider the defendant's financial situation. Some factors that should be considered in this determination include, but are not limited to:**

**(1) the defendant's current employment status, including current salary and gross income from this year and previous recent years, if any, from the current employer(s) or previous employer(s);**

**(2) income from other sources such as interest, dividends, pension and annuities, social security benefits, support payments, disability payments, unemployment compensation and supplemental benefits, workers' compensation, public assistance;**

**(3) the value of all property owned, including money available in cash, or bank accounts, real estate (including home), and other significant property such as motor vehicles;**

**(4) debts and obligations including mortgages, rent, loans; court assessments, and any other miscellaneous recurring expenses;**

**(5) other contributions to household support from spouse, parents, children, or others; and**

**(6) all persons dependent upon the defendant for support and the defendant's actual contribution to that support**

**The issuing authority may require the defendant to present documents or other evidence to verify the defendant's financial situation.**

**It is recommended that the issuing authority seek the following information to assist in making an evaluation as to the defendant's ability to pay:**

**(1) the defendant's employment status, including whether the defendant has been unemployed due to recent incarceration;**

**(2) the defendant's income including monthly salary or wages, or income from self-employment;**

**(3) assets or property owned including real estate, motor vehicles, stocks, bonds, cash, and checking or savings accounts;**

**(4) the amount of the defendant's income that is from a benefit or means-based public assistance such as**

**(a) unemployment compensation,**

**(b) Workers' Compensation,**

**(c) Social Security benefits including Supplemental Security Income and Social Security Disability,**

**(d) food stamps,**

**(e) cash assistance,**

**(f) pensions and annuities,**

**(g) any other benefits;**

**(5) Monthly expenses including:**

- (a) mortgage or rent,
- (b) loans,
- (c) utilities,
- (d) cost of health insurance,
- (e) cost of uninsured health care,
- (f) cost of transportation, including car payments,
- (g) costs of dependent care,
- (h) spousal/child support,
- (i) utilities, including the cost of cell or other telephone service,
- (j) food,
- (k) other expenses.

**The Administrative Office of Pennsylvania Courts has developed a form available through the court's computer systems that will assist the issuing authority in soliciting the above information.**

**In determining whether the defendant has the ability to pay, the issuing authority must consider the totality of the defendant's financial resources and the nature of the burden that the payments will impose on the defendant's finances.**

When the defendant was under 18 years of age at the time of the offense and is charged with a summary offense that would otherwise carry a mandatory sentence of imprisonment as prescribed by statute, the issuing authority is required to conduct the summary trial but may not sentence the defendant to a term of imprisonment. *See* 42 Pa.C.S. §§ 6302 and 6303 and 75 Pa.C.S. § 6303(b).

*See* Rule 454(F) for the information that must be included in the sentencing order when restitution is included in the sentence.

For the procedure upon default in payment of the fine or costs, see Rule 456.

For appeal procedures in summary cases, see Rules 460, 461, and 462.

For arrest warrant procedures, see Rules 430 and 431.

Concerning the appointment or waiver of counsel, see Rules 121 and 122.

**Official Note:** Previous rule, originally numbered Rule 136, adopted January 31, 1970, effective May 1, 1970; renumbered Rule 64 September 18, 1973, effective January 1, 1974; rescinded July 12, 1985, effective January 1, 1986, and replaced by present Rule 84. Present Rule 64 adopted July 12, 1985, effective January 1, 1986; amended September 23, 1985, effective January 1, 1986. The January 1, 1986 effective dates all are extended to July 1, 1986; amended May 28, 1987, effective July 1, 1987; amended January 31, 1991, effective July 1, 1991; renumbered Rule 414 and amended March 1, 2000, effective April 1, 2001; Comment revised August 7, 2003, effective July 1, 2004; amended January 26, 2007, effective February 1, 2008; Comment revised July 17, 2013, effective August 17, 2013; Comment revised March 9, 2016, effective July 1, 2016; **amended** , **2019, effective** , **2019.**

*Committee Explanatory Reports:*

Report explaining the January 31, 1991 amendments published at 20 Pa.B. 4788 (September 15, 1990); Supplemental Report published at 21 Pa.B. 621 (February 16, 1991).

Final Report explaining the March 1, 2000 reorganization and renumbering of the rules published with the Court's Order at 30 Pa.B. 1478 (March 18, 2000).

Final Report explaining the August 7, 2002 new Comment language concerning defendants under the age of 18 published with the Court's Order at 33 Pa.B. 4293 (August 30, 2003).

Final Report explaining the January 26, 2007 amendments to paragraphs (A)(2), (B)(3), and (C)(4) published with the Court's Order at 37 Pa.B. 760 (February 17, 2007).

Final Report explaining the July 17, 2013 Comment revision concerning mandatory incarceration offenses and juveniles published with the Court's Order at 43 Pa.B. 4325 (August 3, 2013).

Final Report explaining the March 9, 2016 Comment revision concerning the Rule 454 restitution procedures published with the Court's Order at 46 Pa.B. 1540 (March 26, 2016).

**Report explaining the proposed amendments regarding inability to pay published for comment at 48 Pa.B. 496 (January 20, 2018); Supplemental Report published for comment at 49 Pa.B. 1140 (March 16, 2019).**

**PART C. Procedures in Summary Cases When Complaint Filed**

**Rule 422. Pleas in Response to Summons.**

Within [ 10 ] **30** days after receipt of a summons, the defendant shall notify the issuing authority by mail or in person that the defendant either pleads not guilty or pleads guilty.

**Comment**

To notify the issuing authority of the plea, the defendant should sign and return the summons. When a defendant fails to sign the summons to indicate the plea, the issuing authority should record the unsigned summons as a guilty plea. *See* Rule 403(B)(5).

For the consequences of failure to respond as provided in this rule, see Rule 430(A).

**Official Note:** Previous Rule 67, adopted September 18, 1973, effective January 1, 1974; amended May 26, 1977, effective July 1, 1977; amended April 26, 1979, effective July 1, 1979; Comment revised April 24, 1981, effective July 1, 1981; Comment revised January 28, 1983, effective July 1, 1983; rescinded July 12, 1985, effective January 1, 1986, and replaced by present Rules 460, 461, and 462. Present Rule 67 adopted July 12, 1985, effective January 1, 1986. The January 1, 1986 effective dates all are extended to July 1, 1986; amended February 1, 1989, effective as to cases instituted on or after July 1, 1989; renumbered Rule 422 and amended March 1, 2000, effective April 1, 2001; **amended** , **2019, effective** , **2019.**

*Committee Explanatory Reports:*

Final Report explaining the March 1, 2000 reorganization and renumbering of the rules published with the Court's Order at 30 Pa.B. 1478 (March 18, 2000).

**Report explaining the proposed amendments increasing the period to respond to 30 days published for comment at 48 Pa.B. 496 (January 20, 2018); Supplemental Report published for comment at 49 Pa.B. 1140 (March 16, 2019).**

**Rule 423. Not Guilty Pleas—Notice of Trial.**

(A) A defendant may plead not guilty by:

(1) appearing before the issuing authority, entering the plea, and depositing such collateral for appearance at trial as the issuing authority shall require; or

(2) notifying the issuing authority in writing of the plea, **providing a current mailing address and telephone number**, and

(a) forwarding as collateral for appearance at trial an amount equal to the fine and costs specified in the citation, plus any additional fee required by law[ . ];

[ If ] (b) if the fine and costs are not specified, [ the defendant shall forward ] forwarding the sum of \$50 as collateral for appearance at trial[ . ]; or

(c) certifying that the defendant does not have the financial means to deposit the amount of the collateral specified in the citation or the \$50 when no amount is specified.

(B) The issuing authority, upon receiving a plea of not guilty, shall:

(1) fix a date and hour for trial;

(2) notify the defendant and the affiant of the date and hour fixed for the trial; and

(3) advise the defendant that failure to appear for trial shall constitute consent to trial in the defendant's absence and if the defendant is found guilty, the collateral deposited shall be forfeited and applied toward the fine, costs, and restitution, and the defendant shall have the right to appeal within 30 days for a trial *de novo*.

**Comment**

[ It is intended that the defendant will appear in person before the issuing authority to plead not guilty when the defendant cannot afford to deposit the amount of collateral specified in the citation or the \$50 when no amount is specified. A plea entered by mail must be accompanied by the full amount of collateral. See Rule 452. ] All checks deposited as collateral shall be made payable to the magisterial district number set forth on the citation.

When fixing the date and hour for trial, the issuing authority should determine whether the trial must be delayed because the defendant's criminal record must be ascertained prior to trial as specifically required by statute for purposes of grading the offenses charged.

Paragraph (B)(3) was amended in 2016 to clarify that collateral may be forfeited for the payment of restitution as well as for the fine and costs that have been assessed by an issuing authority. See 18 Pa.C.S. § 1106(d) for the authority of a magisterial district judge to impose restitution on a defendant.

**Official Note:** Previous Rule 68 adopted September 18, 1973, effective January 1, 1974; rescinded July 12, 1985, effective January 1, 1986, and not replaced in the present rules. Present Rule 68 adopted July 12, 1985, effective January 1, 1986. The January 1, 1986 effective dates all are extended to July 1, 1986; amended January 31, 1991, effective July 1, 1991; renumbered Rule 423 and

amended March 1, 2000, effective April 1, 2001; amended June 10, 2016, effective August 1, 2016; amended , 2019, effective , 2019.

**Committee Explanatory Reports:**

Report explaining the January 31, 1991 amendments published at 20 Pa.B. 4788 (September 15, 1990); Supplemental Report published at 21 Pa.B. 621 (February 16, 1991).

Final Report explaining the March 1, 2000 reorganization and renumbering of the rules published with the Court's Order at 30 Pa.B. 1478 (March 18, 2000).

Final Report explaining the June 10, 2016 amendments clarifying that forfeited collateral may be applied to restitution published with the Court's Order at 46 Pa.B. 3238 (June 26, 2016).

**Report explaining the proposed amendments regarding responses by mail when the defendant is unable to post collateral published for comment at 48 Pa.B. 496 (January 20, 2018); Supplemental Report published for comment at 49 Pa.B. 1140 (March 16, 2019).**

**Rule 424. Guilty Pleas.**

(A) A defendant may plead guilty by:

(1) notifying the issuing authority in writing of the plea and forwarding to the issuing authority an amount equal to the fine and costs specified in the summons; or

(2) appearing before the issuing authority for the entry of the plea and imposition of sentence when:

(a) the fine and costs are not specified in the summons [ or ];

(b) after receipt of notice that a guilty plea by mail has not been accepted by the issuing authority pursuant to paragraph (B)(3)[ . ]; or

(c) the defendant is without the financial means immediately to pay the fine and costs specified in the citation.

(B) When the defendant pleads guilty pursuant to paragraph (A)(1):

(1) The defendant [ must ] shall sign the guilty plea acknowledging that the plea is entered voluntarily and understandingly. **The defendant shall provide confirmation of a current mailing address and telephone number.**

(2) The issuing authority may issue a warrant for the arrest of the defendant as provided in Rules 430 and 431 if the amount forwarded with the plea is less than the amount of the fine and costs specified in the summons.

(3) Restrictions on the acceptance of guilty plea by mail:

(a) The issuing authority shall not accept a guilty plea that is submitted by mail when the offense carries a mandatory sentence of imprisonment.

(b) In those cases in which the charge carries a possible sentence of imprisonment, the issuing authority may accept a guilty plea submitted by mail.

(c) In any case in which the issuing authority does not accept a guilty plea submitted by mail, the issuing authority shall notify the defendant (1) that the guilty plea has not been accepted, (2) to appear personally before the issuing authority on a date and time certain,



and (3) of the right to counsel. Notice of the rejection of the guilty plea by mail also shall be provided to the affiant.

(C) When the defendant is required to personally appear before the issuing authority to plead guilty pursuant to paragraph (A)(2), the issuing authority shall:

(1) advise the defendant of the right to counsel when there is a likelihood of imprisonment and give the defendant, upon request, a reasonable opportunity to secure counsel;

(2) determine by inquiring of the defendant that the plea is voluntarily and understandingly entered;

(3) have the defendant sign the plea form with a representation that the plea is entered voluntarily and understandingly;

(4) impose sentence, or, in cases in which the defendant may be sentenced to intermediate punishment, the issuing authority may delay the proceedings pending confirmation **of the defendant's ability to pay or of the defendant's eligibility for intermediate punishment[; and ]**.

(5) **[ provide for installment payments when a defendant who is sentenced to pay a fine and costs is without the financial means immediately to pay the fine and costs. ] If the defendant is without the financial means to pay the full amount of the fine, costs, and restitution in a single remittance, the issuing authority shall provide for installment payments and shall:**

**(a) state the date on which each installment is due; and**

**(b) shall advise the defendant of the procedures in Rule 456 in the event of any default in payment.**

**(c) The amount of each installment shall be based upon a determination of a defendant's financial ability to pay. The issuing authority is prohibited from establishing mandatory minimum installment payments that are not based on the individual defendant's ability to pay.**

#### Comment

The rule [ was amended in 2007 to make ] makes it clear [ (1) ] that a defendant may not enter a guilty plea by mail (1) to an offense that carries a mandatory sentence of imprisonment, [ and (2) in ] or (2) when **the defendant is without the financial means immediately to pay the fine and costs. In** those cases in which the offense carries a possible sentence of imprisonment, the issuing authority has the discretion whether or not to accept a guilty plea submitted by mail.

Nothing in this rule is intended to require that an issuing authority should proceed as provided in paragraph (C) when the defendant returns the written guilty plea and the fine and costs in person to the issuing authority's office pursuant to paragraphs (A)(1) and (B). The issuing authority's staff should record receipt of the plea and monies in the same manner as those received by mail.

Paragraph (C)(4) was added in 2007 to permit an issuing authority to delay imposition of sentence in order to investigate a defendant's eligibility for intermediate punishment. For example, under 42 Pa.C.S. § 9763 and § 9804, defendants may be sentenced to intermediate punishment for certain offenses, including summary vio-

lations of 75 Pa.C.S. § 1543(b) (driving while license is under a DUI-related suspension) but only if they meet certain eligibility requirements, such as undergoing a drug and alcohol assessment. Often this information will not be available to the issuing authority at the time of sentencing, especially when the defendant appears personally to enter a guilty plea.

**In determining whether a defendant is without the financial means immediately to pay the fine and costs, the issuing authority must consider the defendant's financial situation. Some factors that should be considered in this determination include, but are not limited to:**

**(1) the defendant's current employment status, including current salary and gross income from this year and previous recent years, if any, from the current employer(s) or previous employer(s);**

**(2) income from other sources such as interest, dividends, pension and annuities, social security benefits, support payments, disability payments, unemployment compensation and supplemental benefits, workers' compensation, public assistance;**

**(3) the value of all property owned, including money available in cash, or bank accounts, real estate (including home), and other significant property such as motor vehicles;**

**(4) debts and obligations including mortgages, rent, loans; court assessments, and any other miscellaneous recurring expenses;**

**(5) other contributions to household support from spouse, parents, children, or others; and**

**(6) all persons dependent upon the defendant for support and the defendant's actual contribution to that support**

**The issuing authority may require the defendant to present documents or other evidence to verify the defendant's financial situation.**

**It is recommended that the issuing authority seek the following information to assist in making an evaluation as to the defendant's ability to pay:**

**(1) the defendant's employment status, including whether the defendant has been unemployed due to recent incarceration;**

**(2) the defendant's income including monthly salary or wages, or income from self-employment;**

**(3) assets or property owned including real estate, motor vehicles, stocks, bonds, cash, and checking or savings accounts;**

**(4) the amount of the defendant's income that is from a benefit or means-based public assistance such as**

**(a) unemployment compensation,**

**(b) Workers' Compensation,**

**(c) Social Security benefits including Supplemental Security Income and Social Security Disability,**

**(d) food stamps,**

**(e) cash assistance,**

**(f) pensions and annuities,**

**(g) any other benefits;**

**(5) Monthly expenses including:**

**(a) mortgage or rent,**

- (b) loans,
- (c) utilities,
- (d) cost of health insurance,
- (e) cost of uninsured health care,
- (f) cost of transportation, including car payments,
- (g) costs of dependent care,
- (h) spousal/child support,
- (i) utilities, including the cost of cell or other telephone service,
- (j) food,
- (k) other expenses.

**The Administrative Office of Pennsylvania Courts has developed a form available through the court's computer systems that will assist the issuing authority in soliciting the above information.**

**In determining whether the defendant has the ability to pay, the issuing authority must consider the totality of the defendant's financial resources and the nature of the burden that the payments will impose on the defendant's finances.**

When the defendant was under 18 years of age at the time of the offense and is charged with a summary offense that would otherwise carry a mandatory sentence of imprisonment as prescribed by statute, the issuing authority is required to conduct the summary trial but may not sentence the defendant to a term of imprisonment. *See* 42 Pa.C.S. §§ 6302 and 6303 and 75 Pa.C.S. § 6303(b).

*See* Rule 454(F) for the information that must be included in the sentencing order when restitution is included in the sentence.

For the procedure upon default in payment of the fine or costs, see Rule 456.

For appeal procedures in summary cases, see Rules 460, 461, and 462.

For procedures regarding arrest warrants, see Rules 430 and 431.

Concerning the appointment or waiver of counsel, see Rules 121 and 122.

***Official Note:*** Previous rule, originally numbered Rule 140, adopted January 31, 1970, effective May 1, 1970; renumbered Rule 69 September 18, 1973, effective January 1, 1974; Comment revised January 28, 1983, effective July 1, 1983; rescinded July 12, 1985, effective January 1, 1986, and not replaced in these rules. Present Rule 69 adopted July 12, 1985, effective January 1, 1986; amended September 23, 1985, effective January 1, 1986. The January 1, 1986 effective dates are all extended to July 1, 1986; amended May 28, 1987, effective July 1, 1987; amended January 31, 1991, effective July 1, 1991; renumbered Rule 424 and amended March 1, 2000, effective April 1, 2001; Comment revised August 7, 2003, effective July 1, 2004; amended January 26, 2007, effective February 1, 2008; Comment revised July 17, 2013, effective August 17, 2013; Comment revised March 9, 2016, effective July 1, 2016; **amended** , **2019**, **effective** , **2019**.

#### *Committee Explanatory Reports:*

Report explaining the January 31, 1991 amendments published at 20 Pa.B. 4788 (September 15, 1990); Supplemental Report published at 21 Pa.B. 621 (February 16, 1991).

Final Report explaining the March 1, 2000 reorganization and renumbering of the rules published with the Court's Order at 30 Pa.B. 1478 (March 18, 2000).

Final Report explaining the August 7, 2003 new Comment language concerning defendants under the age of 18 published with the Court's Order at 33 Pa.B. 4293 (August 30, 2003).

Final Report explaining the January 26, 2007 amendments to paragraphs (A)(2), (B)(3), and (C)(4) published with the Court's Order at 37 Pa.B. 760 (February 17, 2007).

Final Report explaining the July 17, 2013 Comment revision concerning mandatory incarceration offenses and juveniles published with the Court's Order at 43 Pa.B. 4325 (August 3, 2013).

Final Report explaining the March 9, 2016 Comment revision concerning the Rule 454 restitution procedures published with the Court's Order at 46 Pa.B. 1540 (March 26, 2016).

**Report explaining the proposed amendments regarding inability to pay published for comment at 48 Pa.B. 496 (January 20, 2018); Supplemental Report published for comment at 49 Pa.B. 1140 (March 16, 2019).**

#### **PART E. General Procedures in Summary Cases**

##### **Rule 454. Trial in Summary Cases.**

(A) Immediately prior to trial in a summary case:

(1) the defendant shall be advised of the charges in the citation or complaint;

(2) if, in the event of a conviction, there is a reasonable likelihood of a sentence of imprisonment or probation, the defendant shall be advised of the right to counsel and

(a) upon request, the defendant shall be given a reasonable opportunity to secure counsel, or

(b) if the defendant is without financial resources or is otherwise unable to employ counsel, counsel shall be assigned as provided in Rule 122; and

(3) the defendant shall enter a plea.

(B) If the defendant pleads guilty, the issuing authority shall impose sentence. If the defendant pleads not guilty, the issuing authority shall try the case in the same manner as trials in criminal cases are conducted in the courts of common pleas when jury trial has been waived; however, in all summary cases arising under the Vehicle Code or local traffic ordinances, the law enforcement officer observing the defendant's alleged offense may, but shall not be required to, appear and testify against the defendant. In no event shall the failure of the law enforcement officer to appear, by itself, be a basis for dismissal of the charges against the defendant.

(C) The attorney for the Commonwealth may appear and assume charge of the prosecution. When the violation of an ordinance of a municipality is charged, an attorney representing that municipality, with the consent of the attorney for the Commonwealth, may appear and assume charge of the prosecution. When no attorney appears on behalf of the Commonwealth, the affiant may be permitted to ask questions of any witness who testifies.



(D) The verdict and sentence, if any, shall be announced in open court immediately upon the conclusion of the trial, except as provided in paragraph (E).

**(E) In determining the amount of the discretionary fine, if any, or discretionary costs, if any, that is to be imposed and the payment schedule, if any, the issuing authority shall consider the defendant's ability to pay. The issuing authority may delay imposing sentence pending confirmation of the defendant's ability to pay.**

[ (E) ] (F) If the defendant may be sentenced to intermediate punishment, the issuing authority may delay imposing sentence pending confirmation of the defendant's eligibility for intermediate punishment.

[ (F) ] (G) At the time of sentencing, the issuing authority shall:

(1) if the defendant's sentence includes restitution, a fine, or costs, state:

(a) the amount of the fine and the obligation to pay costs;

(b) the amount of restitution ordered, including

(i) the identity of the payee(s),

(ii) to whom the restitution payment shall be made, and

(iii) whether any restitution has been paid and in what amount; and

(c) the date on which payment is due[ . ];

**[ If the defendant is without the financial means to pay the amount in a single remittance, the issuing authority may provide for installment payments and shall state the date on which each installment is due. ]**

(2) advise the defendant of the right to appeal within 30 days for a trial *de novo* in the court of common pleas, and that if an appeal is filed:

(a) the execution of sentence will be stayed and the issuing authority may set bail or collateral; and

(b) the defendant must appear for the *de novo* trial or the appeal may be dismissed;

(3) if a sentence of imprisonment has been imposed, direct the defendant to appear for the execution of sentence on a date certain unless the defendant files a notice of appeal within the 30-day period, and advise that, if the defendant fails to appear on that date, a warrant for the defendant's arrest will be issued; and

(4) issue a written order imposing sentence, signed by the issuing authority. The order shall include the information specified in paragraphs (F)(1) through (F)(3), and a copy of the order shall be given to the defendant.

**(5) If the defendant is without the financial means to pay the amount in a single remittance, the issuing authority shall provide for installment payments and shall:**

**(a) state the date on which each installment is due; and**

**(b) shall advise the defendant of the procedures in Rule 456 in the event of any default in payment.**

**(c) The amount of each installment shall be based upon a determination of a defendant's financial ability to pay. The issuing authority is prohibited**

**from establishing mandatory minimum installment payments that are not based on the individual defendant's ability to pay.**

#### Comment

No defendant may be sentenced to imprisonment or probation if the right to counsel was not afforded at trial. See *Alabama v. Shelton*, 535 U.S. 654 (2002), *Scott v. Illinois*, 440 U.S. 367 (1979), and *Argersinger v. Hamlin*, 407 U.S. 25 (1972). See Rules 121 and 122.

The affiant may be permitted to withdraw the charges pending before the issuing authority. See Rule 457 (Withdrawal of Charges in Summary Cases).

Paragraph [ (F)(2)(b) ] (G)(2)(b) is included in the rule in light of *North v. Russell*, 427 U.S. 328 (1976). For the procedures for taking, perfecting, and handling an appeal, see Rules 460, 461, and 462.

As the judicial officer presiding at the summary trial, the issuing authority controls the conduct of the trial generally. When an attorney appears on behalf of the Commonwealth or on behalf of a municipality pursuant to paragraph (C), the prosecution of the case is under the control of that attorney. When no attorney appears at the summary trial on behalf of the Commonwealth, or a municipality, the issuing authority may ask questions of any witness who testifies, and the affiant may request the issuing authority to ask specific questions. In the appropriate circumstances, the issuing authority may also permit the affiant to question Commonwealth witnesses, cross-examine defense witnesses, and make recommendations about the case to the issuing authority.

Although the scheduling of summary trials is left by the rules to the discretion of the issuing authority, it is intended that trial will be scheduled promptly upon receipt of a defendant's plea or promptly after a defendant's arrest. When a defendant is incarcerated pending a summary trial, it is incumbent upon the issuing authority to schedule trial for the earliest possible time.

When the defendant was under 18 years of age at the time of the offense and is charged with a summary offense that would otherwise carry a mandatory sentence of imprisonment as prescribed by statute, the issuing authority is required to conduct the summary trial but may not sentence the defendant to a term of imprisonment. See 42 Pa.C.S. §§ 6302 and 6303 and 75 Pa.C.S. § 6303(b).

Under paragraph [ (F)(2)(a) ] (G)(2)(a), the issuing authority should explain to the defendant that if an appeal is filed, any sentence, including imprisonment, fines, or restitution, will be stayed.

When setting the specific date for the defendant to appear for execution of a sentence of imprisonment pursuant to paragraph [ (F)(3) ] (G)(3), the issuing authority should set the earliest possible date for sentencing after the appeal period expires.

When a defendant has waived the stay of the sentence of imprisonment pursuant to Rule 461, the issuing authority may fix the commencement date of the sentence to be the date of conviction, rather than after the 30-day stay period has expired. The defendant, of course, still would be able to pursue an appeal under Rules 460—462.

For the statutory authority to sentence a defendant to pay a fine, see 42 Pa.C.S. § 9726.

For the statutory authority to sentence a defendant to pay restitution, see 42 Pa.C.S. § 9721(c) and 18 Pa.C.S.

§ 1106(c). *See also* 18 Pa.C.S. § 1106(c)(2)(iii), which prohibits the court from ordering the incarceration of a defendant for failure to pay restitution if the failure results from the defendant's inability to pay.

Before imposing both a fine and restitution, the issuing authority must determine that the fine will not prevent the defendant from making restitution to the victim. *See* 42 Pa.C.S. §§ 9726(c)(2) and 9730(b)(3).

Certain costs are mandatory and must be imposed. *See, e.g.*, Section 1101 of the Crime Victims Act, 18 P.S. § 11.1101.

**In determining whether a defendant has the financial means to pay, the issuing authority must consider the defendant's financial situation. Some factors that should be considered in this determination include, but are not limited to:**

**(1) the defendant's current employment status, including current salary and gross income from this year and previous recent years, if any, from the current employer(s) or previous employer(s);**

**(2) income from other sources such as interest, dividends, pension and annuities, social security benefits, support payments, disability payments, unemployment compensation and supplemental benefits, workers' compensation, public assistance;**

**(3) the value of all property owned, including money available in cash, or bank accounts, real estate (including home), and other significant property such as motor vehicles;**

**(4) debts and obligations including mortgages, rent, loans; court assessments, and any other miscellaneous recurring expenses;**

**(5) other contributions to household support from spouse, parents, children, or others; and**

**(6) all persons dependent upon the defendant for support and the defendant's actual contribution to that support.**

**The issuing authority may require the defendant to present documents or other evidence to verify the defendant's financial situation.**

**It is recommended that the issuing authority seek the following information to assist in making an evaluation as to the defendant's ability to pay:**

**(1) the defendant's employment status, including whether the defendant has been unemployed due to recent incarceration;**

**(2) the defendant's income including monthly salary or wages, or income from self-employment;**

**(3) assets or property owned including real estate, motor vehicles, stocks, bonds, cash, and checking or savings accounts;**

**(4) the amount of the defendant's income that is from a benefit or means-based public assistance such as**

**(a) unemployment compensation,**

**(b) Workers' Compensation,**

**(c) Social Security benefits including Supplemental Security Income and Social Security Disability,**

**(d) food stamps,**

**(e) cash assistance,**

**(f) pensions and annuities,**

**(g) any other benefits;**

**(5) Monthly expenses including:**

**(a) mortgage or rent,**

**(b) loans,**

**(c) utilities,**

**(d) cost of health insurance,**

**(e) cost of uninsured health care,**

**(f) cost of transportation, including car payments,**

**(g) costs of dependent care,**

**(h) spousal/child support,**

**(i) utilities, including the cost of cell or other telephone service,**

**(j) food,**

**(k) other expenses.**

**The Administrative Office of Pennsylvania Courts has developed a form available through the court's computer systems that will assist the issuing authority in soliciting the above information.**

**In determining whether the defendant has the ability to pay, the issuing authority must consider the totality of the defendant's financial resources and the nature of the burden that the payments will impose on the defendant's finances.**

Paragraph [ (E) ] (F) permits an issuing authority to delay imposing sentence in summary cases in order to investigate a defendant's eligibility for intermediate punishment. For example, under 42 Pa.C.S. § 9763 and § 9804, defendants may be sentenced to intermediate punishment for certain offenses, including summary violations of 75 Pa.C.S. § 1543(b) (driving while license is under a DUI-related suspension) but only if they meet certain eligibility requirements, such as undergoing a drug and alcohol assessment. Often this information will not be available to the issuing authority at the time of sentencing.

*See* Rule 456 for the procedures when a defendant defaults in the payment of restitution, fines, or costs.

For the procedures concerning sentences that include restitution in court cases, *see* Rule 705.1.

A defendant should be encouraged to seek an adjustment of a payment schedule for restitution, fines, or costs before a default occurs. *See* Rule 456(A).

***Official Note:*** Rule 83 adopted July 12, 1985, effective January 1, 1986; amended September 23, 1985, effective January 1, 1986; January 1, 1986 effective dates extended to July 1, 1986; amended February 2, 1989, effective March 1, 1989; amended October 28, 1994, effective as to cases instituted on or after January 1, 1995; Comment revised April 18, 1997, effective July 1, 1997; amended October 1, 1997, effective October 1, 1998; Comment revised February 13, 1998, effective July 1, 1998; renumbered Rule 454 and Comment revised March 1, 2000, effective April 1, 2001; amended February 28, 2003, effective July 1, 2003; Comment revised August 7, 2003, effective July 1, 2004; amended March 26, 2004, effective July 1, 2004; amended January 26, 2007, effective February 1, 2008; Comment revised July 17, 2013, effective August 17, 2013; amended March 9, 2016, effective July 1, 2016; amended \_\_\_\_\_, 2019, effective \_\_\_\_\_, 2019.

*Committee Explanatory Reports:*

Final Report explaining the October 28, 1994 amendments published with the Court's Order at 24 Pa.B. 5841 (November 26, 1994).

Final Report explaining the April 18, 1997 Comment revision cross-referencing new Rule 87 published with the Court's Order at 27 Pa.B. 2119 (May 3, 1997).

Final Report explaining the October 1, 1997 amendments to paragraph (E) and the Comment concerning the procedures at the time of sentencing published with the Court's Order at 27 Pa.B. 5414 (October 18, 1997).

Final Report explaining the February 13, 1998 Comment revision concerning questioning of witnesses published with the Court's Order at 28 Pa.B. 1127 (February 28, 1998).

Final Report explaining the March 1, 2000 reorganization and renumbering of the rules published with the Court's Order at 30 Pa.B. 1478 (March 18, 2000).

Final Report explaining the February 28, 2003 amendments published with the Court's Order at 33 Pa.B. 1326 (March 15, 2003).

Final Report explaining the August 7, 2003 changes to the Comment concerning defendants under the age of 18 published with the Court's Order at 33 Pa.B. 4293 (August 30, 2003).

Final Report explaining the March 26, 2004 changes concerning *Alabama v. Shelton* published with the Court's Order at 34 Pa.B. 1931 (April 10, 2004).

Final Report explaining the January 26, 2007 amendments adding paragraph (E) concerning intermediate punishment published with the Court's Order at 37 Pa.B. 760 (February 17, 2007).

Final Report explaining the July 17, 2013 Comment revision concerning mandatory incarceration offenses and juveniles published with the Court's Order at 43 Pa.B. 4325 (August 3, 2013).

Final Report explaining the March 9, 2016 amendments to paragraph (F) concerning required elements of the sentence published with the Court's Order at 46 Pa.B. 1540 (March 26, 2016).

**Report explaining the proposed amendments related to determining the defendant's ability to pay case assessments published for comment at 48 Pa.B. 496 (January 20, 2018); Supplemental Report published for comment at 49 Pa.B. 1140 (March 16, 2019).**

**Rule 456. Default Procedures: Restitution, Fines, and Costs.**

(A) When a defendant advises the issuing authority that a default on a single remittance or installment payment of restitution, fines, or costs is imminent, the issuing authority may schedule a hearing on the defendant's ability to pay. If a new payment schedule is ordered, the order shall state the date on which each payment is due, and the defendant shall be given a copy of the order.

(B) If a defendant defaults on the payment of fines and costs, or restitution, as ordered, the issuing authority shall notify the defendant in person or by first class mail that, unless within 10 days of the date on the default notice, the defendant pays the amount due as ordered, or appears before the issuing authority to explain why the

defendant should not be imprisoned for nonpayment as provided by law, a **bench** warrant for the defendant's arrest may be issued.

(C) If the defendant appears pursuant to the 10-day notice in paragraph (B) or following an arrest for failing to respond to the 10-day notice in paragraph (B), the issuing authority shall conduct a hearing immediately to determine whether the defendant is financially able to pay as ordered.

(1) If the hearing cannot be held immediately, the issuing authority shall release the defendant on recognizance unless the issuing authority has reasonable grounds to believe that the defendant will not appear, in which case, the issuing authority may set collateral as provided in Rule 523.

(2) If collateral is set, the issuing authority shall state in writing the reason(s) why any collateral other than release on recognizance has been set and the facts that support a determination that the defendant has the ability to pay monetary collateral.

(3) If collateral is set and the defendant does not post collateral, the defendant shall not be detained without a hearing longer than 72 hours or the close of the next business day if the 72 hours expires on a non-business day.

(D) When a defendant appears pursuant to the notice in paragraph (B) or pursuant to an arrest warrant issued for failure to respond to the notice as provided in paragraph (C):

(1) upon a determination that the defendant is financially able to pay as ordered, the issuing authority may impose any sanction provided by law.

(2) Upon a determination that the defendant is financially unable to pay as ordered, the issuing authority **[ may ] shall** order a schedule or reschedule for installment payments, or alter or amend the order as otherwise provided by law. **The amount of each installment shall be based upon a determination of a defendant's financial ability to pay. The issuing authority is prohibited from establishing mandatory minimum installment payments that are not based on the individual defendant's ability to pay.**

(3) At the conclusion of the hearing, the issuing authority shall:

(a) if the issuing authority has ordered a schedule of installment payments or a new schedule of installment payments, state the date on which each installment payment is due;

(b) advise the defendant of the right to appeal within 30 days for a hearing *de novo* in the court of common pleas, and that if an appeal is filed:

(i) the execution of the order will be stayed and the issuing authority may set bail or collateral; and

(ii) the defendant must appear for the hearing *de novo* in the court of common pleas or the appeal may be dismissed;

(c) if a sentence of imprisonment has been imposed, direct the defendant to appear for the execution of sentence on a date certain unless the defendant files a notice of appeal within the 30-day period; and

(d) issue a written order imposing sentence, signed by the issuing authority. The order shall include the information specified in paragraphs (D)(3)(a) through (D)(3)(c), and a copy of the order shall be given to the defendant.



The order shall also state the reason(s) why a sentence was deemed appropriate and the facts that support a determination that the defendant has the ability to pay as ordered.

(4) A sentence of imprisonment or probation shall not be imposed if the right to counsel was not afforded at the hearing. Counsel shall be appointed as provided in Rule 122(A)(1).

(E) A defendant may appeal an issuing authority's determination pursuant to this rule by filing a notice of appeal within 30 days of the issuing authority's order. The appeal shall proceed as provided in Rules 460, 461, and 462.

**(F) UNCOLLECTABLE RESTITUTION, FINE, AND COSTS**

(1) If, after a period of two years following sentencing, in which the defendant defaults upon the payment of restitution, fine, and costs due as ordered, the issuing authority determines that the defendant does not have the ability to pay, the issuing authority may notify the defendant, any victim, and the affiant, or the attorney for the Commonwealth in person or by first class mail that, unless within 10 days of the date of the notice any victim, the affiant, or the attorney for the Commonwealth objects, the issuing authority may issue an order declaring the payments uncollectable due to the defendant's inability to pay.

(2) The order may be issued only after a hearing at which the defendant is present and represented by counsel.

(3) Service of the notice of the hearing held pursuant to paragraph (F)(2) shall be by first class mail.

(4) notice of the hearing also shall be made on the victim, affiant, and attorney for the Commonwealth who shall be permitted to object to the issuance of the order.

(5) When an order has been issued pursuant to paragraph (F)(1), no further action shall be taken to collect the amount owed by the defendant, including:

(a) the scheduling of a default hearing pursuant to paragraph (A);

(b) the issuance of the notice pursuant to paragraph (B);

(c) issuance of a bench warrant for the defendant's arrest;

(d) referral of the case to a collections agency;

(e) contempt proceedings for failure to pay;

(f) issuance of a notice of default to the Pennsylvania Department of Transportation pursuant to Rule 470.

(6) The order shall be served on the defendant and the victim, affiant, or attorney for the Commonwealth.

(7) If the defendant later becomes able pay, the issuing authority, after notice to the defendant and the victim, affiant, and attorney for the Commonwealth and an opportunity to be heard, may rescind the order and proceed with efforts to obtain payment from the defendant on the money owed.

**Comment**

The purpose of this rule is to provide the procedures governing defaults in the payment of restitution, fines, and costs.

Although most of this rule concerns the procedures followed by the issuing authority after a default occurs, paragraph (A) makes it clear that a defendant should be encouraged to seek a modification of the payment order when the defendant knows default is likely, but before it happens. For fines and costs, see 42 Pa.C.S. § 9730(b)(3).

An issuing authority may at any time alter or amend an order of restitution. See 18 Pa.C.S. § 1106(c)(2) and (3).

When a defendant defaults on a payment of restitution, fines, or costs, paragraph (B) requires the issuing authority to notify the defendant of the default, and to provide the defendant with an opportunity to pay the amount due or appear within 10 days to explain why the defendant should not be imprisoned for nonpayment. Notice by first class mail is considered complete upon mailing to the defendant's last known address. See Rule 430(B)(4).

Except in cases under the Public School Code of 1949, 24 P.S. § 1-102, *et seq.*, in which the defendant is at least 13 years of age but not yet 17, if the defendant is under 18 years of age, the notice in paragraph (B) must inform the defendant and defendant's parents, guardian, or other custodian that, if payment is not received or the defendant does not appear within the 10-day time period, the issuing authority will certify notice of the failure to pay to the court of common pleas as required by the Juvenile Act, 42 Pa.C.S. § 6302, definition of "delinquent act," paragraph (2)(iv), and the case will proceed pursuant to the Rules of Juvenile Court Procedure and the Juvenile Act instead of these rules.

If the defendant is charged with a violation of the compulsory attendance requirements of the Public School Act of 1949, 24 P.S. § 1-102, *et seq.*; has attained the age of 13 but is not yet 17; and has failed to pay the fine, the issuing authority must issue the notice required by paragraph (B)(4) to the defendant and the defendant's parents, guardian, or other custodian informing the defendant and defendant's parents, guardian, or other custodian that, if payment is not received or the defendant does not appear within the 10-day time period, the issuing authority may allege the defendant dependent under 42 Pa.C.S. § 6303(a)(1). Pursuant to 24 P.S. § 13-1333(b)(2), the defendant's failure to pay is not a delinquent act and the issuing authority would not certify notice of the failure to pay to the common pleas court.

If the defendant is 18 years or older when the default in payment occurs, the issuing authority must proceed under these rules.

Pursuant to paragraph (C), the issuing authority must conduct a default hearing when a defendant responds to the 10-day notice as provided in paragraph (B), or when the defendant is arrested for failing to respond to the 10-day notice. If the default hearing cannot be held immediately, the issuing authority may set collateral as provided in Rule 523. However, the issuing authority should only set monetary collateral when he or she has determined that less restrictive conditions of release will not be effective in ensuring the defendant's appearance.

**In determining whether a defendant has the financial means to pay, the issuing authority must consider the defendant's financial situation. Some**

factors that should be considered in this determination include, but are not limited to:

(1) the defendant's current employment status, including current salary and gross income from this year and previous recent years, if any, from the current employer(s) or previous employer(s);

(2) income from other sources such as interest, dividends, pension and annuities, social security benefits, support payments, disability payments, unemployment compensation and supplemental benefits, workers' compensation, public assistance;

(3) the value of all property owned, including money available in cash, or bank accounts, real estate (including home), and other significant property such as motor vehicles;

(4) debts and obligations including mortgages, rent, loans; court assessments, and any other miscellaneous recurring expenses;

(5) other contributions to household support from spouse, parents, children, or others; and

(6) all persons dependent upon the defendant for support and the defendant's actual contribution to that support.

The issuing authority may require the defendant to present documents or other evidence to verify the defendant's financial situation.

It is recommended that the issuing authority seek the following information to assist in making an evaluation as to the defendant's ability to pay:

(1) the defendant's employment status, including whether the defendant has been unemployed due to recent incarceration;

(2) the defendant's income including monthly salary or wages, or income from self-employment;

(3) assets or property owned including real estate, motor vehicles, stocks, bonds, cash, and checking or savings accounts;

(4) the amount of the defendant's income that is from a benefit or means-based public assistance such as

(a) unemployment compensation,

(b) Workers' Compensation,

(c) Social Security benefits including Supplemental Security Income and Social Security Disability,

(d) food stamps,

(e) cash assistance,

(f) pensions and annuities,

(g) any other benefits;

(5) Monthly expenses including:

(a) mortgage or rent,

(b) loans,

(c) utilities,

(d) cost of health insurance,

(e) cost of uninsured health care,

(f) cost of transportation, including car payments,

(g) costs of dependent care,

(h) spousal/child support,

(i) utilities, including the cost of cell or other telephone service,

(j) food,

(k) other expenses.

The Administrative Office of Pennsylvania Courts has developed a form available through the court's computer systems that will assist the issuing authority in soliciting the above information.

In determining whether the defendant has the ability to pay, the issuing authority must consider the totality of the defendant's financial resources and the nature of the burden that the payments will impose on the defendant's finances.

Under paragraph (D)(1), when the issuing authority determines that a defendant is able to pay as ordered, the issuing authority may, as provided by law, impose imprisonment or other sanctions. In addition, delinquent restitution, fines, or court costs may be turned over to a private collection agency. See 42 Pa.C.S. §§ 9730(b)(2) and 9730.1(a).

When a defendant is in default of an installment payment, the issuing authority on his or her own motion or at the request of the defendant or the attorney for the Commonwealth must schedule a rehearing to determine the cause of the default. Before an issuing authority may impose a sentence of imprisonment as provided by law for nonpayment of restitution, fines, or costs, a hearing or rehearing must be held whenever a defendant alleges that his or her ability to pay has been diminished. See 42 Pa.C.S. § 9730(b). No defendant may be sentenced to imprisonment or probation if the right to counsel was not afforded [ at trial ] at the default hearing. See Rule 122(A)(1) ("Counsel shall be appointed. . . in all summary cases, for all defendants who are without financial resources or who are otherwise unable to employ counsel when there is a likelihood that imprisonment will be imposed. . ."). See *Alabama v. Shelton*, 535 U.S. 654 (2002) and *Scott v. Illinois*, 440 U.S. 367 (1979). See also *Commonwealth v. Farmer*, 466 A.2d 677 (Pa. Super. 1983) (Whenever there is a likelihood in a proceeding that imprisonment will be imposed, counsel must be assigned) and (*Commonwealth v. Spontarelli*, 791 A.2d 1254 (Pa. Cmmw. 2002) (defendant is entitled to appointed counsel when tried for violation of municipal ordinance that permits imprisonment upon default of payment of the fine). See also [ Rules ] Rule 121 [ and 122 ] (dealing with [ appearance or ] waiver of counsel).

When a rehearing is held on a payment schedule for fines or costs, the issuing authority may extend or accelerate the payment schedule, leave it unaltered, or sentence the defendant to a period of community service, as the issuing authority finds to be just and practicable under the circumstances. See 42 Pa.C.S. § 9730(b)(3).

This rule contemplates that when there has been an appeal pursuant to paragraph (E), the case would return to the issuing authority who presided at the default hearing for completion of the collection process.

Nothing in this rule is intended to preclude an issuing authority from imposing punishment for indirect criminal contempt when a defendant fails to pay fines and costs in accordance with an installment payment order, 42 Pa.C.S. §§ 4137(a)(4), 4138(a)(3), and 4139(a)(3), or fails to pay restitution, 42 Pa.C.S. § 4137(a)(3). Separate Rules of Criminal Procedure govern contempt adjudications. See Chapter 1 Part D.



**Official Note:** Adopted July 12, 1985, effective January 1, 1986; amended September 23, 1985, effective January 1, 1986; January 1, 1986 effective dates extended to July 1, 1986; Comment revised February 1, 1989, effective July 1, 1989; rescinded October 1, 1997, effective October 1, 1998. New Rule 85 adopted October 1, 1997, effective October 1, 1998; amended July 2, 1999, effective August 1, 1999; renumbered Rule 456 and amended March 1, 2000, effective April 1, 2001; Comment revised August 7, 2003, effective July 1, 2004; amended March 3, 2004, effective July 1, 2004; Comment revised April 1, 2005, effective October 1, 2005; Comment revised September 21, 2012, effective November 1, 2012; Comment revised January 17, 2013, effective May 1, 2013; amended April 10, 2015, effective July 10, 2015; **amended , 2019, effective , 2019.**

*Committee Explanatory Reports:*

Final Report explaining the new rule published with the Court's Order at 27 Pa.B. 5414 (October 18, 1997).

Final Report explaining the July 2, 1999 amendments to paragraph (C) published with the Court's Order at 29 Pa.B. 3718 (July 17, 1999).

Final Report explaining the March 1, 2000 reorganization and renumbering of the rules published with the Court's Order at 30 Pa.B. 1478 (March 18, 2000).

Final Report explaining the August 7, 2003 changes to the Comment concerning failure to pay and juveniles published with the Court's Order at 33 Pa.B. 4293 (August 30, 2003).

Final Report explaining the March 3, 2004 amendment to paragraph (B) published with the Court's Order at 34 Pa.B. 1561 (March 20, 2004).

Final Report explaining the April 1, 2005 Comment revision concerning application of the Juvenile Court Procedural Rules published with the Court's Order at 35 Pa.B. 2213 (April 16, 2005).

Final Report explaining the September 21, 2012 Comment revision correcting the typographical error in the fourth paragraph published with the Court's Order at 42 Pa.B. 6251 (October 6, 2012).

Final Report explaining the January 17, 2013 revisions of the Comment concerning the Public School Code of 1949 published with the Court's Order at 43 Pa.B. 656 (February 2, 2013).

Final Report explaining the April 10, 2015 amendments concerning the setting of collateral published with the Court's Order at 45 Pa.B. 2045 (April 25, 2015).

**Report explaining the proposed amendment concerning factors to be considered when determining a defendant's ability to pay published for comment at 48 Pa.B. 496 (January 20, 2018); Supplemental Report published for comment at 49 Pa.B. 1140 (March 16, 2019).**

**PART G. Special Procedures in Summary Cases Under the Vehicle Code**

**Rule 470. Procedures Related to License Suspension After Failure to Respond to Citation or Summons or Failure to Pay Fine and Costs.**

(A) When a defendant fails to comply with the [ 10-day ] **30-day** response period set forth in Rules 407, 412, and 422, [ and 456, ] the issuing authority shall notify the defendant in writing that, pursuant to Section 1533 of the Vehicle Code, the defendant's license will be sus-

pending if, **within 15 days of the date of the notice**, the defendant fails to respond to the citation or summons or fails to pay all fines and costs imposed or enter into an agreement to make installment payments for the fines and costs [ **within 15 days of the date of the notice** ].

**(B) When a defendant defaults on the payment of fines, costs, or restitution as ordered, the issuing authority shall notify the defendant in writing that, pursuant to Section 1533 of the Vehicle Code, the defendant's license will be suspended if, within 15 days of the date of the notice, the defendant fails to pay all fines, costs, and restitution imposed, or enter into an agreement to make installment payments for fines, costs, and restitution and the issuing authority finds that the defendant has the financial ability to pay.**

[ (B) ] (C) Service of the notice required in [ paragraph ] paragraphs (A) and (B) shall be by first class mail, and a copy shall be made part of the record.

[ (C) ] (D) If the defendant does not respond by the fifteenth day, the issuing authority shall so notify the Pennsylvania Department of Transportation. The notice shall be sent by electronic transmission in the form prescribed by the Pennsylvania Department of Transportation. The issuing authority shall print out and sign a copy of the notice, which shall include the date and time of the transmission, and the signed copy shall be made part of the record.

**(E) If the defendant responds by the fifteenth day, and fails to pay all fines, costs, and restitution imposed, or fails to enter into an agreement to make installment payments for fines, costs, and restitution, a notice issued pursuant to paragraph (B) shall be sent to the Pennsylvania Department of Transportation only if the issuing authority first has held a hearing pursuant to Rule 456(C) and determined that the defendant has the financial ability to pay. The notice shall not be sent during the pendency of any appeal from that hearing.**

[ (D) ] (F) If the defendant responds to the citation or summons or pays all fines and costs imposed or enters into an agreement to make installment payments for the fines and costs imposed after notice has been sent pursuant to paragraph [ (C) ] (D), the issuing authority shall so notify the Pennsylvania Department of Transportation and request the withdrawal of the defendant's license suspension. The notice and request shall be sent by electronic transmission. The issuing authority shall print out and sign a copy of the notice and request, which shall include the date and time of the transmission, and the signed copy shall be made part of the record.

[ (E) ] (G) Upon request of the defendant, the attorney for the Commonwealth, or any other government agency, the issuing authority's office shall provide a certified copy of any notices or any request form required by this rule.

**Comment**

This rule was adopted in 1993, and amended in 2011, to implement the notice requirements of 75 Pa.C.S. § 1533 and to insure uniform, prompt transmissions to the Department of Transportation. It does not change the other procedural requirements contained in the summary case rules generally. *See, e.g.*, paragraph (B)(1)(a) of Rule 430 (Issuance of Warrant) and Rule 456 (Default Procedures: Restitution, Fines, and Costs). **This rule was amended in 2019 to clarify that, in cases involving**

default on the payment of fines and costs, or restitution, the 15-day notice of the license suspension may be sent at the time of default and not subsequent to the expiration of the 10-day bench warrant notice under Rules 430(B)(3)(b) and 456(B).

It is recommended that the issuing authority seek the following information to assist in making an evaluation as to the defendant's ability to pay:

(1) the defendant's employment status, including whether the defendant has been unemployed due to recent incarceration;

(2) the defendant's income including monthly salary or wages, or income from self-employment;

(3) assets or property owned including real estate, motor vehicles, stocks, bonds, cash, and checking or savings accounts;

(4) the amount of the defendant's income that is from a benefit or means-based public assistance such as

(a) unemployment compensation,

(b) Workers' Compensation,

(c) Social Security benefits including Supplemental Security Income and Social Security Disability,

(d) food stamps,

(e) cash assistance,

(f) pensions and annuities,

(g) any other benefits;

(5) Monthly expenses including:

(a) mortgage or rent,

(b) loans,

(c) utilities,

(d) cost of health insurance,

(e) cost of uninsured health care,

(f) cost of transportation, including car payments,

(g) costs of dependent care,

(h) spousal/child support,

(i) utilities, including the cost of cell or other telephone service,

(j) food,

(k) other expenses.

The Administrative Office of Pennsylvania Courts has developed a form available through the court's computer systems that will assist the issuing authority in soliciting the above information.

In determining whether the defendant has the ability to pay, the issuing authority must consider the totality of the defendant's financial resources and the nature of the burden that the payments will impose on the defendant's finances.

This rule is not intended to address the admissibility of evidence. See the Pennsylvania Rules of Evidence and 42 Pa.C.S. § 6101 *et seq.* concerning the Rules of Evidence for documents.

Under paragraph [ (E) ] (G), the issuing authority is required to provide a certified copy of the report, but only if the request is made within the period that the issuing authority is required to retain the records.

Electronic transmissions are to be made from the Magisterial District Judge System or other computer system used by issuing authorities.

**Official Note:** Previous Rule 91, formerly Rule 140, adopted January 31, 1970, effective May 1, 1970; renumbered Rule 69 September 18, 1973, effective January 1, 1974; Comment revised January 28, 1983, effective July 1, 1983; rescinded July 12, 1985, effective January 1, 1986. The January 1, 1986 effective date is extended to July 1, 1986. Readopted and renumbered Rule 91 February 1, 1989, effective July 1, 1989; rescinded June 3, 1993, effective July 1, 1993, and replaced by new Rule 92. New Rule 91 adopted June 3, 1993, effective July 1, 1993; renumbered Rule 470 and amended March 1, 2000, effective April 1, 2001; amended February 18, 2011, effective March 18, 2011; **amended** , 2019, **effective** , 2019.

*Committee Explanatory Reports:*

Report explaining the provisions of the new rule published with the Court's Order at 23 Pa.B. 2811 (June 19, 1993).

Final Report explaining the March 1, 2000 reorganization and renumbering of the rules published with the Court's Order at 30 Pa.B. 1478 (March 18, 2000).

Final Report explaining the February 18, 2011 amendments to paragraphs (A) and (D) adding failure to pay fines and costs published with the Court's Order at 41 Pa.B. 1168 (March 5, 2011).

**Report explaining the proposed amendments to paragraphs (A) regarding the timing of the notice of suspension for failure to pay fines and costs published for comment at 48 Pa.B. 496 (January 20, 2018); Supplemental Report published for comment at 49 Pa.B. 1140 (March 16, 2019).**

#### SUPPLEMENTAL REPORT

*Proposed Amendment of Pa.Rs.Crim.P. 403, 407, 408, 409, 411, 412, 413, 414, 422, 423, 424, 454, 456, and 470*

#### INCARCERATION OF THE INDIGENT FOR FAILURE TO PAY IN SUMMARY CASES

The Criminal Procedural Rules Committee originally published for comment a package of proposed rules changes intended to provide for the more equitable enforcement of monetary assessments imposed in summary cases on those without the financial ability to pay.<sup>1</sup> After studying the numerous publication responses, the Committee is considering revisions to the proposal. As these changes constitute significant changes to the original proposal, the Committee is publishing this Supplemental Report seeking comment on the changes to the proposal.

The core of the proposal as published remains the same.<sup>2</sup> The original proposal's rules changes fell into three main areas:

(1) increasing the amount of time a defendant has to respond to a citation from the current 10 days to 30 days;

(2) permitting a defendant who wishes to plead not guilty but who cannot afford to post collateral to assert the inability to pay when responding in writing to the citation;

<sup>1</sup> See 48 Pa.B. 496 (January 20, 2018) and <http://www.pacourts.us/assets/uploads/Resources/Documents/Publication%20Report%20Indigent%20Incarceration%20for%20Failure%20to%20Pay%20in%20Summaries%20-%2020006720.pdf?cb=bd09e>.

<sup>2</sup> See the Committee's explanatory Report for the explanation of the development and the core aspects of the proposal.

(3) providing guidance to the issuing authority regarding the factors to be considered when assessing a defendant's ability to pay at time of sentencing and default.

The changes the Committee is considering in this supplemental proposal address several of the issues raised in the publication responses. Briefly, these changes include:

- the creation of a procedure for an administrative hold on collection actions where the issuing authority has determined that the defendant does not have an ability to pay on an extended basis;
- strengthening the statement in the rules regarding right to counsel at payment determination hearings;
- precluding the practice of setting minimum payment amounts regardless of the individual defendant's ability to pay;
- clarifying that the Rule 470 notice to the Pennsylvania Department of Transportation ("PennDOT") regarding suspension of the defendant's driver's license for failure to pay would only be issued after an ability to pay determination had been made;
- developing with the Administrative Office of Pennsylvania Courts a form that may be used by the issuing authority in determining a defendant's ability to pay, that would include in the Comment to various rules a listing of the types of information to be solicited in this form.

A number of the publication responses included a request for a procedure that would permit some form of forbearance when a defendant clearly lacks the ability to pay and will likely be in that situation in the long term. It was noted that a great deal of time and effort was being exerted in collection and attempted enforcement of owed case assessments when a defendant is known to lack the financial resources to be able to pay. These commenters suggested some means of administratively closing a case in that situation. However, the Committee was concerned that this would have amounted to a modification of the sentencing order for which there is no statutory authority.<sup>3</sup>

Due to these concerns about the statutory preclusion on modifying a sentence more than 30 days after imposition, the Committee preferred a procedure for placing an "administrative hold" on collection efforts. Under the proposed procedure, a new paragraph (F) would be added to Rule 456 (Default Procedures: Restitution, Fines, and Costs) that would provide this "administrative hold" procedure. This procedure may be utilized only after two years of attempts at collection have failed and it is determined that the defendant is unable to pay. Paragraph (F) would include a list of collection actions that would be precluded, including the issuance of arrest warrants and notification to Pennsylvania Department of Transportation regarding license suspension.

Once an issuing authority believes that the defendant may be unable to pay, a hearing on the question would be held at which the defendant must be present. Notice of the hearing would be sent to the victim, affiant, and, if applicable, the attorney for the Commonwealth to provide the opportunity to object. If, at the end of the hearing, the issuing authority determines that the defendant has been and will be chronically unable to pay, an order would be issued placing on hold any efforts to collect the case assessments. If the issuing authority later determines that the defendant becomes able to pay, the order may be lifted.

<sup>3</sup> A court order may not be modified by the presiding judge more than 30 days after it had been entered. 42 Pa.C.S. § 5505.

The hold on further collection efforts does not operate to decrease or limit a defendant's financial obligation toward various stakeholders, including restitution owed to victims. The intent of the hold is to serve as a recognition that, after two years, such efforts serve no purpose when a court determines a defendant does not have the ability to pay even minimal periodic amounts. The Committee invites feedback on this aspect of the proposal to better understand stakeholder concerns.

Another suggestion received from the publication comments was to strengthen the statement on a defendant's right to counsel at the default hearings by moving the statement of this right from the Rule 456 Comment into the text of the rule. This suggestion has been incorporated into the proposal as a new paragraph (D)(4) in Rule 456. The Comment language regarding right to counsel would be retained to emphasize the point.

The Committee also received reports of the practice in some counties or among some judges to require certain minimum monthly payments in all cases. The Committee agreed that this practice should be proscribed. This proscription has been included in a new paragraph (G)(5) in Rule 454 that addresses the establishment of installment payment plans. A similar provision has been added to other rules dealing with sentencing, *i.e.*, Rules 409, 414, and 424. It has also been added to Rule 456, as part of the provisions dealing with modified installment plans.

It also was suggested that the rules should provide for a hearing on a defendant's ability to pay before his or her driver's license could be suspended. The Committee agreed to include this provision in the proposal. However, the situation when a defendant refuses to participate in this hearing should not be a means of halting the license suspension process. To clarify these procedures, Rule 470 has been slightly reorganized. Paragraph (A) would address the situation when a notice of license suspension is being issued because the defendant has failed to respond to a citation or summons. A new paragraph (B) would address the situation when a defendant fails to pay summary case assessments and would include the requirement that a determination of the defendant's ability to pay must be made prior to notice being sent to PennDOT. Paragraph (D) would retain the rule's current provision regarding a defendant's failure to respond to the notice of license suspension. A new paragraph (E) would provide that, when a defendant does respond to the notice of license suspension, before notifying PennDOT that the defendant's license should be suspended, the issuing authority must determine that the defendant is able to pay but does not.

There were a number of publication responses suggesting that the rule should contain presumptions of an inability to pay when the defendant's income is at a certain level. The Committee believes that such a standard would be arbitrary given the wide geographical and economic differences between areas of the Commonwealth and between the circumstances of each individual defendant. The Committee concluded that such presumptions would unduly hamper an equitable and individualize determination of a defendant's ability to pay. However, to assist in making this determination, the original proposal included Comment language contained in the various rules related to sentencing and default suggesting factors to be considered. In this revised proposal, the Committee is proposing further detail to these provisions. If the Court adopts this proposal, the Committee would anticipate the development of forms by the Administrative Office of Pennsylvania Courts that would elicit from the



defendant information regarding the defendant's financial situation that would assist in the ability to pay determination. To assist in the development of these forms, the Comments to the rules would contain, in addition to the general factors to be considered in making the ability to pay determination, specific information about the defendant's financial situation.

There were a few suggestions made in publication responses that the Committee declined to adopt. These included reiterations of the proposal to eliminate the requirement to post collateral in not guilty pleas by mail. As the Committee had discussed in its original development of the proposal, the retention of the general requirement for posting collateral but permitting an assertion of financial inability to post collateral represented an appropriate compromise on this question. Therefore, no change to the original proposal in this regard was made.

There were also objections to the increase in the time for responding to a summary citation from 10 to 30 days. The consensus of the Committee was that the increase was a reasonable change that will provide defendants without sufficient liquidity more time to raise assessment money and so may reduce the number of not guilty pleas. No change to the original proposal has been made in this regard.

[Pa.B. Doc. No. 19-359. Filed for public inspection March 15, 2019, 9:00 a.m.]

## Title 237—JUVENILE RULES

### PART I. RULES

#### [ 237 PA. CODE CH. 1 ]

#### Order Amending Rules 170 and 172 of the Pennsylvania Rules of Juvenile Court Procedure; No. 793 Supreme Court Rules Doc.

#### Order

*Per Curiam*

And Now, this 1st day of March, 2019, upon the recommendation of the Juvenile Court Procedural Rules Committee, the proposal having been published for public comment at 47 Pa.B. 938 (February 18, 2017):

It is Ordered pursuant to Article V, Section 10 of the Constitution of Pennsylvania that Pennsylvania Rules of Juvenile Court Procedure 170 and 172 are amended in the following form.

This Order shall be processed in accordance with Pa.R.J.A. No. 103(b), and shall be effective on July 1, 2019.

#### Annex A

### TITLE 237. JUVENILE RULES

#### PART I. RULES

#### Subpart A. DELINQUENCY MATTERS

#### CHAPTER 1. GENERAL PROVISIONS

#### PART C(3). EXPUNGING OR DESTROYING RECORDS, FINGERPRINTS, AND PHOTOGRAPHS

#### Rule 170. Motion to Expunge or Destroy Records.

A. *Motion*. Upon motion, or *sua sponte*, expungement proceedings may be commenced:

- 1) if a written allegation is not approved for prosecution;
- 2) if the petition is dismissed by the court;
- 3) in consent decree and informal adjustment cases:
  - a) when six months have elapsed since the final discharge of the juvenile from supervision; and
  - b) if no proceeding seeking adjudication or conviction is pending;
- 4) when a juvenile has been discharged from court supervision pursuant to Rule 631:
  - a) five years have elapsed;
  - b) the juvenile has not been convicted or adjudicated delinquent for a felony or misdemeanor;
  - c) no court proceeding is pending seeking such conviction or adjudication; and
  - d) the delinquent act is not an act precluded from expungement pursuant to 18 Pa.C.S. § 9123(a.1); or
- 5) when the attorney for the Commonwealth consents to the expungement.

B. *Contents of [motion] Motion*. A motion, which shall include a proposed court order, shall contain the following information:

- 1) the name of the juvenile;
- 2) the date of birth of the juvenile, if known;
- 3) the juvenile's case docket number, if any;
- 4) the allegations or offenses to which the order pertains;
- 5) the law enforcement agency that initiated the allegations;
- 6) the reference number of the police report or written allegation to be expunged or destroyed, including the juvenile offense tracking number (JOTN), if available;
- 7) the date of arrest;
- 8) the disposition of the written allegation or petition;
- 9) the reasons and statutory authority for expunging or destroying the documents, fingerprints, or photographs; and
- 10) the agencies upon which certified copies of the court order shall be served.

C. *Service of [motion] Motion*. In addition to the service required by Rule 345, the movant shall serve the motion on the chief juvenile probation officer.

#### D. *Answer*.

- 1) The attorney for the Commonwealth, and any other person upon whom the motion was served, may file an answer to the motion.
- 2) If objections to the motion are not made within thirty days of the filing of the motion, they shall be deemed waived.

E. *Court's [response to the motion] Response to the Motion*. The court shall conduct a hearing or grant or deny the motion after giving consideration to the following factors:

- 1) the type of offense;
- 2) the individual's age, history of employment, history of academic or vocational training, delinquent or criminal activity, and drug or alcohol issues;



3) adverse consequences that the individual may suffer if the records are not expunged; and

4) whether retention of the record is required for purposes of public safety.

**F. [ *Inter-county transfer cases* ] Inter-County Transfer Cases.**

1) A motion to expunge or destroy records shall be filed in the county in which the adjudication of delinquency was entered.

2) A motion regarding the records of a juvenile whose disposition did not involve an adjudication of delinquency shall be filed in the county in which the disposition occurred.

3) The court entering an order to expunge or destroy records shall direct the order to any other court possessing records pertaining to the case.

**Comment**

Paragraph (A) provides that [ **any party may file** ] a motion to expunge or destroy records, files, fingerprints, or photographs, or the court, *sua sponte*, may commence expungement proceedings.

Under paragraphs (A)(1) & (2), the written allegation or petition may be dismissed for several reasons, including, but not limited to, when: 1) a juvenile completes an informal adjustment or diversionary program; 2) the attorney for the Commonwealth declines to prosecute; 3) probable cause is not found at the detention hearing pursuant to Rule 242(C)(1); 4) there is no finding on the offenses pursuant to Rule 408(B); or 5) there is no finding of a need for treatment, supervision, and rehabilitation pursuant to Rule 409(A)(1). Expungement proceedings may be commenced upon these dismissals of the written allegation or the petition.

**For expungement of summary offenses heard by a magisterial district court or criminal court, see Pa.R.Crim.P. 490 and 490.1 (truancy). For eligibility for expungement, see 18 Pa.C.S. § 9123(a); 24 P.S. § 13-1333.3(h) (truancy).**

Under paragraph (B)(6), any number assigned to police papers helpful in tracking the police report or written allegation that would assist the law enforcement agency in expunging or destroying the document is to be listed. A reference number could be [ **an** ] a **juvenile** offense tracking number, district control number, crime control number, incident number, Philadelphia identification number, or another number assigned by the law enforcement agency to track the document.

Pursuant to paragraph (B)(9), the reasons for expunging the records or destroying fingerprints and photographs are to be included in the motion, specifically citing which provision of paragraph (A) applies.

“Expunge” or “expungement” is defined by Rule 120, which means to erase legally, or the process of legal erasure of an item making it permanently not available to the public but where some information may be retained only for limited purposes by agencies or departments. *See* Rule 173. *See also* Comment to Rule 120.

Rule 173 provides for the retention of certain information that is crucial for: 1) determining compliance with the order to expunge; 2) determining eligibility in a court program, determining the grading or penalty of an offense, or for other purposes as provided by law; 3)

maintaining statistical and research information; 4) maintaining intelligence and investigative information; and 5) financial audits.

**[ The new procedures instituted with the changes of 2014 require one procedure for expunging or destroying records, fingerprints, and photographs. One order will go to the appropriate agencies and departments as required by Rule 172 and will help those agencies become more efficient in the manner in which items are destroyed or expunged. ]**

Pursuant to paragraph (D), the attorney for the Commonwealth is given an opportunity to respond to the motion. The attorney for the Commonwealth should specify its position on whether items should be expunged or destroyed. Expunged items remain available to law enforcement agencies and the attorney for the Commonwealth in limited circumstances, whereas destroyed items are permanently erased. The attorney for the Commonwealth should consent to expunging records unless the attorney for the Commonwealth demonstrates good cause for the retention of records. *See In re A.B.*, 987 A.2d 769 (Pa. Super. [ Ct. ] 2009).

The reasons for maintaining information pursuant to Rule 173 do not qualify as good cause against expunging records under this rule. Maintenance of specific information is different from the maintenance of the official court record or other official records of the juvenile probation office or a law enforcement agency. Pursuant to Rule 173, a separate document, file, or database is to be created. *See* Rule 173 and its Comment.

If the attorney for the Commonwealth objects to expunging or destroying the records, the court should conduct a hearing on the motion.

Pursuant to paragraph (E)(3), the court is to consider adverse consequences that an individual may suffer if the records are not expunged. Adverse consequences are discussed in The Pennsylvania Collateral Consequences Checklist instituted by Pennsylvania Juvenile Indigent Defense Action Network in conjunction with the initiative the Models for Change System Reform in Juvenile Justice. This checklist may be [ **assessed** ] **accessed** on the Supreme Court’s website at [ <http://www.pacourts.us/T/BoardsCommittees/JuvenileCourtProcedural/> ] <http://www.pacourts.us/courts/supreme-court/committees/rules-committees/juvenile-court-procedural-rules-committee/juvenile-court-committee-rules-and-forms>.

The attorney for the Commonwealth in the county in which a motion is filed in an inter-county transfer case pursuant to paragraph (F) should provide notice of the motion to, and communicate with, the attorney for the Commonwealth and the juvenile probation office in the county to which, or from which, the case was transferred.

Notwithstanding this rule, *see* 18 Pa.C.S. § 9123(a.1) for cases that are ineligible for expungement proceedings. *See also* 42 Pa.C.S. § 6341 for destruction of fingerprints and photographs.

**Official Note:** Rule 170 adopted April 1, 2005, effective October 1, 2005. Amended July 28, 2014, effective September 29, 2014. Amended February 12, 2015, effective immediately. **Amended March 1, 2019, effective July 1, 2019.**

*Committee Explanatory Reports:*

Final Report explaining the provisions of Rule 170 published with the Court’s Order at 35 Pa.B. 2214 (April 16, 2005).

Final Report explaining the amendments to Rule 170 published with the Court's Order at 44 Pa.B. 5447 (August 16, 2014).

**Final Report explaining the amendments to Rule 170 published with the Court's Order at 49 Pa.B. 1142 (March 16, 2019).**

**Rule 172. Order to Expunge or Destroy.**

A. *Contents.* Any order to expunge or destroy the official court record, juvenile probation files, docket entries, law enforcement records, or fingerprints and photographs shall include the following information:

- 1) all items contained in Rule 170(B);
- 2) a directive specifically identifying which items shall be expunged or destroyed, including all law enforcement records, juvenile probation files, official court records, other juvenile records, fingerprints, photographs, and any other information pertaining to the arrest;
- 3) a directive that the keeper of the juvenile records shall expunge or destroy such items;
- 4) a directive that each agency, department, or office, upon request, shall notify the court or its designee, in writing, of the action taken in response to the order to expunge or destroy;
- 5) a directive to a school building principal or his or her designee to destroy information received from the court pursuant to Rule 163;
- 6) the printed name and signature of the judge issuing the order; and
- 7) the date of the court order.

B. *Service.* In addition to the service required by Rule 167, the clerk of courts, court administrator, or other court designee shall serve certified copies of the order on the chief juvenile probation officer, **the Pennsylvania State Police, the Juvenile Court Judges' Commission**, and any other person or agency as directed by the court.

**Comment**

Pursuant to paragraph (A)(2), the court is to list specifically which items are to be expunged and which items are to be destroyed. Specific information retained pursuant to Rule 173 should be expunged but not destroyed. In most instances, the court should order that the fingerprints and photographs be destroyed and that the remaining records and documents be expunged.

Pursuant to paragraph (A)(4), an agency, department, or office may be requested to produce evidence of compliance with the court order to expunge. Non-compliance may result in a finding of contempt of court.

Pursuant to paragraph (A)(5), the school is to destroy all information received from the court. Because the school is required to store this information separately under Rule 163(F), destruction should not be difficult. See Rule 163 and its Comment. The court may also require the school to provide written notice of the action taken.

**Official Note:** Rule 172 adopted April 1, 2005, effective October 1, 2005. Amended December 24, 2009, effective immediately. Amended July 28, 2014, effective September 29, 2014. **Amended March 1, 2019, effective July 1, 2019.**

*Committee Explanatory Reports:*

Final Report explaining the amendments to Rule 172 published with the Court's Order at 40 Pa.B. 222 (January 9, 2010).

Final Report explaining the amendments to Rule 172 published with the Court's Order at 44 Pa.B. 5447 (August 16, 2014).

**Final Report explaining the amendments to Rule 172 published with the Court's Order at 49 Pa.B. 1142 (March 16, 2019).**

**FINAL REPORT<sup>1</sup>**

**Amendment of Pa.R.J.C.P. 170 and 172**

On March 1, 2019, the Supreme Court amended Rule of Juvenile Court Procedure 170 to require the inclusion of additional information in a motion for expungement and Rule 172 to require the Pennsylvania State Police and the Juvenile Court Judges' Commission to be served a copy of the expungement order.

The Criminal History Record Information Act provides for the expungement of both written allegations and petitions in juvenile proceedings under certain circumstances. See 18 Pa.C.S. § 9123(a); see also Pa.R.J.C.P. 170(A). In juvenile court vernacular, crimes set forth in a written allegation are "allegations," whereas crimes set forth in a petition are "offenses." Previously, Rule 170(B)(4) concerning expungement motions only required the motion to contain allegations; it did not require the inclusion of offenses. Rule 170(B)(4) has been amended to add "or offenses."

Rule 170(B)(6) has been amended to require the inclusion of the "juvenile" to more accurately describe the offense tracking number. The commentary has also been revised to add the "juvenile" descriptor.

Within the Comment to Rule 170, the phrase, "any party may file," has been removed. The Committee recommended removing this phrase because it did not wish to imply that a non-party, such as a juvenile probation officer, is foreclosed from motioning for an expungement when, for example, a juvenile has been discharged from supervision following a consent decree or informal adjustment. Other non-substantive revisions to the Comment included the elimination of a paragraph of historical language explaining amendments in 2014.

The Pennsylvania State Police is required to maintain a statewide registry of juvenile history record information, fingerprints, and photographs. See 42 Pa.C.S. § 6309(b). Additionally, the Juvenile Court Judges' Commission's Information Technology Division collects, compiles, and publishes the juvenile court statistics. See 42 Pa.C.S. § 6373. Accordingly, information related to juvenile cases is shared with these entities. See 42 Pa.C.S. § 6309(c) & (d).

Rule 172 was amended to ensure that these entities maintain accurate information pertaining to juvenile records by requiring copies of expungement orders to be served upon those entities in every matter. The amendment to Rule 170(B)(6) requires the JOTN, if available, to be included in the expungement motion. By operation of Rule 172(A)(1), this information is also included in the expungement order to assist the entities in performing their functions.

<sup>1</sup> The Committee's Final 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 Committee's explanatory Final Reports.

As a result of a public comment, a joint committee of the Juvenile Court Procedural Rules Committee and the Criminal Procedural Rules Committee was formed to consider whether the Juvenile Rules or the Criminal Rules should govern the expungement procedures for summary offenses committed by a defendant under the age of 18. For reasons more fully discussed in the Final Report being filed with the amendments of Pa.R.Crim.P. 490 and 490.1, the Comment to Rule 170 is being revised to add:

For expungement of summary offenses heard by a magisterial district court or criminal court, see Pa.R.Crim.P. 490 and 490.1 (truancy). For eligibility for expungement, see 18 Pa.C.S. § 9123(a); 24 P.S. § 13-1333.3(h) (truancy).

The purpose of this reference is to direct readers to the Criminal Rules for procedures for the expungement of summary offenses, as well as reference the statutes establishing the eligibility for an expungement. The inclusion of "criminal court" is intended to reflect instances where more serious charges against a minor have been dismissed and the criminal court judge sits as a magisterial district court judge. The reference to the court where the record is located was believed to be more accurate than to the status of the jurist adjudicating the matter.

The amendments will become effective July 1, 2019.

[Pa.B. Doc. No. 19-360. Filed for public inspection March 15, 2019, 9:00 a.m.]

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## DISCIPLINARY BOARD OF THE SUPREME COURT

### Notice of Suspension

Notice is hereby given that Sal Greenman having been suspended from the practice of law in New Jersey; the Supreme Court of Pennsylvania issued an Order dated February 27, 2019 suspending Sal Greenman from the practice of law in this Commonwealth for a period of one year, effective March 29, 2019. 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*.

MARCEE D. SLOAN,  
*Board Prothonotary*

[Pa.B. Doc. No. 19-361. Filed for public inspection March 15, 2019, 9:00 a.m.]

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# PROPOSED RULEMAKING

## ENVIRONMENTAL QUALITY BOARD

[ 25 PA. CODE CHS. 121 AND 127 ]

### Additional Requirements for Control of Fine Particulate Matter in the Nonattainment New Source Review Program

The Environmental Quality Board (Board) proposes to amend Chapters 121 (relating to general provisions) and 127, Subchapters E and H (relating to new source review; and general plan approvals and operating permits) to read as set forth in Annex A. This proposed rulemaking would incorporate recently promulgated Federal requirements for the regulation of volatile organic compounds (VOC) and ammonia as precursor emissions to the formation of fine particulate matter, which is particulate matter less than and equal to 2.5 micrometers in diameter (PM<sub>2.5</sub>). This proposed rulemaking would also revise the application submission options for the use of general plan approvals and operating permits for portable sources in § 127.641(c) (relating to application for use of plan approvals and operating permits for portable sources).

This proposed rulemaking is necessary to address a mandatory 18-month sanction clock, in accordance with section 179 of the Clean Air Act (CAA) (42 U.S.C.A. § 7509), following the United States Environmental Protection Agency's (EPA) determination that the Commonwealth has not met its obligations for the nonattainment new source review (NNSR) permit program, because its existing NNSR program does not include emissions of VOC and ammonia as PM<sub>2.5</sub> precursors. To stop the sanction clock, the Commonwealth will need to submit this proposed rulemaking to the EPA, for the EPA's technical and administrative review, by November 7, 2019.

This proposed rulemaking will be submitted to the EPA for approval as a revision to the Commonwealth's State Implementation Plan (SIP) following promulgation of the final-form rulemaking.

This proposed rulemaking is given under Board order at its meeting of December 18, 2018.

#### A. Effective Date

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

#### B. Contact Persons

For further information, contact Virendra Trivedi, Chief, Division of Permits, Bureau of Air Quality, Rachel Carson State Office Building, P.O. Box 8468, Harrisburg, PA 17105-8468, (717) 783-9476; or Elizabeth Davis, Assistant Counsel, Bureau of Regulatory Counsel, Rachel Carson State Office Building, P.O. Box 8464, Harrisburg, PA 17105-8464, (717) 787-7060. Information regarding submitting comments on this proposed rulemaking appears in Section J of this preamble. Persons with a disability may use the Pennsylvania AT&T Relay Service, (800) 654-5984 (TDD users) or (800) 654-5988 (voice users). This proposed rulemaking is available on the Department of Environmental Protection's (Department) web site at [www.dep.pa.gov](http://www.dep.pa.gov) (select "Public Participation," then "Environmental Quality Board (EQB)").

#### C. Statutory Authority

This proposed rulemaking is authorized under section 5(a)(1) of the Air Pollution Control Act (APCA) (35 P.S. § 4005(a)(1)), which grants the Board the authority to adopt rules and regulations for the prevention, control, reduction and abatement of air pollution in this Commonwealth. Section 5(a)(8) of the APCA also grants the Board the authority to adopt rules and regulations designed to implement the provisions of the CAA (42 U.S.C.A. §§ 7401—7671q).

#### D. Background and Purpose

On July 18, 1997, the EPA revised the National Ambient Air Quality Standard (NAAQS) for particulate matter (PM) to add new standards for fine particles, using PM<sub>2.5</sub> as the indicator. The EPA set the health-based (primary) and welfare-based (secondary) PM<sub>2.5</sub> annual standard at a level of 15 micrograms per cubic meter (µg/m<sup>3</sup>) and the 24-hour standard at a level of 65 µg/m<sup>3</sup>. See 62 FR 38652 (July 18, 1997). Subsequently, on October 17, 2006, the EPA revised the primary and secondary 24-hour NAAQS for PM<sub>2.5</sub> to 35 µg/m<sup>3</sup> from 65 µg/m<sup>3</sup>. See 71 FR 61236 (October 17, 2006). On January 15, 2013, the EPA lowered the health-based (primary) PM<sub>2.5</sub> annual standard from 15 µg/m<sup>3</sup> to 12 µg/m<sup>3</sup>. See 78 FR 3086 (January 15, 2013).

On January 15, 2015, the EPA designated five areas in this Commonwealth as moderate nonattainment areas for the 2012 annual PM<sub>2.5</sub> NAAQS, based on air quality monitoring data from 2011—2013. See 80 FR 2206 (January 15, 2015). The nonattainment areas were the Allegheny County Area, Allentown Area (Lehigh and Northampton Counties), Delaware County Area, Johnstown Area (Cambria County and partial Indiana County) and Lebanon County Area.

On April 7, 2015, the EPA issued updated designations, based on complete, quality-assured and certified monitoring data from 2012—2014, which reduced the number of nonattainment areas in this Commonwealth to three: the Allegheny County Area, the Delaware County Area and the Lebanon County Area. See 80 FR 18535, 18549 (April 7, 2015).

The EPA subsequently determined that two of these areas—Delaware and Lebanon—attained the 2012 annual PM<sub>2.5</sub> NAAQS based on complete, quality-assured and certified air quality data that shows that the area is monitoring attainment (Clean Data Determination). See 81 FR 89868 (December 13, 2016) and 82 FR 50851 (November 2, 2017) respectively. These final actions suspended the requirements for the Commonwealth to submit an attainment demonstration and associated reasonably available control measures, reasonable further progress plans, contingency measures and other planning SIP revisions related to the areas' attainment of the 2012 annual PM<sub>2.5</sub> NAAQS for so long as these areas continue to attain the 2012 annual PM<sub>2.5</sub> NAAQS.

Section 172(c)(3) of the CAA (42 U.S.C.A. § 7502(c)(3)) requires a comprehensive emissions inventory, which is not suspended by the Clean Data Determinations. The Department submitted emissions inventories for the Delaware County and Lebanon County nonattainment areas on May 5, 2017, and September 25, 2017, respectively. On July 3, 2018, the EPA published a final rule that approved both Delaware County and Lebanon County emissions inventories. See 83 FR 31064 (July 3, 2018).



In August 2016, the EPA published its SIP Requirements Rule, which requires states with nonattainment areas for  $PM_{2.5}$  to amend their NNSR regulations to include emissions of VOC and ammonia as  $PM_{2.5}$  precursors. See Fine Particulate Matter National Ambient Air Quality Standards: State Implementation Plan Requirements, 81 FR 58010 (August 24, 2016). Section 189(a)(2)(B) of the CAA (42 U.S.C.A. § 7513a(a)(2)(B)) and its implementing regulations at 40 CFR 51.1003(a) (relating to attainment plan due dates and submission requirements) requires all moderate nonattainment area elements to be submitted to the EPA for SIP approval no later than 18 months from the date of designation. The designations were effective on April 15, 2015. See 80 FR 2206, 18535 (January 15, 2015) and (April 7, 2015). Accordingly, the required elements were due to the EPA for SIP approval on October 15, 2016. The Clean Data Determinations for the Delaware and Lebanon County Areas do not relieve the Commonwealth of its responsibilities to develop this SIP revision for the NNSR permit program.

This proposed rulemaking amends the § 121.1 (relating to definitions) definition of “regulated NSR pollutant” and the Chapter 127 Subchapter E NNSR permitting regulations to include the  $PM_{2.5}$  precursor emissions provisions under the SIP Requirements Rule.

In May 2008, the EPA issued its Implementation Rule which defines a major facility as having the potential to emit: 100 tons per year (TPY) of emissions of VOC or ammonia, or both, in a moderate  $PM_{2.5}$  nonattainment area and 70 TPY of VOC or ammonia emissions, or both, in a serious  $PM_{2.5}$  nonattainment area. See Implementation of the New Source Review (NSR) Program for Particulate Matter Less Than 2.5 Micrometers ( $PM_{2.5}$ ), 73 FR 28321 (May 16, 2008). The EPA’s Implementation Rule also established a VOC significance threshold of 40 TPY. The Implementation Rule requires states to determine the ammonia significance threshold and the VOC and ammonia offset ratio. The Clean Data Determinations for the Delaware and Lebanon County Areas do not relieve the Commonwealth of its responsibilities to develop this SIP revision for the NNSR permit program.

This proposed rulemaking amends the § 121.1 definitions of “major facility” and “significant” and the Chapter 127 Subchapter E NNSR permitting regulations related to the VOC and ammonia offset ratio provisions under the Implementation Rule. On November 4, 2016, the South Coast Air Quality Management District (SCAQMD) amended its NNSR program to include ammonia and VOC as precursors to  $PM_{2.5}$  (SCAQMD Rule 1325). As part of that rulemaking, SCAQMD added a significance threshold for ammonia of 40 TPY, which is the same significance threshold in this proposed rulemaking. SCAQMD also included an offset ratio for VOC and ammonia of 1:1, which is the same offset ratio in this proposed rulemaking. On May 8, 2017, the California Air Resources Board submitted a SIP revision to the EPA with the amendments to SCAQMD Rule 1325. On November 30, 2018, the EPA issued a conditional approval of the SIP revision. See 83 FR 61551 (November 30, 2018).

The Department believes that SCAQMD’s technical rationale, that 40 TPY for ammonia is conservative because  $NO_x$  emissions with an established 40 TPY threshold have a greater influence in the formation of secondary ambient  $PM_{2.5}$  than ammonia emissions, is technically sound. See Proposed Amended Rule 1302—Definitions and Proposed Amended Rule 1325—Federal  $PM_{2.5}$  New Source Review Program, Final Staff Report,

November 2016, Mike Laybourn, Air Quality Specialist, South Coast Air Quality Management District. The Department adopts that rationale as its own for this proposed rulemaking.

This proposed rulemaking includes a significant impact level (SIL) of  $1.2 \mu\text{g}/\text{m}^3$  for 24-hour  $PM_{2.5}$  and  $0.2 \mu\text{g}/\text{m}^3$  for annual  $PM_{2.5}$  which conform with the EPA guidance document for SILs entitled, Guidance on Significant Impact Levels for Ozone and Fine Particles in the Prevention of Significant Deterioration Permitting Program, EPA memorandum, April 17, 2018, Peter Tsigotis, Director, United States Environmental Protection Agency, Office of Air Quality Planning and Standards, Research Triangle Park, NC 27711.

The addition of  $PM_{2.5}$  SILs will mitigate the effects of  $PM_{2.5}$  in nonattainment areas affected by  $PM_{2.5}$  emissions from attainment areas. A SIL defines the level of ambient air impact that is considered a “significant contribution” to air quality. If the modeled maximum ambient impacts of a new source or modification are below the SILs, the source: (1) is presumed not to cause or contribute significantly to a Prevention of Significant Deterioration (PSD) increment or NAAQS violation, and (2) is not required to perform the multiple-source, cumulative impacts assessments that are otherwise required under PSD.

On April 6, 2018, the EPA published a notice of finding of failure to submit (FFS) SIP revisions for the 2012 annual  $PM_{2.5}$  NAAQS, effective May 7, 2018. See 83 FR 14759 (April 6, 2018). The EPA’s FFS included a determination that the Commonwealth has not met its obligations for the NNSR permit program for Allegheny, Delaware and Lebanon Counties because emissions of VOCs and ammonia are not currently regulated as  $PM_{2.5}$  precursors. In addition, the FFS included a determination that the following required SIP elements were not submitted for Allegheny County: emissions inventory, control strategy, attainment demonstration, reasonable further progress, qualitative milestones and contingency measures. Because the Allegheny County Health Department is an approved local air pollution control agency under section 12(b) of the APCA (35 P.S. § 4012(b)), it is developing its own SIP revision to address these required SIP elements which the Department will submit to the EPA. In accordance with section 179 of the CAA, a mandatory 18-month sanction clock began on May 7, 2018, the effective date of the FFS.

Therefore, to stop the sanction clock and correct the deficiency that the Commonwealth has not met its obligations for the NNSR permit program, because the Commonwealth’s existing NNSR program does not include VOC and ammonia as  $PM_{2.5}$  precursors, one of the following must occur by November 7, 2019:

- 1) The Commonwealth submits an updated NNSR regulation that addresses VOC and ammonia as  $PM_{2.5}$  precursors as a SIP revision, which the EPA determines to be technically and administratively complete; or

- 2) The Commonwealth submits a SIP revision for each nonattainment area, and the EPA fully approves and redesignates the area from nonattainment to attainment. Once an area is redesignated as attainment, NNSR would no longer apply.

The Department is currently working on both options to correct the deficiency to ensure that the sanction clock stops by November 7, 2019. Section 179 of the CAA authorizes the EPA to use two types of sanctions: 1) imposing what are called “2:1 offsets” on new or modified sources of emissions; and 2) withholding of certain Fed-

eral highway funds. Under section 179 of the CAA and its implementing regulations, the Administrator first imposes “2:1 offsets” sanctions for new or modified major stationary sources in the nonattainment area, and then, if the deficiency has not been corrected within 6 months, also applies Federal highway funding sanctions. See 40 CFR 52.31 (relating to selection of sequence of mandatory sanctions for findings made pursuant to section 179 of the Clean Air Act). Therefore, if the deficiency is not corrected, the EPA will impose mandatory “2:1 offsets” sanctions beginning November 7, 2019, and highway fund sanctions beginning May 7, 2020. The Commonwealth receives approximately \$1.7 billion in Federal transportation funding annually, which would be at risk if the Commonwealth does not implement one of the previously listed options.

This proposed rulemaking would also revise the application submission options for the use of general plan approvals and operating permits for portable sources in § 127.641(c). Currently applications may only be delivered through hand delivery or certified mail return receipt requested. The proposed change would remove these options thereby allowing delivery by any means.

This proposed rulemaking would help assure that the citizens of this Commonwealth benefit from reduced emissions of PM<sub>2.5</sub> and PM<sub>2.5</sub> precursors from regulated sources. Attaining and maintaining levels of PM<sub>2.5</sub> below the health-based and welfare-based NAAQS is important to reduce premature mortality and other health and environmental effects associated with PM<sub>2.5</sub> exposure.

This proposed rulemaking was presented to the Small Business Compliance Advisory Committee on July 25, 2018, and to the Air Quality Technical Advisory Committee on August 2, 2018. Neither committee expressed concerns, and both committees voted unanimously to concur with the Department’s recommendation to present this proposed rulemaking to the Board for consideration.

On August 21, 2018, this proposed rulemaking was presented to the Citizens Advisory Council’s (CAC) Policy and Regulatory Oversight (PRO) Committee. The PRO Committee requested that clarity be provided in § 121.1 under the definition of “major facility” to indicate that the proposed rulemaking language of “Seventy TPY of PM<sub>2.5</sub>, NO<sub>x</sub>, SO<sub>2</sub>, VOCs or ammonia in a serious nonattainment area for PM<sub>2.5</sub>” means 70 TPY for each pollutant individually and not combined. The Department agreed and revised the definition to provide the requested clarification. On September 18, 2018, the full CAC concurred with the Department’s recommendation to move this proposed rulemaking forward to the Board for consideration.

#### E. Summary of Regulatory Requirements

This proposed rulemaking would amend the existing definitions of “major facility,” “regulated NSR pollutant” and “significant” under § 121.1 to include the requirements for PM<sub>2.5</sub> precursors of VOC and ammonia.

Section 127.202 (relating to effective date) is proposed to be amended to include references to PM<sub>2.5</sub> precursors. In addition, other minor editorial changes are proposed for this section.

Section 127.203 (relating to facilities subject to special permit requirements) is proposed to be amended to include annual and 24-hour significance levels for PM<sub>2.5</sub>.

Section 127.210 (relating to offset ratios) is proposed to be amended to include offset ratios for VOCs and ammonia as PM<sub>2.5</sub> precursors.

This proposed rulemaking would amend Chapter 127, Subchapter H to provide the regulated community with flexibility in submitting applications to use portable source general permits. Currently, § 127.641(c) requires these applications to be either hand delivered or transmitted by certified mail return receipt requested. The proposed amendment would remove these limited options and allow submission by any means.

#### F. Benefits, Costs and Compliance

##### Benefits

As noted in Section D of this preamble, the citizens of this Commonwealth will benefit from reduced emissions of PM<sub>2.5</sub> and PM<sub>2.5</sub> precursors from regulated sources. Attaining and maintaining levels of PM<sub>2.5</sub> below the health-based and welfare-based NAAQS is important to reduce premature mortality and other health and environmental effects associated with PM<sub>2.5</sub> exposure. Reductions in ambient levels of PM<sub>2.5</sub> would also promote improved animal health and welfare, improved visibility, decreased soiling and materials damage, and decreased damage to plants and trees. Also, regarding portable source general plan approvals and operating permits, allowing for additional flexibility would provide additional options for the regulated community to submit applications that may be faster and less expensive than what is currently allowed.

##### Compliance costs

This proposed rulemaking would apply to owners and operators of new or modified major facilities with emissions of VOCs or ammonia as PM<sub>2.5</sub> precursors located within PM<sub>2.5</sub> nonattainment areas or that are located within PM<sub>2.5</sub> attainment areas and would have a significant impact to a PM<sub>2.5</sub> nonattainment area. The significant impact is determined by the proposed SIL of 1.2 µg/m<sup>3</sup> for 24-hour PM<sub>2.5</sub> and 0.2 µg/m<sup>3</sup> for annual PM<sub>2.5</sub>. It is not expected that any facilities within PM<sub>2.5</sub> attainment areas will have a significant impact on PM<sub>2.5</sub> nonattainment areas. No new facilities are known to be constructed or planned to be constructed within PM<sub>2.5</sub> nonattainment areas that will emit major amounts of VOCs or ammonia. There are 17 facilities that have the potential to emit 100 TPY or greater of emissions of VOCs, ammonia, or both. The owners and operators of these facilities would be subject to this proposed rulemaking if major modifications occur at the affected facilities for VOCs, ammonia, or both, at the facility. The Department is not aware of any upcoming major modifications at these facilities.

In addition, owners and operators of portable sources would be affected when submitting applications to the Department for a general plan approval or operating permit. Currently, these applications are required to be either hand delivered or transmitted by certified mail return receipt requested. This proposed rulemaking would remove the language on specific requirements and replace it with the ability to submit applications to the Department by any means.

##### Compliance assistance plan

The Department plans to educate and assist the public and regulated community in understanding the proposed requirements and how to comply with them. This would be accomplished through the Department’s ongoing compliance assistance program. The Department would also work with the Small Business Assistance Program to aid the owners and operators of facilities less able to handle matters with their in-house staff.

*Paperwork requirements*

There are no additional paperwork requirements associated with this proposed rulemaking with which industry would need to comply.

*G. Pollution Prevention*

The Pollution Prevention Act of 1990 (42 U.S.C.A. §§ 13101—13109) established a National policy that promotes pollution prevention as the preferred means for achieving State environmental protection goals. The Department encourages pollution prevention, which is the reduction or elimination of pollution at its source, through the substitution of environmentally friendly materials, more efficient use of raw materials and the incorporation of energy efficiency strategies. Pollution prevention practices can provide greater environmental protection with greater efficiency because they can result in significant cost savings to facilities that permanently achieve or move beyond compliance.

This proposed rulemaking would help assure that the citizens of this Commonwealth would benefit from reduced emissions of PM<sub>2.5</sub> and PM<sub>2.5</sub> precursors from regulated sources. Attaining and maintaining levels of PM<sub>2.5</sub> below the health-based and welfare-based NAAQS is important to reduce premature mortality and other health and environmental effects associated with PM<sub>2.5</sub> exposure. Reduced levels of PM<sub>2.5</sub> would promote improved visibility, decreased soiling and decreased materials damage.

*H. Sunset Review*

The Board is not establishing a sunset date for this proposed rulemaking, since it is needed for the Department to carry out its statutory authority. The Department will closely monitor this proposed rulemaking after promulgation as a final-form rulemaking in the *Pennsylvania Bulletin* for its effectiveness and recommend updates to the Board as necessary.

*I. Regulatory Review*

Under section 5(a) of the Regulatory Review Act (71 P.S. § 745.5(a)), on February 25, 2019, 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 Environmental Resources and Energy Committees. A copy of this material is available to the public upon request.

Under section 5(g) of the Regulatory Review Act, IRRC may convey comments, recommendations or objections to this proposed rulemaking within 30 days of the close of the public comment period. The comments, recommendations or objections must specify the regulatory review criteria in section 5.2 of the Regulatory Review Act (71 P.S. § 745.5b) 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.

*J. Public Comments*

Interested persons are invited to submit to the Board written comments, suggestions, support or objections regarding this proposed rulemaking. Comments, suggestions, support or objections must be received by the Board by May 20, 2019.

Comments may be submitted to the Board online, by e-mail, by mail or express mail as follows.

Comments may be submitted to the Board by accessing the Board's online comment system at <http://www.ahs.dep.pa.gov/eComment>.

Comments may be submitted to the Board by e-mail at [RegComments@pa.gov](mailto:RegComments@pa.gov). A subject heading of this proposed rulemaking and a return name and address must be included in each transmission.

If an acknowledgement of comments submitted online or by e-mail is not received by the sender within 2 working days, the comments should be retransmitted to the Board to ensure receipt. Comments submitted by facsimile will not be accepted.

Written comments should be mailed to the Environmental Quality Board, P.O. Box 8477, Harrisburg, PA 17105-8477. Express mail should be sent to the Environmental Quality Board, Rachel Carson State Office Building, 16th Floor, 400 Market Street, Harrisburg, PA 17101-2301.

*K. Public Hearings*

The Board will hold three public hearings for the purpose of accepting comments on this proposed rulemaking. The hearings will be held at 1 p.m. on the following dates:

April 16, 2019 Department of Environmental Protection  
Southcentral Regional Office  
Susquehanna Room A  
909 Elmerton Avenue  
Harrisburg, PA 17110

April 17, 2019 Department of Environmental Protection  
Southwest Regional Office  
Waterfront Conference Room A  
400 Waterfront Drive  
Pittsburgh, PA 15222

April 18, 2019 Department of Environmental Protection  
Southeast Regional Office  
Delaware River Room  
2 East Main Street  
Norristown, PA 19401

Persons wishing to present testimony at a hearing are requested to contact the Environmental Quality Board, P.O. Box 8477, Harrisburg, PA 17105-8477, (717) 787-4526 at least 1 week in advance of the hearing to reserve a time to present testimony. Oral testimony is limited to 5 minutes for each witness. Witnesses are requested to submit three written copies of their oral testimony to the hearing chairperson at the hearing. Organizations are limited to designating one witness to present testimony on their behalf at each hearing.

Persons in need of accommodations as provided for in the Americans with Disabilities Act of 1990 should contact the Board at (717) 787-4526 or through the Pennsylvania AT&T Relay Service at (800) 654-5984 (TDD) or (800) 654-5988 (voice users) to discuss how the Board may accommodate their needs.

PATRICK McDONNELL,  
*Chairperson*

**Fiscal Note:** 7-551. No fiscal impact; (8) recommends adoption.

**Annex A**

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

**Subpart C. PROTECTION OF NATURAL  
RESOURCES**

**ARTICLE III. AIR RESOURCES**

**CHAPTER 121. GENERAL PROVISIONS**

**§ 121. 1. Definitions.**

The definitions in section 3 of the act (35 P.S. § 4003) apply to this article. In addition, the following words and



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

\* \* \* \* \*

Major facility—

(i) A facility which emits or has the potential to emit 100 TPY or more of a regulated NSR pollutant, except that lower emissions thresholds apply as follows:

(A) Fifty TPY of VOCs in a serious nonattainment area for ozone.

(B) Fifty TPY of VOCs in an area within an ozone transport region except for a severe or extreme nonattainment area for ozone.

(C) Twenty-five TPY of VOCs in a severe nonattainment area for ozone.

(D) Ten TPY of VOCs in an extreme nonattainment area for ozone.

(E) Seventy TPY of PM-10 in a serious nonattainment area for PM-10.

(F) Fifty TPY of CO in a serious nonattainment area for CO.

**(G) Seventy TPY of PM<sub>2.5</sub> in a serious nonattainment area for PM<sub>2.5</sub>.**

**(H) Seventy TPY of NO<sub>x</sub> in a serious nonattainment area for PM<sub>2.5</sub>.**

**(I) Seventy TPY of SO<sub>2</sub> in a serious nonattainment area for PM<sub>2.5</sub>.**

**(J) Seventy TPY of VOCs in a serious nonattainment area for PM<sub>2.5</sub>.**

**(K) Seventy TPY of ammonia in a serious nonattainment area for PM<sub>2.5</sub>.**

(ii) For the purposes of applying the requirements of Chapter 127, Subchapter E to the owner or operator of a facility located in an ozone nonattainment area or in an ozone transport region which emits or has the potential to emit NO<sub>x</sub>, as follows:

(A) One hundred TPY or more of NO<sub>x</sub> in an ozone nonattainment area classified as marginal, basic or moderate.

(B) One hundred TPY or more of NO<sub>x</sub> in an ozone nonattainment area classified as a transitional, submarginal, or incomplete or no data area, when the area is located in an ozone transport region.

(C) One hundred TPY or more of NO<sub>x</sub> in an area designated under section 107(d) of the Clean Air Act (42 U.S.C.A. § 7407(d)) as attainment or unclassifiable for ozone that is located in an ozone transport region.

(D) Fifty TPY or more of NO<sub>x</sub> in a serious nonattainment area for ozone.

(E) Twenty-five TPY or more of NO<sub>x</sub> in a severe nonattainment area for ozone.

(F) Ten TPY or more of NO<sub>x</sub> in an extreme nonattainment area for ozone.

(iii) A physical change that occurs at a facility which does not exceed the major facility thresholds specified in Chapter 127, Subchapter E is considered a major facility if the change constitutes a major facility by itself.

(iv) A facility which is major for VOCs or NO<sub>x</sub> is considered major for ozone.

(v) Notwithstanding the provisions under subparagraphs (i) and (ii), a facility which emits or has the potential to emit 25 TPY or more of NO<sub>x</sub> or VOC and is located in Bucks, Chester, Delaware, Montgomery or Philadelphia County.

\* \* \* \* \*

Regulated NSR pollutant—

(i) NO<sub>x</sub> or VOCs.

(ii) A pollutant for which the EPA has promulgated a NAAQS.

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

(A) VOCs and NO<sub>x</sub> are precursors to ozone in all ozone nonattainment areas.

**(B) SO<sub>2</sub> [ is a precursor ], VOCs and ammonia are precursors to PM<sub>2.5</sub> in all PM<sub>2.5</sub> nonattainment areas.**

(C) Nitrogen oxides are presumed to be precursors to PM<sub>2.5</sub> in PM<sub>2.5</sub> nonattainment areas unless the Department demonstrates to the satisfaction of the Administrator of the EPA or the Administrator of the EPA determines that NO<sub>x</sub> emissions from a source in a specific area are not a significant contributor to that area's ambient PM<sub>2.5</sub> concentrations.

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

\* \* \* \* \*

Significant—

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

<i>Pollutant</i>	<i>Emissions Rate</i>
Carbon monoxide (CO):	100 TPY
Nitrogen oxides (NO <sub>x</sub> ):	40 TPY
Sulfur oxides (SO <sub>x</sub> ):	40 TPY
Ozone:	40 TPY of VOCs or 40 TPY of NO <sub>x</sub>
Lead:	0.6 TPY
PM-10:	15 TPY
PM <sub>2.5</sub> :	10 TPY of PM <sub>2.5</sub> ; 40 TPY of SO <sub>2</sub> ; <b>40 TPY of VOCs; 40 TPY of ammonia;</b> 40 TPY of NO <sub>x</sub> , unless the Department demonstrates to the EPA's satisfaction or the EPA determines that the NO <sub>x</sub> emissions are not a significant contributor to PM <sub>2.5</sub> nonattainment in the area.

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

(iii) For purposes of applying Chapter 127, Subchapter E to the owner or operator of modifications at a major facility located in an ozone nonattainment area or in an ozone transport region that emits or has the potential to emit NO<sub>x</sub>, the emissions rate that is significant and other requirements for VOCs in subparagraphs (i) and (ii) apply to NO<sub>x</sub> emissions.

(iv) The emissions rate that is significant for CO in a serious nonattainment area is 50 TPY if the EPA has



determined that the affected facility contributes significantly to CO levels in that area.

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

\* \* \* \* \*

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

**Subchapter E. NEW SOURCE REVIEW**

**§ 127.202. Effective date.**

(a) The special permit requirements in this subchapter apply to an owner or operator of a facility to which a plan approval [ **will be** ] **is** issued by the Department after May 19, 2007, except **the special permit requirements for precursors to PM<sub>2.5</sub>**, which [ **will** ] apply **as follows:**

- (1) **NO<sub>x</sub> and SO<sub>2</sub>**, after September 3, 2011.
- (2) **VOCs and ammonia after**

(*Editor's Note:* The blank refers to the effective date of adoption of this proposed rulemaking when published as a final-form rulemaking.)

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

**§ 127.203. Facilities subject to special permit requirements.**

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

Pollutant	Averaging time	24 (hours)	8 (hours)	3 (hours)	1 (hours)
	Annual				
SO <sub>2</sub>	1.0 µg/m <sup>3</sup>	5 µg/m <sup>3</sup>	-	25 µg/m <sup>3</sup>	-
PM-10	1.0 µg/m <sup>3</sup>	5 µg/m <sup>3</sup>	-	-	-
CO	-	-	0.5 mg/m <sup>3</sup>	-	2 mg/m <sup>3</sup>
Lead	-	0.1 µg/m <sup>3</sup>	-	-	-
<b>PM<sub>2.5</sub></b>	<b>0.2 µg/m<sup>3</sup></b>	<b>1.2 µg/m<sup>3</sup></b>	-	-	-

\* \* \* \* \*

**§ 127.210. Offset ratios.**

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

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

Pollutant / Area	Flue Emissions	Fugitive Emissions
PM-10 and SO <sub>x</sub>	1.3:1	5:1
Volatile Organic Compounds		
Ozone Classification Areas		
Severe Areas	1.3:1	1.3:1
Serious Areas	1.2:1	1.3:1
Moderate Areas	1.15:1	1.3:1
Marginal/Incomplete Data Areas	1.15:1	1.3:1
Transport Region	1.15:1	1.3:1
NO <sub>x</sub>		
Ozone Classification Areas		
Severe Areas	1.3:1	1.3:1
Serious Areas	1.2:1	1.2:1
Moderate Areas	1.15:1	1.15:1
Marginal/Incomplete Data Areas	1.15:1	1.15:1
Transport Region	1.15:1	1.15:1
Carbon Monoxide		
Primary Nonattainment Areas	1.1:1	1.1:1
Lead	1.1:1	1.1:1
PM <sub>2.5</sub>		
PM <sub>2.5</sub> Nonattainment Area		
PM <sub>2.5</sub>	1:1	1:1
PM <sub>2.5</sub> Precursors		
SO <sub>2</sub>	1:1	1:1
NO <sub>x</sub>	1:1	1:1
<b>VOCs</b>	<b>1:1</b>	<b>1:1</b>
<b>Ammonia</b>	<b>1:1</b>	<b>1:1</b>

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

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

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

#### **Subchapter H. GENERAL PLAN APPROVALS AND OPERATING PERMITS**

##### **USE OF PLAN APPROVALS AND OPERATING PERMITS FOR PORTABLE SOURCES**

#### **§ 127.641. Application for use of plan approvals and operating permits for portable sources.**

(a) A source proposing to use a plan approval or an operating permit for a portable source shall notify the Department on a form provided by the Department and receive prior written approval from the Department prior to operating under the plan approval and operating permit for portable sources.

(b) For applications for sources operating at multiple temporary locations the following apply:

(1) A separate application form and fee may be required to be submitted for each location.

(2) The applicant shall notify the Department and the municipality where the operation shall take place in advance of each change in location.

(c) The application required by this section shall be **[ either hand delivered or transmitted by certified mail return receipt requested ] submitted to the Department.**

(d) The Department will take action on the application within 30 days of receipt.

[Pa.B. Doc. No. 19-362. Filed for public inspection March 15, 2019, 9:00 a.m.]

## **FISH AND BOAT COMMISSION**

**[ 58 PA. CODE CH. 111 ]**

### **Special Regulation Counties**

The Fish and Boat Commission (Commission) proposes to amend Chapter 111 (relating to special regulations counties). The Commission is publishing this proposed rulemaking under the authority of 30 Pa.C.S. (relating to Fish and Boat Code) (code). The proposed amendments update the Commission's list of waters subject to special regulations.

#### **A. Effective Date**

This proposed rulemaking, if approved on final-form rulemaking, will go into effect upon publication in the *Pennsylvania Bulletin*.

#### **B. Contact Person**

For further information on this proposed rulemaking, contact Wayne Melnick, Esq., P.O. Box 67000, Harrisburg, PA 17106-7000, (717) 705-7810. This proposed rulemaking is available on the Commission's web site at [www.fishandboat.com](http://www.fishandboat.com).

#### **C. Statutory Authority**

The proposed amendments to § 111.2 (relating to Allegheny County) are published under the statutory authority of section 5124(a) of the code (relating to particular areas of water).

#### **D. Purpose and Background**

The specific purpose and background of the proposed amendments is described in more detail under the summary of proposal.

#### **E. Summary of Proposal**

The area known as the Point in Pittsburgh is where the Monongahela and Allegheny rivers come together to form the Ohio River. This busy boating destination is regulated specifically by 58 Pa. Code § 111.2. During the busy boating season, a No Wake Zone is enforced from the Fort Pitt Bridge over the Monongahela River and the 9th Street Bridge over the Allegheny River to the West End Bridge on the Ohio River. This zone is in effect on weekends from May 1 to October 1 each year as well as on the three summer holidays.

Recently, several entities including the City of Pittsburgh, Pittsburgh Safe Boating Council, 3 Rivers Rowing Association and the Pittsburgh Downtown Community Development Corporation have requested that the Commission consider extending the zone on the Allegheny River to the Veterans Bridge and keeping it in effect through November 1 of each year. This change is needed due to increased boating traffic in the fall for various events in the area. Additionally, the zone would create safer conditions for mooring vessels along the Riverwalk. This amendment was approved by the Boating Advisory Board at their recent meeting on January 8, 2019.

The Commission proposes that § 111.2 be amended to read as set forth in Annex A.

#### **F. Paperwork**

This proposed rulemaking will not increase paperwork and will not create new paperwork requirements.

#### **G. Fiscal Impact**

This proposed rulemaking will have no adverse fiscal impact on the Commonwealth or its political subdivisions.

#### **H. Public Comments**

Interested persons are invited to submit written comments, objections or suggestions about this proposed rulemaking to the Executive Director, Fish and Boat Commission, P.O. Box 67000, Harrisburg, PA 17106-7000, within 30 days after publication of this notice in the *Pennsylvania Bulletin*. Comments submitted by facsimile will not be accepted.

Comments also may be submitted electronically by completing the form at [www.fishandboat.com/regcomments](http://www.fishandboat.com/regcomments). If an acknowledgment of electronic comments is not received by the sender within 2 working days, the comments should be retransmitted to ensure receipt. Electronic comments submitted in any other manner will not be accepted.

TIMOTHY D. SCHAEFFER,  
*Executive Director*

**Fiscal Note:** 48A-289. No fiscal impact; (8) recommends adoption.

**Annex A**  
**TITLE 58. RECREATION**  
**PART II. FISH AND BOAT COMMISSION**  
**Subpart C. BOATING**  
**CHAPTER 111. SPECIAL REGULATIONS**  
**COUNTIES**

**§ 111.2. Allegheny County.**

\* \* \* \* \*

(c) *Allegheny, Monongahela and Ohio Rivers (City of Pittsburgh)*. Boats are limited to slow, no-wake speed

from the Fort Pitt Bridge over the Monongahela River and the [ **9th Street Bridge** ] **Veterans Bridge** over the Allegheny River to the West End Bridge over the Ohio River. This zone shall be in effect on weekends from May 1 to [ **October** ] **November** 1 from 3 p.m. Friday until midnight Sunday and from 3 p.m. on the day preceding Memorial Day, July 4 and Labor Day until midnight of the holiday.

\* \* \* \* \*

[Pa.B. Doc. No. 19-363. Filed for public inspection March 15, 2019, 9:00 a.m.]

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# STATEMENTS OF POLICY

## Title 101—GENERAL ASSEMBLY

### CAPITOL PRESERVATION COMMITTEE

[ 101 PA. CODE CH. 701 ]

#### Right-to-Know Law; Amendment

The Capitol Preservation Committee amends § 701.11 (relating to hours of access) to read as set forth in Annex A. The purpose of this statement of policy is to align the hours of access with the current office hours.

DAVID L. CRAIG,  
*Executive Director*

**Fiscal Note:** 129-1. No fiscal impact; (8) recommends adoption.

#### Annex A

### TITLE 101. GENERAL ASSEMBLY

#### PART VII. CAPITOL PRESERVATION COMMITTEE

#### CHAPTER 701. RIGHT-TO-KNOW LAW— STATEMENTS OF POLICY

#### Subchapter B. OPEN RECORDS PROCEDURES OF THE CAPITOL PRESERVATION COMMITTEE

#### § 701.11. Hours of access.

The Right-to-Know Office of the Committee will be open from [ 9 a.m. to 4:30 p.m. ] 8:30 a.m. to 4 p.m. Monday through Friday, except for official State and Federal holidays and other days the Committee is closed by direction of the Executive Director of the Committee.

[Pa.B. Doc. No. 19-364. Filed for public inspection March 15, 2019, 9:00 a.m.]

# NOTICES

## DEPARTMENT OF AGRICULTURE

### Addendum to the Order of Quarantine; Spotted Lanternfly

#### Recitals

A. Spotted lanternfly, *Lycorma delicatula*, is a new pest to the United States and has been detected in the Commonwealth. This is a dangerous insect to forests, ornamental trees, orchards and grapes and not widely prevalent or distributed within or throughout the Commonwealth or the United States. Spotted lanternfly has been detected in the Commonwealth and has the potential to spread to uninfested areas by natural means or through the movement of infested articles.

B. The Plant Pest Act (Act) (3 P.S. §§ 258.1—258.27) empowers The Department of Agriculture (Department) to take various measures to detect, contain and eradicate plant pests. A plant pest is defined as an organism, including other plants, causing or capable of causing injury or damage to plants or plant products (3 P.S. § 258.2). These powers include the authority, set forth at section 258.21 of the Act (3 P.S. § 258.21), to establish quarantines to prevent the spread of plant pests within this Commonwealth.

C. Under the authority of section 258.20 of the Act (3 P.S. § 258.20) the Department may declare a pest to be a public nuisance when the Department determines a plant pest to be dangerous or destructive to the agriculture, horticulture or forests of this Commonwealth. For the reasons set forth in Paragraph A above, the Department declares Spotted lanternfly, *Lycorma delicatula*, to be a public nuisance.

D. Consistent with the Order of Quarantine published at 48 Pa.B. 3094 issued Saturday, May 26, 2018, where the Department detects or confirms any of the plant pests established in this Order of Quarantine—Spotted lanternfly, *Lycorma delicatula*—the place or area in which any of these plant pests are detected or confirmed shall

be subject to the provisions of that Order of Quarantine published at 48 Pa.B. 3094 issued Saturday, May 26, 2018.

E. The place or area in which the plant pest is detected or confirmed shall be added to the Order of Quarantine, published at 48 Pa.B. 3094 issued Saturday, May 26, 2018, through an addendum delineating the specific location and geographic parameters of the area or place. Such Addendum shall be published in the *Pennsylvania Bulletin* and enforcement of the Addendum to the Order of Quarantine, published at 48 Pa.B. 3094 issued Saturday, May 26, 2018, with regard to that place or area shall become effective immediately.

#### Order

Under authority of section 21 of the act (3 P.S. § 258.21), and with the Recitals previously listed incorporated into and made a part hereof this Addendum to the Order of Quarantine published at 48 Pa.B. 3094 issued Saturday, May 26, 2018 by reference, the Department orders the following:

##### 1. *Establishment of Quarantine.*

A quarantine is hereby established with respect to Dauphin County. This is in addition to, and does not replace, any areas already subject to the Spotted Lanternfly Quarantine Order published at 48 Pa.B. 3094 issued Saturday, May 26, 2018 and any previous Addendums to that Quarantine Order.

##### 2. *All Provisions Apply.*

All of the provisions established in the Spotted Lanternfly Quarantine Order published at 48 Pa.B. 3094 issued Saturday, May 26, 2018, are hereby incorporated herein and made a part hereof this Addendum as if fully set forth herein and shall hereby be made applicable to Dauphin County.

RUSSELL C. REDDING,  
*Secretary*

[Pa.B. Doc. No. 19-365. Filed for public inspection March 15, 2019, 9:00 a.m.]

## DEPARTMENT OF BANKING AND SECURITIES

### Actions on Applications

The Department of Banking and Securities (Department), under the authority in the Banking Code of 1965 (7 P.S. §§ 101—2204), the Department of Banking and Securities Code (71 P.S. §§ 733-1—733-1203) and 17 Pa.C.S. (relating to Credit Union Code), has taken the following actions on applications received for the week ending March 5, 2019.

Under section 503.E of the Department of Banking and Securities Code (71 P.S. § 733-503.E), any person wishing to comment on the following applications, with the exception of branch applications, may file comments in writing with the Department of Banking and Securities, 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****Branch Applications****De Novo Branches**

<i>Date</i>	<i>Name and Location of Applicant</i>	<i>Location of Branch</i>	<i>Action</i>
02-27-2019	Somerset Trust Company Somerset Somerset County	3966 Lincoln Highway Suite 101 Schellsburg Bedford County	Filed
03-04-2019	Luzerne Bank Luzerne Luzerne County	1320 Wyoming Avenue Forty Fort Luzerne County	Opened
03-05-2019	First Resource Bank Exton Chester County	321 West Lancaster Avenue Wayne Delaware County	Filed

**Branch Discontinuances**

<i>Date</i>	<i>Name and Location of Applicant</i>	<i>Location of Branch</i>	<i>Action</i>
02-22-2019	Lafayette Ambassador Bank Bethlehem Northampton County	1800 Butler Street Easton Northampton County	Closed
02-22-2019	Lafayette Ambassador Bank Bethlehem Northampton County	317 East Landis Street Coopersburg Lehigh County	Closed
03-01-2019	Luzerne Bank Luzerne Luzerne County	324 Wyoming Avenue Wyoming Luzerne County	Closed
03-01-2019	Luzerne Bank Luzerne Luzerne County	801 Main Street Swoyersville Luzerne County	Closed

**CREDIT UNIONS**

No activity.

The Department's web site at [www.dobs.pa.gov](http://www.dobs.pa.gov) includes public notices for more recently filed applications.

ROBIN L. WIESSMANN,  
*Secretary*

[Pa.B. Doc. No. 19-366. Filed for public inspection March 15, 2019, 9:00 a.m.]

## DEPARTMENT OF BANKING AND SECURITIES

### Maximum Lawful Rate of Interest for Residential Mortgages for the Month of April 2019

The Department of Banking and Securities (Department), under the authority contained in section 301 of the act of January 30, 1974 (P.L. 13, No. 6) (41 P.S. § 301), determines that the maximum lawful rate of interest for residential mortgages for the month of April 2019, is 5 1/4%.

The interest rate limitations under the Commonwealth's usury statute were pre-empted to a great extent by Federal law, the Depository Institutions Deregulation and Monetary Control Act of 1980 (Pub.L. No. 96-221). Further pre-emption was instituted with the signing of Pub.L. No. 96-399, which overrode State interest rate limitations on any individual who finances the sale or exchange of residential real property which the individual owns and which the individual occupies or has occupied as his principal residence.

Each month the Department is required by State law to compute and announce the ceiling rate on residential

mortgages in this Commonwealth. This maximum rate is determined by adding 2.50 percentage points to the yield rate on long-term government bonds as published by the Federal Reserve Board or the United States Treasury, or both. The latest yield rate on long-term government securities is 2.85 to which was added 2.50 percentage points for a total of 5.35 that by law is rounded off to the nearest quarter at 5 1/4%.

ROBIN L. WIESSMANN,  
*Secretary*

[Pa.B. Doc. No. 19-367. Filed for public inspection March 15, 2019, 9:00 a.m.]

## DEPARTMENT OF CONSERVATION AND NATURAL RESOURCES

### Conservation and Natural Resources Advisory Council Meeting

The Conservation and Natural Resources Advisory Council to the Department of Conservation and Natural Resources (Department) will hold a meeting on Wednes-

day, March 27, 2019, at 10 a.m. in Room 105, Lobby Level, Rachel Carson State Office Building, 400 Market Street, Harrisburg, PA.

Questions concerning this meeting or agenda items can be directed to Gretchen Leslie at (717) 772-9084. Persons who wish to participate during the public comment section are encouraged to submit their comments in writing to Gretchen Leslie, Advisor, Conservation and Natural Resources Advisory Council, 400 Market Street, Harrisburg, PA 17101.

Persons in need of accommodations as provided for in the Americans with Disabilities Act of 1990 should contact Katie Woodbury directly at (717) 783-5878 or through the Pennsylvania AT&T Relay Service at (800) 654-5984 (TDD) to discuss how the Department may accommodate their needs.

CINDY ADAMS DUNN,  
*Secretary*

[Pa.B. Doc. No. 19-368. Filed for public inspection March 15, 2019, 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 POLLUTANT 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: Clean Water Program Manager, 2 Public Square, Wilkes-Barre, PA 18701-1915. Phone: 570-826-2511.*

<i>NPDES No. (Type)</i>	<i>Facility Name &amp; Address</i>	<i>County &amp; Municipality</i>	<i>Stream Name (Watershed No.)</i>	<i>EPA Waived Y/N?</i>
PA0061671 (Sewage)	Greenfield Township Sewer Authority WWTP 111 Lakeview Avenue Greenfield Township, PA 18407	Lackawanna County Greenfield Township	Unnamed Tributary to Dundaff Creek (4-F)	Yes
PA0032131 (Sewage)	Locust Lake State Park WWTP Locust Lake Road Barnesville, PA 18214	Schuylkill County Ryan Township	Locust Creek (3-A)	Yes
PA0061590 (Sewage)	Eagle Rock WWTF Nuremberg Mountain Road North Union Township, PA 17985	Schuylkill County North Union Township	Tomhicken Creek (5-E)	No
PA0032328 (Sewage)	Hickory Hills WWTP Hickory Hills MHC Bath, PA 18014	Northampton County Moore Township	Tributary 3408 to East Branch Monocacy Creek (2-C)	Yes
PA0062235 (Sewage)	Motel 6 1064 Berwick Hazleton Highway Drums, PA 18222	Luzerne County Sugarloaf Township	Unnamed Tributary to Nescopeck Creek (5-D)	Yes
PA0034070 (Sewage)	Glencrest Mobile Home Park Glencrest Road Slatington, PA 18080	Lehigh County Washington Township	Unnamed Tributary of Coplay Creek (2-C)	Yes

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

<i>NPDES No. (Type)</i>	<i>Facility Name &amp; Address</i>	<i>County &amp; Municipality</i>	<i>Stream Name (Watershed #)</i>	<i>EPA Waived Y/N?</i>
PA0023604 (Sewage)	McAlisterville Area Joint Authority P.O. Box 61 McAlisterville, PA 17049	Juniata County/ Fayette Township	Little Lost Creek (12-A)	Y
PA0261017 (Sewage)	Anna & Stanley Almony 302 Gemmill Road Delta, PA 17314	York County/ Peach Bottom Township & Penn Township	Neill Run (7-1)	Y
PA0083151 (Sewage)	Penn Manor School District Marticville Middle School P.O. Box 1001 Millersville, PA 17551	Lancaster County/ Martic Township	Pequea Creek (7-K)	Y
PA0246921 (Sewage)	Lenhartsville Borough P.O. Box 238 Lenhartsville, PA 19534	Berks County/ Lenhartsville Boro	Furnace Creek (3-B)	Y
PA0086908 (Sewage)	Middle Creek Bible Conference 8006 Hogan Drive Wake Forest, NC 27587	Adams County/ Freedom Township & Liberty Township	Middle Creek (13-D)	Y
PA0261271 (Sewage)	David Graham SRSTP 117 Valentine Acres Road Clearville, PA 15535	Bedford County/ Southampton Township	Amorine Branch (13-A)	Y
PA0086819 (Sewage)	Donald Collier 1534 Millers Corner Road Clearville, PA 15535	Bedford County/ Southampton Township	Wilson Run (13-A)	Y
PA0008427 (IW)	Energy Center Harrisburg, LLC 900 Walnut Street Harrisburg, PA 17101	Dauphin County/ Harrisburg City	Paxton Creek (7-C)	Y
PA0247162 (IW)	West Shore Reg Wtr Treatment Plt— PA American Water 852 Wesley Dr. Mechanicsburg, PA 17055	York County/ Fairview Twp	UNT Yellow Breeches Creek (7-E)	Y

## NOTICES

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<i>NPDES No. (Type)</i>	<i>Facility Name &amp; Address</i>	<i>County &amp; Municipality</i>	<i>Stream Name (Watershed #)</i>	<i>EPA Waived Y/N?</i>
PA0008150 (IW)	Mount Holly Springs Specialty Paper Inc 1 Mountain Street Mt. Holly Springs, PA 17065-1406	Cumberland County/ Mount Holly Springs	UNT Mountain Creek (7-E)	Y

*Northcentral Regional Office: Clean Water Program Manager, 208 W Third Street, Suite 101, Williamsport, PA 17701-6448. Phone: 570.327.3636.*

<i>NPDES No. (Type)</i>	<i>Facility Name &amp; Address</i>	<i>County &amp; Municipality</i>	<i>Stream Name (Watershed No.)</i>	<i>EPA Waived Y/N?</i>
PA0228737 (Sewage)	Westover Borough Sanitary Sewer STP 143 Tannery Road P.O. Box 199 Westover, PA 16692	Clearfield County Westover Borough	Chest Creek (8-B)	Yes

*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 &amp; Address</i>	<i>County &amp; Municipality</i>	<i>Stream Name (Watershed No.)</i>	<i>EPA Waived Y/N?</i>
PA0093050 (Sewage)	Black Lick STP P.O. Box 454 Black Lick, PA 15716-0454	Indiana County Burrell Township	Blacklick Creek (18-D)	Yes
PA0097012 (Sewage)	Stonebridge Gardens MHP STP P.O. Box 117 Friedens, PA 15541-0117	Somerset County Quemahoning Township	Unnamed Tributary of Higgins Run (18-E)	Yes
PA0205524 (Sewage)	Rabbitt SRSTP 297 Ford City Road Freeport, PA 16229-2037	Armstrong County South Buffalo Township	UNT of Hill Run (18-F)	Yes
PA0205915 (Sewage)	Dayton Borough STP P.O. Box 396 Dayton, PA 16222-0396	Armstrong County Dayton Borough	Glade Run (17-D)	Yes
PA0216950 (Industrial)	Creswell Heights Joint Authority— South Heights WTP 3961 Jordan Street P.O. Box 301 South Heights, PA 15081-1026	Beaver County South Heights Borough	Ohio River (20-G)	Yes
PA0218197 (Sewage)	Stevens Trail STP 131 Cardinal Drive New Brighton, PA 15066	Beaver County Daugherty Township	Drainage Swale tributary to an Unnamed Tributary of Blockhouse Run (20-B)	Yes

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

<i>NPDES No. (Type)</i>	<i>Facility Name &amp; Address</i>	<i>County &amp; Municipality</i>	<i>Stream Name (Watershed #)</i>	<i>EPA Waived Y/N?</i>
PA0238945 (Sewage)	Pulaski Township STP 1172 State Route 208 Pulaski, PA 16143	Lawrence County Pulaski Township	Shenango River (20-A)	Yes
PA0100960 (Sewage)	Bloomfield Township STP 22978 Shreve Ridge Road Union City, PA 16438-3540	Crawford County Bloomfield Township	Oil Creek (16-E)	Yes
PA0272701 (Sewage)	Corydon Township Building SFTF 2474 West Washington Street Bradford, PA 16701-2415	McKean County Corydon Township	Willow Creek (16-B)	Yes

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

*Southeast Regional Office: Regional Clean Water Program Manager, 2 E Main Street, Norristown, PA 19401, Telephone: 484.250.5970.*

**PA0031747**, Sewage, SIC Code 8211, **Glen Mills School**, P.O. Box 5001, Concordville, PA 19331-5001. Facility Name: Glen Mills School STP. This existing facility is located in Thornbury Township, **Delaware 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, Chester Creek, is located in State Water Plan watershed 3-G and is classified for Migratory Fishes and Trout Stocking, aquatic life, water supply and recreation. The discharge is not expected to affect public water supplies.

The proposed effluent limits for Outfall 001 are based on a design flow of .15 MGD.—Limits.

Parameters	Mass Units (lbs/day)		Minimum	Concentrations (mg/L)		Instant. Maximum
	Average Monthly	Average Weekly		Average Monthly	Maximum	
Total Dissolved Solids	Report Avg Qrtly	XXX	XXX	Report Avg Qrtly	XXX	XXX

The proposed effluent limits for Outfall 001 are based on a design flow of .15 MGD.—Limits.

Parameters	Mass Units (lbs/day)		Minimum	Concentrations (mg/L)		Instant. Maximum
	Average Monthly	Average Weekly		Average Monthly	Maximum	
Flow (MGD)	Report	Report Daily Max	XXX	XXX	XXX	XXX
pH (S.U.)	XXX	XXX	6.0 Inst Min	XXX	XXX	9.0
Dissolved Oxygen	XXX	XXX	4.0 Inst Min	XXX	XXX	XXX
Total Residual Chlorine (TRC)	XXX	XXX	XXX	0.5	XXX	1.2
Carbonaceous Biochemical Oxygen Demand (CBOD <sub>5</sub> )	31	XXX	XXX	25	XXX	50
Total Suspended Solids	38	XXX	XXX	30	XXX	60
Fecal Coliform (No./100 ml)						
Oct 1 - Apr 30	XXX	XXX	XXX	200 Geo Mean	XXX	1,000*
May 1 - Sep 30	XXX	XXX	XXX	200 Geo Mean	XXX	1,000
Total Nitrogen	Report	XXX	XXX	Report	XXX	XXX
Ammonia-Nitrogen						
Nov 1 - Apr 30	25	XXX	XXX	20.0	XXX	40
May 1 - Oct 31	13	XXX	XXX	10.0	XXX	20
Total Phosphorus						
Nov 1 - Apr 30	2.5	XXX	XXX	2.0	XXX	4
May 1 - Oct 31	1.3	XXX	XXX	1.0	XXX	2

\* shall not exceed in more than 10% of samples.

Sludge use and disposal description and location(s): hauling away to other Wastewater Treatment Facilities.

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

- A. No Stormwater
- B. Acquire Necessary Property Rights
- C. Proper Sludge Disposal
- D. Abandon STP when Municipal Sewers Available
- E. Chlorine Optimization
- F. Operator Notification
- G. Fecal Coliform Reporting
- H. Operations and Maintenance Plan
- I. Solids Management

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.



**PA0244511**, Sewage, SIC Code 8811, **Richardson Melissa**, 177 Creamery Road, Coatesville, PA 19320-1716. Facility Name: Richardson SRSTP. This existing facility is located in West Caln Township, **Chester County**.

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

The receiving stream(s), Unnamed Tributary to West Branch Brandywine Creek, is located in State Water Plan watershed 3-H and is classified for High Quality—Cold Water 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 .0005 MGD.

<i>Parameters</i>	<i>Mass Units (lbs/day)</i>		<i>Minimum</i>	<i>Concentrations (mg/L)</i>		<i>Instant. Maximum</i>
	<i>Average Monthly</i>	<i>Average Weekly</i>		<i>Annual Average</i>	<i>Maximum</i>	
Flow (MGD)	Report	XXX	XXX	XXX	XXX	XXX
pH (S.U.)	Annl Avg	XXX	6.0	XXX	XXX	9.0
Dissolved Oxygen	XXX	XXX	Inst Min 6.0	XXX	XXX	XXX
Carbonaceous Biochemical Oxygen Demand (CBOD <sub>5</sub> )	XXX	XXX	Inst Min XXX	20.0	XXX	40
Total Suspended Solids	XXX	XXX	XXX	10.0	XXX	20
Fecal Coliform (No./100 ml)	XXX	XXX	XXX	200	XXX	XXX
Ammonia-Nitrogen	XXX	XXX	XXX	9.0	XXX	18

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

1. No stormwater
2. Property Rights
3. Sludge Disposal
4. STP Abandon
5. Maintenance of STP and AMR

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.

**PA0244279**, Industrial, SIC Code 4941, **Telford Borough Authority Bucks and Montgomery Counties**, 122 Penn Avenue, Telford, PA 18969-1912. Facility Name: Telford Borough Authority Water System. This existing facility is located in West Rockhill Township, **Bucks County**.

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

The receiving stream(s), Unnamed Tributary of East Branch Perkiomen Creek, is located in State Water Plan watershed 3-E and is classified for Migratory Fishes and Trout Stocking, aquatic life, water supply and recreation. The discharge is not expected to affect public water supplies.

The proposed effluent limits for Outfall 001 are based on a design flow of .0046 MGD.—Limits.

<i>Parameters</i>	<i>Mass Units (lbs/day)</i>		<i>Minimum</i>	<i>Concentrations (mg/L)</i>		<i>Instant. Maximum</i>
	<i>Average Monthly</i>	<i>Average Weekly</i>		<i>Average Monthly</i>	<i>Daily Maximum</i>	
Flow (MGD)	Report	XXX	XXX	XXX	XXX	XXX
pH (S.U.)	XXX	XXX	6.0	XXX	XXX	9.0
Total Suspended Solids	XXX	XXX	Inst Min XXX	30	60	75
Iron, Total	XXX	XXX	XXX	1.5	3.0	3.75
Arsenic, Total	XXX	XXX	XXX	Report	XXX	XXX

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.

**PA0245101**, Sewage, SIC Code 8811, **Price Jeffery P**, 709 Forest Grove Road, Wycombe, PA 18980-0003. Facility Name: Price SRSTP. This proposed facility is located in Buckingham Township, **Bucks County**.

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

The receiving stream(s), Mill Creek, is located in State Water Plan watershed 2-F and is classified for Migratory Fishes and 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 .0004 MGD.—Limits.

<i>Parameters</i>	<i>Mass Units (lbs/day)</i>		<i>Minimum</i>	<i>Concentrations (mg/L)</i>		<i>Instant. Maximum</i>
	<i>Average Monthly</i>	<i>Average Weekly</i>		<i>Average Monthly</i>	<i>Maximum</i>	
Flow (MGD)	Report	XXX	XXX	XXX	XXX	XXX
pH (S.U.)	Annl Avg XXX	XXX	6.0 Inst Min	XXX	XXX	9.0
Biochemical Oxygen Demand (BOD <sub>5</sub> )	XXX	XXX	XXX	10.0	XXX	20
Total Suspended Solids	XXX	XXX	XXX	10.0	XXX	20
Fecal Coliform (No./100 ml)	XXX	XXX	XXX	200	XXX	1,000

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.

**PA0244490**, Sewage, SIC Code 8811, **Patrick Reilly & Paula Holzman**, 171 Creamery Road, Coatesville, PA 19320-1716. Facility Name: Reilly SRSTP. This existing facility is located in West Caln Township, **Chester County**.

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

The receiving stream(s), Unnamed Tributary to West Branch Brandywine Creek, is located in State Water Plan watershed 3-H and is classified for High Quality—Cold Water 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 .0005 MGD.—Limits.

<i>Parameters</i>	<i>Mass Units (lbs/day)</i>		<i>Minimum</i>	<i>Concentrations (mg/L)</i>		<i>Instant. Maximum</i>
	<i>Average Monthly</i>	<i>Average Weekly</i>		<i>Average Monthly</i>	<i>Maximum</i>	
Flow (MGD)	Report	XXX	XXX	XXX	XXX	XXX
pH (S.U.)	XXX	XXX	6.0 Inst Min	XXX	XXX	9.0
Dissolved Oxygen	XXX	XXX	6.0 Inst Min	XXX	XXX	XXX
Carbonaceous Biochemical Oxygen Demand (CBOD <sub>5</sub> )	XXX	XXX	XXX	20	XXX	40
Total Suspended Solids	XXX	XXX	XXX	10	XXX	20
Fecal Coliform (CFU/100 ml)	XXX	XXX	XXX	200 Geo Mean	XXX	XXX
Ultraviolet light intensity (mW/cm <sup>2</sup> )	XXX	XXX	Report	XXX	XXX	XXX
Ammonia-Nitrogen	XXX	XXX	XXX	9.0	XXX	18

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.

**PA0032301**, Sewage, SIC Code 6512, **M & B Environmental Inc.**, 744 Harleysville Pike, Harleysville, PA 19438-2804. Facility Name: Concord Ind Park STP. This existing facility is located in Concord Township, **Delaware 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), West Branch Chester Creek, is located in State Water Plan watershed 3-G and is classified for Migratory Fishes and Trout Stocking, aquatic life, water supply and recreation. The discharge is not expected to affect public water supplies.

The proposed effluent limits for Outfall 001 are based on a design flow of .02 MGD.—Limits.

<i>Parameters</i>	<i>Mass Units (lbs/day)</i>		<i>Minimum</i>	<i>Concentrations (mg/L)</i>		<i>Instant. Maximum</i>
	<i>Average Monthly</i>	<i>Average Weekly</i>		<i>Average Monthly</i>	<i>Maximum</i>	
Flow (MGD)	Report	Report Daily Max	XXX	XXX	XXX	XXX
pH (S.U.)	XXX	XXX	6.0 Inst Min	XXX	XXX	9.0
Dissolved Oxygen	XXX	XXX	4.0 Inst Min	XXX	XXX	XXX
Total Residual Chlorine (TRC)	XXX	XXX	XXX	0.5	XXX	1.2
Carbonaceous Biochemical Oxygen Demand (CBOD <sub>5</sub> )	4.2	XXX	XXX	25	XXX	50

<i>Parameters</i>	<i>Mass Units (lbs/day)</i>		<i>Minimum</i>	<i>Concentrations (mg/L)</i>		<i>Instant. Maximum</i>
	<i>Average Monthly</i>	<i>Average Weekly</i>		<i>Average Monthly</i>	<i>Maximum</i>	
Total Suspended Solids	5.0	XXX	XXX	30	XXX	60
Fecal Coliform (CFU/100 ml)	XXX	XXX	XXX	200	XXX	1,000
Total Nitrogen	XXX	XXX	XXX	Geo Mean Report	XXX	XXX
Ammonia-Nitrogen						
Nov 1 - Apr 30	XXX	XXX	XXX	9.0	XXX	18
May 1 - Oct 31	XXX	XXX	XXX	3.0	XXX	6
Total Phosphorus						
Nov 1 - Apr 30	0.33	XXX	XXX	2.0	XXX	4
May 1 - Oct 31	0.17	XXX	XXX	1.0	XXX	2

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

- A. No Stormwater
- B. Necessary Property Rights
- C. Proper Sludge Disposal
- D. Abandon STP when Municipal Sewers Available
- E. Chlorine Minimization
- F. Operator Notification
- G. Operations and Maintenance Plan

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.

**PA0023949**, Sewage, SIC Code 4952, **Brookhaven Borough**, 2 Cambridge Road, Brookhaven, PA 19015-1708. Facility Name: Brookhaven Borough STP & Sewer System. This existing facility is located in Brookhaven Borough, **Delaware 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), Chester Creek, is located in State Water Plan watershed 3-G and is classified for Migratory Fishes and 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 .192 MGD.—Final Limits.

<i>Parameters</i>	<i>Mass Units (lbs/day)</i>		<i>Minimum</i>	<i>Concentrations (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	Inst Min 3.0	XXX	XXX	XXX
Total Residual Chlorine (TRC)	XXX	XXX	Inst Min XXX	0.5	XXX	1.0
CBOD <sub>5</sub>						
Nov 1 - Apr 30	40	60	XXX	25	40	50
May 1 - Oct 31	32	48	XXX	20	30	40
Raw Sewage Influent	Report	XXX	XXX	Report	XXX	XXX
BOD <sub>5</sub> - Raw Sewage Influent	Report	XXX	XXX	Report	XXX	XXX
Total Suspended Solids						
Raw Sewage Influent	Report	XXX	XXX	Report	XXX	XXX
Total Suspended Solids	48	72	XXX	30	45	60
Fecal Coliform (CFU/100 ml)						
Oct 1 - Apr 30	XXX	XXX	XXX	200	XXX	1,000
May 1 - Sep 30	XXX	XXX	XXX	Geo Mean 200	XXX	1,000
Total Nitrogen	Report	XXX	XXX	Geo Mean Report	XXX	XXX
Ammonia-Nitrogen						
Nov 1 - Apr 30	24	XXX	XXX	15.0	XXX	30
May 1 - Oct 31	8	XXX	XXX	5.0	XXX	10



<i>Parameters</i>	<i>Mass Units (lbs/day)</i>		<i>Minimum</i>	<i>Concentrations (mg/L)</i>		<i>Instant. Maximum</i>
	<i>Average Monthly</i>	<i>Weekly Average</i>		<i>Average Monthly</i>	<i>Weekly Average</i>	
Total Phosphorus						
Nov 1 - Apr 30	3.2	XXX	XXX	2.0	XXX	4
May 1 - Oct 31	1.6	XXX	XXX	1.0	XXX	2
Total Dissolved Solids	XXX	XXX	XXX	XXX	Report Daily Max	XXX

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

1. No Stormwater
2. Acquire Necessary Property Rights
3. Proper Sludge Disposal
4. Chlorine Minimization
5. Operator Notification
6. TMDL/WLA Analysis
7. Fecal Coliform Requirement
8. Operations and Maintenance Plan

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.

**PA0245097**, Sewage, SIC Code 8811, **Shaner Karl**, 26619 S Pear Tree Drive, Sun Lakes, AZ 85248. Facility Name: 2390 N Schaffer Rd Project. This proposed facility is located in Lower Pottsgrove Township, **Montgomery County**.

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

The receiving stream(s), Unnamed Tributary to Sanatoga Creek, is located in State Water Plan watershed 3-D and is classified for Migratory Fishes and 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 .0005 MGD.—Limits.

<i>Parameters</i>	<i>Mass Units (lbs/day)</i>		<i>Minimum</i>	<i>Concentrations (mg/L)</i>		<i>Instant. Maximum</i>
	<i>Average Monthly</i>	<i>Weekly Average</i>		<i>Annual Average</i>	<i>Maximum</i>	
Flow (MGD)	Report Annl Avg	XXX	XXX	XXX	XXX	XXX
pH (S.U.)	XXX	XXX	6.0 Inst Min	XXX	XXX	9.0
Biochemical Oxygen Demand (BOD <sub>5</sub> )	XXX	XXX	XXX	10.0	XXX	20.0
Total Suspended Solids	XXX	XXX	XXX	10.0	XXX	20.0
Fecal Coliform (No./100 ml)	XXX	XXX	XXX	200.0	XXX	1,000.0

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.

**PA0052906**, Storm Water, SIC Code 4953, **Covanta Plymouth Renewable Energy LLC**, 1155 Conshohocken Road, Conshohocken, PA 19428-1028. Facility Name: Covanta Plymouth Renewable Energy LLC. This existing facility is located in Plymouth Township, **Montgomery County**.

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

The receiving stream(s), Schuylkill River, is located in State Water Plan watershed 3-F and is classified for Migratory Fishes and 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 MGD.—Limits.

<i>Parameters</i>	<i>Mass Units (lbs/day)</i>		<i>Minimum</i>	<i>Concentrations (mg/L)</i>		<i>Instant. Maximum</i>
	<i>Average Monthly</i>	<i>Weekly Average</i>		<i>Average Monthly</i>	<i>Daily Maximum</i>	
pH (S.U.)	XXX	XXX	XXX	XXX	Report	XXX
Chemical Oxygen Demand (COD)	XXX	XXX	XXX	XXX	Report	XXX
Total Dissolved Solids	XXX	XXX	XXX	XXX	Report	XXX
Oil and Grease	XXX	XXX	XXX	XXX	Report	XXX

<i>Parameters</i>	<i>Mass Units (lbs/day)</i>		<i>Minimum</i>	<i>Concentrations (mg/L)</i>		<i>Instant. Maximum</i>
	<i>Average Monthly</i>	<i>Average Weekly</i>		<i>Average Monthly</i>	<i>Daily Maximum</i>	
Nitrate-Nitrite as N	XXX	XXX	XXX	XXX	Report	XXX
Ammonia-Nitrogen	XXX	XXX	XXX	XXX	Report	XXX
Arsenic, Total	XXX	XXX	XXX	XXX	Report	XXX
Barium, Total	XXX	XXX	XXX	XXX	Report	XXX
Cadmium, Total	XXX	XXX	XXX	XXX	Report	XXX
Chromium, Total	XXX	XXX	XXX	XXX	Report	XXX
Cyanide, Total	XXX	XXX	XXX	XXX	Report	XXX
Iron, Total	XXX	XXX	XXX	XXX	Report	XXX
Lead, Total	XXX	XXX	XXX	XXX	Report	XXX
Magnesium, Dissolved	XXX	XXX	XXX	XXX	Report	XXX
Magnesium, Total	XXX	XXX	XXX	XXX	Report	XXX
Mercury, Total	XXX	XXX	XXX	XXX	Report	XXX
Selenium, Total	XXX	XXX	XXX	XXX	Report	XXX
Silver, Total	XXX	XXX	XXX	XXX	Report	XXX
Total Organic Carbon	XXX	XXX	XXX	XXX	Report	XXX

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.

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*Southeast Region: Clean Water Program Manager, 2 East Main Street, Norristown, PA 19401. Telephone 484-250-5970.*

**PA0050431**, Industrial, SIC Code 2086, **Refresco North America**, 20 Aldan Avenue, Concordville, PA 19342. Facility Name: Refresco Beverages IWTP. This existing facility is located in Concord Township, **Delaware 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, Unnamed Tributary to West Branch Chester Creek, is located in State Water Plan watershed 3-G and is classified for Migratory Fishes and Trout Stocking, aquatic life, water supply and recreation. The discharge is not expected to affect public water supplies.

The proposed effluent limits for Outfall 001 are based on a design flow of .364 MGD.—Limits.

<i>Parameters</i>	<i>Mass Units (lbs/day)</i>		<i>Minimum</i>	<i>Concentrations (mg/L)</i>		<i>Instant. Maximum</i>
	<i>Average Monthly</i>	<i>Average Weekly</i>		<i>Average Monthly</i>	<i>Maximum</i>	
pH (S.U.)	XXX	XXX	6.0 Inst Min	XXX	XXX	9.0
Dissolved Oxygen	XXX	XXX	6.0 Inst Min	XXX	XXX	XXX
Temperature (°F)	XXX	XXX	XXX	XXX	XXX	110
Total Dissolved Solids	3,036.0	6,072.0	XXX	1,000.0	2,000.0	2,500
Oil and Grease	45.5	Daily Max 91.1	XXX	15.0	Daily Max XXX	30.0
Total Phosphorus	3.0	IMAX 6.1 Daily Max	XXX	1.0	2.0 Daily Max	2.5

The proposed effluent limits for Outfall 101 are based on a design flow of 0.07 MGD.—Limits.

<i>Parameters</i>	<i>Mass Units (lbs/day)</i>		<i>Minimum</i>	<i>Concentrations (mg/L)</i>		<i>Instant. Maximum</i>
	<i>Average Monthly</i>	<i>Daily Maximum</i>		<i>Average Monthly</i>	<i>Daily Maximum</i>	
Flow (MGD)	Report	Report	XXX	XXX	XXX	XXX
Total Residual Chlorine (TRC)	XXX	XXX	XXX	0.5	XXX	0.75
Carbonaceous Biochemical Oxygen Demand (CBOD <sub>5</sub> )	12.0	24.0	XXX	20.0	40.0	50
Total Suspended Solids	18.0	36.0	XXX	30.0	60.0	75
Ammonia-Nitrogen						
Nov 1 - Apr 30	3.5	7.0	XXX	6.0	12.0	15
May 1 - Oct 31	1.2	2.4	XXX	2.0	4.0	5

The proposed effluent limits for Outfall 201 are based on a design flow of 0.288 MGD.—Limits.

<i>Parameters</i>	<i>Mass Units (lbs/day)</i>		<i>Minimum</i>	<i>Concentrations (mg/L)</i>		<i>Instant. Maximum</i>
	<i>Average Monthly</i>	<i>Daily Maximum</i>		<i>Average Monthly</i>	<i>Daily Maximum</i>	
Flow (MGD)	Report	Report	XXX	XXX	XXX	XXX
Carbonaceous Biochemical Oxygen Demand (CBOD <sub>5</sub> )	24.0	48.0	XXX	10.0	20.0	25
Total Suspended Solids	24.0	48.0	XXX	10.0	20.0	25
Total Nitrogen	24.0	48.0	XXX	10.0	20.0	25
Ammonia-Nitrogen						
Nov 1 - Apr 30	14.4	28.8	XXX	6.0	12.0	15
May 1 - Oct 31	4.8	9.6	XXX	2.0	4.0	5
Antimony, Total	XXX	XXX	XXX	Report	XXX	XXX
Cadmium, Total	0.0019	0.0038	XXX	0.0008	0.0016	0.002
Selenium, Total	0.012	0.024	XXX	0.005	0.01	0.013
Thallium, Total	0.0005	0.0010	XXX	0.0002	0.0004	0.0005

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

- A. Acquire Necessary Property Rights
- B. Proper Sludge Disposal
- C. WQM Permit Conditions
- D. BAT/ELG Reopener
- E. Chlorine Minimization
- F. Small Stream Discharge
- G. 2° Change in the Temperature
- H. Chemical Additives Condition
- I. Stormwater Requirements

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.

**PA0244511**, Sewage, SIC Code 8811, **Richardson Melissa**, 177 Creamery Road, Coatesville, PA 19320-1716. Facility Name: Richardson SRSTP. This existing facility is located in West Caln Township, **Chester County**.

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

The receiving stream(s), Unnamed Tributary to West Branch Brandywine Creek, is located in State Water Plan watershed 3-H and is classified for High Quality—Cold Water 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 .0005 MGD.

<i>Parameters</i>	<i>Mass Units (lbs/day)</i>		<i>Minimum</i>	<i>Concentrations (mg/L)</i>		<i>Instant. Maximum</i>
	<i>Average Monthly</i>	<i>Average Weekly</i>		<i>Annual Average</i>	<i>Maximum</i>	
Flow (MGD)	Report	XXX	XXX	XXX	XXX	XXX
pH (S.U.)	Annl Avg XXX	XXX	6.0 Inst Min	XXX	XXX	9.0
Dissolved Oxygen	XXX	XXX	6.0 Inst Min	XXX	XXX	XXX
Carbonaceous Biochemical Oxygen Demand (CBOD <sub>5</sub> )	XXX	XXX	XXX	20.0	XXX	40
Total Suspended Solids	XXX	XXX	XXX	10.0	XXX	20
Fecal Coliform (No./100 ml)	XXX	XXX	XXX	200	XXX	XXX
Ammonia-Nitrogen	XXX	XXX	XXX	9.0	XXX	18

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

1. No stormwater
2. Property Rights
3. Sludge Disposal
4. STP Abandon
5. Maintenance of STP and AMR



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.

**PA0244431**, IW, SIC Code 3731, **Philadelphia Ship Repair**, 1915 South 19th Street, Philadelphia, PA 19112. Facility Name: Philadelphia Navy Yard Dry Dock 3. This existing facility is located in Philadelphia City, **Philadelphia County**.

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

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

The proposed effluent limits for Outfall 002, 003, 004 are based on stormwater.

<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>Daily</i>		<i>Average Monthly</i>	<i>Daily Maximum</i>	
Total Suspended Solids	XXX	XXX	XXX	XXX	Report	XXX
Oil and Grease	XXX	XXX	XXX	XXX	Report	XXX
Total Kjeldahl Nitrogen	XXX	XXX	XXX	XXX	Report	XXX
Total Iron	XXX	XXX	XXX	XXX	Report	XXX

The proposed effluent limits for Outfall 011:

<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>Daily Maximum</i>		<i>Average Monthly</i>	<i>Daily Maximum</i>	
Flow (MGD)	Report	Report	XXX	XXX	XXX	XXX
pH (S.U.)	XXX	XXX	6.0	XXX	XXX	9.0
Temperature (°F)	XXX	XXX	XXX	XXX	XXX	110
Total Suspended Solids Effluent Net	XXX	XXX	XXX	100	200	XXX
Industrial Influent	XXX	XXX	XXX	Report	Report	XXX
Total Suspended Solids	XXX	XXX	XXX	Report	Report	XXX
Oil and Grease	XXX	XXX	XXX	15	30	XXX
					Max	
Total Copper	XXX	XXX	XXX	Report	Report	XXX
Total Iron	XXX	XXX	XXX	Report	Report	XXX
Total Lead	XXX	XXX	XXX	Report	Report	XXX
Total Zinc	XXX	XXX	XXX	Report	Report	XXX
Ethylbenzene	XXX	XXX	XXX	Report	Report	XXX
Total Xylenes	XXX	XXX	XXX	Report	Report	XXX
PCBs (Dry Weather) (pg/L)	XXX	XXX	XXX	Report	XXX	XXX
				Daily Max		

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

I. Other Requirements

A. Property Rights

B. Sludge disposal

C. WQM permit

D. BAT/BCT

II. Requirements applicable to stormwater outfalls

III. PCB Minimization Plan and Monitoring

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.

**PA0244422**, Storm Water, SIC Code 4011, **Norfolk Southern Railway Co.**, 1200 Peachtree Street NE, Atlanta, GA 30309-0013. Facility Name: Norfolk Southern King of Prussia Facility. This existing facility is located in Upper Merion Township, **Montgomery County**.

Description of Existing Activity: The application is for a renewal of an NPDES permit for an existing discharge of Stormwater associated with industrial activities.

The receiving stream(s), Schuylkill River and Crow Creek, is located in State Water Plan watershed 3-F and is classified for Migratory Fishes and 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 and 004 are based on a stormwater.

<i>Parameters</i>	<i>Mass Units (lbs/day)</i>		<i>Minimum</i>	<i>Concentrations (mg/L)</i>		<i>Instant. Maximum</i>
	<i>Average Monthly</i>	<i>Average Weekly</i>		<i>Average Monthly</i>	<i>Daily Maximum</i>	
pH (S.U.)	XXX	XXX	XXX	XXX	Report	XXX
Carbonaceous Biochemical Oxygen Demand (CBOD <sub>5</sub> )	XXX	XXX	XXX	XXX	Report	XXX
Chemical Oxygen Demand (COD)	XXX	XXX	XXX	XXX	Report	XXX
Total Suspended Solids	XXX	XXX	XXX	XXX	Report	XXX
Oil and Grease	XXX	XXX	XXX	XXX	Report	XXX
Total Kjeldahl Nitrogen	XXX	XXX	XXX	XXX	Report	XXX
Total Phosphorus	XXX	XXX	XXX	XXX	Report	XXX
Iron, Total	XXX	XXX	XXX	XXX	Report	XXX
PCBs Wet Weather Analysis (pg/L)	XXX	XXX	XXX	XXX	Report	XXX

The proposed effluent limits for Outfall 003 are based on a stormwater.

<i>Parameters</i>	<i>Mass Units (lbs/day)</i>		<i>Minimum</i>	<i>Concentrations (mg/L)</i>		<i>Instant. Maximum</i>
	<i>Average Monthly</i>	<i>Average Weekly</i>		<i>Average Monthly</i>	<i>Daily Maximum</i>	
pH (S.U.)	XXX	XXX	XXX	XXX	Report	XXX
Carbonaceous Biochemical Oxygen Demand (CBOD <sub>5</sub> )	XXX	XXX	XXX	XXX	Report	XXX
Chemical Oxygen Demand (COD)	XXX	XXX	XXX	XXX	Report	XXX
Total Suspended Solids	XXX	XXX	XXX	XXX	Report	XXX
Oil and Grease	XXX	XXX	XXX	XXX	Report	XXX
Total Kjeldahl Nitrogen	XXX	XXX	XXX	XXX	Report	XXX
Total Phosphorus	XXX	XXX	XXX	XXX	Report	XXX
Iron, Total	XXX	XXX	XXX	XXX	Report	XXX

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

- I. Stormwater Outfalls and Authorized Non-Stormwater Discharges
- II. BMPs
- III. Routine Inspection
- IV. PPC Plan
- V. Stormwater Monitoring Requirements
- VI. Other Requirements

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.

**PA0244228**, Storm Water, SIC Code 3272, 3273, **Rahns Construction Material Company**, 430 Bridge Road, Collegeville, PA 19426. Facility Name: Rahns Concrete Batch Plant. This existing facility is located in Skippack Township, **Montgomery County**.

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

The receiving stream(s), Perkiomen Creek, is located in State Water Plan watershed 3-E and is classified for Migratory Fishes and 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 MGD.—Limits.

<i>Parameters</i>	<i>Mass Units (lbs/day)</i>		<i>Minimum</i>	<i>Concentrations (mg/L)</i>		<i>Instant. Maximum</i>
	<i>Average Monthly</i>	<i>Average Weekly</i>		<i>Semi-Annual Average</i>	<i>Daily Maximum</i>	
pH (S.U.)	XXX	XXX	6.0 Inst Min	XXX	XXX	9.0
Total Suspended Solids	XXX	XXX	XXX	50.0	100.0	100
Oil and Grease	XXX	XXX	XXX	XXX	Report	XXX
Aluminum, Total	XXX	XXX	XXX	XXX	Report	XXX
Iron, Total	XXX	XXX	XXX	XXX	Report	XXX

The proposed effluent limits for Outfall 002 are based on a design flow of 0 MGD.—Limits.

<i>Parameters</i>	<i>Mass Units (lbs/day)</i>		<i>Minimum</i>	<i>Concentrations (mg/L)</i>		<i>Instant. Maximum</i>
	<i>Average Monthly</i>	<i>Average Weekly</i>		<i>Semi-Annual Average</i>	<i>Daily Maximum</i>	
pH (S.U.)	XXX	XXX	6.0 Inst Min	XXX	XXX	9.0
Total Suspended Solids	XXX	XXX	XXX	50.0	100.0	100
Oil and Grease	XXX	XXX	XXX	XXX	Report	XXX
Aluminum, Total	XXX	XXX	XXX	XXX	Report	XXX
Iron, Total	XXX	XXX	XXX	XXX	Report	XXX

The proposed effluent limits for Outfall 003 are based on a design flow of 0 MGD.—Limits.

<i>Parameters</i>	<i>Mass Units (lbs/day)</i>		<i>Minimum</i>	<i>Concentrations (mg/L)</i>		<i>Instant. Maximum</i>
	<i>Average Monthly</i>	<i>Average Weekly</i>		<i>Semi-Annual Average</i>	<i>Daily Maximum</i>	
pH (S.U.)	XXX	XXX	6.0 Inst Min	XXX	XXX	9.0
Total Suspended Solids	XXX	XXX	XXX	50.0	100.0	100
Oil and Grease	XXX	XXX	XXX	XXX	Report	XXX
Aluminum, Total	XXX	XXX	XXX	XXX	Report	XXX
Iron, Total	XXX	XXX	XXX	XXX	Report	XXX

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

I. Stormwater Outfalls and Authorized Non-Stormwater Discharges

II. Best Management Practices (BMPs)

III. Routine Inspections

IV. Preparedness, Prevention and Contingency (PPC) Plan

V. Stormwater Monitoring Requirements

A. Acquire Necessary Property Rights

B. Sludge Disposal Requirement

C. BMPs to Control TSS and pH

D. Remedial Measures if Public Nuisance

E. 10-year, 24-Hour Rainfall Event Definition

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.

**PA0244406**, Storm Water, SIC Code 3273, **Nyce Crete Company, Inc.**, 711 North County Line Road, P.O. Box 64418, Souderton, PA 18964. Facility Name: Nyce Crete Company. This existing facility is located in 901 West Sixth Street, Lansdale, PA 19446, in Lansdale Borough, **Montgomery County**.

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

The receiving stream(s), Unnamed Tributary to West Branch Neshaminy Creek, is located in State Water Plan watershed 2-F and is classified for Migratory Fishes and 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 MGD.—Limits.

<i>Parameters</i>	<i>Mass Units (lbs/day)</i>		<i>Minimum</i>	<i>Concentrations (mg/L)</i>		<i>Instant. Maximum</i>
	<i>Average Monthly</i>	<i>Average Weekly</i>		<i>Average Quarterly</i>	<i>Daily Maximum</i>	
pH (S.U.)	XXX	XXX	6.0 Inst Min	XXX	XXX	9.0
Total Suspended Solids	XXX	XXX	XXX	50.0	100.0	100
Oil and Grease	XXX	XXX	XXX	XXX	Report	XXX
Aluminum, Total	XXX	XXX	XXX	XXX	Report	XXX
Iron, Total	XXX	XXX	XXX	XXX	Report	XXX

The proposed effluent limits for Outfall 002 are based on a design flow of 0 MGD.—Limits.

<i>Parameters</i>	<i>Mass Units (lbs/day)</i>		<i>Minimum</i>	<i>Concentrations (mg/L)</i>		<i>Instant. Maximum</i>
	<i>Average Monthly</i>	<i>Average Weekly</i>		<i>Average Quarterly</i>	<i>Daily Maximum</i>	
pH (S.U.)	XXX	XXX	6.0 Inst Min	XXX	XXX	9.0
Total Suspended Solids	XXX	XXX	XXX	50.0	100.0	100
Oil and Grease	XXX	XXX	XXX	XXX	Report	XXX
Aluminum, Total	XXX	XXX	XXX	XXX	Report	XXX
Iron, Total	XXX	XXX	XXX	XXX	Report	XXX

The proposed effluent limits for Outfall 003 are based on a design flow of 0 MGD.—Limits.

<i>Parameters</i>	<i>Mass Units (lbs/day)</i>		<i>Minimum</i>	<i>Concentrations (mg/L)</i>		<i>Instant. Maximum</i>
	<i>Average Monthly</i>	<i>Average Weekly</i>		<i>Average Quarterly</i>	<i>Daily Maximum</i>	
pH (S.U.)	XXX	XXX	6.0 Inst Min	XXX	XXX	9.0
Total Suspended Solids	XXX	XXX	XXX	50.0	100.0	100
Oil and Grease	XXX	XXX	XXX	XXX	Report	XXX
Aluminum, Total	XXX	XXX	XXX	XXX	Report	XXX
Iron, Total	XXX	XXX	XXX	XXX	Report	XXX

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

- I. Stormwater Outfalls and Authorized Non-Stormwater Discharges
- II. Best Management Practices (BMPs)
- III. Routine Inspections
- IV. Preparedness, Prevention and Contingency (PPC) Plan
- V. Stormwater Monitoring Requirements
  - A. Acquire Necessary Property Rights
  - B. Sludge Disposal Requirement
  - C. BMPs to Control TSS and pH
  - D. Remedial Measures if Public Nuisance
  - E. 10-year, 24-Hour Rainfall Event Definition

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.

**PA0052272**, Industrial, SIC Code 2952, **Henry Company**, P.O. Box 368, Kimberton, PA 19442. Facility Name: Henry Company Kimberton Facility. This existing facility is located in East Pikeland Township, **Chester County**.

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

The receiving stream(s), Unnamed Tributary to French Creek, is located in State Water Plan watershed 3-D and is classified for Migratory Fishes and Trout Stocking, aquatic life, water supply and recreation. The discharge is not expected to affect public water supplies.

The proposed effluent limits for Outfall 001 are based on a design flow of .009 MGD.—Limits.

<i>Parameters</i>	<i>Mass Units (lbs/day)</i>		<i>Minimum</i>	<i>Concentrations (mg/L)</i>		<i>Instant. Maximum</i>
	<i>Average Monthly</i>	<i>Average Weekly</i>		<i>Average Monthly</i>	<i>Daily Maximum</i>	
Flow (GPD)	Report	XXX	XXX	XXX	XXX	XXX
pH (S.U.)	XXX	XXX	6.0 Inst Min	XXX	XXX	9.0
Temperature (deg F) (°F)	XXX	XXX	XXX	XXX	XXX	110
Trichloroethylene	XXX	XXX	XXX	0.001	0.002	0.0025
Trichloroethylene Industrial Influent	XXX	XXX	XXX	Report	Report	XXX

The proposed effluent limits for Outfall 009 are based on a design flow of 0 MGD.—Limits.

<i>Parameters</i>	<i>Mass Units (lbs/day)</i>		<i>Minimum</i>	<i>Concentrations (mg/L)</i>		<i>Instant. Maximum</i>
	<i>Average Monthly</i>	<i>Average Weekly</i>		<i>Average Monthly</i>	<i>Maximum</i>	
pH (S.U.)	XXX	XXX	XXX	XXX	XXX	Report
Total Suspended Solids	XXX	XXX	XXX	XXX	XXX	Report



<i>Parameters</i>	<i>Mass Units (lbs/day)</i>		<i>Minimum</i>	<i>Concentrations (mg/L)</i>		<i>Instant. Maximum</i>
	<i>Average Monthly</i>	<i>Average Weekly</i>		<i>Average Monthly</i>	<i>Maximum</i>	
Oil and Grease	XXX	XXX	XXX	XXX	XXX	Report
Iron, Dissolved	XXX	XXX	XXX	XXX	XXX	Report
Phenol	XXX	XXX	XXX	XXX	XXX	Report

The proposed effluent limits for Outfall 010 are based on a design flow of 0 MGD.—Limits.

<i>Parameters</i>	<i>Mass Units (lbs/day)</i>		<i>Minimum</i>	<i>Concentrations (mg/L)</i>		<i>Instant. Maximum</i>
	<i>Average Monthly</i>	<i>Average Weekly</i>		<i>Average Monthly</i>	<i>Maximum</i>	
pH (S.U.)	XXX	XXX	XXX	XXX	XXX	Report
Carbonaceous Biochemical Oxygen Demand (CBOD <sub>5</sub> )	XXX	XXX	XXX	XXX	XXX	Report
Chemical Oxygen Demand (COD)	XXX	XXX	XXX	XXX	XXX	Report
Total Suspended Solids	XXX	XXX	XXX	XXX	XXX	Report
Oil and Grease	XXX	XXX	XXX	XXX	XXX	Report
Total Kjeldahl Nitrogen	XXX	XXX	XXX	XXX	XXX	Report
Total Phosphorus	XXX	XXX	XXX	XXX	XXX	Report
Iron, Dissolved	XXX	XXX	XXX	XXX	XXX	Report

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

Proposed Part C Conditions:

I. Other Requirements

- A. Necessary Property Rights
- B. Sludge Disposal Requirements
- C. Applicable BAT/BCT Analysis
- D. 2° during discharge
- E. No additional additives to non-contact cooling water
- F. Watershed TMDL/WLA Analysis
- G. No Direct Discharge of Stripper Tower Cleaning Wastewater
- H. Approved Analytical Methods

II. Requirements Applicable to Stormwater Outfalls

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.

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*Southwest Regional Office: Regional Clean Water Program Manager, 400 Waterfront Drive, Pittsburgh, PA 15222-4745, Telephone: 412.442.4000.*

**PA0022292**, Sewage, SIC Code 4952, **Ebensburg Borough Municipal Authority**, 300 West High Street, Ebensburg, PA 15931. Facility Name: Ebensburg Borough Municipal Authority WWTP. This existing facility is located in Cambria Township, **Cambria 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), Howells Run, is located in State Water Plan watershed 18-E and is classified for Cold 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 2 MGD.—Limits.

<i>Parameters</i>	<i>Mass Units (lbs/day)</i>		<i>Minimum</i>	<i>Concentrations (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 Inst Min	XXX	XXX	9.0
Dissolved Oxygen	XXX	XXX	6.0 Inst Min	XXX	XXX	XXX
Carbonaceous Biochemical Oxygen Demand (CBOD <sub>5</sub> )	417	626	XXX	25	37.5	50

Parameters	Mass Units (lbs/day)		Minimum	Concentrations (mg/L)		Instant. Maximum
	Average Monthly	Weekly Average		Average Monthly	Weekly Average	
Biochemical Oxygen Demand (BOD <sub>5</sub> )						
Raw Sewage Influent	Report	Report Daily Max	XXX	Report	Report	XXX
Total Suspended Solids						
Raw Sewage Influent	Report	Report Daily Max	XXX	Report	Report	XXX
Total Suspended Solids	501	751	XXX	30	45	60
Fecal Coliform (No./100 ml)						
Oct 1 - Apr 30	XXX	XXX	XXX	2,000 Geo Mean	XXX	10,000
May 1 - Sep 30	XXX	XXX	XXX	200 Geo Mean	XXX	1,000
Ultraviolet light intensity (µw/cm <sup>2</sup> )	XXX	XXX	Report	XXX	XXX	XXX
Ammonia-Nitrogen						
Nov 1 - Apr 30	58	88	XXX	3.5	5.3	7
May 1 - Oct 31	33	50	XXX	2.0	3.0	4
Total Phosphorus	25	38	XXX	1.5	2.3	3
Total Nitrogen	XXX	XXX	XXX	Report Daily Max	XXX	XXX

Sludge use and disposal description and location(s): Sludge is disposed of at Laurel Highlands Landfill in Cambria County.

The Authority is permitted to discharge combined sewage through Outfalls 002 and 003 until January 1, 2020 the date which these Outfalls are to be eliminated.

You may make an appointment to review the DEP files on this case by calling the File Review Coordinator at 412-442-4000.

The EPA Waiver is not in effect.

### III. WQM Industrial Waste and Sewerage Applications under The Clean Streams Law.

*Northeast Region: Clean Water Program Manager, 2 Public Square, Wilkes-Barre, PA 18701-1915. Phone: 570-826-2511.*

**WQM Permit No. 4819201**, Industrial, **Grand Central Sanitary Landfill, Inc.**, 1963 Pen Argyl Road, Pen Argyl, PA 18072.

This existing facility is located in Plainfield Township, **Northampton County**.

Description of Proposed Action/Activity: The project is for the installation of a pH adjustment and phosphoric acid supplementation system for a 1.3 million gallon influent equalization tank. A chemical storage building will also be installed to house storage tanks and metering pumps.

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

**WQM Permit No. WQG02221902**, Sewerage, **Lower Paxton Township Sewer Authority**, 425 Prince Street # 139, Harrisburg, PA 17109.

This proposed facility is located in Lower Paxton Township, **Dauphin County**.

Description of Proposed Action/Activity: Seeking general permit approval for the construction/operation of pump station and sewer extension to serve Blue Ridge Village.

*Southwest Regional Office: Regional Clean Water Program Manager, 400 Waterfront Drive, Pittsburgh, PA 15222-4745. Phone: 412.442.4000.*

**WQM Permit No. 6571417 A-6**, Sewage, **Kiski Valley Water Pollution Control Authority**, 1361 School Road, Leechburg, PA 15656-4904.

This existing facility is located in Allegheny Township, **Westmoreland County**.

Description of Proposed Action/Activity: The applicant proposes to make multiple upgrades to the existing Vandergrift Pump Station.

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

**WQM Permit No. 2519405**, Sewage, **Patricia & William Menz**, 10644 Station Road, North East, PA 16428.

This proposed facility is located in Greenfield Township, **Erie County**.

Description of Proposed Action/Activity: Single Residence Sewage Treatment Plant.

**WQM Permit No. 4319401**, Sewage, **Paul D McCullough**, 20 Schultz Lane, Sharpsville, PA 16150.

This proposed facility is located in Jefferson Township, **Mercer County**.

Description of Proposed Action/Activity: Single Residence Sewage Treatment Plant.

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**IV. NPDES Individual Permit Applications for Stormwater Discharges from Municipal Separate Storm Sewer Systems (MS4s).**


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*Southeast Regional Office: Regional Clean Water Program Manager, 2 E Main Street, Norristown, PA 19401, Telephone: 484.250.5970.*

**PAI130524**, MS4, **East Brandywine Township, Chester County**, 1214 Horseshoe Pike, Downingtown, PA 19335-1132. The application is for a renewal of an individual NPDES permit for the discharge of stormwater from a regulated municipal separate storm sewer system (MS4) to waters of the Commonwealth in East Brandywine Township, **Chester County**. The receiving stream(s), Unnamed Tributary to Beaver Creek, Beaver Creek, Unnamed Tributary to Culbertson Run, Unnamed Tributary of Beaver Creek, Culbertson Run, and Unnamed Tributary to East Branch Brandywine Creek, is located in State Water Plan watershed 3-H and is classified for Mi, Cold Water Fishes, Migratory Fishes, and High Quality Waters—Trout Stocking, aquatic life, water supply and recreation. The applicant is classified as a small MS4.

The applicant has submitted the following plan(s) with the application to reduce pollutant loads to impaired waters:

- A Pollutant Reduction Plan (PRP)

The Department has made a tentative determination to issue the NPDES permit. Written comments on the application and draft permit will be accepted for 30 days following publication of this notice. The period for comment may be extended at the discretion of DEP for one additional 15-day period. 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 for small MS4s, and is not in effect for large MS4s.

**PAI130038**, MS4, **Bristol Township**, 2501 Bath Road, Bristol, PA 19007. The application is for a renewal of an individual NPDES permit for the discharge of stormwater from a regulated municipal separate storm sewer system (MS4) to waters of the Commonwealth in Bristol Township, **Bucks County**. The receiving stream(s), Mill Creek, Unnamed Tributary to Mill Creek, Neshaminy Creek, and Delaware River, is located in State Water Plan watershed 2-E and is classified for Migratory Fishes and Warm Water Fishes, aquatic life, water supply and recreation. The applicant is classified as a small MS4.

The applicant has submitted the following plan(s) with the application to reduce pollutant loads to impaired waters:

- A Pollutant Reduction Plan (PRP)
- A Total Maximum Daily Load (TMDL) Plan

The Department has made a tentative determination to issue the NPDES permit. Written comments on the application and draft permit will be accepted for 30 days following publication of this notice. The period for comment may be extended at the discretion of DEP for one additional 15-day period. 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 for small MS4s, and is not in effect for large MS4s.

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


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*Northeast Region: Waterways and Wetlands Program Manager, 2 Public Square, Wilkes-Barre, PA 18701-1915.*

*Lehigh County Conservation District, 4184 Dorney Park Road, Suite 105, Allentown, PA 18401.*

<i>NPDES Permit No.</i>	<i>Applicant Name &amp; Address</i>	<i>County</i>	<i>Municipality</i>	<i>Receiving Water/Use</i>
PAD390110	Liberty Property Trust 400 Boulder Dr Ste 200 Breinigsville, PA 18031	Lehigh	Lower Macungie Twp Alburtis Boro	UNT to Little Lehigh Creek (HQ-CWF, MF)

*Schuylkill Conservation District, 1206 AG Center Drive, Pottsville, PA 17901-9733.*

<i>NPDES Permit No.</i>	<i>Applicant Name &amp; Address</i>	<i>County</i>	<i>Municipality</i>	<i>Receiving Water/Use</i>
PAD540013	Northpoint Development LLC Eric Watts, Project Manager 4825 NW 41st St Ste 500 Riverside, MO 64150	Schuylkill	Mahanoy Twp Ryan Twp	Hosensock Creek (CWF, MF) Codorus Creek (CWF, MF) UNT to Mill Creek (CWF, MF)

*Susquehanna County Conservation District, 88 Chenango Street, Montrose, PA 18801.*

## NPDES

Permit No.	Applicant Name & Address	County	Municipality	Receiving Water/Use
PAD580007	Matthew Button 5058 School Rd New Milford, PA 18834	Susquehanna	New Milford Twp	Salt Lick Creek (HQ-CWF, MF) Beaver Creek (HQ-CWF, MF)

*Southcentral Region: Waterways & Wetlands Program, 909 Elmerton Avenue, Harrisburg, PA 17110-8200, Nathan Phillips, Section Chief, 717.705.4802.*

Permit #	Applicant Name & Address	County	Municipality	Receiving Water/Use
PAD220004	Hawthorne SPE, LLC 3605 Vartan Way Suite 301 Harrisburg, PA 17110	Dauphin	Susquehanna Township	Black Run (WWF)
PAD440004	Kish Bank 30 Carriage House Lane Reedsville, PA 17804	Mifflin	Brown Township	Tea Creek (HQ-CWF)
PAD360039	Michael Weaver 381 Scotland Road Quarryville, PA 17566	Lancaster	East Drumore Township	UNT Conowingo Creek (HQ-CWF)
PAD310007	The Pennsylvania State University 1391 Physical Plant Building University Park, PA 16802	Huntingdon	Baree Township	UNT Shavers Creek (HQ-CWF)
PAD670032	York County School of Technology 2179 South Queen Street York, PA 17402	York	York Township	UNT Mill Creek (CWF)

*Northcentral Region: Waterways & Wetlands Program Manager, 208 West Third Street, Williamsport, PA 17701, 570.327.3574.*

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

## NPDES

Permit No.	Applicant Name & Address	County	Municipality	Receiving Water/Use
PAD140046 Renewal	Stearns Boal, Inc. 100 North Patterson Street State College, PA 16801	Centre	College Township	Spring Creek HQ-CWF

## 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.



**ACT 38  
NUTRIENT MANAGEMENT PLANS  
CAFO PUBLIC NOTICE SPREADSHEET—APPLICATIONS**

<i>Agricultural Operation Name and Address</i>	<i>County</i>	<i>Total Acres</i>	<i>AEU's</i>	<i>Animal Type</i>	<i>Special Protection Waters (HQ or EV or NA)</i>	<i>New or Renewal</i>
Woodland View Farm (Paul Smoker) 133 Woodland View Farm Oxford, PA 19363	Chester, East Nottingham Township	204	152.69	Duck, Dairy, Beef	NA	Renewal
Brookside Acres Benjamin Nissley 125 Aberdeen Road Elizabethtown, PA 17022	Lancaster	130	775.73	Swine	NA	R
Eugene Nolt 143 Kurtz Rd New Holland, PA 17557	Lancaster	64	664.29	Beef/Swine	NA	R
Robbie & Danyell Dickinson 199 West McKinleyville Road Hustontown, PA 17229	Fulton	100.9	693.59	Swine Finisher	UNT Sideling Hill Creek-HQ;CWF	Renewal

**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**

**Applications Received Under the Pennsylvania Safe Drinking Water Act (35 P.S. §§ 721.1—721.17).**

*Southcentral Region: Safe Drinking Water Program Manager, 909 Elmerton Avenue, Harrisburg, PA 17110.*

**Permit No. 2119501**, Public Water Supply.  
 Applicant **Jaymee Lee's Quick Stop, LLC**  
 Municipality Lower Mifflin Township  
 County **Cumberland**  
 Responsible Official Richard N. Walker Sr, Owner  
 348 Doubling Gap Road  
 Newville, PA 17241  
 Type of Facility Public Water Supply  
 Consulting Engineer Craig J. Zack, P.E.  
 KPI Technology  
 143 Carlisle Street  
 Gettysburg, PA 17325  
 Application Returned: 2/26/2019  
 Description of Action The installation of greensand filtration for Fe & Mn removal treatment, softening and UV disinfection.

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

**Permit No. 0219507**, Public Water Supply.  
 Applicant **Pennsylvania American Water Company**  
 852 Wesley Drive  
 Mechanicsburg, PA 17055  
 [Township or Borough] Cross Creek, Hanover and Independence Townships  
 Responsible Official David Kaufman, VP of Engineering  
 Pennsylvania American Water Company  
 852 Wesley Drive  
 Mechanicsburg, PA 17055  
 Type of Facility Water system  
 Consulting Engineer Pennsylvania American Water Company  
 352 Industrial Park Drive  
 Wampum, PA 16157

Application Received      February 27, 2019  
Date

Description of Action      Installation of mixing systems in  
the Avella Tank, Cross Creek  
Tank and Paris-Florence Tank.

## 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 remediator of the site develop and implement a public involvement plan. Requests to be involved and comments should be directed to the remediator of the site.

For further information concerning the content of a Notice of Intent to Remediate, contact the environmental cleanup program manager in the Department regional office listed before the notice. If information concerning this acknowledgment is required in an alternative form, contact the community relations coordinator at the appro-

priate regional office. TDD users may telephone the Department through the Pennsylvania AT&T Relay Service at (800) 654-5984.

The Department has received the following Notices of Intent to Remediate:

*Southcentral Region: Environmental Cleanup and Brownfields Program Manager, 909 Elmerton Avenue, Harrisburg, PA 17110. Phone 717.705.4705.*

**Kenneth R. & Gladys M. Stoltzfus Property**, 890 Hanover Road, York, PA 17408, Jackson Township, **York County**. Liberty Environmental Inc., 505 Penn Street, Reading, PA 19601, on behalf of Poplar Partners, 130 Carlisle Street, Hanover, PA 17331 and Kenneth R. and Gladys M. Stoltzfus, 761 Valley Drive, Dallastown, PA 17313, submitted a Notice of Intent to Remediate site soil contaminated with PAHs and Vanadium. The site will be remediated to the Site-Specific Standard. Future use of the site is residential. The Notice of Intent to Remediate was published in the *York Daily Record* on February 25, 2019.

**547 North Prince Street**, 547 North Prince Street Lancaster, PA 17603, City of Lancaster, **Lancaster County**. Liberty Environmental, Inc., 505 Penn Street, Reading, PA 19601, on behalf of Lancaster General Hospital, 555 North Duke Street, Lancaster, PA 17604, submitted a Notice of Intent to Remediate site soil contaminated with No. 4 Heating Oil. The site will be remediated to the Statewide Health Standard. Future use of the site is undetermined. The Notice of Intent to Remediate was published in the *Lancaster Newspaper* on December 17, 2018.

**Miller Chemical & Fertilizer, LLC/Former Alco Industries**, 120 Radio Road, Hanover, PA 17331, Conewago Township, **Lancaster County**. EnviroAnalytics Group LLC, 1515 Des Peres Road, Suite 300, St. Louis, MO 63131, on behalf of INOHGA LLC, 1650 Des Peres Road, Suite 303, St. Louis, MO 63131 and Miller Chemical & Fertilizer, 120 Radio Road, Hanover, PA 17331, submitted a Notice of Intent to Remediate site soil and groundwater contaminated with organochloride pesticides and BTEX. The site will be remediated to the Site Specific Standard. The site will remain a fertilizer distributor. The Notice of Intent to Remediate was published in the *Evening Sun* on February 12, 2019.

#### **HAZARDOUS WASTE TREATMENT, STORAGE AND DISPOSAL FACILITIES**

#### **Applications received, withdrawn, denied or returned under the Solid Waste Management Act of July 7, 1980 (P.L. 380, No. 97) (35 P.S. §§ 6018.101—6018.1003) and Regulations to Operate a Hazardous Waste Treatment, Storage or Disposal Facility.**

*Southwest Region: Regional Solid Waste Manager, 400 Waterfront Drive, Pittsburgh, PA 15222-4745, Telephone 412-442-4000.*

**Permit ID No. PAD004344222. Tecumseh Redevelopment, Inc.**, 4020 Kinross Lakes Parkway, Richfield, OH 44286 for Tecumseh Riders Disposal Site, 950 Riders Road, Johnstown, PA 15906. An application to renew its hazardous waste closure and post-closure permit for its Spent Pickle Liquor Area and EAF Dust Landfill located at the Riders Disposal Area in East Taylor Township/City of Johnstown, **Cambria County**, was received in the Regional Office on September 27, 2018, as modified by amendments received on February 15, 2019, and deemed complete on March 4, 2019.

## DETERMINATION FOR APPLICABILITY FOR MUNICIPAL WASTE GENERAL PERMITS

**Application(s) for Determination of Applicability for General Permit Received Under the Solid Waste Management Act (35 P.S. §§ 6018.101—6018.1003); the Municipal Waste Planning, Recycling and Waste Reduction Act (53 P.S. §§ 4000.101—4000.1904); and Municipal Waste Regulations for a General Permit to Operate Municipal Waste Processing Facilities and/or the Beneficial Use of Municipal Waste.**

*Northeast Region: Regional Solid Waste Manager, 2 Public Square, Wilkes-Barre, PA 18701-1915.*

**General Permit Application No. WMGM055-NE003. Meadowbrook Energy LLC**, 1444 E. Lackawanna Avenue. A General Permit Determination of Applicability for the processing and beneficial use of landfill gas as an alternative fuel source at the Meadowbrook Energy LLC Renewable Natural Gas Processing facility located in Dunmore Borough, **Lackawanna County**. The application for determination of applicability was received on February 27, 2019 and deemed administratively complete by the Regional Office on March 4, 2019.

Persons interested in reviewing the application may contact Roger Bellas, Environmental Program Manager, Waste Management Program, Northeast Regional Office, 2 Public Square, Wilkes-Barre, PA 18701-1915 at 570-826-2511. TDD users may contact the Department through the Pennsylvania AT&T Relay Service, (800) 654-5984.

## AIR QUALITY

### PLAN APPROVAL AND OPERATING PERMIT APPLICATIONS

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 general public. This approach allows the owner or operator of a facility to submit permitting documents relevant to its application for all sources related to a facility or a proposed project, affords an opportunity for public input, and provides for a decision on the issuance of the necessary permits.

The Department received applications for Plan Approvals or Operating Permits from the following facilities.

Copies of the application, the Department’s analysis, all pertinent documents used in the evaluation of the application and subsequently prepared proposed plan approvals/operating permits are available for public review during normal business hours at the appropriate Department Regional Office. Appointments for scheduling a review must be made by calling the appropriate Department Regional Office. The address and phone number of the Regional Office is listed before the application notices.

Persons wishing to file a written protest or provide comments or additional information, which they believe should be considered prior to the issuance of a permit, may submit the information to the Department’s Regional Office. A 30-day comment period from the date of this publication will exist for the submission of comments, protests and information. Each submission must contain the name, address and telephone number of the person submitting the comments, identification of the proposed Plan Approval/Operating Permit including the permit

number and a concise statement regarding the relevancy of the information or objections to issuance of the permit.

A person wishing to request a hearing may do so during the 30-day comment period. A public hearing may be held, if the Department, in its discretion, decides that a hearing is warranted based on the information received. Persons submitting comments or requesting a hearing will be notified of the decision to hold a hearing by publication in the newspaper, the *Pennsylvania Bulletin* or by telephone, when the Department determines this type of notification is sufficient. Requests for a public hearing and any relevant information should be directed to the appropriate Department Regional Office.

Permits issued to the owners or operators of sources subject to 25 Pa. Code Chapter 127, Subchapter D or E, or located within a Title V facility or subject to 25 Pa. Code § 129.51(a) or permits issued for sources with limitations on their potential to emit used to avoid otherwise applicable Federal requirements may be submitted to the United States Environmental Protection Agency for review and approval as a revision to the State Implementation Plan. Final Plan Approvals and Operating Permits will contain terms and conditions to ensure that the sources are constructed and operating in compliance with applicable requirements in the Air Pollution Control Act (35 P.S. §§ 4001—4015), 25 Pa. Code Chapters 121—145, the Federal Clean Air Act (42 U.S.C.A. §§ 7401—7671q) and regulations adopted under the Federal Clean Air Act.

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.

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

*Southwest Region: Air Quality Program, 400 Waterfront Drive, Pittsburgh, PA 15222-4745.*

*Contact: Ed Orris, P.E., New Source Review Chief—Telephone: 412-442-4168.*

**04-00712A: Watco Transloading, LLC** (2701 Route 68 West, Industry, PA 15052-1709) Notice is hereby given in accordance with 25 Pa. Code §§ 127.44—127.46 that the Department of Environmental Protection (“Department”) intends to issue Air Quality Plan Approval: PA-04-00712A to Watco Transloading, LLC (“Watco”) for installation of one new cartridge dust collector system as a permanent replacement of an existing baghouse for Source 102 (crushing and screening) at LOT 3 dry material handling terminal (“LOT 3”) located in Industry Borough, **Beaver County**.

The facility is limited to a material throughput of 246,300 tpy on a 12-month rolling basis and the estimated emissions from Source 102 with a new cartridge dust collector are 0.4 tpy of particulate matter (PM), 0.08 tpy of PM<sub>10</sub>, and 0.32 tpy of hazardous air pollutants (HAP).

This authorization is subject to State regulations including 25 Pa. Code Chapters 123 and 127. Plan approval conditions include throughput limitations on material



throughput, operational restrictions, monitoring requirements, work practice standards, associated recordkeeping, reporting requirements, and stack testing. Once compliance with the Plan Approval is demonstrated, the applicant will be required to revise or submit a State Only Operating Permit ("SOOP") application in accordance with 25 Pa. Code Subchapter F. Watco's Plan Approval application, the Department's Air Quality Review Memorandum, and the Proposed Air Quality Plan Approval for this project are available for review by any interested party at the Pennsylvania Department of Environmental Protection, Southwest Regional Office, 400 Waterfront Drive, Pittsburgh, PA 15222.

To request a review of the Plan Approval Application, to receive an electronic copy of the Department's Air Quality Review Memorandum, or to receive an electronic copy of the Department's proposed Air Quality Plan Approval for this project, a person may contact Jesse Parihar at [jparihar@pa.gov](mailto:jparihar@pa.gov) or 412.442.4030.

A person may oppose the proposed Plan Approval by filing a written protest with the Department through Jesse Parihar via the U.S. Postal Service to Pennsylvania Department of Environmental Protection, 400 Waterfront Drive, Pittsburgh, PA 15222; email to [jparihar@pa.gov](mailto:jparihar@pa.gov); or fax to 412.442.4194. Additional written comments may also be submitted. Each protest or set of written comments must contain the name, address and telephone number of the person submitting the comments, identification of the proposed Plan Approval (PA-04-00712A) and a concise statement of the objections to the plan approval issuance and the relevant facts upon which the objections are based. All comments must be received prior to the close of business 30 days after the date of this publication.

**30-00170B: Laurel Mountain Midstream Operating, LLC** (Park Place Corporate Center 2, 2000 Commerce Drive, Pittsburgh, PA 15275) Notice is hereby given in accordance with 25 Pa. Code §§ 127.44—127.46 that the Pennsylvania Department of Environmental Protection (Department) intends to issue Air Quality Plan Approval: PA-30-00170B for the replacement of two 1,380 bhp Caterpillar G3516B natural gas-fired compressor engines at the Brown Compressor Station located in Greene Township, **Greene County**.

Emissions from the sources covered under this plan approval are 13.32 tons of nitrogen oxides (NO<sub>x</sub>), 6.48 tons of carbon monoxide (CO), 7.40 tons of volatile organic compounds (VOC), 1.14 ton of formaldehyde (HCHO), 2.12 tons of hazardous air pollutants (HAP), and 15,278 tons of carbon dioxide equivalents (CO<sub>2</sub>e) per year. Best available technology (BAT) for the proposed natural gas-fired engines is ultra-lean burn emission combustion technology, installation and proper operation of oxidation catalysts, and good combustion practices including the use of air to fuel ratio controllers and proper maintenance and operation. The authorization is subject to State regulations including 25 Pa. Code § 123.31, Federal New Source Performance Standards (NSPS) including 40 CFR Part 60 Subpart JJJJ for spark ignition internal combustion engines, and Federal National Emission Standards for Hazardous Air Pollutants (NESHAPS) including 40 CFR Part 63 Subpart ZZZZ. Plan Approval has been conditioned to ensure compliance with all applicable rules. This includes visible emission limits, work practice standards, testing, monitoring, recordkeeping, and reporting conditions. Once compliance with the Plan Approval is demonstrated, the applicant will subsequently submit a

revision to the pending State Only Operating Permit (SOOP), or a new SOOP application, as appropriate, for this Facility.

The Plan Approval application, the Department's Air Quality Review Memorandum, and the Proposed Air Quality Plan Approval for this project are available for review by any interested party at the Pennsylvania Department of Environmental Protection, Southwest Regional Office, 400 Waterfront Drive, Pittsburgh, PA 15222. To request a review of the Plan Approval Application, to receive an electronic copy of the Department's Air Quality Review Memorandum, or to receive an electronic copy of the Department's proposed air Quality Plan Approval for this project, a person may contact the Department at 412-442-4000.

A person may oppose the proposed plan approval by filing a written protest with the Department through Alexander Sandy, Pennsylvania Department of Environmental Protection, 400 Waterfront Drive, Pittsburgh, PA 15222; [asandy@pa.gov](mailto:asandy@pa.gov); or fax 412-442-4194. Each protest or set of written comments must contain the name, address and telephone number of the person submitting the comments, identification of the proposed Plan Approval (PA-30-00170B) and a concise statement of the objections to the plan approval and the relevant facts upon which the objections are based. All comments must be received prior to the close of business 30 days after the date of this publication. For additional information, you may contact Alexander Sandy at 412-442-4028.

**65-00979B: Laurel Mountain Midstream Operating, LLC** (Park Place Corporate Center 2, 2000 Commerce Drive, Pittsburgh, PA 15275) Notice is hereby given in accordance with 25 Pa. Code §§ 127.44—127.46 that the Department of Environmental Protection ("Department") intends to issue Air Quality Plan Approval: PA-65-0979B to Laurel Mountain Midstream Operating, LLC (LMM) for the installation and temporary operation of air contamination sources at the Herminie Compressor Station located in South Huntingdon Township, **Westmoreland County**.

Air contamination sources and controls to be authorized at this site include:

- Three (3) Caterpillar, Model G3516B, lean burn, natural gas-fired compressor engines (CE-11 thru CE-13), 1,380 bhp at 1,400 rpm; controlled by DCL America Inc. DCA3W (C3F1-01-4A3W-31, or equivalent), oxidation catalysts; regulated by ADEM3 (or equivalent) automatic air/fuel ratio controllers.
- One (1) Caterpillar, Model G3612LE A4, lean burn, natural gas-fired compressor engine (CE-14), 3,750 bhp at 1,000 rpm; controlled by DCL America Inc. DC4815 (C391-01-4A3W-32, or equivalent), oxidation catalysts; regulated by ADEM4 (or equivalent), air/fuel ratio controllers.
- One (1) tri-ethylene glycol (TEG) dehydrator (DHY-03) Tryer or equivalent, 200 MMscf/day; equipped with a reboiler burner (BLR-03) and emissions controlled by a flare rated at 4.0 MMBtu/hr (COMB-02).
- One (1) natural gas-fired reboiler (BLR-03), 1.71 MMBtu/hr.

The facility is a synthetic minor source of air pollution with a facility-wide potential to emit from the authorized activities summarized as follows:



### Facility-Wide Potential to Emit

Air Contaminant	Emission Rate (tpy)
NO <sub>x</sub>	82.86
CO	46.52
PM <sub>10</sub>	5.72
PM <sub>2.5</sub>	5.72
SO <sub>x</sub>	0.50
VOC	48.77
Formaldehyde	5.09
HAPa	13.89
CO <sub>2</sub> e	106,592

This authorization is subject to State regulations including 25 Pa. Code Chapters 123—Standards for Contaminants; 124—National Emission Standards for Hazardous Air Pollutants, 127—Construction, Modification, Reactivation, and Operation of Sources; 129—Standards for Sources; 135—Reporting of Sources; and 139—Sampling and Testing. State standards for contaminants and sources are superseded in most cases by more stringent Best Available Technology (BAT) determinations in accordance with 25 Pa. Code § 127.12(a)(5) requirements. This authorization is also subject to Federal New Source Performance Standards (NSPS) including 40 CFR Part 60 Subparts A, JJJJ, and OOOOa and National Emission Standards for Hazardous Air Pollutants (NESHAP) including 40 CFR Part 63 Subparts A, ZZZZ, and HH. Other applicable Federal regulations include Part 98—Mandatory Greenhouse Gas Reporting.

Plan approval conditions will include source specific emission limitations, operational restrictions, compliance testing and monitoring requirements, work practice standards, and associated recordkeeping and reporting requirements. The Department has determined that the proposed facility satisfies the Department's Best Available Technology (BAT) requirements. Once compliance with the Plan Approval is demonstrated, the applicant will be required to submit a State Only Operating Permit (SOOP) application in accordance with 25 Pa. Code Subchapter F.

A person may oppose the proposed plan approval by filing a written protest with the Department through Sheri Guerrieri via the U.S. Postal Service to Pennsylvania Department of Environmental Protection, 400 Waterfront Drive, Pittsburgh, PA 15222; email to shguerrieri@pa.gov; or fax to 412.442.4194. Additional written comments may also be submitted. Each protest or set of written comments must contain the name, address and telephone number of the person submitting the comments, identification of the proposed Plan Approval (PA-65-00979B) and a concise statement of the objections to the plan approval issuance and the relevant facts upon which the objections are based.

LMM's Plan Approval application, the Department's Air Quality Review Memorandum, and the Proposed Air Quality Plan Approval for this project are available for review by any interested party at the Pennsylvania Department of Environmental Protection, Southwest Regional Office, 400 Waterfront Drive, Pittsburgh, PA 15222. To request a review of the LMM Plan Approval Application, to receive an electronic copy of the Department's Air Quality Review Memorandum, or to receive an electronic copy of the Department's proposed air Quality Plan

Approval for this project, a person may contact Sheri Guerrieri at shguerrieri@pa.gov or 412.442.4069.

All comments must be received prior to the close of business 30 days after the date of this publication.

A public hearing may be held, if the Department, in its discretion, decides that such a hearing is warranted based on the information received. All persons submitting comments or requesting a hearing will be notified of the decision to hold a hearing in writing or by publication in the newspaper and the *Pennsylvania Bulletin*, or by telephone, where the Department determines such notification by telephone is sufficient.

*Northwest Region: Air Quality Program, 230 Chestnut Street, Meadville, PA 16335-3481.*

*Contact: David Balog, New Source Review Chief—Telephone: 814-332-6328.*

**24-131T: SGL Carbon LLC** (900 Theresia Street, St. Marys, PA 15857), The Department of Environmental Protection intends to issue a plan approval to SGL Carbon LLC for the installation of an additional Vacuum Outgas Furnace (VOG) and an additional Chemical Vapor Deposition Process (CVD) at their facility located in City of Saint Marys, **Elk County**. This is an existing non-Title V facility. Public notice is required for sources required to obtain a Plan Approval in accordance with 25 Pa. Code § 127.44.

This facility currently operates one VOG furnace. SGL proposes the installation of an additional VOG Furnace but will take an enforceable restriction to use of only one VOG furnace at a time. The current scrubber onsite (C7107) will control emission from either furnace in use. Emissions of Cl, a Hazardous Air Pollutant, are estimated to be 0.02 ton per year.

The proposed CVD Reactor will become the 16th reactor onsite. It will coat purified graphite parts with silicon carbide. It will be controlled by a new wet scrubber with pH monitoring and a KOH pump (Sodium Hydroxide). Emissions of HCl, a Hazardous Air Pollutant, are estimated to be 0.05 ton per year.

The Plan Approval will contain testing, recordkeeping, emission restriction, reporting, and work practice requirements designed to keep the facility operating within all applicable air quality requirements.

In accordance with 25 Pa. Code § 127.44(e)(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 at (814) 332-6940.

In accordance with 25 Pa. Code § 127.44(e)(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 [24-131T: SGL Carbon LLC] 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 Eric Gustafson, 230 Chestnut St., Meadville, PA 16335; Phone (814) 332-6819. 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.

*Department of Public Health, Air Management Services: 321 University Avenue, Philadelphia, PA 19104.*

*Contact: Edward Wiener, Chief—Telephone: 215-685-9426.*

**AMS Plan Approval No. IP19-000045: Saint Timothy Roman Catholic Church** (3001 Levick Street, Philadelphia, PA 19149) for the installation of seven (7) boilers of sizes 4.08, 3.5, 2.89, 1.69, 1.25, 1.0, and 0.52 MMBtu/hr and firing natural gas at their facility in the City of Philadelphia, **Philadelphia County**. Nitrogen Oxides (NO<sub>x</sub>) have a potential emissions of 6.4 tons per year. Carbon Monoxide (CO) has a potential emissions of 5.4 tons per year. The plan approval will contain operating, monitoring, and recordkeeping requirements to ensure operation within all applicable requirements.

Anyone affected by the proposed plan approval may submit written comments or a request for a public hearing by mail to Air Management Services, 321 University Avenue, 2nd Floor, Philadelphia, PA 19104, Attn: Debra Williams within thirty (30) days from today. Comments received by facsimile will not be accepted.

#### OPERATING PERMITS

#### **Intent to Issue Title V Operating Permits under the Air Pollution Control Act (35 P.S. §§ 4001—4015) and 25 Pa. Code Chapter 127, Subchapter G.**

*Southcentral Region: Air Quality Program, 909 Elmerston Avenue, Harrisburg, PA 17110.*

*Contact: Thomas Hanlon, Facilities Permitting Chief, 717-705-4862, Thomas Bianca, New Source Review Chief, 717-705-4863, or William Weaver, Regional Air Quality Manager, 717-705-4702.*

**21-05031: Community Refuse Service, Inc.** (135 Vaughn Road, Shippensburg, PA 17257) for operation of the landfill facility in Hopewell and North Newton Townships, **Cumberland County**. The actual emissions in 2017 were 22.17 tons of CO, 5.8 tons of NO<sub>x</sub>, 12.77 tons of PM<sub>10</sub>, 1.33 ton of SO<sub>2</sub>, 13.03 tons of VOC, and 8.32 tons of total HAPs. The Title V Operating Permit will contain fuel usage restrictions, and monitoring, recordkeeping and reporting requirements designed to keep the facility operating within all applicable air quality requirements. The facility is subject to 40 CFR Part 60 Subpart WWW-Standards of Performance for Municipal Solid Waste Landfills, 40 CFR Part 63 Subpart AAAA-National Emission Standards for Hazardous Air Pollutants: Municipal Solid Waste Landfills, and 40 CFR Part 61 Subpart M-National Emission Standard for Hazardous Air Pollutants-Asbestos.

*Northcentral Region: Air Quality Program, 208 West Third Street, Williamsport, PA 17701.*

*Contact: Muhammad Q. Zaman, Environmental Program Manager—Telephone: 570-327-3648.*

**41-00025: Lycoming County Resource Management Services** (P.O. Box 187, Montgomery, PA 17752) a Title V operating permit renewal for the Lycoming

County Landfill located in Brady Township, **Lycoming County**. In accordance with 25 Pa. Code § 127.521, the Department of Environmental Protection (DEP) has received an application and intends to issue a renewal of an Air Quality Operating Permit for the previously mentioned facility. The subject facility has the following potential emissions: 51.71 TPY of CO; 56.53 TPY of NO<sub>x</sub>; 93.91 TPY of SO<sub>x</sub>; 5.20 TPY of PM/PM<sub>10</sub>; 8.20 TPY of VOCs; and 4.87 TPY of HAPs. The facility's main sources include the waste disposal area, a landfill gas collection and extraction system, two (2) John Zink candlestick flares to destroy the landfill gas collected, two (2) 2.4 MMBtu/hr landfill gas fired boilers and portable material processing plants and associated diesel engines. Lycoming County Resource Management Services provides up to 100% of the landfill gas collected by the collection system to EPP Renewable Energy LLC as fuel for its landfill gas to energy plant located at the landfill. The emission limits and work practice standards along with testing, monitoring, recordkeeping and reporting requirements have been included in the operating permit to ensure the facility complies with all applicable Federal and State air quality regulations. These operating permit conditions have been derived from the applicable requirements of 40 CFR Parts 52, 60, 63, 64, 68, 72, 73, 74, 75, 76, 96, 97, 98 and 25 Pa. Code Article III, Chapters 121—145. All pertinent documents used in the evaluation of the application are available for public review during normal business hours at the Department's Northcentral Regional Office, 208 West Third Street, Suite 101, Williamsport, PA 17701. Appointments for scheduling a review must be made by calling 570-327-0550.

*Southwest Region: Air Quality Program, 400 Waterfront Drive, Pittsburgh, PA 15222-4745.*

*Contact: Thomas Joseph, P.E., Facilities Permitting Chief—Telephone: 412-442-4336.*

**63-00015: Flexsys America L.P.** (829 Route 481, Monongahela, PA 15063) In accordance with 25 Pa. Code §§ 127.424, 127.425 and 127.521, the Department of Environmental Protection (DEP) is providing notice that it intends to issue a renewal Title V Operating Permit (TV-63-00015) to Flexsys America L.P. (Flexsys) for the operation of the Monongahela Plant located in Carroll Township, **Washington County**.

The facility's major sources of emissions include a Crystex Plant, two (2) 25.1 MMBtu/hr dual-fired (natural gas and fuel oil) boilers, a vaporizer, one 300,000 gallon sulfur storage tank, one 8,000 gallon carbon disulfide pressure vessel, two (2) 46,000 gallon process oil storage tanks, railcar and truck sulfur handling, two (2) diesel-fired fire pump internal combustion engines rated at 238 bhp each, and a diesel-fired emergency generator engine rated at 226 bhp.

The Monongahela Plant is a major facility subject to the operating permit requirements of Title V of the Federal Clean Air Act and 25 Pa. Code Chapter 127, Subchapters F (relating to operating permit requirements) and G (relating to Title V operating permit requirements). In 2018, Flexsys calculated actual emissions of the following type and quantity of air contaminants (on an annual basis) from the Monongahela Plant: 9.38 tons of carbon monoxide (CO), 11.49 tons of nitrogen oxides (NO<sub>x</sub>), 1.36 ton of particulate matter, 10-micron (PM<sub>10</sub>), 0.21 ton of particulate matter, 2.5-micron (PM<sub>2.5</sub>), 8.13 tons of sulfur oxides (SO<sub>x</sub>), 27.63 tons of volatile organic compounds (VOC), 25.54 tons of carbon disulfide



(CS<sub>2</sub>), 0.60 ton of hydrogen sulfide (H<sub>2</sub>S), 25.55 tons of total hazardous air pollutants (HAPs), and 13,320.26 tons of greenhouse gases (GHGs).

The emission restrictions and testing, monitoring, recordkeeping, reporting and work practice conditions of the TVOP have been derived from the applicable requirements of 40 CFR Parts 52, 60, 61, and 70, and 25 Pa. Code Article III, Chapters 121—145.

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 Department's Southwest Regional Office, 400 Waterfront Drive, Pittsburgh, PA 15222. Appointments for scheduling a review must be made by calling 412-442-4000.

Any person may submit comments, a request for the Department to hold a public hearing, or a protest to the operating permit or a proposed condition thereof, by filing such submissions in writing with the Department at the Southwest Regional Office. A 30-day comment period from the date of this publication will exist for the submission of comments.

All requests for a public hearing, and all protests to a proposed action, shall be filed with the Department within 30 days of the date that notice of the proposed action was published under 25 Pa. Code § 127.424 (relating to public notice). A protest must include the name, address and telephone number of the person filing the protest; identification of the proposed permit issuance being opposed (Title V Operating Permit TV-63-00015); and a concise statement of the objections to the permit issuance and the relevant facts upon which the objections are based.

A public hearing may be held in accordance with 25 Pa. Code § 127.429, if the Department, in its discretion, decides that such a hearing is warranted based on the information received. If a public hearing is held, all persons who have properly filed a protest under 25 Pa. Code § 127.426 may appear and give testimony. The applicant, the protestant, and other participants will be notified of the decision to hold a hearing (and the time, place and purpose of such hearing) by publication in the newspaper or by the *Pennsylvania Bulletin*, or by telephone, where the Department determines such notification by telephone is sufficient.

Written comments, protests, and requests for a public hearing should be directed to Nicholas J. Waryanka, Air Quality Engineer, Department of Environmental Protection, Southwest Regional Office, 400 Waterfront Drive, Pittsburgh, PA 15222. For additional information concerning the permit or the issuance procedure, contact Nicholas J. Waryanka at (412) 442-4172.

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**Intent to Issue Operating Permits under the Air Pollution Control Act (35 P.S. §§ 4001—4015) and 25 Pa. Code Chapter 127, Subchapter F.**

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*Southeast Region: Air Quality Program, 2 East Main Street, Norristown, PA 19401.*

*Contact: Janine Tulloch-Reid, Facilities Permitting Chief—Telephone: 484-250-5920.*

**46-00024: Johnson & Johnson Consumer, Inc.** (7050 Camp Hill Road, Fort Washington, PA 19034) for operation of a pharmaceutical preparation plant located in Whitmarsh Township, **Montgomery County**. The permit is for a non-Title V (State only) facility. The facility is a Synthetic Minor facility for Volatile Organic

Compounds (VOCs), Nitrogen Oxide (NO<sub>x</sub>), and Particulate Matter (PM) emissions. The facility is an area source for Hazardous Air Pollutant (HAP) emissions. The permit will include monitoring, recordkeeping and reporting requirements designed to keep the plant operating within all applicable air quality requirements.

*Southcentral Region: Air Quality Program, 909 Elmerston Avenue, Harrisburg, PA 17110.*

*Contact: Thomas Hanlon, Facilities Permitting Chief, 717-705-4862, Thomas Bianca, New Source Review Chief, 717-705-4863, or William Weaver, Regional Air Quality Manager, 717-705-4702.*

**36-03182: Charles F. Snyder Funeral Home & Crematory, Inc.** (3110 Lititz Pike, Lititz, PA 17543) to issue a Natural Minor Operating Permit for the operation of their Matthews model No. IE43-PPII human cremation unit in Manheim Township, **Lancaster County**. The crematory is controlled by an afterburner. The subject facility has estimated potential emissions of less than 1 tpy of each of the criteria pollutants. 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.

*Southwest Region: Air Quality Program, 400 Waterfront Drive, Pittsburgh, PA 15222-4745.*

*Contact: Thomas Joseph, P.E., Facilities Permitting Chief—Telephone: 412-442-4336.*

**26-00121: Crown Cork & Seal Co., Inc.** (1840 Baldrige Street, Connellsville, PA 15425) Synthetic Minor Operating Permit is for a facility that manufactures metal and plastic jar and bottle closures for the food and beverage industry and is located in South Connellsville Borough, **Fayette County**. In accordance with 25 Pa. Code § 127.424 and § 127.425, the Department of Environmental Protection (DEP) has received an application and is providing notice that it intends to issue an Air Quality Operating Permit for the previously-mentioned facility. Sources of emissions consist of one 8.4 MMBtu/hr boiler, one 0.4 MMBtu/hr boiler, twenty-four (24) manufacturing lines, six (6) part washers, and twenty-two (22) closure sealing ovens. Facility-wide potential emissions are projected to be 44.9 TPY VOC, 7.1 TPY NO<sub>x</sub>, 6.0 TPY CO, 0.14 TPY HAP, 0.13 TPY single HAP for hexane from natural gas combustion, 5.4 TPY PM<sub>10</sub>, 0.54 TPY PM<sub>2.5</sub>, 0.04 TPY SO<sub>x</sub>, and 8,584 TPY CO<sub>2e</sub>. Actual annual emissions at the facility are projected to be 3.7 TPY VOC, 4.7 TPY NO<sub>x</sub>, 4.0 TPY CO, 0.09 TPY HAP, 0.09 TPY single HAP for hexane, 3.7 TPY PM<sub>10</sub>, 0.36 TPY PM<sub>2.5</sub>, 0.03 TPY SO<sub>x</sub>, and 5,699 TPY CO<sub>2e</sub>. At a minimum, the facility is required to conduct daily surveys of the site to ensure compliance with visible, fugitive, and malodor emission requirements and maintain records of those surveys. The air quality permit includes material throughput limits, operation requirements, monitoring requirements, and recordkeeping requirements for the site.

Those who wish to provide the Department with additional written information that they believe should be considered prior to the issuance of the State-Only Operating Permit may submit the information to Bradley Spayd, Air Quality Engineering Specialist, Department of Environmental Protection, Southwest Regional Office, 400 Waterfront Drive, Pittsburgh, PA 15222. Written comments must contain the name, address and telephone number of the person submitting the comments, identification of the proposed Operating Permit (26-00121) and

concise statements regarding the relevancy of the information or objections to issuance of the Operating Permit.

A public hearing may be held, if the Department, in its discretion, decides that such a hearing is warranted based on the information 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 by the *Pennsylvania Bulletin*, or by telephone, where the Department determines such notification by telephone is sufficient. Written comments or requests for a public hearing should be directed to Bradley Spayd, Air Quality Engineering Trainee, at the previously listed address. For additional information concerning the permit or the issuance procedure, contact Bradley Spayd at the same previously listed address or phone at (412) 442-5227.

All comments must be received prior to the close of business 30 days after the date of this publication.

*Northwest Region: Air Quality Program, 230 Chestnut Street, Meadville, PA 16335-3481.*

*Contact: David Balog, New Source Review Chief—Telephone: 814-332-6328.*

**20-00302: ITU AbsorbTech, Inc.** (818 W. Spring St., Titusville, PA 16354), the Department intends to issue the renewal of the State-Only Operating Permit of an industrial launderer located in Titusville City, **Crawford County**. Permitted sources at the facility include solvent recovery dryers, washers, dryers, a boiler, a water heater, a steam tunnel, and a wastewater treatment system. To be Synthetic Minor, the facility is subject to a VOC restriction of 49 TPY and to towel throughput restrictions of 1,100,000 lbs/yr for solvent recovered print towels, 25,000 lbs/yr for non-solvent recovered print towels, and 2,200,000 lbs/yr for other towels. The facility has been complying with conditions of the Malodor Prevention Plan submitted in 2012. In this renewal, permit changes include the removal of a previously permitted washer and the update of number of units for solvent recovery dryers, washers, and dryers. There are no new permit requirements added in this renewal.

**25-00053: Urick Foundry Company**, (1501 Cherry Street, Erie, PA 16502-1732), the Department intends to issue the renewal of a Synthetic Minor State-Only Operating Permit to a facility which manufactures ductile iron cast products for the many applications. This facility located in the City of Erie, **Erie County**. The primary sources at the facility are miscellaneous natural gas heaters, pre-heat torches, electric induction furnaces, raw material storage, material charging, holding furnaces, pouring and Inoculation, mold cooling, shakeout, sand handling, sand receiving, shell core machines, core coating, shot blast machines, finishing/grinding, emergency generators, degreasers and a core making system. The facility has taken a site limit of 43.0 tons per year (tpy) for volatile organic compound (VOC) emissions and 95.0 tpy for carbon monoxide (CO) emissions. Actual emissions for other criteria pollutants are estimated as follows: NO<sub>x</sub>, 5.0 tpy, PM<sub>10</sub>, 24.0 tpy; and SO<sub>x</sub>, 7.0 tpy. The permit contains emission restrictions, along with testing, monitoring, recordkeeping, reporting, work practice and additional requirements to ensure compliance with the Clean Air Act and the Air Pollution Control Act.

## PLAN APPROVALS

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

*Northeast Region: Air Quality Program, 2 Public Square, Wilkes-Barre, PA 18711-0790.*

*Contact: Raymond Kempa, New Source Review Chief—Telephone: 570-826-2507.*

Notice is hereby given in accordance with 25 Pa. Code §§ 127.44(a) and 127.45(a), that the Department of Environmental Protection (DEP) has received and intends to issue a Plan Approval to **Process Technologies & Packaging LLC** (102 Life Science Drive, Olyphant, PA 18447) for their facility located in Scott Twp., **Lackawanna County**. This Plan Approval No. 35-00075A will be incorporated into a Synthetic Minor Permit through an administrative amendment at a later date.

Plan Approval No. 35-000075A is for the operation of a cosmetic powder manufacturing and packaging operation with dust collectors to control emissions at their facility. Particulate emissions will not exceed 0.04 grains/dscf. The company shall be subject to and comply with 25 Pa. Code § 123.31 for malodorous emissions. The company shall be subject to and comply with 25 Pa. Code § 123.41 for Visible emissions. These limits will meet BAT requirements for this source. The Plan Approval and Operating permit will contain additional recordkeeping and operating restrictions designed to keep the facility operating within all applicable air quality requirements.

Copies of the application, 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, 2 Public Square, Wilkes-Barre, PA 18711.

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 the address shown in the preceding paragraph. Each written comment must contain the name, address and telephone number of the person submitting the comments, identification of the proposed permit No. 35-00075A 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 Ray Kempa, Chief, New Source Review Section, Air Quality Program, 2 Public Square, Wilkes-Barre, PA 18711, Phone 570-826-2511 within 30 days after publication date.



## 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.*

**56140702 and NPDES No. PA0236306. LCT Energy, LP**, (938 Mt. Airy Drive, Suite 200, Johnstown, PA 15904). To operate the Laurel Refuse in Shade Township, **Somerset County**, a new coal refuse site and related NPDES permit and add NPDES Outfall 001. Surface Acres Proposed 208.0, Coal Refuse Disposal Support Acres Proposed 154.8, Coal Refuse Disposal Acres Proposed 53.1. Receiving stream: Miller Run, classified for the following use(s): CWF. The application was considered

administratively complete on February 25, 2019. Application received: November 6, 2018.

**32051301 and NPDES No. PA0215228 and GP12-32051301. Rosebud Mining Company**, (301 Market Street, Kittanning, PA 16201). To renew the permit for the Barrett Deep Mine in Buffington and Brush Valley Townships, **Indiana County** to include the renewal of Air Quality GPA/GP12 Authorization. The related NPDES permit was previously renewed. No additional discharges. The application was considered administratively complete on February 27, 2019. Application received: January 23, 2019.

*Cambria District Mining Office: 286 Industrial Park Road, Ebensburg, PA 15931, 814-472-1900.*

**Permit No. 32803010 and NPDES No. PA0124834, CONSOL Mining Co., LLC, CNX Center**, 1000 Consol Energy Drive, Suite 100, Cannonsburg, PA 15317, permit renewal for the continued operation and restoration of a bituminous surface mine in Blacklick Township, **Indiana County**, affecting 89.9 acres. Receiving stream: unnamed tributary Aultman's Run, classified for the following use: trout stocked fishes. The first downstream potable water supply intake from the point of discharge is Saltsburg Borough Indiana County Municipal Waterworks Conemaugh River SWI. Application received: February 21, 2019.

**Permit No. 32080103. KMP Associates, Inc.**, 3756 State Route 981, Saltsburg, PA 15681, permit renewal for reclamation only of a bituminous surface and auger mine in Young Township, **Indiana County**, affecting 66 acres. Receiving streams: unnamed tributaries to/and Harpers Run and unnamed tributaries to Blacklegs Creek, classified for the following use: cold water fishes. There are no potable water supply intakes within 10 miles downstream. Application received: February 27, 2019.

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

**33080101. MSM Coal Company, Inc.** (P.O. Box 243, DuBois, PA 15801). Renewal of an existing bituminous surface mine in Pine Creek Township, **Jefferson County** affecting 23.4 acres. Receiving streams: Cable Run, classified for the following: CWF. There are no potable surface water supply intakes within 10 miles downstream. Application for reclamation only. Application received: March 4, 2019.

*Pottsville District Mining Office: 5 West Laurel Boulevard, Pottsville, PA 17901, 570-621-3118.*

**Permit No. 54830109R7. Joe Kuperavage Coal Company**, (916 Park Avenue, Port Carbon, PA 17965), renewal of an existing anthracite surface mine operation in Blythe Township and New Philadelphia Borough, **Schuylkill County** affecting 495.5 acres, receiving streams: Schuylkill River and unnamed tributary to Schuylkill River, classified for the following uses: cold water and migratory fishes. Application received: January 29, 2019.

**Permit No. 54860107R6. Reading Anthracite Company**, (P.O. Box 1200, Pottsville, PA 17901), renewal of an existing anthracite surface mine, coal refuse reprocessing, coal refuse disposal and preparation plant operation in Cass Township, **Schuylkill County** affecting 786.0 acres, receiving stream: West Branch Schuylkill River, classified for the following use: cold water fishes. Application received: January 29, 2019.

**Permit No. GP12-54860107R. Reading Anthracite Company**, (P.O. Box 1200, Pottsville, PA 17901), renewal 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. 54860207 in Cass Township, **Schuylkill County**. Application received: January 29, 2019.

**Permit No. 54813009R7. Joe Kuperavage Coal Company**, (916 Park Avenue, Port Carbon, PA 17965), renewal of an existing anthracite surface mine and coal refuse reprocessing operation in East Norwegian Township, **Schuylkill County** affecting 45.2 acres, receiving streams: Mill Creek and unnamed tributary to Mill

Creek, classified for the following uses: cold water and migratory fishes. Application received: February 4, 2019.

**Permit No. 54830101R7. Premium Fine Coal, Inc.**, (P.O. Box 268, Tamaqua, PA 18252), renewal of an existing anthracite surface mine and coal refuse disposal operation in Blythe Township, **Schuylkill County** affecting 152.6 acres, receiving stream: unnamed tributaries of the Schuylkill River, classified for the following uses: cold water and migratory fishes. Application received: February 13, 2019.

*Noncoal Applications Received*

*Effluent Limits*—The following effluent limits will apply to NPDES permits issued in conjunction with a noncoal mining permit:

Parameter	30-day Average	Daily Maximum	Instantaneous Maximum
Suspended solids	10 to 35 mg/l	20 to 70 mg/l	25 to 90 mg/l
Alkalinity exceeding acidity* pH*		greater than 6.0; less than 9.0	

\* The parameter is applicable at all times.

A settleable solids instantaneous maximum limit of 0.5 ml/l applied to surface runoff resulting from a precipitation event of less than or equal to a 10-year 24-hour event. If coal will be extracted incidental to the extraction of noncoal minerals, at a minimum, the technology-based effluent limitations identified under coal applications will apply to discharges of wastewater to streams.

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

**3072SM3. Allegheny Mineral Corporation** (P.O. Box 1022, Kittanning, PA 16201). Renewal of NPDES Permit No. PA0605336, Marion and Mercer Townships, **Butler County**. Receiving streams: Two unnamed tributaries to McMurray Run, McMurray Run, and an unnamed tributary to North Branch Slippery Rock Creek, all classified for the following use: CWF. There are no potable surface water supply intakes within 10 miles downstream. Application received: February 25, 2019.

**20910303. Don & Randy Ferris, Inc.** (23773 Mackey Hill Road, Cambridge Springs, PA 16403). Renewal of NPDES Permit No. PA0259454, Rockdale Township, **Crawford County**. Receiving streams: Kelly Run and an unnamed tributary to French Creek, classified for the following uses: HQ-CWF and WWF, respectively. There are no potable surface water supply intakes within 10 miles downstream. Application received: February 26, 2019.

*Moshannon District Mining Office: 186 Enterprise Drive, Philipsburg, PA 16866, 814-342-8200.*

**4977SM4. Daggett Sand & Gravel, Inc.** (8056 Route 549, Millerton, PA 16936). Permit revision for change in land use from recreational woodland to commercial and unmanaged natural habitat also update bond on a large noncoal surface mine in Jackson Township, **Tioga County**, affecting 12.6 acres. Receiving stream: Seely Creek classified for the following use(s): CWF and MF. There are no potable water supply intakes within 10 miles downstream. Application received: February 21, 2019.

*Pottsville District Mining Office: 5 West Laurel Boulevard, Pottsville, PA 17901, 570-621-3118.*

**Permit No. 66040801. Kevin Spencer**, (515 Spencer Hill Road, Nicholson, PA 18446), Stage I & II bond release of a quarry operation in Nicholson Township, **Wyoming County** affecting 3.0 acres on property owned by Kevin Spencer. Application received: February 15, 2019.

#### 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.

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 limits for noncoal mining activities as provided in 25 Pa. Code Chapter 77 are pH 6 to 9 and other parameters the Department may require.

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 563-2112-115, Developing National Pollutant Discharge Elimination System (NPDES) Permits for Mining Activities. 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 Depart-

ment 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.

#### *Noncoal NPDES Draft Permits*

*Pottsville District Mining Office: 5 West Laurel Boulevard, Pottsville, PA 17901, 570-621-3118.*

**NPDES Permit No. PA0225941 on Surface Mining Permit No. 6574SM1. Pocono Industries, Inc.,** (506 Hickory Valley Road, Stroudsburg, PA 18360), new NPDES Permit for a sand and gravel quarry operation in Hamilton Township, **Monroe County**, affecting 42.4 acres. Receiving stream: McMichael Creek, classified for the following uses: HQ—cold water and migratory fishes. Application received: July 20, 2018.

Non-discharge BMP's are in effect.

**NPDES Permit No. PA0225924 on GP105 Permit No. 64182503. Rutledge Unlimited, LLC,** (2495 Hancock Highway, Equinunk, PA 19417), new NPDES Permit for a bluestone quarry operation in Damacus Township, **Wayne County**, affecting 11.4 acres. Receiving streams: unnamed tributary to Little Equinunk and North Branch Calkins Creek/Delaware River Watershed, classified for the following uses: HQ—cold water and migratory fishes. Application received: August 15, 2018.

Non-discharge BMP's are in effect.

## **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.

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**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.**

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**WATER OBSTRUCTIONS AND ENCROACHMENTS**

*Northcentral Region: Waterways & Wetlands Program Manager, 208 West Third Street, Williamsport, PA 17701, 570-327-3636.*

**E57-140. Department of Conservation and Natural Resources**, Rachel Carson State Office Building, P.O. Box 8451, Harrisburg, PA 17105-8451, Fox Township, **Sullivan County**, U.S. Army Corps of Engineers, Baltimore District.

The applicant is proposing to perform streambank repairs, debris removal, the removal of three existing box culverts along Mill Creek Road and the partial realignment of Mill Creek Road due to damages caused by the October 2016 flood event in Fox Township, Sullivan County within Loyalsock State Forest. The project is funded by FEMA to restore the area back to pre-flood conditions. Construction is anticipated to take place during the 2019 and 2020 construction seasons. The work at the site consists of a new roadway alignment for a portion of Mill Creek Road running approximately 4,800 feet from the DCNR bridge on Mill Creek Road over East Branch

Mill Creek at the confluence with West Branch Mill Creek to Camels Road. The roadway is being realigned in order to prevent future flood damage to Mill Creek Road.

The project is located in the Barbour's Quadrangle, Latitude: 41° 29' 1.4098" N, Longitude: -76° 45' 40.8377" W.

*Northwest Region: Waterways and Wetlands Program, 230 Chestnut Street, Meadville, PA 16335-3481.*

**E2506219-001, Erie County Conservation District**, 1927 Wager Road, Erie, PA 16509. Headwaters Park and Trail Development, in Millcreek Township, **Erie County**, ACOE Pittsburgh District (Erie South, PA Quadrangle N: 42.092062°; W: -80.012691°).

In an effort to improve access within the existing Headwaters Park, the Applicant proposes to construct, operate, and maintain a 20 feet long by 18 feet wide by 6.5 feet tall precast concrete box culvert crossing of Mill Creek (WWF-MF) and to construct, operate, and maintain approximately 300 feet of 8 feet wide elevated wooden boardwalk within a wetland adjacent to Mill Creek resulting in de minimus resource impacts all at a point approximately 1,500 feet west of the U.S. Route 90 and S.R. Route 8 interchange in Millcreek Township, Erie County.

*District Oil & Gas Operations: Eastern Oil & Gas District, 208 West Third Street, Suite 101, Williamsport, PA 17701.*

**E4129-124. ARD Operating LLC, Pennsylvania Department of Conservation and Natural Resources**, 33 West Third Street, Suite 300, Williamsport, PA 17701. COP Tract 551 Pads A&B and Access Road in McIntyre Township, **Lycoming County**, ACOE Baltimore District (Liberty & Trout Run, PA Quadrangles N: 41° 29' 50" W: -77° 0' 3").

ARD has applied for an Individual—Joint Permit to construct, operate and maintain two (2) new permanent stream crossing over UNTs Frozen Run along newly constructed access road in McIntyre Township, Lycoming County. The project will include drainage and wearing surface improvements to approximately 1,226 linear feet of existing access road (Bodine Mountain Road). Approximately 6,537 feet of newly constructed access road and construction of two (2) 375 ft × 425 ft well pads.

A total of two (2) permanent and two (2) temporary stream impacts are proposed to UNT Frozen Run (HQ-CWF). Project watercourse impacts shall include and be limited to a total of 70 LF (490 SF) of permanent stream impacts and 75 LF (671 SF) of temporary stream impacts.

A total of two (2) permanent floodway impacts are proposed to UNT Frozen Run (HQ-CWF). Project watercourse impacts shall include and be limited to a total of 18,629 SF (0.42 ac) of permanent floodway impacts.

A total of seven (7) permanent and two (2) temporary wetland impacts are proposed. Project wetland impacts shall include and be limited to a total of 5,246 SF (0.12 acre) of permanent and 103 SF (0.01 acre) of temporary wetland impacts.



**STREAM IMPACT TABLE:**

<i>Resource Name</i>	<i>Municipality</i>	<i>Activity</i>	<i>Chapter 93</i>	<i>Listed Trout</i>	<i>Impact Area Temp. (SF)</i>	<i>Impact Length Temp. (LF)</i>	<i>Impact Area Perm. (SF)</i>	<i>Impact Length Perm. (LF)</i>	<i>Lat. Long.</i>
UNT 1 Frozen Run	McIntyre	Culvert Install	HQ-CWF	None	557	55	302	30	41.504114 77.010521
UNT 2 Frozen Run	McIntyre	Culvert Replace	HQ-CWF	None	114	20	188	40	41.502680 77.008584
TOTAL					671	75	490	70	

**WETLAND IMPACT TABLE:**

<i>Resource Name</i>	<i>Municipality</i>	<i>Activity</i>	<i>Chapter 93</i>	<i>Listed Trout</i>	<i>Impact Area Temp. (SF)</i>	<i>Impact Length Temp. (LF)</i>	<i>Impact Area Perm. (SF)</i>	<i>Impact Length Perm. (LF)</i>	<i>Lat. Long.</i>
Wetland 1	McIntyre	Access Road	PEM; EV	None			1,627	102	41.502365 77.008653
Wetland 3	McIntyre	Access Road	PEM; EV	None	79	9			41.498033 77.002401
Wetland 4	McIntyre	Access Road	PEM; EV	None	24	3			41.502076 77.006813
Wetland 9	McIntyre	Access Road	PEM; EV	None			613	32	41.502262 77.007584
Wetland 51	McIntyre	Access Road	PEM; EV	None			1,031	150	41.502525 77.019115
Wetland 61	McIntyre	Access Road	PEM; EV	None			657	11	41.503669 77.009749
Wetland 62	McIntyre	Access Road	PEM; EV	None			93	6	41.503376 77.009564
Wetland 63	McIntyre	Access Road	PEM; EV	None			462	120	41.502819 77.008794
Wetland 66	McIntyre	Access Road	PEM; EV	None			763	6.5	41.495714 77.000112
TOTAL					103	12	5,246	428	

**FLOODWAY IMPACT TABLE:**

<i>Resource Name</i>	<i>Municipality</i>	<i>Activity</i>	<i>Chapter 93</i>	<i>Listed Trout</i>	<i>Impact Area Temp. (SF)</i>	<i>Impact Length Temp. (LF)</i>	<i>Impact Area Perm. (SF)</i>	<i>Impact Length Perm. (LF)</i>	<i>Lat. Long.</i>
UNT 1 Frozen Run	McIntyre	Culvert Install	HQ-CWF	None			16,514		41.504114 77.010521
UNT 2 Frozen Run	McIntyre	Culvert Replace	HQ-CWF	None			2,115		41.502680 77.008584
TOTAL							18,629		

**ENVIRONMENTAL ASSESSMENTS**

*Southcentral Region: Waterways & Wetlands Program, 909 Elmerton Avenue, Harrisburg, PA 17110, Ed Muzic, Section Chief, 717.705.4802.*

**EA67-034: First Pennsylvania Resource, LLC**, 33 Terminal Way, Suite W445A, Pittsburgh, PA 15219, in Manchester Township, **York County**, U.S. Army Corps of Engineers Baltimore District.

The applicant proposes to restore and maintain 4,031 linear feet of Unnamed Tributary to Codorus Creek, locally referred to as Sinking Springs (WWF-MF) and its floodplain by use of channel relocation, floodplain grading, subsurface grade control structures, and habitat structural improvements to restore the channel pattern and floodplain. The project is located immediately east of SR 83 and south of Sinking Springs Lane in Manchester Township, York County (40.0126°, -76.7398°).

## 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—691.1001) 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 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, P.O. Box 8457, Harrisburg, PA 17105-8457, (717) 787-3483. TDD users may contact the Board through the Pennsylvania AT&T Relay Service, (800) 654-5984. Appeals must be filed with the Board within 30 days of publication of this notice in the *Pennsylvania Bulletin* unless the appropriate statute provides a different time period. Copies of the appeal form and the Board's rules of practice and procedure may be obtained from the Board. The appeal form and the Board's rules of practice and procedure are also available in braille or on audiotape from the Secretary to the Board at (717) 787-3483. This paragraph does not, in and of itself, create 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 free pro bono representation. Call the Secretary to the Board at (717) 787-3483 for more information.

## I. NPDES Renewal Permit Actions.

*Southeast Region: Clean Water Program Manager, 2 East Main Street, Norristown, PA 19401. Phone: 484.250.5970.*

<i>NPDES No. (Type)</i>	<i>Facility Name &amp; Address</i>	<i>County &amp; Municipality</i>	<i>Stream Name (Watershed)</i>	<i>EPA Waived Y/N?</i>
PA0052094 (Sewage)	Montgomery Sewer Co. Inc. P.O. Box 851 Montgomeryville, PA 18936-0851	Montgomery County Montgomery Township	Little Neshaminy Creek 2-F	Y
PA0245038 (Storm Water)	GMA Garnet (USA) Corp 1780 Hughes Landing Suite 725 The Woodlands, TX 77380-1684	Bucks County Falls Township	Delaware River 2-E	Y

*Northeast Region: Clean Water Program Manager, 2 Public Square, Wilkes-Barre, PA 18701-1915. Phone: 570-826-2511.*

<i>NPDES No. (Type)</i>	<i>Facility Name &amp; Address</i>	<i>County &amp; Municipality</i>	<i>Stream Name (Watershed No.)</i>	<i>EPA Waived Y/N?</i>
PA0063525 (Sewage)	Pocono Mountain School District— Clear Run Treatment Plant School Road Mount Pocono, PA 18344	Monroe County Coolbaugh Township	Clear Run (2-A)	Yes

<i>NPDES No. (Type)</i>	<i>Facility Name &amp; Address</i>	<i>County &amp; Municipality</i>	<i>Stream Name (Watershed No.)</i>	<i>EPA Waived Y/N?</i>
PA0063860 (Industrial)	Lehighon Water Authority Box 29 Municipal Building Lehighon, PA 18235	Carbon County Franklin Township	Long Run (2-B)	Yes
PA0060887 (Sewage)	Mugg's Country Kitchen/ Lakeview True Value Hardware WWTP Route 6 Hawley, PA 18428	Pike County Palmyra Township	Decker Creek (1-B)	Yes

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

<i>NPDES No. (Type)</i>	<i>Facility Name &amp; Address</i>	<i>County &amp; Municipality</i>	<i>Stream Name (Watershed #)</i>	<i>EPA Waived Y/N?</i>
PA0083160 SEW	Anchor Mobile Estates Peifer & Gross, Inc. P.O. Box 506 Elizabethtown, PA 17022-0506	Butler Township Adams County	Willoughby Run in Watershed(s) 13-D	Y
PA0261131 SEW	Frederick W. Steudler 7335 River Road Conestoga, PA 17516-9504	Providence Township Lancaster County	Unnamed Tributary to Huber Run in Watershed(s) 7-K	N
PA0081523 SEW	Blair Chalet 215 Union Avenue Altoona, PA 16602-3247	Blair Township Blair County	To Frankstown Branch Juniata River in Watershed(s) 11-A	Y

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

<i>NPDES No. (Type)</i>	<i>Facility Name &amp; Address</i>	<i>County &amp; Municipality</i>	<i>Stream Name (Watershed #)</i>	<i>EPA Waived Y/N?</i>
PA0239224 (Sewage)	Keystone Charter School 425 South Good Hope Road Greenville, PA 16125	Mercer County West Salem Township	Big Run (20-A)	Yes
PA0240044 (Sewage)	Meadville KOA Campground 25164 State Highway 27 Meadville, PA 16335-5914	Crawford County East Mead Township	Unnamed Tributary to Little Sugar Creek (16-D)	Yes
PA0210781 (Sewage)	Hazel Hurst WWTP 664 Dewey Avenue Hazel Hurst, PA 16733	McKean County Hamlin Township	Marvin Creek (16-C)	Yes

## **II. New or Expanded Facility Permits, Renewal of Major Permits and EPA Nonwaived Permit Actions.**

*Northeast Regional Office: Regional Clean Water Program Manager, 2 Public Square, Wilkes-Barre, PA 18701-1915. Phone: 570.826.2511.*

**NPDES Permit No. PA0020168**, Sewage, SIC Code 4952, **East Stroudsburg Borough**, P.O. Box 303, East Stroudsburg, PA 18301.

This existing facility is located in East Stroudsburg Borough, **Monroe County**.

Description of Existing Action/Activity: Issuance of an NPDES Permit for an existing discharge of treated sewage.

**NPDES Permit No. PA0276162**, Storm Water, SIC Code 4222, 4225, **C&S Wholesale Grocers, Inc.**, 208 Bilo Boulevard, Greenville, SC 29607.

This proposed facility is located in Bethlehem Township, **Northampton County**.

Description of Proposed Action/Activity: Issuance of an NPDES Permit for a new discharge of treated Stormwater.

*Southwest Regional Office: Regional Clean Water Program Manager, 400 Waterfront Drive, Pittsburgh, PA 15222-4745. Phone: 412.442.4000.*

**NPDES Permit No. PA0255432**, Storm Water, SIC Code 3299, **Detroit Salt Co. LLC**, 1019 River Avenue, Johnstown, PA 15909-2008.

This proposed facility is located in Franklin Borough, **Cambria County**.

Description of Proposed Action/Activity: Issuance of an NPDES Permit for a new discharge of untreated Storm Water.

**NPDES Permit No. PA0026034**, Sewage, SIC Code 4952, **Johnstown Redevelopment Authority Cambria County**, 4th Floor, Public Sfty Bldg, Johnstown, PA 15901.

This existing facility is located in West Taylor Township, **Cambria County**.

Description of Existing Action/Activity: Re-Issuance of an NPDES Permit for an existing discharge of treated sewage from the Dornick Point WWTP.

**NPDES Permit No. PA0254894**, Storm Water, SIC Code 5052, **Bognar & Co., Inc.**, 733 Washington Road, Pittsburgh, PA 15228-2022.

This proposed facility is located in Black Township, **Somerset County**.

Description of Proposed Action/Activity: Issuance of an NPDES Permit for a new discharge of treated Storm Water.

### III. WQM Industrial Waste and Sewerage Actions under The Clean Streams Law.

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

**WQM Permit No. WQG02501801**, Sewerage, **Penn Township Municipal Authority Perry County**, 102 Municipal Building Road, Duncannon, PA 17020.

This proposed facility is located in Penn Township, **Perry County**.

Description of Proposed Action/Activity: This General Permit approves the construction and operation of: 1 sewer extension.

**WQM Permit No. WQG02221802**, Sewerage, **Susquehanna Township Authority**, 1900 Linglestown Road, Harrisburg, PA 17110-3302.

This proposed facility is located in Susquehanna Township, **Dauphin County**.

Description of Proposed Action/Activity: This General Permit approves the construction and operation of: 1 sewer extension.

**WQM Permit No. 0719401**, Sewerage, **Patty L. Leamer**, 179 Atlas Drive, Hollidaysburg, PA 16648.

This proposed facility is located in Frankstown Township, **Blair County**.

Description of Proposed Action/Activity:

This permit approves the construction/operation of sewage facilities consisting of:

- 500-gallon rated capacity Norweco Singular 960 ATU (concrete)
- Norweco Hydro-Kinetic BioFilm Reactor (concrete) w/pump assembly
- Salcor UV disinfection.

*Northcentral Regional Office: Regional Clean Water Program Manager, 208 W Third Street, Suite 101, Williamsport, PA 17701-6448. Phone: 570.327.3636.*

**WQM Permit No. 1406406 A-1**, Sewage, SIC Code 4952, **University Area Joint Authority**, 1576 Spring Valley Road, State College, PA 16801-8401.

This existing facility is located in College Township, **Centre County**.

Description of Proposed Action/Activity: Installation of 12" PVC beneficial reuse waterline to provide service to a country club and ski resort.

**WQM Permit No. 4990405 A-1**, Sewage, SIC Code 4952, **Mount Carmel Township**, 300 Laurel Street, Atlas, PA 17851.

This existing facility is located in Mount Carmel Township, **Northumberland County**.

Description of Proposed Action/Activity: Permit amendment issued authorizing the pump replacement in pumping station.

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

*Southeast Region: Waterways & Wetlands Program Manager, 2 East Main Street, Norristown, PA 19401. Telephone 484-250-5160.*

<i>NPDES Permit No.</i>	<i>Applicant Name &amp; Address</i>	<i>County</i>	<i>Municipality</i>	<i>Receiving Water/Use</i>
PAI015114011-10	Liberty Property Trust 150 Rouse Boulevard Suite 210 Philadelphia, PA 19112-1901	Philadelphia	City of Philadelphia	Delaware River WWF-MF
PAD510041	Liberty Property/ Synterra Limited Partnership Liberty Property Limited Partnership 150 Rouse Boulevard Philadelphia, PA 19112	Philadelphia	City of Philadelphia	Delaware and/or Schuylkill River MF
PAD150124	Progressum Terra, LLC 4310 Whitehorse Road Malvern, PA 19355	Chester	Charlestown Township	Unnamed Tributary to Pickering Creek HQ-TSF



<i>NPDES Permit No.</i>	<i>Applicant Name &amp; Address</i>	<i>County</i>	<i>Municipality</i>	<i>Receiving Water/Use</i>
PAD150105	Downingtown Area School District 540 Trestle Place Downingtown, PA 19335	Chester	Uwchlan Township	Unnamed Tributary to East Branch Brandywine Creek HQ-TSF-MF

*Northeast Region: Waterways and Wetlands Program Manager, 2 Public Square, Wilkes-Barre, PA 18701-1915.*

*Lehigh County Conservation District, 4184 Dorney Park Road, Suite 105, Allentown, PA 18401.*

<i>NPDES Permit No.</i>	<i>Applicant Name &amp; Address</i>	<i>County</i>	<i>Municipality</i>	<i>Receiving Water/Use</i>
PAD390090	Liberty Property Trust 400 Boulder Drive Suite 200 Breinigsville, PA 18031	Lehigh	Lower Macungie Township	Little Lehigh Creek— (HQ-CWF, MF)
PAD390104	Woodmont at Upper Mac, LP 100 Passaic Ave. Ste. 240 Fairfield, NJ 07004	Lehigh	Upper Macungie Township	Cedar Creek— (HQ-CWF, MF)

*Southwest Region: Waterways & Wetlands Program, 400 Waterfront Drive, Pittsburgh, PA 15222, Dana Drake,  
Waterways and Wetlands Program Manager, 412-442-4000.*

<i>NPDES Permit No.</i>	<i>Applicant Name &amp; Address</i>	<i>County</i>	<i>Municipality</i>	<i>Receiving Water/Use</i>
PAD650016	PTV 1031, LLC Building 4 Suite 1000 400 Penn Center Boulevard Pittsburgh, PA 15235	Westmoreland County	Donegal Township	UNT to Loyalhanna Creek (HQ-CWF); UNT to Fourmile Run (TSF)

*Northwest Region: Waterways & Wetlands Program, 230 Chestnut Street, Meadville, PA 16335-3481.*

*Jefferson County Conservation District, 1514 Route 28, Brookville, PA 15825, 814-849-7463.*

*Elk County Conservation District, 850 Washington Street, St. Marys, PA 15857, 814-776-5373.*

*Lawrence County Conservation District, 430 Court Street, New Castle, PA 16101, 724-652-4512.*

*Beaver County Conservation District, 156 Cowpath Road, Aliquippa, PA 15001, 724-378-1701.*

<i>NPDES Permit No.</i>	<i>Applicant Name &amp; Address</i>	<i>County</i>	<i>Municipality</i>	<i>Receiving Water/Use</i>
PAD330005	PA Department of Transportation District 10-0 2550 Oakland Avenue Indiana, PA 15701	Jefferson	Warsaw Township	North Fork Redbank Creek HQ-CWF
PAD240004	Johnsonburg Municipal Authority 434 Center Street Johnsonburg, PA 15845	Elk	Johnsonburg Borough	E. Branch Clarion River HQ-CWF W. Branch Clarion River CWF Clarion River CWF Johnson Run CWF Bear Creek HQ-CWF Silver Creek HQ-CWF

<i>NPDES Permit No.</i>	<i>Applicant Name &amp; Address</i>	<i>County</i>	<i>Municipality</i>	<i>Receiving Water/Use</i>
PAD370006	American Transmission System Inc 341 White Pond Drive Akron, OH 44320	Lawrence & Beaver	Taylor, North Beaver, Little Beaver Townships, New Beaver Borough, Lawrence County South Beaver, Darlington Townships, Darlington, New Galilee, Big Beaver Boroughs, Beaver County	Beaver River WWF, UNT to Beaver River WWF, Edwards Run WWF, UNT to Edwards Run WWF, Jenkins Run WWF, UNT to Jenkins Run WWF, UNT to Beaverdam Run HQ-CWF, UNT to North Fork Little Beaver Creek HQ-CWF, North Fork Little Beaver Creek HQ-CWF, Dilworth Run HQ-CWF, Clarks Run HQ-CWF

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**VII. Approvals to Use NPDES and/or Other General Permits.**


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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).

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**List of NPDES and/or Other General Permit Types.**


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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 Petroleum Product Contaminated Groundwater 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 Discharges from Hydrostatic Testing of Tanks and Pipelines
PAG-11	General Permit for Discharges from Aquatic Animal Production Facilities
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*

*Waterways & Wetlands Program Manager, 2 East Main Street, Norristown, PA 19401. Telephone 484-250-5160.*

<i>Facility Location &amp; Municipality</i>	<i>Permit No.</i>	<i>Applicant Name &amp; Address</i>	<i>Receiving Water/Use</i>	<i>Contact Office &amp; Phone No.</i>
Hilltown Township Bucks County	PAC090244	Hallmark Homes— Highfield, LLC 865 Easton Road Suite 320 Warrington, PA 18976-1877	Unnamed Tributary to Neshaminy Creek TSF-MF	Southeast Regional Office 2 East Main Street Norristown, PA 19401 484-250-5900
Montgomery Township Montgomery County	PAC460340	Chic Fil A 5200 Buffington Road Atlanta, GA 30349-2998	Wissahickon Creek TSF	Southeast Regional Office 2 East Main Street Norristown, PA 19401 484-250-5900

<i>Facility Location &amp; Municipality</i>	<i>Permit No.</i>	<i>Applicant Name &amp; Address</i>	<i>Receiving Water/Use</i>	<i>Contact Office &amp; Phone No.</i>
Collegeville Borough Montgomery County	PAC460282	Two Farms, Inc. 3611 Roland Avenue Baltimore, MD 21211	Perkiomen Creek WWF-MF	Southeast Regional Office 2 East Main Street Norristown, PA 19401 484-250-5900
Lower Pottsgrove Township Montgomery County	PAC460115	Lower Pottsgrove Township 2199 Buchert Road Pottstown, PA 19464	Unnamed Tributary to Sprogels Run WWF-MF	Southeast Regional Office 2 East Main Street Norristown, PA 19401 484-250-5900
City of Philadelphia Philadelphia County	PAC510094	Philadelphia Water Department 1101 Market Street 2nd Floor Philadelphia, PA 19104-2994	Schuylkill River WWF-MF	Southeast Regional Office 2 East Main Street Norristown, PA 19401 484-250-5900

*Northeast Region: Waterways and Wetlands Program Manager, 2 Public Square, Wilkes-Barre, PA 18701-1915.*

*Lehigh County Conservation District, 4184 Dorney Park Road, Suite 105, Allentown, PA 18401.*

<i>NPDES</i>				<i>Receiving Water/Use</i>
<i>Permit No.</i>	<i>Applicant Name &amp; Address</i>	<i>County</i>	<i>Municipality</i>	
PAC390075	2 City Center OP LP & City Center Investment Corp 645 Hamilton St Ste 600 Allentown, PA 18101	Lehigh	Allentown City	Jordan Creek (TSF, MF)

*Monroe County Conservation District, 8050 Running Valley Road, Stroudsburg, PA 18347.*

<i>NPDES</i>				<i>Receiving Water/Use</i>
<i>Permit No.</i>	<i>Applicant Name &amp; Address</i>	<i>County</i>	<i>Municipality</i>	
PAC450012	Lot Holding Co LLC 507 Seven Bridges Rd East Stroudsburg, PA 18301	Monroe	Stroud Twp Stroudsburg Boro	Brodhead Creek (TSF, MF)

*Waterways & Wetlands Program, 909 Elmerton Avenue, Harrisburg, PA 17110-8200, Nathan Phillips, Section Chief, 717.705.4802.*

*Facility Location:  
Municipality &  
County*

<i>Facility Location: Municipality &amp; County</i>	<i>Permit No.</i>	<i>Applicant Name &amp; Address</i>	<i>Receiving Water/Use</i>	<i>Contact Office &amp; Phone No.</i>
Lower Paxton Township Dauphin County Issued	PAC220134	Triple Crown Corporation 5351 Jaycee Avenue Harrisburg, PA 17112	Paxton Creek (WWF, MF)	Dauphin County Conservation District 1451 Peters Mountain Road Dauphin, PA 17018 717.921.8100
Halifax Township Dauphin County Issued	PAC220051	Ameer Farhat 637 South River Road Halifax, PA 17032	UNT Powell Creek (TSF, MF) UNT Susquehanna River (WWF, MF)	Dauphin County Conservation District 1451 Peters Mountain Road Dauphin, PA 17018 717.921.8100
Derry Township Dauphin County Issued	PAC220125	Derry Township 600 Clearwater Road Hershey, PA 17033	UNT Spring Creek East (WWF)	Dauphin County Conservation District 1451 Peters Mountain Road Dauphin, PA 17018 717.921.8100
West Hanover Township Dauphin County Issued	PAC220145	Richard Yingst 4717 Smith Street Harrisburg, PA 17109	Beaver Creek (WWF)	Dauphin County Conservation District 1451 Peters Mountain Road Dauphin, PA 17018 717.921.8100

<i>Facility Location: Municipality &amp; County</i>	<i>Permit No.</i>	<i>Applicant Name &amp; Address</i>	<i>Receiving Water/Use</i>	<i>Contact Office &amp; Phone No.</i>
Ayr Township Fulton County Issued	PAC290009	JLG Industries 221 Success Drive McConnellsburg, PA 17233	UNT Big Cove Creek (CWF)	Fulton County Conservation District 216 North Second Street Suite 15 McConnellsburg, PA 17233-1170 717.485.3547, ext. 4
East Hempfield Township Lancaster County Issued	PAC360347	Mennonite Home 1520 Harrisburg Pike Lancaster, PA 17601	Little Conestoga Creek (WWF)	Lancaster County Conservation District 1383 Arcadia Road Room 200 Lancaster, PA 17601-3149 717.299.5361, ext. 5
Lancaster Township Lancaster County Issued	PAC360343	School District of Lancaster 251 South Prince Street Lancaster, PA 17603	Conestoga River West Branch (WWF, MF) Little Conestoga Creek (WWF, MF)	Lancaster County Conservation District 1383 Arcadia Road Room 200 Lancaster, PA 17601-3149 717.299.5361, ext. 5
Manheim Township Lancaster County Issued	PAC360300	Elam Fisher 435 Newport Road Ronks, PA 17572	Conestoga River (WWF)	Lancaster County Conservation District 1383 Arcadia Road Room 200 Lancaster, PA 17601-3149 717.299.5361, ext. 5
York Township York County Issued	PAC670252	Cape Horn Retail, LP 9640 Deereco Road Timonium, MD 21093	Kreutz Creek (WWF)	York County Conservation District 118 Pleasant Acres Road York, PA 17402 717-840-7430
Spring Grove Borough York County Issued	PAC670271	Spring Forge Development 6259 Reynolds Mill Road Spring Grove, PA 17362	UNT Codorus Creek (WWF)	York County Conservation District 118 Pleasant Acres Road York, PA 17402 717-840-7430

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

<i>Facility Location &amp; Municipality</i>	<i>Permit No.</i>	<i>Applicant Name &amp; Address</i>	<i>Receiving Water/Use</i>	<i>Contact Office &amp; Phone No.</i>
College Twp Centre Cnty	PAC140030 Major Amendment	Star Grande LLC 11 Bush Road Hillsborough, NJ 08844	UNT to Spring Creek CWF, MF	Centre County Conservation District 414 Holmes Ave Ste 4 Bellefonte, PA 16823 (814) 355-6817

*Southwest Region: Waterways & Wetlands Program, 400 Waterfront Drive, Pittsburgh, PA 15222, Dana Drake, Waterways and Wetlands Program Manager, 412-442-4000.*

<i>Facility Location and Municipality</i>	<i>Permit No.</i>	<i>Applicant Name and Address</i>	<i>Receiving Water/Use</i>	<i>Contact Office and Phone No.</i>
City of Pittsburgh	PAC020340	Forest City Realty Trust, Inc. 100 West Station Square Drive Suite 1900 Pittsburgh, PA 15219	Monongahela River (WWF)	Allegheny County Conservation District 33 Terminal Way Suite 325B Pittsburgh, PA 15219 (412) 242-7645



## NOTICES

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<i>Facility Location and Municipality</i>	<i>Permit No.</i>	<i>Applicant Name and Address</i>	<i>Receiving Water/Use</i>	<i>Contact Office and Phone No.</i>
City of Pittsburgh	PAC020362	University of Pittsburgh Facilities Management 3400 Forbes Avenue Suite 5 Pittsburgh, PA 15213	Monongahela River (WWF)	Allegheny County Conservation District 33 Terminal Way Suite 325B Pittsburgh, PA 15219 (412) 242-7645
Pine Township	PAC020374	Gateway Land, LLC 109 Gateway Avenue Suite 202 Wexford, PA 15090	North Fork Pine Run Basin (CWF)	Allegheny County Conservation District 33 Terminal Way Suite 325B Pittsburgh, PA 15219 (412) 242-7645
North Fayette Township	PAC020364	Burns Scalo Development, LLC 965 Greentree Road Suite 400 Pittsburgh, PA 15220	Montour Run (TSF)	Allegheny County Conservation District 33 Terminal Way Suite 325B Pittsburgh, PA 15219 (412) 242-7645
Bethel Park Township	PAC020379	Municipality of Bethel Park 5100 Library Avenue Bethel Park, PA 15102	UNT to Piney Fork (CWF)	Allegheny County Conservation District 33 Terminal Way Suite 325B Pittsburgh, PA 15219 (412) 242-7645
Bethel Park Township	PAC020380	Municipality of Bethel Park 5100 Library Avenue Bethel Park, PA 15102	UNT to Graesers Run (WWF)	Allegheny County Conservation District 33 Terminal Way Suite 325B Pittsburgh, PA 15219 (412) 242-7645
Jefferson Hills Borough	PAC020347	Pennsylvania Turnpike 2200 North Center Avenue New Stanton, PA 15672	UNT to Peters Creek (TSF)	Allegheny County Conservation District 33 Terminal Way Suite 325B Pittsburgh, PA 15219 (412) 242-7645
Brentwood Borough	PAC020388	Slater Funeral Home 4201 Brownsville Road Brentwood, PA 15227	UNT to Streets Run (WWF)	Allegheny County Conservation District 33 Terminal Way Suite 325B Pittsburgh, PA 15219 (412) 242-7645
Kennedy Township and Robinson Township	PAC020370	Duckstein Contracting 627 Chartiers Avenue McKees Rocks, PA 15136	Moon Run (WWF)	Allegheny County Conservation District 33 Terminal Way Suite 325B Pittsburgh, PA 15219 (412) 242-7645
Findlay Township	PAC020331	Vollmer of America Corporation 105 Broadway Avenue Carnegie, PA 15106	Montour Run (TSF)	Allegheny County Conservation District 33 Terminal Way Suite 325B Pittsburgh, PA 15219 (412) 242-7645
Marshall Township	PAC020378	Laurel Communications, LLC 2585 Washington Road Suite 130 Pittsburgh, PA 15241	UNT to Big Sewickley Creek (TSF)	Allegheny County Conservation District 33 Terminal Way Suite 325B Pittsburgh, PA 15219 (412) 242-7645

<i>Facility Location and Municipality</i>	<i>Permit No.</i>	<i>Applicant Name and Address</i>	<i>Receiving Water/Use</i>	<i>Contact Office and Phone No.</i>
Robinson Township	PAC630128	Industrial Wastes, Inc. P.O. Box 10086 Toledo, OH 43699	St. Patrick Run (WWF)	Washington County Conservation District 50 Old Hickory Ridge Road Suite 1 Washington, PA 15301 (724) 705-7098
California Borough	PAC630126	The Perryman Company 213 Vandale Drive Houston, PA 15342	UNT to Pike Run (TSF)	Washington County Conservation District 50 Old Hickory Ridge Road Suite 1 Washington, PA 15301 (724) 705-7098

*Northwest Region: Waterways & Wetlands Program, 230 Chestnut Street, Meadville, PA 16335-3481.*

<i>Facility Location: Municipality &amp; County</i>	<i>Permit No.</i>	<i>Applicant Name &amp; Address</i>	<i>Receiving Water/Use</i>	<i>Contact Office &amp; Phone No.</i>
Adams Township Butler County	PAC100124	Municipal Authority of Adams Township P.O. Box 807 Mars, PA 16046	Breakneck Creek WWF	Butler County Conservation District 122 McCune Drive Butler, PA 16001 724-284-5270
Jackson Township Butler County	PAC100108	Advanced Polymer Technology Corp APT 109 Conica Lane Harmony, PA 16037	UNT to Connoquenessing Creek WWF	Butler County Conservation District 122 McCune Drive Butler, PA 16001 724-284-5270
Monroe Township Clarion County	PAC160023	Clarion Trinity Development Co. P.O. Box 445 Clarion, PA 16214	Brush Run CWF	Clarion County Conservation District 217 S 7th Avenue Room 106A Clarion, PA 16214 814-297-7813
Cranberry Township Butler County	PAC100132	Level II Development Corp LLC 1603 Carmody Court Suite 101 Baymore II Sewickley, PA 15143	UNTs to Brush Creek WWF	Butler County Conservation District 122 McCune Drive Butler, PA 16001 724-284-5270
Fairview Township Erie County	PAC250066	Mr. Joel Muzyka P.O. Box 8857 Erie, PA 16505	UNT Trout Run CWF; MF	Erie County Conservation District 1927 Wager Road Erie, PA 16509 814-825-6403
Summit Township Erie County	PAC250069	Tresler, Rae, Dahlkamper Partnership 8084 Clair Wright Road Girard, PA 16417 and Marlin Keith Coon 4169 Stanton Street Erie, PA 16510	Elk Creek CWF; MF	Erie County Conservation District 1927 Wager Road Erie, PA 16509 814-825-6403
Millcreek Township Erie County	PAC250065	JP Realty Group, LLC 2233 West 38th Street Erie, PA 16506	UNT Lake Erie WWF; MF	Erie County Conservation District 1927 Wager Road Erie, PA 16509 814-825-6403

NOTICES

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*Facility Location:  
Municipality &  
County*

Cranberry Township  
Butler County

*Permit No.*  
PAC100135

*Applicant Name & Address*  
Grace Community Church  
9160 Marshall Road  
Cranberry Township, PA 16066

*Receiving  
Water/Use*  
UNT to Brush Creek  
WWF

*Contact Office &  
Phone No.*  
Butler County  
Conservation District  
122 McCune Drive  
Butler, PA 16001  
724-284-5270

*General Permit Type—PAG-03*

*Facility Location  
Municipality &  
County*

Hempfield Township  
Westmoreland  
County

*Permit No.*  
PAG036244

*Applicant Name & Address*  
RW Sidley Inc.  
88 East Hillis Street  
Youngwood, PA 15697-0305

*Receiving  
Water/Use*  
Jacks Run—19-D

*Contact Office &  
Phone No.*  
DEP Southwest  
Regional Office  
Clean Water Program  
400 Waterfront Drive  
Pittsburgh, PA  
15222-4745  
412.442.4000

Neville Township  
Allegheny County

PAG036245

Brad Foote Gear Works Inc.  
5100 Neville Road  
Pittsburgh, PA 15225

Ohio River—20-G

DEP Southwest  
Regional Office  
Clean Water Program  
400 Waterfront Drive  
Pittsburgh, PA  
15222-4745  
412.442.4000

Armstrong Township  
Indiana County

PAR216159

Marion Center Supply Inc.  
517 Church Street  
P.O. Box 173  
Marion Center, PA 15759-0173

Crooked  
Creek—17-E

DEP Southwest  
Regional Office  
Clean Water Program  
400 Waterfront Drive  
Pittsburgh, PA  
15222-4745  
412.442.4000

Marion Center  
Borough  
Indiana County

PAR216160

Marion Center Supply Inc.  
517 Church Street  
P.O. Box 173  
Marion Center, PA 15759-0173

Pine Run—17-E

DEP Southwest  
Regional Office  
Clean Water Program  
400 Waterfront Drive  
Pittsburgh, PA  
15222-4745  
412.442.4000

Lower Towamensing  
Township  
Carbon County

PAG032255

Ampal Inc.  
2115 Little Gap Road  
Palmerton, PA 18071

Aquashicola  
Creek—2-B

DEP Northeast  
Regional Office  
Clean Water Program  
2 Public Square  
Wilkes-Barre, PA  
18701-1915  
570.826.2511

*General Permit Type—PAG-8*

*Facility Location &  
County/Municipality*

Peck's Septic Waste  
Processing Facility  
68 Pine School Road  
Gardners, PA 17324  
South Middleton Twp  
Cumberland County

*Permit No.*  
PAG083532

*Applicant Name & Address*  
Peck's Septic Service  
68 Pine School Rd.  
Gardners, PA 17324

*Site Name &  
Location*  
Same As Facility

*Contact Office &  
Phone No.*  
DEP—SCRO—CW  
909 Elmerton Ave  
Harrisburg, PA 17110  
717-705-4707

*General Permit Type—PAG-9*

<i>Facility Location &amp; County/Municipality</i>	<i>Permit No.</i>	<i>Applicant Name &amp; Address</i>	<i>Site Name &amp; Location</i>	<i>Contact Office &amp; Phone No.</i>
Same As Applicant Fayette Township Juniata County	PAG093523	William Kemp Septic Service 1218 Troyer Road McAlisterville, PA 17049	Same As Applicant	DEP—SCRO— Clean Water 909 Elmerton Avenue Harrisburg, PA 17110 717-705-4707

*General Permit Type—PAG-13*

<i>Facility Location Municipality &amp; County</i>	<i>Permit No.</i>	<i>Applicant Name &amp; Address</i>	<i>Receiving Water/Use</i>	<i>Contact Office &amp; Phone No.</i>
Trainer Borough Delaware County	PAG130118	Trainer Borough 824 Main Street Trainer, PA 19061-5014	Marcus Hook Creek, Unnamed Tributary to Marcus Hook Creek, and Stoney Creek 3-G	DEP Southeast Regional Office Clean Water Program 2 E Main Street Norristown, PA 19401 484.250.5970
Paradise Township Lancaster County	PAG133532	Paradise Township Lancaster County 2 Twp. Drive P.O. Box 40 Paradise, PA 17562-0040	Pequea Creek, Londonland Run, and Eshleman Run—7-K	DEP Southcentral Regional Office Clean Water Program 909 Elmerton Avenue Harrisburg, PA 17110-8200 717.705.4800
East McKeesport Borough Allegheny County	PAG136276	East McKeesport Borough 907 Florence Avenue East McKeesport, PA 15035-0160	Unnamed Tributary to Turtle Creek 19-A WWF	DEP Southwest Regional Office Clean Water Program 400 Waterfront Drive Pittsburgh, PA 15222-4745 412.442.4000

**STATE CONSERVATION COMMISSION  
NUTRIENT MANAGEMENT PLANS RELATED TO APPLICATIONS FOR NPDES  
PERMITS FOR CAFOS**

The State Conservation Commission has taken the following actions on previously received applications for nutrient management plans under 3 Pa.C.S. Chapter 5, for agricultural operations that have or anticipate submitting applications for new, amended or renewed NPDES permits or 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.

Persons aggrieved by an action may appeal under 3 Pa.C.S. § 517, section 4 of the Environmental Hearing Board Act and 2 Pa.C.S. §§ 501—508 and 701—704 to the Environmental Hearing Board, Second Floor, Rachel Carson State Office Building, 400 Market Street, P.O. Box 8457, Harrisburg, PA 17105-8457, (717) 787-3483. TDD users should contact the Environmental Hearing Board (Board) through the Pennsylvania AT&T Relay Service at (800) 654-5984. Appeals must be filed with the Board within 30 days of publication of this notice in the *Pennsylvania Bulletin*. Copies of the appeal form and the Board’s rules of practice and procedure may be obtained from the Board. The appeal form and the Board’s rules of practice and procedure are also available in Braille or on audiotape from the Secretary of the Board at (717) 787-3483. This paragraph does not, in and of itself, create a right of appeal beyond that permitted by applicable statutes and decision law.

For individuals who wish to challenge actions, appeals must reach the Board within 30 days. A lawyer is not needed to file an appeal with the Board.

Important legal rights are at stake, however, so individuals should show this notice to a lawyer at once. Persons who cannot afford a lawyer may qualify for pro bono representation. Call the Secretary of the Board at (717) 787-3483 for more information.

**NUTRIENT MANAGEMENT PLAN  
PUBLIC NOTICE SPREADSHEET—ACTIONS**

<i>Agricultural Operation Name and Address</i>	<i>County</i>	<i>Total Acres</i>	<i>AEU's</i>	<i>Animal Type</i>	<i>Special Protection Waters (HQ or EV or NA)</i>	<i>Approved or Disapproved</i>
Reu-Hel Farms 638 Railroad Road Mohrsville, PA 19541	Berks	609.8	553.58	Ducks and Dairy	NA	approved



## 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, P.O. Box 8457, Harrisburg, PA 17105-8457, (717) 787-3483. TDD users may contact the Board through the Pennsylvania AT&T Relay Service, (800) 654-5984. Appeals must be filed with the Board within 30 days of publication of this notice in the *Pennsylvania Bulletin* unless the appropriate statute provides a different time period. Copies of the appeal form and the Board's rules of practice and procedure may be obtained from the Board. The appeal form and the Board's rules of practice and procedure are also available in Braille or on audiotape from the Secretary to the Board at (717) 787-3483. This paragraph does not, in and of itself, create 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 free 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 (35 P.S. §§ 721.1—721.17).

*Northeast Region: Safe Drinking Water Program Manager, 2 Public Square, Wilkes-Barre, PA 18701-1915.*

**Permit No. 240036, Transfer of Operation Permit, Public Water Supply.**

Applicant	<b>Ms. Tia Martini Spangenberg</b> Country Crest MHP, LLC 57 Davis Street Spring Brook Township, PA 18444
Municipality	Lehman Township
County	<b>Luzerne County</b>
Type of Facility	PWS
Consulting Engineer	N/A
Permit to Operate Issued	02/21/2019

**Permit No. 3396420, Operation Permit, Public Water Supply.**

Applicant	<b>Nestle Waters North America, Inc.</b> Attention: Mr. Weaver 305 Nestle Way Breinigsville, PA
Municipality	Upper Macungie Township
County	<b>Lehigh County</b>

Type of Facility	PWS
Consulting Engineer	Mr. Edward E. Davis Sr., P.E. Miller Brothers Construction, Inc.
Permit to Operate Issued	February 19, 2019
<b>Permit No. 3918501, Public Water Supply.</b>	
Applicant	<b>Nestle Waters North America, Inc.</b> Attention: Mr. Weaver 305 Nestle Way Breinigsville, PA
Municipality	Upper Macungie Township
County	<b>Lehigh County</b>
Type of Facility	PWS
Consulting Engineer	Mr. Edward E. Davis Sr., P.E. Miller Brothers Construction, Inc.
Permit to Operate Issued	February 19, 2019
<b>Permit No. 4518518MA, Public Water Supply.</b>	
Applicant	<b>PA American Water</b> 800 W. Hershey Park Drive Hershey, PA 17033
[Township or Borough]	Coolbaugh Township <b>Monroe County</b>
Responsible Official	Mr. David Kaufman Vice President-Engineering
Type of Facility	Public Water Supply
Consulting Engineer	Mr. Scott Thomas, PE PA American Water Company 2699 Stafford Avenue Scranton, PA 18505
Permit Issued	02/25/2019
<b>Permit No. 2409011, Public Water Supply.</b>	
Applicant	<b>PA American Water</b> 800 W. Hershey Park Drive Hershey, PA 17033
[Township or Borough]	Plains Township <b>Luzerne County</b>
Responsible Official	Mr. David Kaufman Vice President-Engineering
Type of Facility	Public Water Supply
Consulting Engineer	Mr. Ralph R. Wawrzyniakowski, PE PA American Water Company 2699 Stafford Avenue Scranton, PA 18505
Permit Issued	01/08/2019
<i>Northcentral Region: Safe Drinking Water Program Manager, 208 West Third Street, Suite 101, Williamsport, PA 17701-6448.</i>	
<b>Permit No. 4918508MA—Operation—Public Water Supply.</b>	
Applicant	<b>Aqua Pennsylvania, Inc.—Roaring Creek Division</b>
Township/Borough	Coal Township

County **Northumberland County**  
 Responsible Official Mr. Patrick R. Burke, P.E.  
 Director of Operations  
 Aqua Pennsylvania, Inc.  
 204 E. Sunbury Street  
 Shamokin, PA 17872

Type of Facility Public Water Supply—Operation  
 Consulting Engineer Mr. Dan Hopkins  
 Entech Engineering, Inc.  
 500 N. Center Street  
 P.O. Box 389  
 Pottsville, PA 17901

Permit Issued March 5, 2019  
 Description of Action Authorizes Aqua Pennsylvania, Inc. Roaring Creek Division to operate two 230-gallon solution tanks for 50% Sodium Hydroxide in the caustic feed system at Roaring Creek Water Treatment Plant.

**Permit No. 1717511MA—Operation—Public Water Supply.**

Applicant **Aqua Pennsylvania, Inc.—Treasure Lake Division**  
 Township/Borough Sandy Township  
 County **Clearfield County**  
 Responsible Official Mr. Patrick R. Burke, P.E.  
 Director of Operations  
 Aqua Pennsylvania, Inc.  
 204 E. Sunbury Street  
 Shamokin, PA 17872

Type of Facility Public Water Supply—Operation (Partial)  
 Consulting Engineer Mr. Michael J. Daschbach  
 Entech Engineering, Inc.  
 1524 West College Avenue  
 Suite 206  
 State College, PA 16801

Permit Issued March 5, 2019  
 Description of Action Authorizes Aqua Pennsylvania, Inc.—Treasure Lake Division to operate the new 250,000-gallon, Daxon Point, water-storage tank, while the 500,000-gallon, Daxon Point, water-storage tank is out of service for rehabilitation.

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

**Permit No. 6318504, Public Water Supply.**  
 Applicant **George Zimmermann, Owner**  
 Walnut Ridge's Red Rooster Grill  
 557 Farra School Road  
 Avella, PA 15312

[Borough or Township] Hopewell Township  
 County **Washington**  
 Type of Facility Water system  
 Consulting Engineer GAI Consultants  
 385 East Waterfront Drive  
 Homestead, PA 15120

Permit to Construct February 26, 2019  
 Issued

**Operations Permit** issued to: **Municipal Authority of Westmoreland County**, 124 Park & Pool Road, New Stanton, PA 15672, (**PWSID # 5650032**) North Huntingdon Township, **Westmoreland County** on March 1, 2019 for the operation of facilities approved under Construction Permit # 6519502MA.

**Operations Permit** issued to: **Jason S. Lee & Michelle D. Lee**, Owners, Kingdom Hills, 124 Holly Street, Carrolltown, PA 15722, (**PWSID # 4110005**) **Cambria County** on March 1, 2019 for the operation of facilities approved under Construction Permit # 4110005.

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

**Operation Permit** issued to **Borough of Edinboro Water Authority, PWSID No. 6250022**, Edinboro Borough, **Erie County**. Permit Number 2516501 issued February 28, 2019 for the operation of the new water treatment plant, finished water storage tank, and system improvements needed to serve the Borough of Edinboro. This permit is issued in response to pre-operation inspections conducted by the Department of Environmental Protection personnel on December 17, 2018 and February 6, 2019.

#### SEWAGE FACILITIES ACT PLAN APPROVAL

**Plan Approvals Granted Under the Pennsylvania Sewage Facilities Act, Act of January 24, 1966, P.L. 1535, as amended, 35 P.S. § 750.5.**

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

#### Plan Location:

Borough or Township	Borough or Township Address	County
Salem Township	P.O. Box 278 Hamlin, PA 18427	Wayne

#### Plan Description:

Approval is granted for a revision to the official plan of Salem Township, Wayne County. The project is known as Neville Mobile Home Park. The DEP Code Number is 2-64922316-3. This project proposes the installation of a wastewater treatment plant to serve an existing 36-unit mobile home park and one (1) existing single-family residence. The mobile home park and the residence are currently served by a community onlot sewage disposal system which is malfunctioning. Testing and evaluation of the lot has shown that the soils types and site conditions present are unsuitable for the use of land disposal methods. The existing collection and conveyance system will be utilized with the new wastewater treatment plant to collect, convey, and treat proposed flows of 6,400 GPD. The wastewater treatment plant will discharge year-round into an unnamed tributary of Wilcox Creek. Acceptance of this revision is conceptual. It leaves to be addressed at a later date both (1) the effluent limitations necessary to satisfy special protection requirements and to protect public health, and (2) specific treatment technology.

Water will be provided by an existing public water supply.

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 applicant.

## 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 Pennsylvania AT&T Relay Service at (800) 654-5984.

The Department has received the following plans and reports:

*Northeast Region: Environmental Cleanup & Brownfields Program Manager, 2 Public Square, Wilkes-Barre, PA 18701-1915.*

**Skidmore Property**, 537 Rue De John, Middle Smithfield Township, **Monroe County**. MEA, 1365 Ackermanville Road, Bangor, PA 18013, on behalf of James Skidmore, 537 Rue De John, East Stroudsburg, PA 18302, submitted a final report concerning remediation of site soil contaminated with heating oil/kerosene from an aboveground storage tank. The report is intended to document remediation of the site to meet Statewide Health Standards.

*Southcentral Region: Environmental Cleanup and Brownfields Program Manager, 909 Elmerton Avenue, Harrisburg, PA 17110. Phone 717.705.4705.*

**Former Agway Lebanon Surplus**, 1655 Cumberland Street, Lebanon, PA 17042, West Lebanon Township, **Lebanon County**. Compliance Management International, 1350 Welsh Road, Suite 200, North Wales, PA 19454, on behalf of M&G Realty, Inc., 2295 Susquehanna Trail, York, PA 17404, submitted a Remedial Investigation and Final Report concerning remediation of site soil and groundwater contaminated with VOCs, PAHs and Inorganics. The report is intended to document remediation of the site to meet the Site-Specific Standard.

**Prescott Quarry**, 200 South Prescott Road, Lebanon, PA 17042, South Lebanon Township, **Lebanon County**. Reliance Environmental, Inc., 235 North Duke Street, Lancaster, PA 17603 on behalf of Pennsy Supply, Inc., 200 Prescott Road, Lebanon, PA 17042, submitted a Final Report concerning remediation of site soil contaminated with diesel fuel. The report is intended to document remediation of the site to meet the Nonresidential Statewide Health Standard.

**Baughman's U-Pull-It Auto Parts**, 441 Eberts Lane, York, PA 17403, York City, **York County**. Independence Environmental Consulting LLC, 1750 Kaylor Road, Hummelstown, PA 17036, on behalf of 426 Property Management LLC, 3631 Trout Run Road, York, PA 17406, submitted a Cleanup Plan concerning remediation of site soil and groundwater contaminated with VOCs, PAHs and Inorganics. The plan is intended to document remediation of the site to meet the Nonresidential Statewide Health and Site-Specific Standards.

**Manheim Township High School**, 100 School Road, Lancaster, PA 17603, Manheim Township, **Lancaster County**. Reliance Environmental Inc., 235 North Duke Street, Lancaster, PA 19602, on behalf of Manheim Township School District, 450A Candlewyck Road, Lancaster, PA 17606, submitted a Final Report concerning remediation of site soil contaminated with # 4 Fuel Oil. The report is intended to document remediation of the site to meet the Residential Statewide Health Standard.

## LAND RECYCLING AND ENVIRONMENTAL REMEDIATION

### UNDER ACT 2, 1995 PREAMBLE 3

**The Department has taken action on the following plans and reports under the Land Recycling and Environmental Remediation Standards Act (35 P.S. §§ 6026.101—6026.907).**

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 Pennsylvania AT&T Relay Service at (800) 654-5984.

The Department has received the following plans and reports:

*Southcentral Region: Environmental Cleanup and Brownfields Program Manager, 909 Elmerton Avenue, Harrisburg, PA 17110. Phone 717.705.4705.*

**Fairfield Auto Service**, 207 West Main Street, Fairfield, PA 17320, Fairfield Borough, **Adams County**. Blackrock Environmental LLC, P.O. Box 288, Nazareth, PA 18064, on behalf of Fairfield Auto Service, 207 West Main Street, Fairfield, PA 17320, submitted a Remedial Investigation/Final Report concerning remediation of site soil and groundwater contaminated with gasoline. The Final Report demonstrated attainment of the Site-Specific Standard and was approved by the Department on February 26, 2019.

**LKO Transport Diesel Release/Flying J # 518**, 2210 Camp Swatara Road, Myerstown, PA 17067, Bethel Township, **Berks County**. Taylor Geoservices Inc., 38 Bishop Hollow Drive, Suite 200, Newtown Square, PA 19073, on behalf of LKO Transport, LLC, 9013 Ellenbrook Street, Las Vegas, NV 89148, submitted a Final Report concerning remediation of site soil contaminated with Diesel Fuel. The Final Report demonstrated attainment of the Nonresidential Statewide Health Standard and was approved by the Department on February 28, 2019.

**Former Domestic Casting Company**, 275 North Queen Street, Shippensburg, PA 17257, Shippensburg Township, **Cumberland County**. August Mack Environmental Inc., 941 Wheatland Avenue, Suite 202, Lancaster, PA 17603, on behalf of Cumberland Area Economic Development Corp., REC DC LLC, 53 West South Street, Suite 1, Carlisle, PA 17013, submitted Final Report concerning remediation of site soil contaminated with PAHs and arsenic. The Final Report demonstrated attainment of the Site Specific Standard and was approved by the Department on March 6, 2019.

*Northeast Region: Environmental Cleanup & Brownfields Program Manager, 2 Public Square, Wilkes-Barre, PA 18701-1915.*

**Wallenpaupack Energy and Home Center**, 2587 US Route 6, Palmyra Township, **Pike County**. Bluestone Environmental Inc., 196 Beach Lake Highway, Honesdale, PA 18431, on behalf of The Dime Bank, 120 Sunrise Avenue, Honesdale, PA 18431, submitted a final report concerning remediation of site soils and groundwater contaminated with heating oil from underground storage tanks. The report documented remediation of the site to meet Statewide Health Standards and was approved by the Department on November 1, 2018.

**Former Bridges Market**, 582 Route 183, Wayne Township, **Schuylkill County**. United Environmental Services Inc., P.O. Box 701, Schuylkill Haven, PA 17972, on behalf of Herman Clauser, 105 Schuylkill Mountain Road, Schuylkill Haven, PA 17972, submitted a revised final report concerning remediation of site soils and groundwater contaminated with Naphthalene, Ethylbenzene, and MTBE. The report documented remediation of the site to meet Statewide Health Standards and was approved by the Department on March 5, 2019.

**Bluegrass SUS Well Pad**, 225 Hibbard Road, Rush Township, **Susquehanna County**. Leidos, 6310 Allentown Boulevard, Suite 110, Harrisburg, PA 17112, on behalf of Chesapeake Appalachia LLC, 300 North 2nd Street, 5th Floor, Harrisburg, PA 17101, submitted a Final Report concerning remediation of a release of produced water (brine) to soil. The report documented remediation of the site to meet Statewide Health Standards and was approved by the Department on March 5, 2019.

#### HAZARDOUS WASTE TRANSPORTER LICENSE

**Actions on applications for Hazardous Waste Transporter License received under the Solid Waste Management Act of July 7, 1980 (P.L. 380, No. 97) (35 P.S. §§ 6018.101—6018.1003) and regulations to transport hazardous waste.**

*Central Office: Bureau of Land Recycling and Waste Management, Division of Hazardous Waste Management, P.O. Box 69170, Harrisburg, PA 17106-9170.*

*Renewal Applications Received*

**Lancaster Oil Company dba Environmental Recovery Corporation of Pennsylvania**, 1076 Old Manheim Pike, Lancaster, PA 17601. License No. PA-AH 0679. Effective Feb 27, 2019.

**Clean Harbors Environmental Services, Inc.**, P.O. Box 9149, Norwell, MA 02061. License No. PA-AH 0312. Effective Feb 27, 2019.

**Ross Transportation Services, Inc.**, 36790 Giles Road, Grafton, OH 44044. License No. PA-AH 0133. Effective Feb 27, 2019.

**Philotechnics, Ltd.**, 201 Renovare Boulevard, Oak Ridge, TN 37830. License No. PA-AH 0782. Effective Mar 01, 2019.

**Buffalo Fuel Corp.**, 4870 Packard Road, Niagara Falls, NY 14304. License No. PA-AH 0147. Effective Mar 01, 2019.

*Hazardous Waste Transporter License Reissued*

**Lancaster Oil Company dba Environmental Recovery Corporation of Pennsylvania**, 1076 Old Manheim Pike, Lancaster, PA 17601. License No. PA-AH 0679. Effective Feb 27, 2019.



**Clean Harbors Environmental Services, Inc.,** P.O. Box 9149, Norwell, MA 02061. License No. PA-AH 0312. Effective Feb 27, 2019.

**Ross Transportation Services, Inc.,** 36790 Giles Road, Grafton, OH 44044. License No. PA-AH 0133. Effective Feb 27, 2019.

**Philotechnics, Ltd.,** 201 Renovare Boulevard, Oak Ridge, TN 37830. License No. PA-AH 0782. Effective Mar 01, 2019.

**Buffalo Fuel Corp.,** 4870 Packard Road, Niagara Falls, NY 14304. License No. PA-AH 0147. Effective Mar 01, 2019.

*Hazardous Waste Transporter New License Issued*

**DI Trucking, LLC,** 110 Jabez St., Newark, NJ 07202. License No. PA-AH 0881. Effective Mar 05, 2019.

**REGULATED MEDICAL AND  
CHEMOTHERAPEUTIC WASTE TRANSPORTER  
LICENSES**

**Actions on applications for Regulated Medical and Chemotherapeutic Waste Transporter License received under the Solid Waste Management Act of July 7, 1980 (P.L. 380, No. 97) (35 P.S. §§ 6018.101—6018.1003) and Act 93 of June 28, 1988 (P.L. 525, No. 93) and regulations to transport regulated medical and chemotherapeutic waste.**

*Central Office: Bureau of Land Recycling and Waste Management, Division of Hazardous Waste Management, P.O. Box 69170, Harrisburg, PA 17106-9170.*

*Renewal Applications Received*

**Stericycle, Inc.,** 1525 Chestnut Hill Rd., Morgantown, PA 19543. License No. PA-HC 0196. Effective Mar 01, 2019.

*Regulated Medical and Chemotherapeutic Waste Transporter License Reissued*

**Stericycle, Inc.,** 1525 Chestnut Hill Rd., Morgantown, PA 19543. License No. PA-HC 0196. Effective Mar 01, 2019.

**HAZARDOUS WASTE TREATMENT, STORAGE AND  
DISPOSAL FACILITIES**

**Permits issued, renewed, revised, or withdrawn under the Solid Waste Management Act (35 P.S. §§ 6018.101—6018.1003) and Regulations to Operate a Hazardous Waste Treatment, Storage, or Disposal Facility.**

*Northwest Region: Regional Solid Waste Manager, 230 Chestnut Street, Meadville, PA 16335-3481.*

**PAD087561015. International Metals Recovery Company (INMETCO), LLC,** One INMETCO Drive, P.O. Box 720, Ellwood City, PA 16117, Ellwood City Borough, **Lawrence County.** On March 5, 2019 the Department renewed a Hazardous Waste TSD permit for INMETCO in Ellwood City. The existing permit expired July 14, 2016 but was administratively extended until a final decision is made on the application received November 9, 2015. INMETCO has been operating under a hazardous waste permit, PAD087561015 since November 6, 1992. A draft renewal permit was sent out on October 17, 2018. The renewed permit will now be effective until March 5, 2029.

*Facility Description*

INMETCO specializes in recycling of waste materials generated by the specialty steel industry, the metal finishing industry and other industries generating chromium, and/or nickel bearing wastes. Since many of the wastes received and processed are classified as hazardous or residual wastes, INMETCO is considered a hazardous waste storage and treatment facility. Hazardous wastes received are stored in container and tank storage areas while awaiting the INMETCO treatment processes. These processes convert these wastes to a high quality chrome-nickel-iron alloy, which are then offered back to the steel industry for sale.

**OPERATE WASTE PROCESSING OR DISPOSAL  
AREA OR SITE**

**Permit Issued Under the Solid Waste Management Act (35 P.S. §§ 6018.101—6018.1003), the Municipal Waste Planning, Recycling and Waste Reduction Act (53 P.S. §§ 4000.101—4000.1904) and Regulations to Operate Solid Waste Processing or Disposal Area or Site.**

*Southeast Region: Regional Solid Waste Manager, 2 East Main Street, Norristown, PA 19401.*

**Permit No 300997. Aqua Pennsylvania, Inc,** 762 West Lancaster Avenue, Bryn Mawr, PA 19010-3402. This permit is for a 10-year renewal for continuing operations at the Foxcroft Residual Waste Landfill, a captive Class III residual waste landfill for disposal of water treatment sludge, located at Sproul Road/Rt. 320 in Marple Township, **Delaware County.** The permit was issued by the Southeast Regional Office on January 23, 2019.

Persons interested in reviewing the permit may contact the Pennsylvania Department of Environmental Protection (“DEP”) Waste Management Program Manager, Southeast Regional Office, 2 East Main Street, Norristown, PA 19401-4915, or by telephone at 484.250.5960. TDD users may contact the DEP through the Pennsylvania AT&T Relay Service, (800) 654.5984.

**Permit No 301299. Aqua Pennsylvania, Inc,** 762 West Lancaster Avenue, Bryn Mawr, PA 19010-3402. This permit is for a 10-year renewal for continuing operations at the Pickering Creek Residual Waste Landfill, a captive Class III residual waste landfill for disposal of water treatment sludge, located at 1011 Valley Forge Road in Schuylkill Township, **Chester County.** The permit was issued by the Southeast Regional Office on January 23, 2019.

Persons interested in reviewing the permit may contact the Pennsylvania Department of Environmental Protection (“DEP”) Waste Management Program Manager, Southeast Regional Office, 2 East Main Street, Norristown, PA 19401-4915, or by telephone at 484.250.5960. TDD users may contact the DEP through the Pennsylvania AT&T Relay Service, (800) 654.5984.

*Northwest Region: Regional Solid Waste Manager, 230 Chestnut Street, Meadville, PA 16335-3481.*

**Permit Application No. 100361. McKean County Landfill,** 19 Ness Lane, Kane, PA 16735; Sergeant Township, **McKean County.** On February 27, 2019 the Department issued a major permit modification to Casella Waste Management of Pa, Inc. for their existing municipal waste landfill in Sergeant Township, McKean County. This modification allows leachate trucking to a POTW as a primary leachate management option and increases the allowable over the road waste tonnage that can be

delivered to the site from 1,000 tons per day to 2,000 tons per day. The incoming Average and Maximum Daily Waste Volumes will remain the same. The application was considered complete by the Northwest Regional Office on August 10, 2018.

Persons interested in commenting on the permit may contact Christina S. Wilhelm, Program Manager, Northwest Regional Office, 230 Chestnut Street, Meadville, PA 16335 (814) 332-6848. TDD users may contact the Department through the Pennsylvania AT&T Relay Service, (800) 654-5984.

## 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.**

*Southcentral Region: Air Quality Program, 909 Elmerston Avenue, Harrisburg, PA 17110.*

*Contact: Thomas Hanlon, Facilities Permitting Chief, 717-705-4862, Thomas Bianca, New Source Review Chief, 717-705-4863, or William Weaver, Regional Air Quality Manager, 717-705-4702.*

**GP3-36-05081: Lancaster County Solid Waste Management Authority** (1299 Harrisburg Pike, Lancaster, PA 17604) on February 28, 2019, for portable nonmetallic mineral processing equipment, including 1 screen and 3 conveyors, under GP3, at the Frey Farm/Creswell Landfill in Manor Township, **Lancaster County**.

**GP9-36-05081: Lancaster County Solid Waste Management Authority** (1299 Harrisburg Pike, Lancaster, PA 17604) on February 28, 2019, for one IC engine under GP9, to operate portable nonmetallic mineral processing equipment at the Frey Farm/Creswell Landfill in Manor Township, **Lancaster County**.

**GP14-06-03153: Peach Tree Cremation Services** (223 Peach Street, Leesport, PA 19533) on February 26, 2019, for the two existing cremation units (1 human and 1 animal) under GP14, at the facility located in Ontelaunee Township, **Berks County**. The general permit authorization was renewed.

**GP1-31-05021B: State Correctional Institute of Huntingdon** (1120 Pike Street, Huntingdon, PA 16652-1117) on March 1, 2019, for three existing No. 2 oil-fired boilers, under GP1, to add compressed natural gas (CNG) firing capability, at the Huntingdon SCI facility located in Smithfield Township, **Huntingdon County**.

*Northcentral Region: Air Quality Program, 208 West Third Street, Williamsport, PA 17701.*

*Contact: Muhammad Q. Zaman, Program Manager, 570-327-3648.*

**AG5-41-00008A: NFG Midstream Trout Run, LLC** (6363 Main Street, Williamsville, NY 14221) on February 22, 2019, to authorize the continued operation of ten (10) natural gas-fired compressor engines, four (4) natural gas-fired micro turbines, two (2) storage tanks and two (2) 200 million cubic foot per day tri-ethylene dehydrators pursuant to the General Plan Approval/General Operating Permit for Natural Gas Compression Stations, Processing Plants and Transmission Stations (BAQ-GPA/GP-5) at the Hagerman Compressor Station located in Lewis Township, **Lycoming County**.

*Southwest Region: Air Quality Program, 400 Waterfront Drive, Pittsburgh, PA 15222-4745.*

*Contact: Ed Orris, P.E., New Source Review Chief—Telephone: 412-442-4168.*

**GP5-04-00732D/AG5-04-00002A: Utica Gas Services, LLC** (Park Place Corporate Center 2, 2000 Commerce Drive, Pittsburgh, PA 15275) on February 28, 2019, for the continued operation of the Beaver Creek Dehydration Station located in South Beaver Township, **Beaver County**.

*Northwest Region: Air Quality Program, 230 Chestnut Street, Meadville, PA 16335-3481.*

*Contact: David Balog, New Source Review Chief—Telephone: 814-332-6328.*

**GP1-25-931B: SCI Albion** (10745 Route 18, Albion, PA 16475) on February 27, 2019, for the authority to operate two natural gas fired boilers (BAQ-GPS/GP1) located at their facility in Conneaut Township, **Erie County**.

**Plan Approvals Issued under the Air Pollution Control Act (35 P.S. §§ 4001—4015) and regulations in 25 Pa. Code Chapter 127, Subchapter B relating to construction, modification and reactivation of air contamination sources and associated air cleaning devices.**

*Southeast Region: Air Quality Program, 2 East Main Street, Norristown, PA 19401.*

*Contact: Janine Tulloch-Reid, Facilities Permitting Chief—Telephone: 484-250-5920.*

**09-0235A: CP Converters, Inc. dba C-P Flexible Packaging** (181 Rittenhouse Circle, Bristol, PA 19007) On February 28, 2019 for installation of a new flexible packaging flexographic printing press (Source ID 240—Press 24) which will exhaust to the existing regenerative thermal oxidizer (C01—RTO) at the facility located in Bristol Township, **Bucks County**.

**09-0107A: Oldcastle APG Northeast, Inc.** (1214 Hayes Blvd., Bristol, PA 19007), On February 28, 2019, for a Plan Approval to modify the pressure drop range to 0.3 and 8.0 inch of water for dust collectors C02, C03 and C04. Old Castle operates a concrete and mortar packaging facility at this site under a State Only, Natural Minor Operating Permit in Bristol Township, **Bucks County**.

*Northcentral Region: Air Quality Program, 208 West Third Street, Williamsport, PA 17701.*

*Contact: Muhammad Q. Zaman, Environmental Program Manager—Telephone: 570-327-3648.*

**17-00063E: Pennsylvania Grain Processing, LLC** (250 Technology Drive, Clearfield, PA 16830) on February 28, 2019, for the increase in emissions based upon stack testing data from existing air contamination sources at their ethanol production facility located in Clearfield Borough, **Clearfield County**.

**Plan Approval Revisions Issued including Extensions, Minor Modifications and Transfers of Ownership under the Air Pollution Control Act (35 P.S. §§ 4001—4015) and 25 Pa. Code §§ 127.13, 127.13a and 127.32.**

*Southcentral Region: Air Quality Program, 909 Elmerston Avenue, Harrisburg, PA 17110.*

*Contact: Thomas Hanlon, Facilities Permitting Chief, 717-705-4862, Thomas Bianca, New Source Review Chief, 717-705-4863, or William Weaver, Regional Air Quality Manager, 717-705-4702.*



**67-03056A: SKF USA, Inc.** (20 Industrial Drive, Hanover, PA 17331) on February 27, 2019, for the construction of two (2) vapor degreasers each controlled by a dedicated refrigerated freeboard chiller as well as the construction of naphtha cleaning operations at its spherical and cylindrical roller bearing manufacturing facility located in Penn Township, **York County**. The plan approval was extended.

**36-05158A: Perdue AgriBusiness LLC** (1897 River Road, Marietta, PA 17547) on February 25, 2019, for the construction and temporary operation of a grain elevator and a soybean oil extraction facility in Conoy Township, **Lancaster County**. The plan approval was extended, with a compliance schedule and a revised stack test schedule.

**06-05155A: Martin Forestry Products, LLC** (56 Wintersville Road, Richland, PA 17087) on February 26, 2019, for the construction of a wood chip drying system at 523 Brown Road, Myerstown, PA 17067, located in Bethel Township, **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.*

**55-00026A: Panda Hummel Station LLC** (5001 Spring Valley Road, Suite 1150 West, Dallas, TX 75244) on February 22, 2019, extended the authorization an additional 180 days until August 22, 2019 for the sources at the facility. This facility is located in Shamokin Dam Borough **Snyder County**, PA. The plan approval has been extended.

**17-00063D: Pennsylvania Grain Processing, LLC** (250 Technology Drive, Clearfield, PA 16830) on February 22, 2019, to extend the authorization an additional 180 days until August 25, 2019, in order to continue the compliance evaluation and permit operation pending issuance of an operating permit for the sources. The extension authorization allows continued operation of the grain storage silos located in Clearfield Borough, **Clearfield County**. The plan approval has been extended.

*Southwest Region: Air Quality Program, 400 Waterfront Drive, Pittsburgh, PA 15222-4745.*

*Contact: Ed Orris, P.E., New Source Review Chief—Telephone: 412-442-4168.*

**65-00979A: Laurel Mountain Midstream Operating, LLC** (Park Place Corporate Center 2, 2000 Commerce Drive, Pittsburgh, PA 15275) Extension effective February 28, 2019 to extend the period of temporary operation of the Caterpillar G3612LE lean burn natural gas-fired compressor engine rated at 3,550 bhp and controlled by an oxidation catalyst authorized under plan approval PA-65-00979A at the Herminie Compressor Station located in South Huntingdon Township, **Westmoreland County**.

**26-00535B: Dynegy Fayette II, LLC** (100 Energy Drive, Masontown, PA 15461) Extension effective February 28, 2019, to allow continued temporary operation of the modified combustion gas turbines (“CGT”) at Fayette Energy Center located in Masontown Borough, **Fayette County**. Components of the turbine section have been replaced and combustion control logic change to increase combustion air flow.

**26-00588: Laurel Mountain Midstream Operating, LLC** (1550 Coraopolis Heights Road, Suite 140, Moon Township, PA 15108) Extension effective February 28, 2019, to extend the period of temporary operation of the three Caterpillar G3516B natural gas-fired compressor engines rated at 1,380 bhp each and controlled by oxidation catalysts, and a Solar Mars 100 gas-fired turbine rated at 15,525 bhp authorized under plan approval PA-26-00588 at Shamrock Compressor Station located in German Township, **Fayette County**.

**26-00588A: Laurel Mountain Midstream Operating, LLC** (1550 Coraopolis Heights Road, Suite 140, Moon Township, PA 15108) Extension effective February 28, 2019, to extend the period of temporary operation of the new dehydrator and emergency generator authorized under plan approval PA-26-00588A at Shamrock Compressor Station located in German Township, **Fayette County**.

**PA-11-00356E: Equitrans, LP** (625 Liberty Avenue, Suite 1700, Pittsburgh, PA 15222) on February 22, 2019, plan approval extension issued for 180 days to facilitate the shake-down of sources and controls at their Laurel Ridge/Rager Mountain Compressor Station located in Jackson Township, **Cambria County**.

**PA-11-00356C Ext: Equitrans LP** (625 Liberty Avenue, Suite 1700, EQT Plaza, Pittsburgh, PA 15222-3114) Plan Approval Extension on February 22, 2019, for 180 days to issue Title V Operating Permit by the Department for their Rager Mountain Laurel Ridge Station located in Jackson Township, **Cambria County**.

*Northwest Region: Air Quality Program, 230 Chestnut Street, Meadville, PA 16335-3481.*

*Contact: David Balog, New Source Review Chief—Telephone: 814-332-6328.*

**37-331B: RWE Holding CO., West Pittsburgh Operations** (P.O. Box 144, Portersville, PA 16051) on February 27, 2019, effective February 28, 2019, has issued a plan approval extension for the construction and initial operation of a new control device for a bulk carbon loading process in Taylor Township, **Lawrence County**. This is a State Only facility. This will expire on August 31, 2019.

**43-182D: Wheatland Tube Co., Council Avenue Plant** (700 S Dock Street, Sharon, PA 16146) on February 26, 2019, effective February 28, 2019, has issued a plan approval extension for the construction and operation of a venture scrubber in Wheatland Borough, **Mercer County**. This is a Title V facility. This will expire on August 31, 2019.

**43-182E: Wheatland Tube Co., Council Avenue Plant** (700 S Dock Street, Sharon, PA 16146) on March 1, 2019, effective February 28, 2019, has issued a plan approval extension for the installation and operation of a vaporized zinc application process. Emissions associated with the process will be controlled by a cartridge dust collector in Wheatland Borough, **Mercer County**. This is a State Only facility. This will expire on August 31, 2019.

**61-147A: Polk Center** (P.O. Box 94, Polk, PA 16342) on February 25, 2019, effective February 28, 2019, has issued a plan approval extension for the construction and operation of an additional 28 MMBtu/hr natural gas and No. 2 fuel oil fired boiler (Cleaver Brooks, Model: CB-LE-700-250ST) in Polk Borough, **Venango County**. This will expire August 31, 2019. This is a Title V facility.

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**Title V Operating Permits Issued under the Air Pollution Control Act (35 P.S. §§ 4001—4015) and 25 Pa. Code Chapter 127, Subchapter G.**

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*Southcentral Region: Air Quality Program, 909 Elmerston Avenue, Harrisburg, PA 17110.*

*Contact: Thomas Hanlon, Facilities Permitting Chief, 717-705-4862, Thomas Bianca, New Source Review Chief, 717-705-4863, or William Weaver, Regional Air Quality Manager, 717-705-4702.*

**34-05002: Texas Eastern Transmission LP** (P.O. Box 1642, Houston, TX 77251-1642) on February 22, 2019, for the Perulack natural gas transmission station located in Lack Township, **Juniata County**. The Title V permit was renewed.

**01-05041: McClarin Plastics LLC** (15 Industrial Drive, Hanover, PA 17331) on February 26, 2019, for the thermoformed plastic and fiberglass-reinforced plastic products manufacturing facility located in Conewago Township, **Adams County**.

*Department of Public Health, Air Management Services: 321 University Avenue, Philadelphia, PA 19104.*

*Contact: Edward Wiener, Chief—Telephone: 215-685-9426.*

**OP17-000076: Veolia Energy Philadelphia Inc.—Edison Station** (908 Sansom Street, Philadelphia, PA 19107) for the operation of a steam generating facility in the City of Philadelphia, **Philadelphia County**. The facility's air emissions sources include two 283 MMBtu/hr boilers firing No. 6 fuel oil, two 335 MMBtu/hr boilers firing No. 6 fuel oil and firing propane for ignition, one 350 KW emergency diesel generator, cold cleaner degreasing station, and cooling tower. The facility is a major source of NO<sub>x</sub> and SO<sub>x</sub>.

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**Operating Permits for Non-Title V Facilities Issued under the Air Pollution Control Act (35 P.S. §§ 4001—4015) and 25 Pa. Code Chapter 127, Subchapter F.**

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*Southeast Region: Air Quality Program, 2 East Main Street, Norristown, PA 19401.*

*Contact: Janine Tulloch-Reid, Facilities Permitting Chief—Telephone: 484-250-5920.*

**46-00171: John Evans' Sons, Inc.**, (1 Spring Avenue, Lansdale, PA 19446) On February 28, 2019 for the renewal of a Non-Title V Facility, State-Only, Natural Minor Permit in Lansdale Borough, **Montgomery County**.

*Southcentral Region: Air Quality Program, 909 Elmerston Avenue, Harrisburg, PA 17110.*

*Contact: Thomas Hanlon, Facilities Permitting Chief, 717-705-4862, Thomas Bianca, New Source Review Chief, 717-705-4863, or William Weaver, Regional Air Quality Manager, 717-705-4702.*

**38-05031: Supreme Mid-Atlantic Corp.** (411 Jonestown Road, P.O. Box 779, Jonestown, PA 17038-9502) on February 28, 2019, for the truck body manufacturing facility located in Union Township, **Lebanon County**. The State-only permit was renewed.

**06-03087: Arkema, Inc.** (1112 Lincoln Road, Birdsboro, PA 19508-1804) on February 26, 2019, for the nylon polymer manufacturing facility located in Exeter Township, **Berks County**. The State-only permit was renewed.

**28-05001: Martin's Famous Pastry Shoppe** (1000 Potato Roll Lane, Chambersburg, PA 17201-8897) on February 27, 2019, for the commercial baking facility located in Guilford Township, **Franklin County**. The State-only permit was renewed.

*Northwest Region: Air Quality Program, 230 Chestnut Street, Meadville, PA 16335-3481.*

*Contact: Matt Williams, Facilities Permitting Chief at Telephone: 814-332-6940.*

**25-00591: Seaway Industries Paint Company**, (2250 E. 33rd Street, Erie, PA 16510-2556), on February 27, 2019, the Department issued the renewal of the Natural Minor State-Only Operating Permit to a facility which is used to touch up surface coatings of aluminum storm and patio doors and vinyl molded products at 2112 E. 30th Street, Erie, PA 16510. This facility is located in the City of Erie, **Erie County**. The primary sources at the facility are miscellaneous natural gas combustion, metal surface coating, vinyl surface coating, parts sanding and solvent evaporation. Potential emissions for the site are below Title V permitting thresholds for all criteria pollutants. The permit contains emission restrictions, along with monitoring, recordkeeping, reporting, work practice and additional requirements to ensure compliance with the Clean Air Act and the Air Pollution Control Act.

*Philadelphia: Air Management Services, 321 University Avenue, Philadelphia, PA 19104-4543, Contact: Edward Wiener, Chief, Source Registration at 215-685-9476.*

The City of Philadelphia, Air Management Services (AMS) has intended to issue a Minor State Only Operating Permit for the following facility:

**OP16-000021: Southwest Water Pollution Control Plant** (8200 Enterprise Ave, Philadelphia, PA 19153) issued on March 4, 2019 for the operation of a water treatment plant in the City of Philadelphia, **Philadelphia County**. The facility's air emission sources include liquid treatment processes, solids treatment processes, two (2) boilers firing digester gas and No. 2 fuel oil each rated 5.230 MMBtu/hr, four (4) boilers firing digester gas and No. 2 Fuel Oil each rated 26.780 MMBtu/hr, four (4) flares firing digester gas and propane each rated 88,150 SCF/hr, and two (2) portable washers firing gasoline and No. 2 Fuel Oil each rated 294,000 BTU/hr, and four (4) cold cleaning degreasers using non-halogenated solvents.

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**Operating Permit Revisions Issued including Administrative Amendments, Minor Modifications or Transfers of Ownership under the Air Pollution Control Act (35 P.S. §§ 4001—4015) and 25 Pa. Code §§ 127.412, 127.450, 127.462 and 127.464.**

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*Northeast Region: Air Quality Program, 2 Public Square, Wilkes-Barre, PA 18711-0790.*

*Contact: Raymond Kempa, New Source Review Chief—Telephone: 570-826-2507.*

**40-00059: Reilly Finishing Acton Technologies.** (130 Alden Street, Nanticoke, PA 18634) on February 27, 2019, in Nanticoke City, **Luzerne County** for an amendment to incorporate process modification at the facility. The conditions from Plan Approval 40-00059A & 40-00059B were copied into the State Only Operating Permit. Administrative Amendment of State Only Operating Permit issued under the Air Pollution Control Act (35 P.S. §§ 4001—4015) and 25 Pa. Code § 127.450.



*Southcentral Region: Air Quality Program, 909 Elmerston Avenue, Harrisburg, PA 17110.*

*Contact: Thomas Hanlon, Facilities Permitting Chief, 717-705-4862, Thomas Bianca, New Source Review Chief, 717-705-4863, or William Weaver, Regional Air Quality Manager, 717-705-4702.*

**36-03137: New Enterprise Stone & Lime Co., Inc.** (3580 Division Highway, East Earl, PA 17519-9217) on February 25, 2019, for the stone crushing operations at the Burkholder Quarry located in Earl Township, **Lancaster County**. The State-only permit was administratively amended in order to incorporate the requirements of Plan Approval No. 36-03137B.

**36-03052: Boose Aluminum Foundry Co., Inc.** (77 North Reamstown Road, P.O. Box 77, Reamstown, PA 17547-0261) on February 25, 2019, for the secondary aluminum foundry located in East Cocalico Township, **Lancaster County**. The State-only permit was administratively amended in order to incorporate the requirements of Plan Approval No. 36-03052C.

*Northcentral Region: Air Quality Program, 208 West Third Street, Williamsport, PA 17701.*

*Contact: Muhammad Q. Zaman, Environmental Program Manager—Telephone: 570-327-3648.*

**53-00005: Dominion Transmission, Inc.** (445 West Main Street, Clarksburg, WV 26301) on February 25, 2019, for a minor modification of the Title V operating permit for their Greenlick Compressor Station located in Stewardson Township, **Potter County**. The minor modification was for a revision to the record keeping requirements for the sulfur content of the fuel utilized in the compressor engines at the facility. The emission limits, throughput limitations and work practice standards along with testing, monitoring, record keeping and reporting requirements have been included in the operating permit renewal to ensure the facility complies with all applicable Federal and State air quality regulations.

**53-00006: Dominion Transmission, Inc.** (445 West Main Street, Clarksburg, WV 26301) on February 25, 2019, for a minor modification of the Title V operating permit for their Ellisburg Compressor Station located in Genesee Township, **Potter County**. The minor modification was for a revision to the record keeping requirements for the sulfur content of the fuel utilized in the compressor engines at the facility. The emission limits, throughput limitations and work practice standards along with testing, monitoring, record keeping and reporting requirements have been included in the operating permit renewal to ensure the facility complies with all applicable Federal and State air quality regulations.

**41-00041: Lonza, Inc.** (3500 Trenton Ave., Williamsport, PA 17701-7924) issued a revised State Only (Synthetic Minor) operating permit on February 27, 2019, for a change in the Responsible Official for the Williamsport facility. This facility is located in the City of Williamsport, **Lycoming County**. This revised State Only operating permit contains all applicable regulatory requirements including monitoring, recordkeeping, and reporting conditions.

**59-00004: Ward Manufacturing, LLC** (117 Gulick Street, Blossburg, PA 16912) on February 11, 2019, was issued a revised Title V operating permit to incorporate the terms and conditions of Plan Approval 59-00004J for their Blossburg facility located in Blossburg Borough, **Tioga County**. The revised Title V operating permit

contains all applicable regulatory requirements including monitoring, recordkeeping and reporting conditions.

*Southwest Region: Air Quality Program, 400 Waterfront Drive, Pittsburgh, PA 15222-4745.*

*Contact: Thomas Joseph, P.E., Facilities Permitting Chief—Telephone: 412-442-4336.*

**04-00727: Lambeth LLC** (2061 Brodhead Rd, Aliquippa, PA 15001) operating permit transferred from Five Points Veterinary Clinic, LLC and change of address effective on February 25, 2019, for its facility located in Hopewell Township, **Beaver County**.

**04-00727: Lambeth LLC** (2061 Brodhead Rd, Aliquippa, PA 15001) operating permit administrative amendment to incorporate the terms and conditions of PA-04-00727B effective on February 26, 2019, for its facility located in Hopewell Township, **Beaver County**.

## 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 Issued

*California District Office: 25 Technology Drive, Coal Center, PA 15423, 724-769-1100.*

**30831303 and NPDES No. PA0013511. Cumberland Contura, LLC**, (158 Portal Road, P.O. Box 1020, Waynesburg, PA 15370). To revise the permit for the Cumberland Mine in Center, Jackson, and Richhill Townships, **Greene County**. This permit revision reflects ownership/operator changes to a previously published notice for an in-process permit application to permit a new underground mine (Foundation Mine), associated shaft site and related NPDES discharge point (Mine Permit No. 30141301 and NPDES Permit No. PA0235741). Foundation Mining, LLC has sold its assets to Cumberland Contura, LLC. As such, the previously proposed new underground mine (Foundation Mine), shaft surface activity site, and related NPDES discharge points will now be permitted as an expansion to the existing Cumberland Mine. Underground Acres Proposed 9,438.0, Subsidence Control Plan Acres Proposed 6,768.0. No additional discharges. The application was considered administratively complete on February 18, 2016. Application received: January 20, 2016. Permit issued: February 27, 2019.

**32051601 and NPDES No. PA0236012. Rosebud Mining Company**, (301 Market Street, Kittanning, PA 16201). To revise the permit for the Crooked Creek

Preparation Plant in Washington Township, **Indiana County** and related NPDES permit for use of existing access road and to construct a fresh water reservoir pond. The pond will not discharge. Surface Acres Proposed 30.9. No additional discharges. The application was considered administratively complete on September 10, 2018. Application received: June 6, 2018. Permit issued: February 28, 2019.

**30743705 and NPDES No. PA0214752. Dana Mining Company of PA, LLC**, (103 Corporate Drive, Suite 102, Morgantown, WV 26501). To renew the NPDES permit for the Mundell Hollow Refuse Disposal Area in Dunkard Township, **Greene County**. No additional discharges. The application was considered administratively complete on August 17, 2016. Application received: April 25, 2016. NPDES Permit issued: March 1, 2019.

*Cambria District Mining Office: 286 Industrial Park Road, Ebensburg, PA 15931, 814-472-1900.*

**Permit No. 11880201 and NPDES No. PA0598208. Ebensburg Power Co**, 11 Lloyd Ave., Latrobe, PA 15650, permit renewal for reclamation only of a bituminous surface mine in Cambria Township, **Cambria County**, affecting 56.5 acres. Receiving streams: unnamed tributary to/and South Branch Blacklick Creek classified for the following use: cold water fishes. There are no potable water supply intakes within 10 miles downstream. Application received: October 26, 2018. Permit Issued: February 22, 2019.

**Permit No. 56130111 and NPDES PA0269361, Coal Loaders, Inc.**, 210 East Main Street, P.O. Box 556, Ligonier, PA 15658, permit renewal for the continued operation and restoration of a bituminous surface & auger mine in Stonycreek Township, **Somerset County**, affecting 44.9 acres. Receiving stream: Stonycreek River, classified for the following use: cold water fishes. The first downstream potable water supply intake from the point of discharge is Hooversville Borough. Application received: December 3, 2018. Permit Issued: February 22, 2019.

**Permit No. 11930102 and NPDES No. PA0212393. E.P. Bender Coal Co., Inc.**, P.O. Box 594, Carrolltown, PA 15722, permit renewal for reclamation only of a bituminous surface and auger mine in Dean Township, **Cambria County** affecting 21 acres. Receiving streams: Little Laurel Run & Clearfield Creek classified for the following uses: cold water fishes and warm water fishes. There are no potable water supply intakes within 10 miles downstream. Application received: September 14, 2018. Permit issued: February 27, 2019.

#### *Noncoal Permits Issued*

*Cambria District Mining Office: 286 Industrial Park Road, Ebensburg, PA 15931, 814-472-1900.*

**Permit No. 11130301 and NPDES No. PA0269255, New Enterprise Stone & Lime Co., Inc.**, P.O. Box 77, New Enterprise, PA 16664, transfer of an existing large noncoal (industrial minerals) mine from Laurel Sand & Stone, Inc., P.O. Box 556, Ligonier, PA 15658, located in Jackson Township, **Cambria County**, affecting 206 acres. Receiving stream: unnamed tributary to Bracken Run classified for the following use: cold water fishes. There are no potable water supply intakes within 10 miles downstream. Application received: October 4, 2018. Permit issued: February 25, 2019.

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

**20182804. Lakeland Sand & Gravel, Inc.** (11203 Ellion Road, Conneaut Lake, PA 16316), commencement, operation and restoration of a small industrial minerals mine in East Fallowfield Township, **Butler County**, affecting 5.0 acres. Receiving streams: Randolph Run. Application received: October 9, 2019. Permit Issued: February 26, 2019.

**PAM618070. Lakeland Sand & Gravel, Inc.** (11203 Ellion Road, Conneaut Lake, PA 16316), general NPDES Permit for stormwater discharges associated with mining activities on Surface Mining Permit No. 20182804 in East Fallowfield Township, **Butler County**. Receiving streams: Randolph Run. Application received: October 9, 2018. Permit Issued: February 26, 2019.

**10120303. Allegheny Mineral Corporation** (P.O. Box 1022, Kittanning, PA 16201), renewal of NPDES Permit No. PA0259322, Worth Township, **Butler County**. Receiving streams: Unnamed tributaries to Slippery Rock Creek and Slippery Rock Creek. Application received: November 15, 2018. Permit Issued: February 26, 2019.

*Moshannon District Mining Office: 186 Enterprise Drive, Philipsburg, PA 16866, 814-342-8200.*

**14060302 and NPDES PA0256447. Glenn O. Hawbaker, Inc.** (1952 Waddle Road, State College, PA 16803). Modification to the NPDES permit to add a monitoring point for temporary stockpiling of reclaimed asphalt product located in Spring Township, **Centre County** affecting 23.6 acres. Receiving stream(s): Spring Creek classified for the following uses(s): CWF. Application received: November 7, 2018. Permit issued: February 20, 2019.

*Pottsville District Mining Office: 5 West Laurel Boulevard, Pottsville, PA 17901, 570-621-3118.*

**Permit No. PAM112090R. Donald R. Taylor**, (4450 Williams Road, Nicholson, PA 18846), renewal of General NPDES Stormwater Permit for stormwater discharges associated with mining activities on Surface Mining Permit No. 66130801 in Nicholson Township, **Wyoming County**, receiving stream: no discharge to unnamed tributary to Monroe Creek Watershed. Application received: February 20, 2018. Renewal issued: February 28, 2019.

#### **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 Issued*

*Pottsville District Mining Office: 5 West Laurel Boulevard, Pottsville, PA 17901, 570-621-3118.*

**Permit No. 36194106. Douglas Explosives, Inc.**, (2052 Philipsburg Bigler Highway, Philipsburg, PA 16866), construction blasting for Sheetz 688 tank hole in Lancaster Township, **Lancaster County** with an expiration date of June 1, 2019. Permit issued: February 26, 2019.

**Permit No. 46194101. Rock Work, Inc.**, (1257 DeKalb Pike, Blue Bell, PA 19422), construction blasting



for Driscoll Tract in Plymouth Township, **Montgomery County** with an expiration date of March 1, 2020. Permit issued: March 1, 2019.

**Permit No. 48194104. Maine Drilling & Blasting, Inc.**, (P.O. Box 1140, Gardiner, ME 04345), construction blasting for Lot 4 Hecktown Road Business Park in Bethlehem and Lower Nazareth Townships, **Northampton County** with an expiration date of February 28, 2020. Permit issued: March 1, 2019.

**Permit No. 67194104. M & J Explosives, LLC**, (P.O. Box 1248, Carlisle, PA 17013), construction blasting for Rutters 53 in Newberry Township, **York County** with an expiration date of May 31, 2020. Permit issued: March 1, 2019.

## 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 construction 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, P.O. Box 8457, Harrisburg, PA 17105-8457, (717) 787-3483. TDD users may contact the Board through the Pennsylvania AT&T Relay Service, (800) 654-5984. Appeals must be filed with the Board within 30 days of publication of this notice in the *Pennsylvania Bulletin* unless the appropriate statute provides a different time period. Copies of the appeal form and the Board's rules of practice and procedure may be obtained from the Board. The appeal form and the Board's rules of practice and procedure are also available in Braille or on audiotape from the Secretary to the Board at (717) 787-3483. This paragraph does not, in and of itself, create 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 free 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: Waterway and Wetlands Program Manager, 2 East Main Street, Norristown, PA 19401, Telephone 484-250-5900.*

**E46-1176. Skippack Township**, 4089 Heckler Road, Skippack, PA 19474, Skippack Township, **Montgomery County**, ACOE Philadelphia District.

To construct and maintain a new 6-foot wide, 23-foot span pedestrian bridge across a tributary to Skippack Creek (TSF-MF) associated with expansion of the existing sidewalk/trail system.

The site is located about 200 feet southeast of intersection of Skippack Pike and Collegeville Road (Collegeville, PA USGS Quadrangle N: 17.5 inches, W: 3.25) inches in Skippack Township, Montgomery County. This work was previously authorized under Permit E46-1098 which expired on December 31, 2014.

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)).

**E46-1171. Lower Gwynedd Township**, 1130 N Bethlehem Pike, Spring House, PA 19477, Lower Gwynedd Township, **Montgomery County**, ACOE Philadelphia District.

Lower Gwynedd Township is proposing to construct and maintain the following water obstruction and encroachment activities associated the Springhouse Roadway Improvements Project Phase 1—Sumneytown Pike Culvert Extension:

1. To extend an existing 60-foot-long, 15-foot by 6-foot concrete box culvert carrying Willow Run (TSF-MF) to a total length of 90 feet resulting in 56 linear feet (896 square feet, 0.21 acre) of permanent stream impact and 102 linear feet (1,530 square feet, 0.035 acre) of temporary stream impact with 2,318 square feet (0.053 acre) of permanent floodway impact and 4,313 square feet (0.099 acre) of temporary floodway impact.

2. To construct 32-inch and 42-inch diameter outfalls downstream of the culvert extension resulting in 5 linear feet of permanent stream impact and 305 square feet (0.007 acre) of permanent floodway impact.

The project is located near the intersection of Sumneytown Pike and North Bethlehem Pike in Lower Gwynedd Township, Montgomery County. (USGS PA Ambler Quadrangle—Latitude 40.186025 N, Longitude 75.228347 W).

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)).

*Southeast Region: Waterways and Wetlands Program Manager, 2 East Main Street, Norristown, PA 19401, Telephone 484-250-5900.*

**E15-909. Pennsylvania Department of Transportation Engineering District 6-0**, 7000 Geerdes Blvd., King of Prussia, PA 19406, Atglen Township and West Sadsbury Township, **Chester County**, U.S. Army Corps of Engineers Philadelphia District.

The Pennsylvania Department of Transportation (PennDOT) is proposing to perform the following water

obstruction and encroachment activities associated with the SR 372 Section LVR Bridge Replacement over Officers Run Project:

1. To remove an existing 38.4-foot two-span reinforced concrete slab bridge and in its place, construct and maintain a 41.5-foot single-span composite prestressed concrete adjacent box beam bridge over Officers Run (TSF-MF, Channel 1). These activities will result in 76 linear feet (2,916 square feet) of permanent stream impact.

2. To construct and maintain a new 58-inch by 91-inch horizontal elliptical reinforced concrete culvert under SR 0372 located within the floodplain approximately 189 feet west of the proposed bridge to facilitate the conveyance of overbank/high flow. This activity includes the placement of riprap rock protection as well as grading within a wetland (PEM/PSS, Wetland 2) and floodway/floodplain of Officers Run to facilitate the conveyance of overbank flow resulting in 1,437 square feet (0.033 acre) of permanent wetland impact and 1,873 square feet (0.043 acre) of temporary wetland impact.

3. To construct and maintain a temporary road crossing with two (2) 17-foot wide lanes consisting of four (4) 6-foot diameter corrugated metal pipes to facilitate conveyance of Officers Run (TSF-MF, Channel 1) temporary by-pass flow. This activity includes the placement of temporary fill within the floodway/floodplain of Officers Run and will result in 154 linear feet (6,845 square feet) of temporary stream impact.

4. To relocate an unnamed tributary to Officers Run (TSF-MF, Channel 3). This activity includes the removal of an existing driveway culvert and, in its place, construct and maintain a 24-inch by 38-inch elliptical concrete pipe culvert conveying perennial flow to Officers Run (TSF-MF, Channel 1). This construction activity also includes impact to a wetland (PEM/PSS, Wetland 3) located upstream of proposed driveway culvert resulting in 136 linear feet (1,530 square feet) of permanent stream impact and 87 square feet (0.002 acre) of permanent wetland impact.

The overall project will result in 33,836 square feet (0.78 acre) of permanent and 23,679 square feet (0.54 acre) of temporary floodplain impacts and is located at Lower Valley Road approximately 400 feet east of Gap Newport Pike intersection in Atglen Borough and West Sadsbury Township, Chester County (USGS PA Parkesburg Quadrangle—Latitude 39.947494 N, Longitude 75.967255 W).

*Northeast Regional Office, Waterways and Wetlands Program, 2 Public Square, Wilkes-Barre, PA 18701-1915, Telephone 570-826-2511.*

**E48-451. Portland Industrial Park LP**, 102 Demi Road, Portland, PA 18351, Northampton County, U.S. Army Corps of Engineers, Philadelphia District.

To construct and maintain the following water obstructions and encroachments associated with the construction of an industrial manufacturing/warehouse facility for the Ultra-Poly Corporation:

1) To fill and maintain an abandoned, 0.95-acre water-filled lacustrine quarry pit having a pool depth of approximately 15-feet.

2) To modify and maintain an existing 75-foot long, 45-foot wide, riprap-lined stormwater outfall within the floodway of an Unnamed Tributary to the Delaware River (CWF, MF) with work consisting of re-grading the existing riprap apron and the placement of additional riprap.

3) To construct and maintain a 50-foot long, 8-foot wide, riprap-lined trapezoidal stormwater outfall channel within the floodway of an Unnamed Tributary to the Delaware River (CWF, MF) having 2:1 side slopes, and a 2-foot bottom width.

The project is located on the north side of Demi Road, approximately 0.4-mile southwest of the intersection of S.R. 611 (N. Delaware Drive) and River Road (Portland, PA Quadrangle Latitude: 40° 54' 53.76" Longitude: -75° 5' 48.34"). Subbasin 1F.

*Southcentral Region: Waterways & Wetlands Program, 909 Elmerton Avenue, Harrisburg, PA 17110, Ed Muzic, Section Chief, 717.705.4802.*

**E31-240: Borough of Huntingdon**, 530 Washington Street, P.O. Box 592, Huntingdon, PA 16652, in Huntingdon Borough, **Huntingdon County**.

To construct and maintain a 6-foot long, 6-foot wide, and 5-foot high bulk water loading station on a concrete slab, gravel parking at grade, and fencing in the floodplain of the Juniata River (WWF, MF). The project is located within Huntingdon Borough off Ice Plant Road approximately 1-mile northwest of the intersection with S.R. 0026 and 4th Street; (Latitude: 40° 29' 13.9", Longitude: -78° 01' 9.7") in Huntingdon Borough, Huntingdon County. The purpose of the project is to construct a dog park on Huntingdon Borough Property. The permittee is not impacting wetlands, streams, or floodways on site. The permit was issued on February 27, 2019.

*Southwest Region: Waterways & Wetlands Program, 400 Waterfront Drive, Pittsburgh, PA 15222, Dana Drake, Waterways and Wetlands Program Manager, 412-442-4000.*

**E04-146-A1, Pittsburgh Intermodal Terminals**, P.O. Box 29, Butler, PA 16003, Ambridge Borough, **Beaver County**, Pittsburgh ACOE District.

Has been given consent to:

Amend the existing permit, E04-146 (which authorized the applicant to maintain docking facilities and perform maintenance dredging, as required, along the right downstream bank of the Ohio River (WWF) at Mile Point 15.5 in the Borough of Ambridge, Beaver County), to:

1. Correctly identify the location of the dock, along the right downstream bank of the Ohio River at Mile Point 16.5 in the Borough of Ambridge, Beaver County, which will continue to be maintained as noted above;

2. Operate and maintain a second existing dock, three (3) concrete icebreakers, and a 460 ft long by 100 ft wide mooring area; and to perform maintenance dredging within the mooring area;

As mitigation for the stream impacts a payment was made to the PA Mussel Conservation Fund. The project site is located along the right descending bank of the Ohio River at Mile Point 15.8 (Ambridge, PA USGS 7.5 minute Topographic Quadrangle, N: 14.6 inches; W: 14.8 inches; Lat: 40° 34' 50"; Long: -80° 13' 53"; Sub-basin 20G; USACE Pittsburgh District) in the Borough of Ambridge, Beaver County.

**E04-209-A1, Phil's Towing Company, Inc.**, 1125 Greiner Street, Monaca, PA 15061, Greene Township, **Beaver County**, Pittsburgh ACOE District.

Has been given consent to:

1. Operate and maintain an existing 28' × 125' spud barge, as a landing area;



2. Operate and maintain an existing 26' × 1,050' docking area, consisting of five (5) grounded, double-stacked, standard (26' × 175') barges, and one (1) single, grounded, standard barge, which are connected end-to-end; and

3. Operate and maintain an existing string of spar barges (26' × 600'), which are secured between the aforementioned spud barge and docking area; For the purpose of operating a barge and towboat fleeting and repair company, known as Phil's Towing Company, Inc., at approximate River Mile 37, of the Ohio River (WWF, N). The project is located at 150 Dam Road, Georgetown, PA 15043 (Midland, PA USGS topographic quadrangle; Latitude: 40° 38' 17.23"; Longitude: -80° 28' 22.88"; Sub-basin: 20G; Pittsburgh Corps District), in and along approximately 1,730' of the Ohio River, in Greene Township, Beaver County. This facility also includes an approx. 3.8 acre (140' × 1,170') mooring area, for up to twenty-four (24) 35' × 195' moored barges. While no new construction is included in the current project, the currently existing facility represents an expansion of a previously permitted (DEP Permit No. E04-209) barge docking facility.

**E63-707, Thomas and Kathleen Marecic**, 2007 Grandview Farms Ct., Bethel Park, PA 15102, Morris Township, **Washington County**, Pittsburgh ACOE District.

Has been given consent to:

1. Construct and maintain a bridge having a clear span of 50 feet and an underclearance of 7 feet across Tencm Creek (TSF),

2. Rehabilitate an existing low flow crossing composed of twenty-one 18" culvert pipes.

For the purpose of improving overall safety, roadway site distance, and provide accessibility during high water events to the permittee's property. The project will permanently impact 21 linear feet of stream channel and 0.07 acre of floodway.

The project will result in temporary impacts to 70 linear feet of stream channel and 0.25 acre of floodway. No mitigation is required. The project is located along SR 2020 near Hackney Station Road. (Amity, PA USGS Topographic Quadrangle, Chapter 93: TSF, B; Sub-basin 20), in Morris Township, Westmoreland County.

**E63-713, Pennsylvania Department of Transportation Engineering District 12**, 825 North Gallatin Avenue Extension, Uniontown, PA 15401, North Strabane Township, **Washington County**, Pittsburgh ACOE District.

Has been given consent to:

1. Remove the existing 105' long 18" pipe enclosure carrying an unnamed tributary to Chartiers Creek (S-SRC-07; WWF) having a drainage area of less than 100 acres and construct and maintain a 121' long 18" replacement pipe enclosure on an adjacent alignment; downstream of this pipe place and maintain fill in 187' of this same UNT and construct and maintain a 187' long relocated channel which will be managed for stormwater control.

2. Remove the existing 94' long 24" pipe carrying an unnamed tributary to Chartiers Creek (S-SRC-08; WWF) having a drainage area less than 100 acres and construct and maintain a 98' long 24" replacement pipe on an adjacent alignment.

3. Remove the existing 93' long 24" pipe carrying an unnamed tributary to Chartiers Creek (S-SRC-09; WWF) having a drainage area less than 100 acres and place and maintain fill in 499' of S-SRC-09 downstream of the removed pipe outlet; the hydrology for this stream will be diverted to S-SRC-10 via stormwater conveyance channels. In addition, construct and maintain a waterline utility crossing under S-SRC-09 to replace the service lines to a business and residential home.

4. Place and maintain fill in 140' of an unnamed tributary to Chartiers Creek (S-SRC-09A; WWF) having a drainage area less than 100 acres; the hydrology for this stream will be diverted to S-SRC-10 via stormwater conveyance channels.

5. Remove the existing 57' long 18" pipe carrying an unnamed tributary to Chartiers Creek (S-SRC-10; WWF) having a drainage area less than 100 acres and construct and maintain a 58' long 24" replacement pipe on an adjacent alignment; downstream of this pipe, place and maintain 235' of S-SRC-10 in a 192' long 30" pipe enclosure.

6. Remove the existing 150' long 30" pipe enclosure carrying an unnamed tributary to Chartiers Creek (S-SRC-02; WWF) having a drainage area less than 100 acres; construct and maintain a 151' long 36" replacement pipe enclosure on an adjacent alignment; in addition place and maintain fill in 23' of S-SRC-02 and construct and maintain a 20' long relocated replacement channel to align the streamflow with the inlet of the new pipe; downstream of the pipe replacement, place and maintain fill in 320' of S-SRC-02 and construct and maintain a 317' long relocated replacement channel due to the proposed fill slope of the widening SR519.

7. Place and maintain fill in 57' of an unnamed tributary to Chartiers Creek (S-KLE-03; WWF) having a drainage area less than 100 acres.

8. Place and maintain fill in 31' of an unnamed tributary to Chartiers Creek (S-SRC-05; WWF) having a drainage area less than 100 acres.

9. Remove the existing 82' long 24" pipe carrying an unnamed tributary to Chartiers Creek (S-SRC-06; WWF) having a drainage area less than 100 acres and construct and maintain a 73' long 48" replacement pipe on an adjacent alignment; in addition, place and maintain fill in 17' of S-SRC-06 and construct and maintain a 38' long relocated replacement channel to align streamflow with the inlet of the new pipe.

10. Remove the existing 77' long 36" pipe carrying an unnamed tributary to Chartiers Creek (S-SRC-04; WWF) having a drainage area less than 100 acres and construct and maintain an 82' long 42" replacement pipe on an adjacent alignment.

11. Construct and maintain a 22' long extension of the existing 214' long enclosure carrying an unnamed tributary to Chartiers Creek (S-SRC-03; WWF) having a drainage area less than 100 acres; in addition place and maintain fill in 18' of S-SRC-03 and construct and maintain a 21' long relocated replacement channel to align streamflow with the inlet of the new pipe.

12. Remove the existing 80' long 54" culvert carrying an unnamed tributary to Chartiers Creek (S-SRC-01; WWF) having a drainage area less than 100 acres and construct and maintain a 116' 54" replacement enclosure on an adjacent alignment.

13. In addition, construct and maintain roadway associated stormwater outfalls, place and maintain fill in 0.22

acre of wetland (0.06 acre PEM, 0.02 acre PSS, and 0.14 acre PFO), and temporarily impact 0.04 acre of wetland (0.02 PEM and 0.02 PSS) and 521' of stream for the purpose of constructing these encroachments.

The project includes the widening and addition of turn lanes along SR 519 from the intersection with I-79 to the intersection with US 19, as well as intersection improvements at both intersections. The project is located in North Strabane Township, Washington County (Washington East Quadrangle; Beginning Latitude: 40 14' 49.6", Beginning Longitude: -80 12' 15.3"; Ending Latitude: 40 14' 25.9", Ending Longitude: -80 10' 43.3"; Sub-basin 19F; Pittsburgh ACOE District). Compensatory stream and wetland mitigation will occur offsite. Wetland mitigation will occur at State Game Lands # 302 in Richhill Township, Greene County (Wind Ridge Quadrangle; Latitude 39° 57' 8.4", Longitude -80° 29' 8.1"; Sub-basin 20E; Pittsburgh ACOE District). Stream mitigation will occur on two unnamed tributaries to Ralston Run (HQ-WWF) in Donegal Township, Washington County (West Middleton Quadrangle; Latitude 40° 9' 16.9", Longitude -80° 29' 29.2"; Sub-basin 20E; Pittsburgh ACOE District).

*Northwest Region: Waterways & Wetlands Program, 230 Chestnut Street, Meadville, PA 16335-3481.*

**E24-266, Johnsonburg Borough Municipal Authority**, 434 Center Street, Johnsonburg, PA 15845. Water Treatment Facility Intakes, in Johnsonburg Borough, **Elk County**, ACOE Pittsburgh District (Ridgway, PA Quadrangle; N: 41.493998°, W: -78.672219°).

Construct, operate, and maintain a raw water intake structure and stormwater outfall within the East Branch of the Clarion River (HQ-CWF) at a point approximately 150 feet north of the Glen Avenue and 1st Avenue intersection for the purposes of supplying a new water treatment facility and discharging stormwater from the new facility (Ridgway, PA Quadrangle; N: 41.493998; W: -78.672219) in Johnsonburg Borough, Elk County.

*District Oil and Gas Operations: Eastern Oil & Gas District, 208 West Third Street, Suite 101, Williamsport, PA 17701.*

**E0829-117: Chief Oil and Gas, LLC**, 1720 Sycamore Road, Montoursville, PA 17754, Overton Township, **Bradford County**, USACE Baltimore District.

To construct, operate, and maintain:

1) a permanent access road with a 14" × 23" ERCP culvert impacting 54 linear feet of an unnamed tributary to Sugar Run (EV, MF) and 5,879 square feet of its channel/floodway, 19 square feet of a Palustrine Emergent Wetland (EV), 1,528 square feet of a Palustrine Emergent Wetland (EV), and 24 square feet of a Palustrine Scrub Shrub Wetland (EV) (Overton, PA Quadrangle, Latitude: 41° 35' 53", Longitude: -76° 35' 35");

2) a permanent access road with a 24" × 38" ERCP culvert impacting 48 linear feet of an unnamed tributary to Sugar Run (EV, MF) and 2,374 square feet of its channel/floodway, 9 linear feet of an adjacent unnamed tributary to Sugar Run (EV, MF) and 4,286 square feet of its channel/floodway, and 91 square feet of a Palustrine Emergent Wetland (EV) (Overton, PA Quadrangle, Latitude: 41° 35' 53", Longitude: -76° 35' 37");

3) a permanent access road with a 19" × 30" ERCP culvert impacting 50 linear feet of an unnamed tributary to Sugar Run (EV, MF) and 114 square feet of its channel/floodway, 9 linear feet of an adjacent unnamed tributary to Sugar Run (EV, MF) and 25 square feet of its channel/floodway, and 531 square feet of a Palustrine

Emergent Wetland (EV) (Overton, PA Quadrangle, Latitude: 41° 35' 53", Longitude: -76° 35' 40");

4) a permanent access road with a 24" × 38" ERCP culvert impacting 53 linear feet of an unnamed tributary to Sugar Run (EV, MF) and 120 square feet of its channel/floodway, and 1,459 square feet of the floodway of an adjacent unnamed tributary to Sugar Run (EV, MF) (Overton, PA Quadrangle, Latitude: 41° 35' 54", Longitude: -76° 35' 56");

5) a permanent access road impacting 263 square feet of a Palustrine Emergent Wetland (EV) (Overton, PA Quadrangle, Latitude: 41° 35' 54", Longitude: -76° 35' 57");

6) a permanent access road with a 19" × 30" ERCP culvert is impacting 9 linear feet of an unnamed tributary to Sugar Run (EV, MF) and 2,785 square feet of its channel/floodway, and 48 linear feet of an adjacent unnamed tributary to Sugar Run (EV, MF) and 5,461 square feet of its channel/floodway (Overton, PA Quadrangle, Latitude: 41° 35' 54", Longitude: -76° 35' 59");

7) a permanent access road impacting 139 square feet of a Palustrine Emergent Wetland (EV) (Overton, PA Quadrangle, Latitude: 41° 35' 54", Longitude: -76° 36' 01");

8) a permanent access road with one 18" SLCPP culvert impacting 50 linear feet of an unnamed tributary to Sugar Run (EV, MF) and 6,255 square feet of its channel/floodway, and 9 linear feet of an adjacent unnamed tributary to Sugar Run (EV, MF) and 1,690 square feet of its channel/floodway (Overton, PA Quadrangle, Latitude: 41° 35' 48", Longitude: -76° 36' 09");

9) a permanent access road with one 24" SLCPP culverts impacting 47 linear feet of an unnamed tributary to Sugar Run (EV, MF) and 5,292 square feet of its channel/floodway, and 9 linear feet of an adjacent unnamed tributary to Sugar Run (EV, MF) and 1,059 square feet of its channel/floodway (Overton, PA Quadrangle, Latitude: 41° 35' 46", Longitude: -76° 36' 14");

10) a permanent access road impacting 211 square feet of the floodway of an unnamed tributary to Sugar Run (EV, MF) (Overton, PA Quadrangle, Latitude: 41° 35' 47", Longitude: -76° 36' 37");

11) a permanent access road impacting 2,513 square feet of the floodway of an unnamed tributary to Sugar Run (EV, MF) (Overton, PA Quadrangle, Latitude: 41° 35' 51", Longitude: -76° 36' 45");

12) a permanent access road impacting 3,071 square feet of a floodway of an unnamed tributary to Sugar Run (EV, MF) and 29 square feet of a Palustrine Emergent Wetland (EV) (Overton, PA Quadrangle, Latitude: 41° 35' 52", Longitude: -76° 36' 47");

13) a permanent access road impacting 4,409 square feet of a floodway of an unnamed tributary to Sugar Run (EV, MF) (Overton, PA Quadrangle, Latitude: 41° 35' 53", Longitude: -76° 36' 48");

14) a permanent access road impacting 911 square feet of a floodway of an unnamed tributary to Sugar Run (EV, MF) (Overton, PA Quadrangle, Latitude: 41° 35' 54", Longitude: -76° 36' 49");

15) a permanent access road and one 36" SLCPP culvert impacting 47 linear feet of an unnamed tributary to Sugar Run (EV, MF) and 518 square feet of its channel/floodway, and impacting 70 square feet of a Palustrine Forested Wetland (EV) (Overton, PA Quadrangle, Latitude: 41° 35' 56", Longitude: -76° 36' 50").

The project will result in 1,551 square feet (0.04 ac.) of permanent PEM wetland impacts, 1,030 square feet (0.02 ac.) of temporary PEM wetland impacts, 24 square feet (0.001 ac.) of PSS wetland conversion, and 70 square feet (0.002 ac.) of PFO wetland conversion, 297 linear feet (0.02 ac.) of permanent stream channel impacts, 145 linear feet (0.01 ac.) of temporary stream impacts, and 56,763 square feet (1.30 ac.) of floodway impacts, all for the purpose of installing a natural gas well pad and permanent access road for Marcellus Shale development in Overton Township, Bradford County.

#### ENVIRONMENTAL ASSESSMENTS

*Central Office: Bureau of Waterways Engineering and Wetlands, Rachel Carson State Office Building, Floor 2, 400 Market Street, P.O. Box 8460, Harrisburg, PA 17105-8460.*

**D48-091EA. Leslie Huhn**, Township Manager, Lower Saucon Township, 3700 Old Philadelphia Pike, Bethlehem, PA 18015, Hellertown Borough and Lower Saucon Township, **Northampton County**, USACOE Philadelphia District.

Project proposes to remove the breached remains of Kulp Dam to eliminate a threat to public safety and to restore approximately 1,000 feet of stream channel to a free-flowing condition. The project is located across Saucon Creek (CWF, MF) (Hellertown, PA Quadrangle, Latitude: 40.5788; Longitude: -75.3453).

#### 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, P.O. Box 8457, Harrisburg, PA 17105-8457, (717) 787-3483. TDD users may contact the Board through the Pennsylvania AT&T Relay Service, (800) 654-5984. Appeals must be filed with the Board within 30 days of publication of this notice in the *Pennsylvania Bulletin* unless the appropriate statute provides a different time period. Copies of the appeal form and the Board's rules of practice and procedure may be obtained from the Board. The appeal form and the Board's rules of practice and procedure are also available in Braille or on audiotape from the Secretary to the Board at (717) 787-3483. This paragraph does not, in and of itself, create 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 free pro bono representation. Call the Secretary to the Board at (717) 787-3483 for more information.

*Southwest District: Oil & Gas Management Program Manager, 400 Waterfront Drive, Pittsburgh, PA 15222.*

ESCGP-3 # ESX15-059-0017  
Applicant Name Rice Drilling B, LLC  
Contact Person Todd Klaner  
Address 2400 Ansys Drive, Suite 200  
City, State, Zip Canonsburg, PA 15317

County Greene  
Township(s) Whitely Twp  
Receiving Stream(s) and Classification(s) Unnamed tributary to Patterson Run, Patterson Run (TSF)

ESCGP-3 # ESX16-059-0014 Renewal  
Applicant Name EQT Production Company and EQM Gathering OPCO, LLC

Contact Person Todd Klaner and Brint Goettel  
Address 2400 Ansys Dr., Ste. 200, and 2200 Energy Dr.  
City, State, Zip Canonsburg, PA 15317  
County Greene County

Township(s) Jackson and Aleppo Townships  
Receiving Stream(s) and Classification(s) UNTs to Job Creek (TSF).

Secondary Receiving Water—Job Creek (TSF).

ESCGP-3 # ESX13-125-0065

Applicant Name Rice Drilling B, LLC

Contact Person Todd Klaner

Address 2400 Ansys Dr., Ste. 200

City, State, Zip Canonsburg, PA 15317

County Washington County

Township(s) North Bethlehem Township

Receiving Stream(s) and Classification(s) Unnamed tributaries to Daniels Run, Ten Mile Creek (TSF), Monongahela River (WWF)

*Eastern Region: Oil & Gas Management Program Manager, 208 West Third Street, Williamsport, PA 17701.*

ESCGP-3 # ESG32911318-001

Applicant Name Chief Oil & Gas LLC

Contact Person Jeff Deegan

Address 8111 Westchester Drive, Suite 900

City, State, Zip Dallas, TX 75225

County Sullivan

Township(s) Forks Twp.

Receiving Stream(s) and Classification(s) Streby Run (EV)

ESCGP-2 # ESG29-117-18-0037

Applicant Name Eclipse Resources—PA, L.P.

Contact Person Bruce Carpenter

Address 2121 Old Gatesburg Road, Suite 110

City, State, Zip State College, PA 16803

County Tioga & Potter

Township(s) Westfield & Clymer Twps. (Tioga)/Hector Twp. (Potter)

Receiving Stream(s) and Classification(s) Potter Brook (HQ-CWF), Crance Brook (CWF), Phoenix Run (HQ-CWF), Little Phoenix Run (HQ-CWF), Wattles Run (CWF)

#### OIL AND GAS MANAGEMENT

The following Well Permits have been issued with a waiver under 58 Pa.C.S. § 3215(b)(4) (relating to well location restrictions).

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, P.O. Box 8457, Harrisburg, PA 17105-8457, (717) 787-3483. TDD users may contact the Board through the Pennsylvania AT&T Relay Service, (800) 654-5984. Appeals must be filed which 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.

*Southwest Region: Oil and Gas Management Program Manager, 400 Waterfront Drive, Pittsburgh, PA 15222.*

**E63-07-015: Consol Pennsylvania Coal Company, LLC**, 1000 Consol Energy Drive, Canonsburg, PA 15317, South Franklin Township, **Washington County**, ACOE Pittsburgh District.

Consol Pennsylvania Coal Company, LLC is proposing to install a temporary access road and a pad for the purpose of plugging an existing gas well (GW-2028). The existing well is located approximately 3,500 feet west of the intersection of Vaneal Road (SR-3014) and Old Scales Road (SR-3009) in South Franklin Township, Washington County (lat/long: 40.104639, -80.307940). The well is being plugged to allow for future longwall mining to safely progress through the area.

The entire project will require approximately 2.45 acres of earth disturbance. Gas Well 2028 is located within a Palustrine Forested (PFO) portion of a wetland. Temporary impacts to the PFO wetland (0.258 acre total) are unavoidable given the location of the existing gas well within the wetland. Following plugging, all areas will be restored to conditions prior to construction and a forested wetland seed mix will be used to re-plant the impacted areas of the wetland.

#### *Wetland Crossings*

Wetland W01DAM71817

Palustrine Forested (PFO)

Lat: N 40.104186,

Long: W -80.306953

Temporary impacts: 0.258 acre

Permanent impacts: 0 acre

## **CORRECTIVE ACTION UNDER ACT 32, 1989**

### **PREAMBLE 2**

**The following plans and reports were submitted under the Storage Tank and Spill Prevention Act (35 P.S. §§ 6021.101—6021.2104).**

Provisions of 25 Pa. Code Chapter 245 Subchapter D, Administration of the Storage Tank and Spill Prevention Program, require the Department of Environmental Protection (DEP) to publish in the *Pennsylvania Bulletin* a notice of submission of plans and reports. A remedial action plan is submitted to summarize the site characterization, document the design and construction details for the remedial action, and describe how the remedial action will attain the selected remediation standard. The remedial action plan also provides results of studies performed and data collected to support the remedial action and a description of postremediation care requirements. A remedial action completion report is submitted to document cleanup of a release of a regulated substance at a site to

the selected remediation standard. A remedial action completion 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 non-residential 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.

For further information concerning plans or reports, please contact the Environmental Cleanup Program Manager in the DEP 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 listed. TDD users may telephone the DEP through the Pennsylvania AT&T Relay Service at (800) 654-5984.

The Department has received the following plans and reports:

*Southeast Region: Environmental Cleanup & Brownfields Program Manager, 2 East Main Street, Norristown, PA 19401.*

**New Hope Auto Sales**, 09-34413, 6528 Lower York Rd, Solebury Township, **Bucks County**. Boucher & James, Inc., 1546 Ferry Road Building, Doylestown, PA 18901, on behalf of Estate of Claire Hovespian, c/o Howland, Hess, Guinan, Torpey, Cassidy, & O'Connell, LLP, 2444 Huntingdon Pike, Huntingdon Valley, PA 19006 submitted a Remedial Action Completion Report concerning remediation of soil and groundwater contaminated with petroleum products. The report is intended to document remediation of the site to meet the residential Statewide health standard.

**Castor Fuels 67249**, 51-23880, 6301 Castor Ave, **City of Philadelphia**. Antea Group, Inc, 1055 Westlakes Drive, Suite 300, Berwyn, PA 19312, on behalf of Getty Properties Corp., Two Jericho Plaza, Suite 110, Jericho, NY 11753 submitted a Site Characterization report 310(b) concerning remediation of soil contaminated with petroleum products. The report is intended to document remediation of the site to meet the residential Statewide health standard.

**Eddington Supply**, 09-41185, 2734 Bristol Pike, Bensalem Township, **Bucks County**. Advanced GeoServices, 1878 Marleton Pike East, Suite 10, Cherry Hill, NJ 08003, on behalf of Cook Property Management, LLC, 77 Township Line Road, Suite 250, Yardley, PA 19067 submitted a Remedial Action Plan concerning remediation of soil and groundwater contaminated with petroleum products. The report is intended to document remediation of the site to meet site specific standards.

*Southwest Region: Environmental Cleanup Program Manager, 400 Waterfront Drive, Pittsburgh, PA 15222-4745.*

**Jeff's Service Station**, Storage Tank Primary Facility ID # 11-25183, 3606 Bigler Avenue, Northern Cambria, PA 15714, Northern Cambria Borough, **Cambria County**. ATC Group Services, LLC, 270 William Pitt Way, Pittsburgh, PA 15238, on behalf of Edward P. Shea, 3606 Bigler Avenue, Northern Cambria, PA 15714, submitted a Remedial Action Completion Report concerning remediation of soil and groundwater contaminated with petroleum products. The report is intended to document remediation of the site to meet the Statewide health standard.



**Sheetz Store # 230**, Storage Tank Primary Facility ID # 30-37164, 973 State Route 88, Carmichaels, PA 15320, Carmichaels Borough, **Greene County**. EnviroTrac, LTD., 176 Thorn Hill Road, Warrendale, PA 15086, on behalf of Sheetz, Inc., 5700 6th Avenue, Altoona, PA 16602, submitted a Remedial Action Completion Report concerning remediation of soil and groundwater contaminated with petroleum products. The report is intended to document remediation of the site to meet the Statewide health standard.

**Blairsville Pacific Pride**, Storage Tank Primary Facility ID # 65-27481, 2262 Route 217 South, Blairsville, PA 15717, Derry Township, **Westmoreland County**. Letterle and Associates, Inc., 2859 Oxford Boulevard, Allison Park, PA 15101, on behalf of Lockard Co., 4470 West Pike Road, Indiana, PA 15701, submitted a Remedial Action Plan concerning remediation of soil and groundwater contaminated with petroleum products. The report is intended to document remediation of the site to meet the Statewide health standard.

## CORRECTIVE ACTION UNDER ACT 32, 1989

### PREAMBLE 3

**The DEP has taken action on the following plans and reports under the Storage Tank and Spill Prevention Act (35 P.S. §§ 6021.101—6021.2104).**

Provisions of 25 Pa. Code Chapter 245 Subchapter D, Administration of the Storage Tank and Spill Prevention Program, require the Department of Environmental Protection (DEP) to publish in the *Pennsylvania Bulletin* a notice of its final actions on plans and reports.

A remedial action plan is submitted to summarize the site characterization, document the design and construction details for the remedial action, and describe how the remedial action will attain the selected remediation standard. The remedial action plan also provides results of studies performed and data collected to support the remedial action and a description of postremediation care requirements. A remedial action completion report is submitted to document cleanup of a release of a regulated substance at a site to the selected remediation standard. A remedial action completion 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

non-residential 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.

The DEP may approve or disapprove plans and reports submitted. This notice provides the DEP's decision and, if relevant, the basis for disapproval.

For further information concerning the plans and reports, please contact the Environmental Cleanup Program Manager in the DEP Regional Office under which the notice of the plan or report appears. If information concerning a report is required in an alternative form, contact the Community Relations Coordinator at the appropriate Regional Office listed. TDD users may telephone the DEP through the Pennsylvania AT&T Relay Service at (800) 654-5984.

The DEP has received the following plans and reports:

*Northeast Region: Environmental Cleanup & Brownfields Program Manager, 2 Public Square, Wilkes-Barre, PA 18701-1915.*

**Hornbeck Chevrolet**, Storage Tank ID # 58-23256, 400 Main Street, Forest City Borough, **Susquehanna County**. Aquaterra, P.O. Box 744, West Chester, PA 19381 on behalf of Hornbeck Chevrolet, 400 Main Street, Forest City, PA 18421, has submitted a Remedial Action Plan concerning remediation of soil and groundwater contaminated with gasoline. The Remedial Action Plan was acceptable to meet Site-Specific Standards for soil and groundwater and was approved by DEP on February 27, 2019.

**Jack Frost Mountain Ski Area**, Storage Tank ID # 13-30162, 434 Jack Frost Mountain Road, Kidder Township, **Carbon County**. Liberty Environmental, 505 Penn Street, Suite 400, Reading, PA 19601, on behalf of JFBB Ski Areas, P.O. Box 1539, Blakeslee, PA 18610, submitted a Remedial Action Completion Report concerning remediation of soil contaminated with benzene, toluene, ethylbenzene, Methyl tert-butyl Ether, xylenes (total), isopropylbenzene (cumene), naphthalene, 1,3,5-trimethylbenzene, and 1,2,4-trimethylbenzene and groundwater contaminated with benzene, toluene, ethylbenzene, Methyl tert-butyl Ether, xylenes (total), isopropylbenzene (cumene), naphthalene, 1,3,5-trimethylbenzene, and 1,2,4-trimethylbenzene. The Remedial Action Completion Report demonstrated attainment of a combination Statewide Health and Site-Specific Standards for soils and groundwater and was approved by DEP on March 4, 2019.

## SPECIAL NOTICES

### Notice of Certification to Perform Radon-Related Activities in Pennsylvania

In the month of February 2019 Department of Environmental Protection of the Commonwealth of Pennsylvania, under the authority contained in the Radon Certification Act, act of July 9, 1987, P.L. 238, No. 43 (63 P.S. §§ 2001—2014) and regulations promulgated thereunder at 25 Pa. Code Chapter 240, has certified the persons listed as follows to perform radon-related activities in this Commonwealth. The period of certification is 2 years. (For a complete list of persons currently certified to perform radon-related activities in this Commonwealth and for information as to the specific testing devices that persons certified for testing or laboratory are certified to use, contact the Bureau of Radiation Protection, Radon Division, P.O. Box 8469, Harrisburg, PA 17105-8469, (1-800-23RADON)).

Name	Address	Type of Certification
Brian Bacchus	125 Twin Oaks Drive Wexford, PA 15090	Mitigation
Jason Bancroft	P.O. Box 261 Gilbertsville, PA 19525	Testing

<i>Name</i>	<i>Address</i>	<i>Type of Certification</i>
James Brownell	5057 State Route 247 Clifford Township, PA 18421	Testing
Bernard Catanzareti	1177 Dewalt Drive Easton, PA 18040	Testing
Shavaun Cotter Partner Assessment Corporation	362 Fifth Avenue, Suite 501 New York, NY 10001	Testing
John Fordyce	7844 Old Rte. 56 Hwy. West Indiana, PA 15701	Testing
Lindsey Golubosky	681 East Watson Street Bedford, PA 15522	Testing
Gene Heffner	P.O. Box 952 Pottsville, PA 17901	Testing
Elliot Hoffman	P.O. Box 91 Akron, PA 17501	Mitigation
Frederick Lawrence	1468 Hawleyton Road Binghamton, NY 13903	Testing
Edward Moran	940 Port Carbon Street Pottsville, PA 17901	Testing
James Mulvehill	126 Furnari Avenue Johnstown, PA 15905	Testing
Nyveldt Enterprises, LLC	27 Mt. Carmel Street Roseto, PA 18013	Testing
John O'Connor	1270 Keysville Road South Keymar, MD 21757	Testing
Pro-Lab, Inc.	1675 North Commerce Parkway Weston, FL 33326	Laboratory Analysis
Steven Robinson Peach Inspections, Inc.	120 Cambridge Road Coatesville, PA 19320	Testing
Gregory Scheer	474 McCollum Road Montrose, PA 18801	Testing & Mitigation
William Staniland	706 Russett Meadow Court Cranberry Twp., PA 16066	Testing
Milan Stanojevic	199 Jill Drive Pittsburgh, PA 15236	Testing

## **PUBLIC NOTICE OF APPLICATION AND DRAFT STATE WATER QUALITY CERTIFICATION FOR A FERC REGULATED PIPELINE PROJECT**

### **Proposed State Water Quality Certification Required by Section 401 of the Clean Water Act for the Line 134 Replacement Project— East & West Projects**

*Regional Permit Coordination Office: 400 Market Street,  
Harrisburg, PA 17101, Domenic Rocco, PE, Program  
Manager, 717-772-5987.*

**EA00832-001, Columbia Gas Transmission, LLC** (Applicant), 400 Louisiana St, Suite 14-113, Houston, TX 77002. Line 134 Replacement Project—East & West Projects (Project), in Fairview Township, **Butler County**, Perry Township, **Armstrong County**, and Toby Township, **Clarion County**, ACOE Pittsburgh District. The proposed project starts in Fairview Township, Butler County (Latitude: 41.012037°; Longitude: -79.696592°) and ends in Toby Township, Clarion County (Latitude: 41.045273°; Longitude: -79.508948°).

On December 21, 2018 Applicant requested a state water quality certification (SWQC) from the Department of Environmental Protection (Department), as required by Section 401 of the Clean Water Act (33 U.S.C.A. § 1341), to ensure that the construction, operation and maintenance of the Project will protect water quality in this Commonwealth consistent with the requirements of State law and the Clean Water Act.

The Project, as proposed, includes the replacement of approximately 4.11-miles/21,700 feet of old, 10-inch pipeline with a new 4.06-mile/21,436-foot long, 10-inch pipeline to transport natural gas from the Ellwood City Compressor Station (Butler County) to the Rimersburg Compressor Station (Clarion County). This project includes a relocation of a 0.38-mile/1,990-foot long section of pipe, to be abandoned in-place, with a straighter 0.33-mile/1,730-foot long section of new pipeline in Armstrong County. The project is divided into two parts for the purpose of the FERC applications with approximately 3.22-mile/17,005-foot long new pipeline on the West Project and approximately 0.84-mile/4,435-foot long pipeline on the East Project.

The Project, as proposed, will require approximately 59.2 acres of earth disturbance, and impacts to 1,709

linear feet of UNT to Pine Run (WWF), UNT to Allegheny River (WWF), UNT to Cove Run (WWF), Cove Run (WWF), UNT to South Branch Bear Creek (WWF), UNT Cherry Run (CWF), Cherry Run (CWF), 4.72 acres of floodway, 0.73 acre of temporary PEM wetland impacts, and 0.01 acre of permanent impact due to PFO to PEM conversion.

The Department, by this notice, is proposing to issue a SWQC to Columbia Gas Transmission, LLC for the Line 134 Replacement Project—East & West Projects. The Department is proposing to certify that construction, operation and maintenance of the Line 134 Replacement Project—East & West Projects complies with the applicable provisions of sections 301—303, 306 and 307 of the Federal Clean Water Act (33 U.S.C.A. §§ 1311—1313, 1316 and 1317). The Department is proposing to further certify that the construction, operation and maintenance of the Line 134 Replacement Project—East & West Projects complies with water quality standards in this Commonwealth and that the construction, operation and maintenance of the projects does not violate applicable Commonwealth water quality standards provided that the construction, operation and maintenance of the project complies with the following Department water quality permitting programs, criteria and conditions established pursuant to Pennsylvania law:

1. *Discharge Permit*—Applicant shall obtain and comply with a National Pollutant Discharge Elimination System (NPDES) permit(s) for the discharge of water from the hydrostatic testing of the pipeline associated with the Project pursuant to Pennsylvania's Clean Streams Law (35 P.S. §§ 691.1—691.1001), 25 Pa. Code Chapter 92a (relating to NPDES permitting, monitoring and compliance), and all other applicable regulations.

2. *Erosion and Sediment Control Permit*—Applicant shall obtain and comply with an Erosion and Sediment Control Permit(s) for earth disturbance associated with the Project issued pursuant to Pennsylvania's Clean Streams Law and Storm Water Management Act (32 P.S. §§ 680.1—680.17), 25 Pa. Code Chapter 102 (relating to erosion and sediment control), and all other applicable regulations.

3. *Water Obstruction and Encroachment Permits*—Applicant shall obtain and comply with a Water Obstruction and Encroachment Permit(s) for the construction, operation and maintenance of all stream and wetland crossings associated with the Project pursuant to Pennsylvania's Clean Streams Law, Dam Safety and Encroachments Act (32 P.S. §§ 693.1—693.27), and Flood Plain Management Act (32 P.S. §§ 679.101—679.601.), 25 Pa. Code Chapter 105 (relating to dam safety and waterway management), 25 Pa. Code Chapter 106 (relating to floodplain management) and all other applicable regulations.

4. *Other Water Quality Requirements*—Applicant shall obtain any other permits, authorizations or approvals required to construct, operate, and maintain the Project from any interstate or international agency as required by an interstate compact or international agreement that has established water quality standards applicable to surface waters of this Commonwealth, including wetlands.

5. *Water Quality Monitoring*—The Department retains the right to specify additional studies or monitoring to ensure that the receiving water quality associated with the Project is not adversely impacted by any operational and construction process that may be employed by Applicant.

6. *Operation*—Applicant shall properly operate and maintain at all times all Project facilities and systems of treatment and control (and related appurtenances) installed to achieve compliance with the terms and conditions of this SWQC and all required permits, authorizations and approvals. Proper operation and maintenance includes adequate laboratory controls, appropriate quality assurance procedures, and the operation of backup or auxiliary facilities or similar systems installed by Applicant.

7. *Inspection*—The Project, including all relevant records, are subject to inspection at reasonable hours and intervals by an authorized representative of the Department or the delegated County Conservation District to determine compliance with this SWQC, including all required permits, authorizations or approvals required by this SWQC. The Applicant shall provide a copy of this SWQC to an authorized representative conducting an inspection of the Project.

8. *Transfer of Projects*—If Applicant intends to transfer any legal or equitable interest in the Project or any portion(s) thereof, the Applicant shall provide a copy of this SWQC and copies of any permits, authorizations or approvals obtained to comply with the SWQC upon the prospective transferee of the legal and equitable interest at least thirty (30) days prior to the contemplated transfer and shall simultaneously inform the appropriate Department office of such intent. Notice to the Department shall include a transfer agreement signed by the existing and new owners containing a specific date for transfer of responsibility, coverage, and liability under the SWQC and any permits, authorizations and approvals obtained to comply with the SWQC. The new owner shall submit to the Department a new application form for the SWQC and any permits, authorizations and approvals required to comply with the SWQC signed by the new owner.

9. *Correspondence*—All correspondence with and submittals to the Department concerning this SWQC shall be addressed to Department of Environmental Protection, Regional Permit Coordination Office, Domenic Rocco, PE, Program Manager, P.O. Box 69206, Harrisburg, PA 17106-9206.

10. *Reservation of Rights*—The Department may modify, suspend, or revoke this SWQC if (i) the Department becomes aware of new facts about the Project that warrant such action; or (ii) the Department determines that the Applicant has not complied with the terms and conditions of this certification. The Department may require additional measures to achieve compliance with any applicable law or regulation.

11. *Other Laws*—Nothing in this SWQC shall be construed to preclude the institution of any legal action or to relieve Applicant from any responsibilities, liabilities, or penalties established pursuant to any applicable law or regulation.

12. *Severability*—The provisions of this SWQC are severable and should any provision of this SWQC be declared invalid or unenforceable, the remainder of this SWQC shall not be affected thereby.

Prior to issuance of the final SWQC, the Department will consider all relevant and timely comments, suggestions or objections submitted to the Department within 30 days of this notice. Comments should be directed to Domenic Rocco, PE, Program Manager, at the previous address or through the Pennsylvania AT&T Relay Service at 800-654-5984 (TDD). Comments must be submitted in



writing and contain the name of the person commenting and a concise statement of comments, objections or suggestions on this proposal. No comments submitted by facsimile will be accepted.

### 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

*Regional Permit Coordination Office: 400 Market Street, Harrisburg, PA 17101, Domenic Rocco, PE, Program Manager, 717-772-5987.*

**Applicant: Columbia Gas Transmission, LLC** (Applicant), 400 Louisiana St, Suite 14-113, Houston, TX 77002, Line 134 Replacement Project—East & West Projects.

The applicant is proposing the installation and maintenance of an approximately 4.06-mile-long, 10-inch diameter pipeline and appurtenant facilities in various municipalities within Armstrong, Butler, and Clarion as part of the proposed Columbia Gas Line 134 Replacement Project. The project consists of six Chapter 105 Water Obstruction and Encroachment Permits and one Chapter 102 Erosion and Sediment Control Permit. Below are the Chapter 105 permit applications being reviewed by the Department.

**GP081083218-001 & GP111083218-001.** The **Butler County** portion of the project is located in Fairview Township, U.S. Army Corps of Engineers, Pittsburgh District. The proposed project is located in Fairview Township, Butler County starting at (Latitude: 41.012037°; Longitude -79.696592°) and extending to the county line (Latitude: 41.012354°; Longitude: -79.689958°).

The proposed project impacts in Butler County include a total of 31 feet of temporary impacts and zero feet of permanent impacts to UNT to South Branch Bear Creek (WWF); 0.11 acre of floodway impacts; no wetlands will be impacted in Butler County.

**GP080383218-001 & GP110383218-001.** The **Armstrong County** portion of the project is located in Perry Township, U.S. Army Corps of Engineers, Pittsburgh District. The proposed project is located in Perry Township, Armstrong County starting at the county line (Latitude: 41.012354°; Longitude: -79.689958°) and extending to (Latitude: 41.025709°; Longitude -79.632699°).

The proposed project impacts in Armstrong County include a total of 947 feet of temporary impacts and zero feet of permanent impacts to UNT to Pine Run (WWF), UNT to Allegheny River (WWF), UNT to Cove Run (WWF), and Cove Run (WWF); 2.59 acres of floodway impacts; 0.24 acre of temporary impacts to PEM; and 0.01 acre of permanent wetland impact due to PFO to PEM conversion. No mitigation is required, as the impacts are under de minimis.

**GP081683218-001 & GP111683218-001.** The **Clarion County** portion of the project is located in Toby Township, U.S. Army Corps of Engineers, Pittsburgh District. The proposed project is located in Toby Township, Clarion County starting at (Latitude: 41.046785°; Longitude -79.529572°) and extending to (Latitude: 41.045273°; Longitude -79.508948°).

The proposed project impacts in Clarion County include a total of 731 feet of temporary impacts and zero feet of permanent impacts to UNT Cherry Run (CWF) and Cherry Run (CWF); 2.02 acres of floodway impacts; 0.49 acre of temporary impacts to PEM wetlands; and zero acre of permanent impacts to wetlands.

#### EROSION AND SEDIMENT CONTROL PERMITS

The following parties have applied for Erosion and Sediment Control Permits for earth disturbance associated with oil and gas exploration, production, processing, or treatment operations or transmission facilities.

Unless otherwise indicated, on the basis of preliminary review and application of lawful standards and regulations, the Department proposes to issue a permit to discharge, subject to certain limitations in the permit conditions. These proposed determinations are tentative. Limitations are provided as erosion and sediment control best management practices which restrict the rate and quantity of sediment discharged.

A person wishing to comment on a proposed permit are invited to submit a statement to the appropriate Department office listed before the application within 30 days of this public notice. Comments reviewed within this 30-day period will be considered in the formulation of the final determinations regarding this application. Responses should include the name, address and telephone number of the writer and a concise statement to inform the Department of the exact basis of a comment and relevant facts upon which it is based. A public hearing may be



held after consideration of comments received by the appropriate Department office during the 30-day public comment period.

Following the 30-day comment period, the program manager from the appropriate Department office will make a final determination regarding the proposed permit. Notice of this determination will be published in the *Pennsylvania Bulletin* at which time this determination may be appealed to United States Court of Appeals for the 3rd Circuit, 21400 U.S. Courthouse, 601 Market Street, Philadelphia, PA 19106-1790.

The application and related documents, including the erosion and sediment control plan for the earth disturbance activity, are on file and may be inspected at the appropriate Department office.

Persons with a disability that require an auxiliary aid, service or other accommodation to participate during the 30-day public comment period should contact the specified Department office. TDD users may contact the Department through the Pennsylvania AT&T Relay Service at (800) 654-5984.

<i>Permit No.</i>	<i>Applicant Name &amp; Address</i>
ESG83016180001	Columbia Gas Transmission, LLC
ESG83000180001	400 Louisiana St Suite 14-113 Houston, TX 77002

More detailed information regarding the permit applications related to this proposed project is available from the Department's Regional Permit Coordination Office. Contact the Department's Regional Permit Coordination Office File Review Coordinator at 717-772-5987 to request a file review.

Comments on the applications can be emailed or sent via postal mail to the Department of Environmental Protection, Regional Permit Coordination Office, Rachel Carson Building, 400 Market Street, 10th Floor, Harrisburg, PA 17101, RA-EPREGIONALPERMIT@pa.gov.

**PUBLIC NOTICE OF APPLICATION AND DRAFT STATE WATER QUALITY CERTIFICATION FOR A FERC REGULATED PIPELINE PROJECT**

**Proposed State Water Quality Certification Required by Section 401 of the Clean Water Act for the Adelpia Gateway Project**

*Southeast Region: Waterways and Wetlands Program Manager, 2 East Main Street, Norristown, PA 19401, Telephone 484-250-5160.*

**EA00012-001, Adelpia Gateway, LLC** (Applicant), 1415 Wyckoff Road, Wall, NJ 07719. Adelpia Gateway Project (Project Name), in **Chester County** (East Goshen Township, Whiteland Township, Charlestown Township and, East Pikeland Township); **Delaware County** (Chester Township, Concord Township, Lower Chichester Township, Thornberry Township and, Trainer Borough); **Montgomery County** (Skipack Township and Perkiomen Township); **Bucks County** (Richlandtown Borough and West Rockhill Township); and **Northampton County** (Lower Mount Bethel Township); Philadelphia District of

**Applications received under sections 5 and 402 of The Clean Streams Law (35 P.S. §§ 691.5 and 691.402).**

*Regional Permit Coordination Office: 400 Market Street, Harrisburg, PA 17101, Domenic Rocco, PE, Program Manager, 717-772-5987.*

**ESG83016180001, ESG83000180001.** The Department of Environmental Protection (Department) provides notice of receipt of an application for a Chapter 102, Erosion and Sediment Control General Permit for Earth Disturbance Associated with Oil and Gas Exploration, Production, Processing or Treatment Operations or Transmission Facilities. The application is currently under technical review for Line 134 Replacement Project—East & West Projects.

This authorization is required for earth disturbance activities associated with oil and gas exploration, production, processing or treatment operations or transmission facilities when earth disturbance is five acres or greater. Review of this application is being coordinated among the Department and the associated county conservation districts.

The application under review is as follows:

<i>Counties</i>	<i>DEP Office</i>
Clarion County Armstrong and Butler Counties	Regional Permitting Coordination Office

U.S. Army Corps of Engineers. The proposed project starts at Martins Creek (Latitude: 40° 47' 36.04"; Longitude: 75° 7' 53.50") and ends at Marcus Hook (Latitude: 39° 48' 53.17"; Longitude: 75° 26' 19.12").

On January 12, 2018, Applicant filed an application with the Federal Energy Regulatory Commission (FERC) under Section 7 of the Natural Gas Act (15 U.S.C.A. § 717f) seeking a certificate of public convenience and necessity to construct and operate its Project (FERC Docket No. CP18-46-000 and CP18-46-001). The FERC Environmental Assessment for the Project, which was issued on January 4, 2019, may be viewed on FERC's website at [www.ferc.gov](http://www.ferc.gov) (search eLibrary; Docket Search CP18-46-000 and CP18-46-001).

On March 4, 2019, Applicant requested a state water quality certification (SWQC) from the Department of Environmental Protection (Department), as required by Section 401 of the Clean Water Act (33 U.S.C.A. § 1341), to ensure that the construction, operation and maintenance of the Project will protect water quality in this Commonwealth consistent with the requirements of State law and the Clean Water Act.

The Project, as proposed, includes use of 84.2 miles of existing 18-inch pipeline and 4.4 miles of new 20-inch pipeline to transport natural gas from Martins Creek, Northampton County to Marcus Hook, Delaware County. In addition, Adelpia Gateway Project proposes to construct the following new facilities along the Existing Mainline:

- two 5,625 horsepower compressor stations (CS)—one near Quakertown and one near Marcus Hook;
- one 4.4 mile 16-inch pipeline lateral (a.k.a. Tilghman Lateral);

- one 0.3 mile 16-inch pipeline lateral (a.k.a. Parkway Lateral);
- five-meter stations;
- two mainline valves (MLVs);
- seven blowdown assembly valves (blowdowns) at existing MLVs;
- four pig launcher/receiver facilities;
- two new tap valves; and
- one wareyard within the limits of the existing Marcus Hook Pump Station for the storage of pipe and contractor facilities.

The Project, as a whole, proposes approximately 47 acres of earth disturbance, and impacts 37 linear feet of Marcus Hook Creek (WWF, MF) and 12 linear feet of Stoney Creek (WWF, MF), 0.155 acre of floodway, 0.820 acre of temporary PEM and PSS wetland impacts, and 0.010 acre of PEM and PSS wetland permanent impacts.

The Department, by this notice, is proposing to issue a SWQC to Adelpia Gateway, LLC for the Adelpia Gateway Project. The Department is proposing to certify that construction, operation and maintenance of the Adelpia Gateway Project complies with the applicable provisions of sections 301—303, 306 and 307 of the Federal Clean Water Act (33 U.S.C.A. §§ 1311—1313, 1316 and 1317). The Department is proposing to further certify that the construction, operation and maintenance of the Adelpia Gateway Project complies with water quality standards in this Commonwealth and that the construction, operation and maintenance of the projects does not violate applicable Commonwealth water quality standards provided that the construction, operation and maintenance of the project complies with the following Department water quality permitting programs, criteria and conditions established pursuant to Pennsylvania law:

1. *Discharge Permit*—Applicant shall obtain and comply with a National Pollutant Discharge Elimination System (NPDES) permit(s) for the discharge of water from the hydrostatic testing of the pipeline associated with the Project pursuant to Pennsylvania's Clean Streams Law (35 P.S. §§ 691.1—691.1001), 25 Pa. Code Chapter 92a (relating to NPDES permitting, monitoring and compliance), and all other applicable regulations.

2. *Erosion and Sediment Control Permit*—Applicant shall obtain and comply with an Erosion and Sediment Control Permit(s) for earth disturbance associated with the Project issued pursuant to Pennsylvania's Clean Streams Law and Storm Water Management Act (32 P.S. §§ 680.1—680.17), 25 Pa. Code Chapter 102 (relating to erosion and sediment control), and all other applicable regulations.

3. *Water Obstruction and Encroachment Permits*—Applicant shall obtain and comply with a Water Obstruction and Encroachment Permit(s) for the construction, operation and maintenance of all stream and wetland crossings associated with the Project pursuant to Pennsylvania's Clean Streams Law, Dam Safety and Encroachments Act (32 P.S. §§ 693.1—693.27), and Flood Plain Management Act (32 P.S. §§ 679.101—679.601.), 25 Pa. Code Chapter 105 (relating to dam safety and waterway management), 25 Pa. Code Chapter 106 (relating to floodplain management) and all other applicable regulations.

4. *Other Water Quality Requirements*—Applicant shall obtain any other permits, authorizations or approvals required to construct, operate, and maintain the Project

from any interstate or international agency as required by an interstate compact or international agreement that has established water quality standards applicable to surface waters of this Commonwealth, including wetlands.

5. *Water Quality Monitoring*—The Department retains the right to specify additional studies or monitoring to ensure that the receiving water quality associated with the Project is not adversely impacted by any operational and construction process that may be employed by Applicant.

6. *Operation*—Applicant shall properly operate and maintain at all times all Project facilities and systems of treatment and control (and related appurtenances) installed to achieve compliance with the terms and conditions of this SWQC and all required permits, authorizations and approvals. Proper operation and maintenance includes adequate laboratory controls, appropriate quality assurance procedures, and the operation of backup or auxiliary facilities or similar systems installed by Applicant.

7. *Inspection*—The Project, including all relevant records, are subject to inspection at reasonable hours and intervals by an authorized representative of the Department or the delegated County Conservation District to determine compliance with this SWQC, including all required permits, authorizations or approvals required by this SWQC. The Applicant shall provide a copy of this SWQC to an authorized representative conducting an inspection of the Project.

8. *Transfer of Projects*—If Applicant intends to transfer any legal or equitable interest in the Project or any portion(s) thereof, the Applicant shall provide a copy of this SWQC and copies of any permits, authorizations or approvals obtained to comply with the SWQC upon the prospective transferee of the legal and equitable interest at least thirty (30) days prior to the contemplated transfer and shall simultaneously inform the appropriate Department office of such intent. Notice to the Department shall include a transfer agreement signed by the existing and new owners containing a specific date for transfer of responsibility, coverage, and liability under the SWQC and any permits, authorizations and approvals obtained to comply with the SWQC. The new owner shall submit to the Department a new application form for the SWQC and any permits, authorizations and approvals required to comply with the SWQC signed by the new owner.

9. *Correspondence*—All correspondence with and submittals to the Department concerning this SWQC shall be addressed to Department of Environmental Protection, Southeast Regional Office, John Hohenstein, PE, Acting Program Manager, 2 East Main Street, Norristown, PA 19428.

10. *Reservation of Rights*—The Department may modify, suspend, or revoke this SWQC if (i) the Department becomes aware of new facts about the Project that warrant such action; or (ii) the Department determines that the Applicant has not complied with the terms and conditions of this certification. The Department may require additional measures to achieve compliance with any applicable law or regulation.

11. *Other Laws*—Nothing in this SWQC shall be construed to preclude the institution of any legal action or to relieve Applicant from any responsibilities, liabilities, or penalties established pursuant to any applicable law or regulation.

12. *Severability*—The provisions of this SWQC are severable and should any provision of this SWQC be declared invalid or unenforceable, the remainder of this SWQC shall not be affected thereby.

Prior to issuance of the final SWQC, the Department will consider all relevant and timely comments, suggestions or objections submitted to the Department within 30 days of this notice. Comments should be directed to John Hohenstein, PE, Acting Program Manager, at the above address or through the Pennsylvania AT&T Relay Service at 800-654-5984 (TDD). Comments must be submitted in writing and contain the name of the person commenting and a concise statement of comments, objections or suggestions on this proposal. No comments submitted by facsimile will be accepted.

**Proposed State Water Quality Certification  
Required by Section 401 of the Clean Water Act for  
the Plug and Abandon Hunters Cave 3675  
Storage Well Project**

*Southwest Region: Oil and Gas Operations, 400 Waterfront Drive, Pittsburgh, PA 15222, Brian Bailey (570) 974-2604.*

**EA-WQ-30-07-001, Equitrans, LP** (Applicant), 2200 Energy Drive, Canonsburg, PA 15317. Plug and Abandon Hunters Cave 3675 Storage Well Project (Project), in **Greene County**, Center Township, Pittsburgh District ACOE. The proposed project starts at Applicant's existing pipeline in Center Township (Rogersville, PA Quadrangle N: 39°, 55', 47.77"; W: 80°, 17', 44.93") and ends at the Hunters Cave 3675 Storage Well (Rogersville, PA Quadrangle N: 39°, 55', 54.26"; W: 80°, 17', 50.00").

On December 10, 2018, Applicant filed an application with the Federal Energy Regulatory Commission (FERC) under Section 7 of the Natural Gas Act (15 U.S.C.A. § 717f) seeking a certificate of public convenience and necessity to construct and operate its Project (FERC Docket No. [CP19-24-000]). The FERC Environmental Assessment for the Project, which was issued on February 15, 2019, may be viewed on FERC's website at [www.ferc.gov](http://www.ferc.gov) (search eLibrary; Docket Search; Docket No. CP19-24-000).

On December 18, 2018, Applicant requested a State water quality certification, a GP-8 (GP083007218-512) application, and a GP-11 (GP113007218-504) from the Department of Environmental Protection (Department), as required by Section 401 of the Clean Water Act (33 U.S.C.A. § 1341), to ensure that the construction, operation and maintenance of the Project will protect water quality in this Commonwealth through compliance with State water quality standards and associated State law requirements, which are consistent with the requirements of the Clean Water Act.

The Project, as proposed, includes the plug and abandonment of one natural gas storage well and the abandonment in place of approximately 800 feet of six-inch diameter natural gas pipeline that is part of Equitrans' existing Hunters Cave Storage Field. The Project, as proposed, will require approximately 0.22 acre of earth disturbance, and temporary impacts to 0.024 acre of palustrine emergent wetland.

The Department is proposing to issue a State water quality certification to Applicant for the Project that will require compliance with the following State water quality permitting programs, criteria and conditions established pursuant to State law to ensure the Project does not violate applicable State water quality standards set forth in 25 Pa. Code Chapter 93:

1. *Erosion and Sediment Control Plan*—Applicant shall obtain and comply with the Department's Chapter 102 Erosion and Sediment Control for Earth Disturbance Associated with Oil and Gas Exploration, Production, Processing or Treatment issued pursuant to Pennsylvania's Clean Streams Law and Storm Water Management Act (32 P.S. §§ 680.1—680.17), and all applicable implementing regulations (25 Pa. Code Chapter 102).

2. *Water Obstruction and Encroachment Permits*—Applicant shall obtain and comply with a Department Chapter 105 Water Obstruction and Encroachment Permits for the construction, operation and maintenance of all water obstructions and encroachments associated with the project pursuant to Pennsylvania's Clean Streams Law, Dam Safety and Encroachments Act (32 P.S. §§ 673.1—693.27), and Flood Plain Management Act (32 P.S. §§ 679.101—679.601.), and all applicable implementing regulations (25 Pa. Code Chapter 105).

3. *Water Quality Monitoring*—The Department retains the right to specify additional studies or monitoring to ensure that the receiving water quality is not adversely impacted by any operational and construction process that may be employed by Applicant.

4. *Operation*—Applicant shall at all times properly operate and maintain all Project facilities and systems of treatment and control (and related appurtenances) which are installed to achieve compliance with the terms and conditions of this State Water Quality Certification and all required permits, authorizations and approvals. Proper operation and maintenance includes adequate laboratory controls, appropriate quality assurance procedures, and the operation of backup or auxiliary facilities or similar systems installed by Applicant.

5. *Inspection*—The Project, including all relevant records, are subject to inspection at reasonable hours and intervals by an authorized representative of the Department to determine compliance with this State Water Quality Certification, including all required State water quality permits and State water quality standards. A copy of this certification shall be available for inspection by the Department during such inspections of the Project.

6. *Transfer of Projects*—If Applicant intends to transfer any legal or equitable interest in the Project which is affected by this State Water Quality Certification, Applicant shall serve a copy of this certification upon the prospective transferee of the legal and equitable interest at least thirty (30) days prior to the contemplated transfer and shall simultaneously inform the Department Regional Office of such intent. Notice to the Department shall include a transfer agreement signed by the existing and new owner containing a specific date for transfer of certification responsibility, coverage, and liability between them.

7. *Correspondence*—All correspondence with and submittals to the Department concerning this State Water Quality Certification shall be addressed to Department of Environmental Protection, Southwest District Office, Samantha Sullivan, 400 Waterfront Drive, Pittsburgh, PA 15222.

8. *Reservation of Rights*—The Department may suspend or revoke this State Water Quality Certification if it determines that Applicant has not complied with the terms and conditions of this certification. The Department may require additional measures to achieve compliance with applicable law, subject to Applicant's applicable procedural and substantive rights.

9. *Other Laws*—Nothing in this State Water Quality Certification shall be construed to preclude the institution



of any legal action or relieve Applicant from any responsibilities, liabilities, or penalties established pursuant to any applicable federal or state law or regulation.

10. *Severability*—The provisions of this State Water Quality Certification are severable and should any provision of this certification be declared invalid or unenforceable, the remainder of the certification shall not be affected thereby. Prior to issuance of the final State water quality certification, the Department will consider all relevant and timely comments, suggestions or objections submitted to the Department within 30 days of this notice. Comments should be directed to Samantha Sullivan, Aquatic Biologist, at the above address or through the Pennsylvania AT&T Relay Service at (800) 654-5984 (TDD). Comments must be submitted in writing and contain the name, address and telephone number of the person commenting and a concise statement of comments, objections or suggestions on this proposal. No comments submitted by facsimile will be accepted.

*New Stanton District Office: 131 Broadview Road, New Stanton, PA 15672, 724-925-5500.*

Notice is hereby given that the Department of Environmental Protection has requested a Stage 3 (FINAL) Bond Release for Coal Mining Activity Permit Number 35A77SM4 (Cross Mine) which was originally issued on September 09, 1977. This release is being requested pursuant to the Surface Mining Conservation and Reclamation Act.

The reclaimed mine site for which the bond release is being requested consists of 7.5 acres and is located on the current Buffalo Valley LTD property in East Franklin Township, Armstrong County. The mine site is located at the intersection of Sotos Road and T530 as show on the Kittanning 7.5 minute USGS topo map. Bond release is being requested for \$3,085.00 on 7.5 acres. The Stage 3 area has been revegetated for over five years and is capable of supporting the post-mining land use.

Written comments, objections, or a request for a public hearing or informal conference may be submitted to the Department of Environmental Protection, New Stanton District Office, 131 Broadview Road, New Stanton, PA 15672 within thirty (30) days from the date of the final (4th) publication of this notice and must include the person's name, address, telephone number and a brief description as to the nature of the objections.

[Pa.B. Doc. No. 19-369. Filed for public inspection March 15, 2019, 9:00 a.m.]

## DEPARTMENT OF ENVIRONMENTAL PROTECTION

### Availability of Technical Guidance

Technical guidance documents (TGD) are available on the Department of Environmental Protection's (Department) web site at [www.eLibrary.dep.state.pa.us](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 TGDs are posted. The "Technical Guidance Draft Documents" heading is the link to the Department's draft TGDs.

### Ordering Paper Copies of Department Technical Guidance

The Department encourages the use of the Internet to view and download TGDs. When this option is not available, persons can order a paper copy of any of the

Department's draft or final TGDs 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 TGDs

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.

### Rescission of Technical Guidance

*DEP ID: 291-4200-001. Title: Medical X-ray Procedures Operator Training Guide. Description: This TGD was created to ensure compliance with competency and training requirements, such as contact hours and continuing education units. The guidance is no longer needed because regulatory updates that became effective on January 24, 2019, restructured training and certification requirements.*

*Contact: Questions regarding this TGD should be directed to John Chipppo at [jchipppo@pa.gov](mailto:jchipppo@pa.gov) or (717) 783-9730.*

*Effective Date: March 16, 2019*

PATRICK McDONNELL,  
Secretary

[Pa.B. Doc. No. 19-370. Filed for public inspection March 15, 2019, 9:00 a.m.]

## DEPARTMENT OF ENVIRONMENTAL PROTECTION

### Bid Opportunity

**OSM 35(2086)102.1, Abandoned Mine Reclamation Project, 1212 Breaker Street Subsidence, Dickson City Borough, Lackawanna County.** The principal items of work and approximate quantities include: drilling boreholes—vertical air rotary drilling to accommodate 6" casing, 640 linear feet; drilling boreholes—angular air rotary drilling to accommodate 6" casing, 270 linear feet; 6" I.D. steel or PVC casing, 660 linear feet; fill material injection—flowable fill material through borehole, 40 cubic yards; fill material injection—concrete fill material through borehole, 220 cubic yards; and sealing boreholes, 16 each.

This bid issues on March 15, 2019, and bids will be opened on April 11, 2019, at 2 p.m. Bid documents, including drawings in PDF format and AutoCAD Map 3D format, may be downloaded for free beginning on the issue date from the Department of Environmental Protection by going to [www.BidExpress.com](http://www.BidExpress.com). This project is financed by the Federal government under the authority given it by the Surface Mining Control and Reclamation Act of 1977 (act) (30 U.S.C.A. §§ 1201—1328) and is subject to the act and to the Federal grant for this project. Contact the Construction Contracts Section at (717) 787-7820 or [RA-ConstructionContr@pa.gov](mailto:RA-ConstructionContr@pa.gov) for more information on this bid. Note this is a Small Construction Business Program bid opportunity.

PATRICK McDONNELL,  
Secretary

[Pa.B. Doc. No. 19-371. Filed for public inspection March 15, 2019, 9:00 a.m.]



## DEPARTMENT OF ENVIRONMENTAL PROTECTION

### Small Business Compliance Advisory Committee Meeting Rescheduled

The Small Business Compliance Advisory Committee meeting originally scheduled for Wednesday, April 24, 2019, has been rescheduled to Wednesday, April 17, 2019, at 10 a.m. on the 12th Floor, Rachel Carson State Office Building, 400 Market Street, Harrisburg, PA.

Questions concerning the April 17, 2019, meeting should be directed to Nancy Herb, Bureau of Air Quality, at [nherb@pa.gov](mailto:nherb@pa.gov) or (717) 783-9269. The agenda and meeting materials will be available through the Public

Participation tab on the Department of Environmental Protection's (Department) web site at [www.dep.pa.gov](http://www.dep.pa.gov) (select "Public Participation," then "Advisory Committees," then "Air Advisory Committees," then "Small Business Compliance").

Persons in need of accommodations as provided for in the Americans with Disabilities Act of 1990 should contact the Department at (717) 787-9702 or through the Pennsylvania AT&T Relay Service at (800) 654-5984 (TDD) or (800) 654-5988 (voice users) to discuss how the Department may accommodate their needs.

PATRICK McDONNELL,  
*Secretary*

[Pa.B. Doc. No. 19-372. Filed for public inspection March 15, 2019, 9:00 a.m.]

## DEPARTMENT OF HEALTH

### Ambulatory Surgical Facilities; Requests for Exceptions

The following ambulatory surgical facilities (ASF) have filed requests for exceptions under 28 Pa. Code § 51.33 (relating to requests for exceptions) with the Department of Health (Department), which has authority to license ASFs under the Health Care Facilities Act (35 P.S. §§ 448.101—448.904b). The following requests for exceptions relate to regulations governing ASF licensure in 28 Pa. Code Chapters 51 and 551—571 (relating to general information; and ambulatory surgical facilities).

<i>Facility Name</i>	<i>Regulation</i>
Conemaugh Neurology, Pain & Outpatient Surgery Center	28 Pa. Code § 553.31(a) (relating to administrative responsibilities)
Metro Vascular Center	28 Pa. Code § 551.21 (relating to criteria for ambulatory surgery)
OSS Health Ambulatory Surgery Center	28 Pa. Code § 553.31(a)
Valley Access Center VKS	28 Pa. Code § 553.21(d)(3) (relating to principle)
	28 Pa. Code § 551.3 (relating to definitions), specifically subparagraph (ii) of the definition of "classification levels," regarding Class B facilities PS III patients
	28 Pa. Code § 553.31(a)
Vascular Access Center of Pittsburgh, LLC	28 Pa. Code § 553.21(d)(3)
Vincera Surgery Center	28 Pa. Code § 553.21

The following ASF has filed a request for exception under 28 Pa. Code § 153.1 (relating to minimum standards). Requests for exceptions under this section relate to *Guidelines for Design and Construction of Hospitals and of Outpatient Facilities*, as published by the Field Guidelines Institute (FGI). The following list includes the citation to the section of the FGI *Guidelines* for which the hospital is seeking an exception and the year of publication.

<i>Facility Name</i>	<i>Guidelines Section and Relating to</i>	<i>Yr<sup>1</sup></i>
Reading Surgery Center of the Surgical Institute of Reading, LLC	2.7-7.2.2.1(2) (relating to corridor width)	18-O

<sup>1</sup> 2018 Year FGI Regulations were split into 2 books; Hospitals, and Outpatient Facilities as indicated by "-O."

These previously listed 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](mailto: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 previously listed address. 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, call the Pennsylvania AT&T Relay Service at (800) 654-5984 (TDD users) or (800) 654-5988 (voice users).

RACHEL L. LEVINE, MD,  
*Secretary*

[Pa.B. Doc. No. 19-373. Filed for public inspection March 15, 2019, 9:00 a.m.]

## DEPARTMENT OF HEALTH

### Extension of Temporary Scheduling of Substance; Fentanyl-Related Substances as a Schedule I Controlled Substance

The Secretary of Health (Secretary) of the Department of Health (Department) is issuing this notice of intent to extend the temporarily scheduling of fentanyl-related substances for an additional year. On March 17, 2018, the Secretary issued a final order temporarily scheduling fentanyl-related substances that were not at the time listed in any schedule of The Controlled Substance, Drug, Device and Cosmetic Act (act) (35 P.S. §§ 780-101—780-144). This extension of the temporary scheduling will maintain fentanyl-related substances in schedule I under the act while the Secretary goes forward with permanently scheduling fentanyl-related substances as schedule I substances.

#### Background

In this Commonwealth, there has been an increase in use of fentanyl-related substances to mix with heroin and other substances (such as cocaine and methamphetamine) or used in counterfeit pharmaceutical prescription drugs. These substances have a high potential for abuse and are widely available over the Internet. This prompted the Secretary to schedule fentanyl-related substances as schedule I controlled substances on a temporary basis.

#### Legal Authority and Action

Under section 3 of the act, (35 P.S. § 780-103), the Secretary shall control all substances listed in schedules I—V of the act. Under section 3(d) of the act, the Secretary is authorized to schedule any substance on a

temporary basis to avoid an imminent hazard to public safety. Additionally, under section 3(d)(2) of the act, the temporary scheduling of a substance shall expire at the end of 1 year from the date of publication of the final notice scheduling of the substance, except that the Secretary may, during the pendency of proceedings under subsection (a), extend the temporary scheduling for up to additional year by publishing a subsequent notice in the *Pennsylvania Bulletin* prior to the expiration of the initial notice.

Because fentanyl-related substances were temporarily scheduled as schedule I substances by the publication of the final notice scheduling fentanyl-related substances on March 17, 2018, and the Secretary is currently going forward with permanently scheduling those substances, the Secretary has the authority to extend the temporary schedule of fentanyl-related substances under the act.

#### Accessibility

For additional information, or persons with a disability who require an alternative format of this notice (for example, large print, audiotape, Braille) should contact the Department of Health, Bureau of Community Program Licensure and Certification, Division of Home Health, Drug, Device and Cosmetics Program, 132A Kline Plaza, Harrisburg, PA 17104, (717) 783-1379, or for speech and/or hearing impaired persons, call the Pennsylvania AT&T Relay Service at (800) 654-5984 (TDD users) or (800) 654-5988 (voice users).

RACHEL L. LEVINE, MD,  
Secretary

[Pa.B. Doc. No. 19-374. Filed for public inspection March 15, 2019, 9:00 a.m.]

## DEPARTMENT OF HEALTH

### Hospitals; Requests for Exceptions

The following hospitals have filed requests for exceptions under 28 Pa. Code § 51.33 (relating to requests for exceptions) with the Department of Health (Department), which has authority to license hospitals under the Health Care Facilities Act (35 P.S. §§ 448.101—448.904b). The following requests for exceptions relate to regulations governing hospital licensure in 28 Pa. Code Chapters 51 and 101—158 (relating to general information; and general and special hospitals).

Facility Name	Regulation and relating to
Butler Memorial Hospital	28 Pa. Code § 107.61 (relating to written orders)
Excelsa Health Westmoreland Hospital	28 Pa. Code § 138.15 (relating to high-risk cardiac catheterizations)
UPMC Pinnacle Lititz	28 Pa. Code § 138.18 (relating to EPS studies)

The following hospitals have filed requests for exceptions under 28 Pa. Code § 153.1 (relating to minimum standards). Requests for exceptions under this section relate to *Guidelines for Design and Construction of Hospitals and of Outpatient Facilities*, as published by the Field Guidelines Institute (FGI). The following list includes the citation to the section of the FGI *Guidelines* for which the hospital is seeking an exception and the year of publication.

Facility Name	FGI Guidelines Section and Relating to	Yr. <sup>1</sup>
Coordinated Health Orthopedic Hospital, LLC	2.1-5.7.1.1 (relating to morgue services applications)	18
Moses Taylor Hospital	2.2-3.1.4.3 (relating to secure holding rooms)	18
Select Specialty Hospital—Johnstown, Inc.	2.2-2.2.2.1(1) (relating to capacity)	18
	2.2-2.2.2.1(2) (relating to capacity)	18
	2.2-2.2.2.2(1)(b) (relating to area)	18
	2.2-2.2.2.2(2)(a) (relating to clearances)	18
	2.2-2.2.2.5 (relating to hand-washing stations)	18
	2.2-2.2.2.6 (relating to patient toilet rooms)	18
	2.2-2.2.8.15 (relating to examination rooms)	18

<i>Facility Name</i>	<i>FGI Guidelines Section and Relating to</i>	<i>Yr.<sup>1</sup></i>
St. Luke's Hospital—Anderson Campus	2.2-2.6.2.2(3)(a) (relating to space requirements)	18
	2.2-2.6.2.2(3)(b) (relating to space requirements)	18
St. Luke's Hospital of Bethlehem, Pennsylvania	2.1-3.2.1.2 (relating to single-patient examination/observation room)	18-O
	2.1-3.5.6.1(1)(a) (relating to ultrasound room)	18-O
	2.1-3.5.6.1(2) (relating to ultrasound room)	18-O
	2.1-3.5.6.2 (relating to patient toilet room)	18-O
UPMC Magee-Womens Hospital	2.2-2.8.2.3 (relating to window(s))	18
UPMC Mercy	2.2-3.4.4.2 (relating to MRI scanner rooms)	14

<sup>1</sup> 2018 Year FGI Regulations were split into 2 books; Hospitals, and Outpatient Facilities as indicated by “-O.”

The previously listed 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. 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 previously listed address. 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 for speech and/or hearing impaired persons, call the Pennsylvania AT&T Relay Service at (800) 654-5984 (TDD users) or (800) 654-5988 (voice users).

RACHEL L. LEVINE, MD,  
*Secretary*

[Pa.B. Doc. No. 19-375. Filed for public inspection March 15, 2019, 9:00 a.m.]

## DEPARTMENT OF HEALTH

### Long-Term Care Nursing Facilities; Requests for Exception

The following long-term care nursing facility is seeking an exception to 28 Pa. Code § 205.20(a) (relating to resident bedrooms):

Crosslands  
P.O. Box 100  
Route 926  
1660 East Street Road  
Kennett Square, PA 19348  
FAC ID # 551202

The following long-term care nursing facility is seeking an exception to 28 Pa. Code § 201.22(e) and (j) (relating to prevention, control and surveillance of tuberculosis (TB)):

Rouse-Warren County Home  
701 Rouse Avenue  
Youngsville, PA 16371  
FAC ID # 181702

These requests are on file with the Department of Health (Department). Persons may receive a copy of a request for exception by requesting a copy from the 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 previously listed address.

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 previously listed address or phone number, or for speech and/or hearing-impaired persons, call the Pennsylvania AT&T Relay Service at (800) 654-5984 (TDD users) or (800) 654-5988 (voice users).

RACHEL L. LEVINE, MD,  
*Secretary*

[Pa.B. Doc. No. 19-376. Filed for public inspection March 15, 2019, 9:00 a.m.]

## DEPARTMENT OF HEALTH

### Medical Facility Patient Safety Trust Fund Surcharge for Fiscal Year 2018-2019 as Provided for under the Medical Care Availability and Reduction of Error (MCARE) Act

On March 20, 2002, the Medical Care Availability and Reduction of Error (MCARE) Act (MCARE Act) (40 P.S. §§ 1303.101—1303.910) was enacted. Among other provisions, the MCARE Act established the Patient Safety Authority (Authority) to collect, analyze and evaluate data regarding reports of serious events and incidents occurring in certain medical facilities and to make recommendations to those facilities regarding changes, trends and improvements in health care practices and procedures for the purpose of reducing the number and severity of serious events and incidents.



Section 305(a) of the MCARE Act (40 P.S. § 1303.305(a)) authorizes the establishment of a Patient Safety Trust Fund (Fund) for the operations of the Authority. Section 305(c) of the MCARE Act states that beginning July 1, 2002, and for every fiscal year thereafter, each medical facility covered by the MCARE Act shall pay the Department of Health (Department) a surcharge on its licensing fee as necessary to provide sufficient revenues for the Authority to operate. Section 305(c) of the MCARE Act also states that the total assessment amount for Fiscal Year (FY) 2002-2003 shall not exceed \$5 million and that the Department shall transfer the total assessment amount to the Fund within 30 days of receipt. Section 305(d) of the MCARE Act provides that for each succeeding calendar year, the Department shall determine and assess each medical facility a proportionate share of the Authority's budget. The base amount of \$5 million provided for in FY 2002-2003 shall be increased no more than the Consumer Price Index in each succeeding fiscal year.

Initially, the surcharge was assessed on ambulatory surgical facilities (ASF), birth centers and hospitals. Subsequently, the MCARE Act was amended and abortion facilities were also required to pay the surcharge.

With the cooperation of hospitals, birthing centers, abortion facilities and ASFs in this Commonwealth, the surcharge has been implemented and has provided resources for the implementation of the web-based Pennsylvania Patient Safety Reporting System and the operation of the Authority.

This notice sets forth the procedure that the Department will follow in assessing and collecting the surcharge for FY 2018-2019. The Authority FY 2018-2019 surcharge assessment is \$6.86 million. The MCARE Act states that the surcharge shall be collected from medical facilities, which are defined as ASFs, birth centers and hospitals licensed under either the Health Care Facilities Act (35 P.S. §§ 448.101—448.904b) or Article X of the Public Welfare Code (62 P.S. §§ 1001—1088). Also included, as of May 1, 2006, are abortion facilities which are defined in 18 Pa.C.S. § 3203 (relating to definitions). Nursing homes, which are assessed under sections 401—411 of the MCARE Act (40 P.S. §§ 1303.401—1303.411), receive a separate assessment notification.

To assess the surcharge in an equitable manner, the Department continues to use a common denominator in these facilities. For ASFs, birth centers and abortion facilities, the Department has chosen the number of operating and procedure rooms. For hospitals, the Department has chosen the number of beds contained on the license of each hospital, whether by the Department (general and special acute care hospitals) or the Department of Human Services (privately owned psychiatric hospitals). It was also necessary to pick a point in time to make this assessment; the Department has chosen December 31, 2018.

The number of operating/procedure rooms (for ASFs, birth centers and abortion facilities) and the number of licensed beds (for hospitals) was totaled and that number was divided into \$6.68 million to arrive at a charge per unit for the assessment. The total number of units (operating rooms, procedure rooms and licensed beds) is 42,081. Dividing this number into \$6.68 million results in a per unit assessment for each installment of approximately \$163.02. The assessment is payable by May 31, 2019.

To obtain a copy of the assessment for all facilities, send an e-mail to [paexcept@pa.gov](mailto:paexcept@pa.gov), and request the FY 2018-2019 MCARE surcharge assessment lists.

Each facility will receive notification from the Department setting forth the amount due, date due and the name and address to which the payment should be sent. Payment will be due within 60 days. The MCARE Act authorizes the Department to assess an administrative penalty of \$1,000 per day on facilities who fail to pay the surcharge by the due date.

If a facility has any questions concerning this notice, a representative from that facility should contact Garrison E. Gladfelter, Jr., Chief, Division of Acute and Ambulatory Care, Room 532, Health and Welfare Building, 825 Forster Street, Harrisburg, PA 17120, (717) 783-8980.

Persons with a disability who require an alternative format of this document (for example, large print, audio-tape, Braille) should contact Garrison E. Gladfelter, Jr. at the previously listed address or telephone number, or for speech and/or hearing-impaired persons, call the Pennsylvania AT&T Relay Service at (800) 654-5984 (TDD users) or (800) 654-5988 (voice users).

RACHEL L. LEVINE, MD,  
*Secretary*

[Pa.B. Doc. No. 19-377. Filed for public inspection March 15, 2019, 9:00 a.m.]

## DEPARTMENT OF HEALTH

### Nursing Home Patient Safety Trust Fund Surcharge Assessment Procedure

Sections 401—411 of the Medical Care Availability and Reduction of Error (MCARE) Act (MCARE Act) (40 P.S. §§ 1303.401—1303.411) require nursing homes to electronically report health care-associated infection (HAI) data to the Department of Health (Department) and the Patient Safety Authority (Authority). Mandatory reporting of nursing home HAIs was implemented in June 2009.

Section 409 of the MCARE Act (40 P.S. § 1303.409) states that every fiscal year, beginning July 1, 2008, each nursing home shall pay the Department a surcharge on its licensing fee to provide sufficient revenues for the Authority to perform its responsibilities related to the MCARE Act. The base amount of \$1 million for Fiscal Year (FY) 2008-2009 has the potential to be increased no more than the Consumer Price Index in each succeeding fiscal year. The Authority has recommended that the FY 2018-2019 surcharge assessment total \$1.14 million.

To assess the surcharge in an equitable manner, the number of licensed nursing home beds as of December 31, 2018, was totaled and that amount was divided into \$1.14 million. The total number of licensed beds is 86,793. This equates to a surcharge of \$13.13 per bed.

To obtain a copy of the assessment for all facilities, send an e-mail to [paexcept@pa.gov](mailto:paexcept@pa.gov) and request the FY 2018-2019 MCARE surcharge assessment list for nursing care facilities. Each facility will receive notification from the Department setting forth the amount due, date due and the name and address to which the payment should be sent. Payment will be due within 60 days. The MCARE Act authorizes the Department to assess an

administrative penalty of \$1,000 per day on facilities who fail to pay the surcharge by the due date.

If a nursing care facility has any questions concerning this notice, a representative from that facility should contact Susan Williamson, Director, Division of Nursing Care Facilities, Room 526, Health and Welfare Building, 825 Forster Street, Harrisburg, PA 17120, (717) 787-1816.

Persons with a disability who require an alternative format of this document (for example, large print, audiotape, Braille) should contact Susan Williamson at the previously listed address or telephone number, or for speech and/or hearing-impaired persons, call the Pennsylvania AT&T Relay Service at (800) 654-5984 (TDD users) or (800) 654-5988 (voice users).

RACHEL L. LEVINE, MD,  
Secretary

[Pa.B. Doc. No. 19-378. Filed for public inspection March 15, 2019, 9:00 a.m.]

## DEPARTMENT OF REVENUE

### Pennsylvania Mother's Day Instant Lottery Game 1393

Under the State Lottery Law (72 P.S. §§ 3761-101—3761-314) and 61 Pa. Code § 819.203 (relating to notice of instant game rules), the Secretary of Revenue hereby provides public notice of the rules for the following instant lottery game:

1. *Name:* The name of the game is Pennsylvania Mother's Day (hereinafter "Mother's Day"). The game number is PA-1393.

2. *Price:* The price of a Mother's Day instant lottery game ticket is \$5.

3. *Play Symbols:* Each Mother's Day instant lottery game ticket will contain one play area featuring a "WINNING NUMBERS" and a "YOUR NUMBERS" area. The play symbols and their captions, located in the "WINNING NUMBERS" area, are: 1 (ONE), 2 (TWO), 3 (THREE), 4 (FOUR), 5 (FIVE), 6 (SIX), 7 (SEVEN), 8 (EIGHT), 9 (NINE), 10 (TEN), 11 (ELEVN), 12 (TWLV), 13 (THRTN), 14 (FORTN), 15 (FIFTN), 16 (SIXTN), 17 (SVNTN), 18 (EGHTN), 19 (NINTN), 20 (TWENT), 21 (TWYONE), 22 (TWYTWO), 23 (TWYTHR), 24 (TWYFOR), 25 (TWYFIV), 26 (TWYSIX), 27 (TWYSVN), 28 (TWYEGT), 29 (TWININ), and 30 (THIRTY). The play symbols and their captions, located in the "YOUR NUMBERS" area, are: 1 (ONE), 2 (TWO), 3 (THREE), 4 (FOUR), 5 (FIVE), 6 (SIX), 7 (SEVEN), 8 (EIGHT), 9 (NINE), 10 (TEN), 11 (ELEVN), 12 (TWLV), 13 (THRTN), 14 (FORTN), 15 (FIFTN), 16 (SIXTN), 17 (SVNTN), 18 (EGHTN), 19 (NINTN), 20 (TWENT), 21 (TWYONE), 22 (TWYTWO), 23 (TWYTHR), 24 (TWYFOR), 25 (TWYFIV), 26 (TWYSIX), 27 (TWYSVN), 28 (TWYEGT), 29 (TWININ), 30 (THIRTY), Butterfly (BTRFLY) symbol, and a MOM (WIN\$50K) symbol.

4. *Prize Symbols:* The prize symbols and their captions, located in the play area are: \$5<sup>.00</sup> (FIV DOL), \$10<sup>.00</sup> (TEN DOL), \$20<sup>.00</sup> (TWENTY), \$25<sup>.00</sup> (TWY FIV), \$50<sup>.00</sup> (FIFTY), \$75<sup>.00</sup> (SVY FIV), \$100 (ONE HUN), \$200 (TWO HUN), \$400 (FOR HUN), \$1,000 (ONE THO), \$5,000 (FIV THO), and \$50,000 (FTY THO). A player can win up to 12 times on a ticket.

5. *Prizes:* The prizes that can be won in this game are: \$5, \$10, \$20, \$25, \$50, \$75, \$100, \$200, \$400, \$1,000, \$5,000, and \$50,000.

6. *Approximate Number of Tickets Printed For the Game:* Approximately 5,400,000 tickets will be printed for the Mother's Day instant lottery game.

#### 7. Determination of Prize Winners:

(a) Holders of tickets upon which any one of the "YOUR NUMBERS" play symbols is a MOM (WIN\$50K) symbol and a prize symbol of \$50,000 (FTY THO) appears in the "prize" area under that MOM (WIN\$50K) symbol, on a single ticket, shall be entitled to a prize of \$50,000.

(b) Holders of tickets upon which any one of the "YOUR NUMBERS" play symbols matches any of the "WINNING NUMBERS" play symbols and a prize symbol of \$5,000 (FIV THO) appears in the "prize" area under the matching "YOUR NUMBERS" play symbol, on a single ticket, shall be entitled to a prize of \$5,000.

(c) Holders of tickets upon which any one of the "YOUR NUMBERS" play symbols is a Butterfly (BTRFLY) symbol and a prize symbol of \$5,000 (FIV THO) appears in the "prize" area under that Butterfly (BTRFLY) symbol, on a single ticket, shall be entitled to a prize of \$5,000.

(d) Holders of tickets upon which any one of the "YOUR NUMBERS" play symbols matches any of the "WINNING NUMBERS" play symbols and a prize symbol of \$1,000 (ONE THO) appears in the "prize" area under the matching "YOUR NUMBERS" play symbol, on a single ticket, shall be entitled to a prize of \$1,000.

(e) Holders of tickets upon which any one of the "YOUR NUMBERS" play symbols is a Butterfly (BTRFLY) symbol and a prize symbol of \$1,000 (ONE THO) appears in the "prize" area under that Butterfly (BTRFLY) symbol, on a single ticket, shall be entitled to a prize of \$1,000.

(f) Holders of tickets upon which any one of the "YOUR NUMBERS" play symbols matches any of the "WINNING NUMBERS" play symbols and a prize symbol of \$400 (FOR HUN) appears in the "prize" area under the matching "YOUR NUMBERS" play symbol, on a single ticket, shall be entitled to a prize of \$400.

(g) Holders of tickets upon which any one of the "YOUR NUMBERS" play symbols is a Butterfly (BTRFLY) symbol and a prize symbol of \$400 (FOR HUN) appears in the "prize" area under that Butterfly (BTRFLY) symbol, on a single ticket, shall be entitled to a prize of \$400.

(h) Holders of tickets upon which any one of the "YOUR NUMBERS" play symbols matches any of the "WINNING NUMBERS" play symbols and a prize symbol of \$200 (TWO HUN) appears in the "prize" area under the matching "YOUR NUMBERS" play symbol, on a single ticket, shall be entitled to a prize of \$200.

(i) Holders of tickets upon which any one of the "YOUR NUMBERS" play symbols is a Butterfly (BTRFLY) symbol and a prize symbol of \$200 (TWO HUN) appears in the "prize" area under that Butterfly (BTRFLY) symbol, on a single ticket, shall be entitled to a prize of \$200.

(j) Holders of tickets upon which any one of the "YOUR NUMBERS" play symbols matches any of the "WINNING NUMBERS" play symbols and a prize symbol of \$100 (ONE HUN) appears in the "prize" area under the matching "YOUR NUMBERS" play symbol, on a single ticket, shall be entitled to a prize of \$100.

(k) Holders of tickets upon which any one of the “YOUR NUMBERS” play symbols is a Butterfly (BTRFLY) symbol and a prize symbol of \$100 (ONE HUN) appears in the “prize” area under that Butterfly (BTRFLY) symbol, on a single ticket, shall be entitled to a prize of \$100.

(l) Holders of tickets upon which any one of the “YOUR NUMBERS” play symbols matches any of the “WINNING NUMBERS” play symbols and a prize symbol of \$75.00 (SVY FIV) appears in the “prize” area under the matching “YOUR NUMBERS” play symbol, on a single ticket, shall be entitled to a prize of \$75.

(m) Holders of tickets upon which any one of the “YOUR NUMBERS” play symbols is a Butterfly (BTRFLY) symbol and a prize symbol of \$75.00 (SVY FIV) appears in the “prize” area under that Butterfly (BTRFLY) symbol, on a single ticket, shall be entitled to a prize of \$75.

(n) Holders of tickets upon which any one of the “YOUR NUMBERS” play symbols matches any of the “WINNING NUMBERS” play symbols and a prize symbol of \$50.00 (FIFTY) appears in the “prize” area under the matching “YOUR NUMBERS” play symbol, on a single ticket, shall be entitled to a prize of \$50.

(o) Holders of tickets upon which any one of the “YOUR NUMBERS” play symbols is a Butterfly (BTRFLY) symbol and a prize symbol of \$50.00 (FIFTY) appears in the “prize” area under that Butterfly (BTRFLY) symbol, on a single ticket, shall be entitled to a prize of \$50.

(p) Holders of tickets upon which any one of the “YOUR NUMBERS” play symbols matches any of the “WINNING NUMBERS” play symbols and a prize symbol of \$25.00 (TWY FIV) appears in the “prize” area under the matching “YOUR NUMBERS” play symbol, on a single ticket, shall be entitled to a prize of \$25.

(q) Holders of tickets upon which any one of the “YOUR NUMBERS” play symbols is a Butterfly (BTRFLY) symbol and a prize symbol of \$25.00 (TWY FIV) appears in the “prize” area under that Butterfly (BTRFLY) symbol, on a single ticket, shall be entitled to a prize of \$25.

(r) Holders of tickets upon which any one of the “YOUR NUMBERS” play symbols matches any of the “WINNING NUMBERS” play symbols and a prize symbol of \$20.00 (TWENTY) appears in the “prize” area under the matching “YOUR NUMBERS” play symbol, on a single ticket, shall be entitled to a prize of \$20.

(s) Holders of tickets upon which any one of the “YOUR NUMBERS” play symbols is a Butterfly (BTRFLY) symbol and a prize symbol of \$20.00 (TWENTY) appears in the “prize” area under that Butterfly (BTRFLY) symbol, on a single ticket, shall be entitled to a prize of \$20.

(t) Holders of tickets upon which any one of the “YOUR NUMBERS” play symbols matches any of the “WINNING NUMBERS” play symbols and a prize symbol of \$10.00 (TEN DOL) appears in the “prize” area under the matching “YOUR NUMBERS” play symbol, on a single ticket, shall be entitled to a prize of \$10.

(u) Holders of tickets upon which any one of the “YOUR NUMBERS” play symbols is a Butterfly (BTRFLY) symbol and a prize symbol of \$10.00 (TEN DOL) appears in the “prize” area under that Butterfly (BTRFLY) symbol, on a single ticket, shall be entitled to a prize of \$10.

(v) Holders of tickets upon which any one of the “YOUR NUMBERS” play symbols matches any of the “WINNING NUMBERS” play symbols and a prize symbol of \$5.00 (FIV DOL) appears in the “prize” area under the matching “YOUR NUMBERS” play symbol, on a single ticket, shall be entitled to a prize of \$5.

(w) Holders of tickets upon which any one of the “YOUR NUMBERS” play symbols is a Butterfly (BTRFLY) symbol and a prize symbol of \$5.00 (FIV DOL) appears in the “prize” area under that Butterfly (BTRFLY) symbol, on a single ticket, shall be entitled to a prize of \$5.

8. *Number and Description of Prizes and Approximate Odds:* The following table sets forth the approximate number of winners, amounts of prizes, and approximate odds of winning:

<i>When Any Of Your Numbers Match Any Winning Number, Win Prize Shown Under The Matching Number. Win With:</i>	<i>Win:</i>	<i>Approximate Odds Are 1 In:</i>	<i>Approximate No. Of Winners Per 5,400,000 Tickets:</i>
\$5 w/ BUTTERFLY	\$5	19.35	279,000
\$5	\$5	16.67	324,000
\$5 × 2	\$10	600	9,000
(\$5 w/ BUTTERFLY) + \$5	\$10	300	18,000
(\$5 w/ BUTTERFLY) × 2	\$10	60	90,000
\$10 w/ BUTTERFLY	\$10	60	90,000
\$10	\$10	60	90,000
\$5 × 4	\$20	300	18,000
\$10 × 2	\$20	300	18,000
(\$10 w/ BUTTERFLY) × 2	\$20	100	54,000
\$20 w/ BUTTERFLY	\$20	100	54,000
\$20	\$20	300	18,000
\$5 × 5	\$25	600	9,000



<i>When Any Of Your Numbers Match Any Winning Number, Win Prize Shown Under The Matching Number. Win With:</i>	<i>Win:</i>	<i>Approximate Odds Are 1 In:</i>	<i>Approximate No. Of Winners Per 5,400,000 Tickets:</i>
$(\$10 \times 2) + \$5$	\$25	600	9,000
$((\$10 \text{ w/ BUTTERFLY}) \times 2) + \$5$	\$25	150	36,000
$(\$20 \text{ w/ BUTTERFLY}) + (\$5 \text{ w/ BUTTERFLY})$	\$25	150	36,000
\$25 w/ BUTTERFLY	\$25	150	36,000
\$25	\$25	600	9,000
$\$5 \times 10$	\$50	600	9,000
$((\$10 \text{ w/ BUTTERFLY}) \times 2) + (\$5 \times 6)$	\$50	600	9,000
$(\$25 \text{ w/ BUTTERFLY}) \times 2$	\$50	600	9,000
\$50 w/ BUTTERFLY	\$50	300	18,000
\$50	\$50	600	9,000
$\$25 \times 3$	\$75	6,000	900
$(\$10 \times 3) + (\$5 \times 9)$	\$75	6,000	900
$(\$20 \times 3) + (\$10 \text{ w/ BUTTERFLY}) + (\$5 \text{ w/ BUTTERFLY})$	\$75	2,400	2,250
$(\$25 \text{ w/ BUTTERFLY}) \times 3$	\$75	2,000	2,700
\$75 w/ BUTTERFLY	\$75	800	6,750
\$75	\$75	6,000	900
$\$10 \times 10$	\$100	6,000	900
$\$50 \times 2$	\$100	6,000	900
$((\$20 \text{ w/ BUTTERFLY}) \times 2) + (\$10 \times 2) + (\$5 \times 8)$	\$100	1,714.29	3,150
$((\$25 \text{ w/ BUTTERFLY}) \times 2) + ((\$10 \text{ w/ BUTTERFLY}) \times 5)$	\$100	1,714.29	3,150
\$100 w/ BUTTERFLY	\$100	1,200	4,500
\$100	\$100	6,000	900
$\$20 \times 10$	\$200	24,000	225
$\$50 \times 4$	\$200	24,000	225
$((\$20 \text{ w/ BUTTERFLY}) \times 8) + ((\$10 \text{ w/ BUTTERFLY}) \times 4)$	\$200	12,000	450
$((\$50 \text{ w/ BUTTERFLY}) \times 2) + (\$10 \times 10)$	\$200	12,000	450
$(\$100 \text{ w/ BUTTERFLY}) \times 2$	\$200	12,000	450
\$200 w/ BUTTERFLY	\$200	6,000	900
\$200	\$200	24,000	225
$\$100 \times 4$	\$400	60,000	90
$((\$10 \text{ w/ BUTTERFLY}) \times 10) + \$200 + \$100$	\$400	60,000	90
$((\$50 \text{ w/ BUTTERFLY}) \times 4) + ((\$25 \text{ w/ BUTTERFLY}) \times 8)$	\$400	60,000	90
\$400 w/ BUTTERFLY	\$400	30,000	180
\$400	\$400	60,000	90
$\$200 \times 5$	\$1,000	540,000	10
$((\$200 \text{ w/ BUTTERFLY}) \times 2) + ((\$100 \text{ w/ BUTTERFLY}) \times 5) + (\$20 \times 5)$	\$1,000	540,000	10
\$1,000 w/ BUTTERFLY	\$1,000	540,000	10
\$1,000	\$1,000	540,000	10
\$5,000 w/ BUTTERFLY	\$5,000	540,000	10
\$5,000	\$5,000	540,000	10
\$50,000 w/ MOM SYMBOL	\$50,000	540,000	10

Reveal a "BUTTERFLY" (BTRFLY) symbol, win the prize shown under that symbol automatically.

Reveal a "MOM" (WIN\$50K) symbol, win \$50,000 instantly!



9. *Retailer Incentive Awards:* The Lottery may conduct a separate Retailer Incentive Program for retailers who sell Mother's Day instant lottery tickets.

10. *Retailer Bonus:* The Lottery may offer a retailer bonus in connection with the sale of Pennsylvania instant lottery game tickets. If a retailer bonus is offered, a Lottery retailer shall be eligible for a bonus as described in this section. Lottery retailers who sell a winning ticket that entitles the ticket holder to a prize, either payable in a single installment or having a guaranteed minimum payout, of at least \$100,000 and not exceeding \$500,000 shall be paid a bonus of \$500. Lottery retailers who sell a winning ticket that entitles the ticket holder to a prize, either payable in a single installment or having a guaranteed minimum payout, of at least \$500,001 and not exceeding \$1,000,000 shall be paid a bonus of \$5,000. Lottery retailers who sell a winning ticket that entitles the ticket holder to a prize, either payable in a single installment or having a guaranteed minimum payout, of at least \$1,000,001 and not exceeding \$10,000,000 shall be paid a bonus of \$10,000. A Lottery retailer is entitled only to the largest bonus for which he qualifies on a winning ticket. A bonus will be initiated for payment after the instant ticket is claimed and validated. A bonus will not be awarded to a Lottery retailer that sells a non-winning Pennsylvania Lottery instant ticket used to enter a Pennsylvania Lottery second-chance drawing or promotion that is subsequently selected to win a prize.

11. *Unclaimed Prize Money:* For a period of 1 year from the announced close of the Mother's Day instant lottery game, prize money from winning Mother's Day instant lottery game tickets will be retained by the Secretary for payment to the persons entitled thereto. If no claim is made within 1 year of the announced close of the Mother's Day instant lottery game, the right of a ticket holder to claim the prize represented by the ticket, if any, will expire and the prize money will be paid into the State Lottery Fund and used for purposes provided for by statute.

12. *Governing Law:* In purchasing a ticket, the customer agrees to comply with and abide by the State Lottery Law (72 P.S. §§ 3761-101—3761-314), 61 Pa. Code Part V (relating to State Lotteries) and the provisions contained in this notice.

13. *Termination of the Game:* The Secretary may announce a termination date, after which no further tickets from this game may be sold. The announcement will be disseminated through media used to advertise or promote Mother's Day or through normal communications methods.

C. DANIEL HASSELL,  
Secretary

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## DEPARTMENT OF REVENUE

### Pennsylvania Wild Numbers 5X Instant Lottery Game 1395

Under the State Lottery Law (72 P.S. §§ 3761-101—3761-314) and 61 Pa. Code § 819.203 (relating to notice of instant game rules), the Secretary of Revenue hereby provides public notice of the rules for the following instant lottery game:

1. *Name:* The name of the game is Pennsylvania Wild Numbers 5X (hereinafter "Wild Numbers 5X"). The game number is PA-1395.

2. *Price:* The price of a Wild Numbers 5X instant lottery game ticket is \$1.

3. *Play Symbols:* Each Wild Numbers 5X instant lottery game ticket will contain one play area featuring a "WINNING NUMBERS" and a "YOUR NUMBERS" area. The play symbols and their captions, located in the "WINNING NUMBERS" area, are: 1 (ONE), 2 (TWO), 3 (THREE), 4 (FOUR), 6 (SIX), 7 (SEVEN), 8 (EIGHT), 9 (NINE), 10 (TEN), 11 (ELEVN), 12 (TWLV), 13 (THRTN), 14 (FORTN), 16 (SIXTN), 17 (SVNTN), 18 (EGHTN), 19 (NINTN), and 20 (TWENT). The play symbols and their captions, located in the "YOUR NUMBERS" area, are: 1 (ONE), 2 (TWO), 3 (THREE), 4 (FOUR), 6 (SIX), 7 (SEVEN), 8 (EIGHT), 9 (NINE), 10 (TEN), 11 (ELEVN), 12 (TWLV), 13 (THRTN), 14 (FORTN), 16 (SIXTN), 17 (SVNTN), 18 (EGHTN), 19 (NINTN), 20 (TWENT), and a 5X (5TIMES) symbol.

4. *Prize Symbols:* The prize symbols and their captions, located in the play area, are: FREE (TICKET), \$1<sup>00</sup> (ONE DOL), \$2<sup>00</sup> (TWO DOL), \$4<sup>00</sup> (FOR DOL), \$5<sup>00</sup> (FIV DOL), \$10<sup>00</sup> (TEN DOL), \$20<sup>00</sup> (TWENTY), \$25<sup>00</sup> (TWY FIV), \$50<sup>00</sup> (FIFTY), \$100 (ONE HUN), \$500 (FIV HUN), \$1,000 (ONE THO), and \$5,000 (FIV THO). A player can win up to 4 times on a ticket.

5. *Prizes:* The prizes that can be won in this game are: Free \$1 Ticket, \$1, \$2, \$4, \$5, \$10, \$20, \$25, \$50, \$100, \$500, \$1,000, and \$5,000.

6. *Approximate Number of Tickets Printed For the Game:* Approximately 10,800,000 tickets will be printed for the Wild Numbers 5X instant lottery game.

#### 7. Determination of Prize Winners:

(a) Holders of tickets upon which any one of the "YOUR NUMBERS" play symbols matches any of the "WINNING NUMBERS" play symbols and a prize symbol of \$5,000 (FIV THO) appears in the "prize" area under the matching "YOUR NUMBERS" play symbol, on a single ticket, shall be entitled to a prize of \$5,000.

(b) Holders of tickets upon which any one of the "YOUR NUMBERS" play symbols matches any of the "WINNING NUMBERS" play symbols and a prize symbol of \$1,000 (ONE THO) appears in the "prize" area under the matching "YOUR NUMBERS" play symbol, on a single ticket, shall be entitled to a prize of \$1,000.

(c) Holders of tickets upon which any one of the "YOUR NUMBERS" play symbols matches any of the "WINNING NUMBERS" play symbols and a prize symbol of \$500 (FIV HUN) appears in the "prize" area under the matching "YOUR NUMBERS" play symbol, on a single ticket, shall be entitled to a prize of \$500.

(d) Holders of tickets upon which any one of the "YOUR NUMBERS" play symbols is a 5X (5TIMES) symbol and a prize symbol of \$100 (ONE HUN) appears in the "prize" area under that 5X (5TIMES) symbol, on a single ticket, shall be entitled to a prize of \$500.

(e) Holders of tickets upon which any one of the "YOUR NUMBERS" play symbols is a 5X (5TIMES) symbol and a prize symbol of \$50<sup>00</sup> (FIFTY) appears in the "prize" area under that 5X (5TIMES) symbol, on a single ticket, shall be entitled to a prize of \$250.

(f) Holders of tickets upon which any one of the "YOUR NUMBERS" play symbols is a 5X (5TIMES) symbol and a prize symbol of \$25<sup>00</sup> (TWY FIV) appears in the "prize"

area under that 5X (5TIMES) symbol, on a single ticket, shall be entitled to a prize of \$125.

(g) Holders of tickets upon which any one of the “YOUR NUMBERS” play symbols matches any of the “WINNING NUMBERS” play symbols and a prize symbol of \$100 (ONE HUN) appears in the “prize” area under the matching “YOUR NUMBERS” play symbol, on a single ticket, shall be entitled to a prize of \$100.

(h) Holders of tickets upon which any one of the “YOUR NUMBERS” play symbols is a 5X (5TIMES) symbol and a prize symbol of \$20.00 (TWENTY) appears in the “prize” area under that 5X (5TIMES) symbol, on a single ticket, shall be entitled to a prize of \$100.

(i) Holders of tickets upon which any one of the “YOUR NUMBERS” play symbols matches any of the “WINNING NUMBERS” play symbols and a prize symbol of \$50.00 (FIFTY) appears in the “prize” area under the matching “YOUR NUMBERS” play symbol, on a single ticket, shall be entitled to a prize of \$50.

(j) Holders of tickets upon which any one of the “YOUR NUMBERS” play symbols is a 5X (5TIMES) symbol and a prize symbol of \$10.00 (TEN DOL) appears in the “prize” area under that 5X (5TIMES) symbol, on a single ticket, shall be entitled to a prize of \$50.

(k) Holders of tickets upon which any one of the “YOUR NUMBERS” play symbols matches any of the “WINNING NUMBERS” play symbols and a prize symbol of \$25.00 (TWY FIV) appears in the “prize” area under the matching “YOUR NUMBERS” play symbol, on a single ticket, shall be entitled to a prize of \$25.

(l) Holders of tickets upon which any one of the “YOUR NUMBERS” play symbols is a 5X (5TIMES) symbol and a prize symbol of \$5.00 (FIV DOL) appears in the “prize” area under that 5X (5TIMES) symbol, on a single ticket, shall be entitled to a prize of \$25.

(m) Holders of tickets upon which any one of the “YOUR NUMBERS” play symbols matches any of the “WINNING NUMBERS” play symbols and a prize symbol of \$20.00 (TWENTY) appears in the “prize” area under the matching “YOUR NUMBERS” play symbol, on a single ticket, shall be entitled to a prize of \$20.

(n) Holders of tickets upon which any one of the “YOUR NUMBERS” play symbols is a 5X (5TIMES) symbol and a prize symbol of \$4.00 (FOR DOL) appears in the “prize” area under that 5X (5TIMES) symbol, on a single ticket, shall be entitled to a prize of \$20.

(o) Holders of tickets upon which any one of the “YOUR NUMBERS” play symbols matches any of the “WINNING NUMBERS” play symbols and a prize symbol

of \$10.00 (TEN DOL) appears in the “prize” area under the matching “YOUR NUMBERS” play symbol, on a single ticket, shall be entitled to a prize of \$10.

(p) Holders of tickets upon which any one of the “YOUR NUMBERS” play symbols is a 5X (5TIMES) symbol and a prize symbol of \$2.00 (TWO DOL) appears in the “prize” area under that 5X (5TIMES) symbol, on a single ticket, shall be entitled to a prize of \$10.

(q) Holders of tickets upon which any one of the “YOUR NUMBERS” play symbols matches any of the “WINNING NUMBERS” play symbols and a prize symbol of \$5.00 (FIV DOL) appears in the “prize” area under the matching “YOUR NUMBERS” play symbol, on a single ticket, shall be entitled to a prize of \$5.

(r) Holders of tickets upon which any one of the “YOUR NUMBERS” play symbols is a 5X (5TIMES) symbol and a prize symbol of \$1.00 (ONE DOL) appears in the “prize” area under that 5X (5TIMES) symbol, on a single ticket, shall be entitled to a prize of \$5.

(s) Holders of tickets upon which any one of the “YOUR NUMBERS” play symbols matches any of the “WINNING NUMBERS” play symbols and a prize symbol of \$4.00 (FOR DOL) appears in the “prize” area under the matching “YOUR NUMBERS” play symbol, on a single ticket, shall be entitled to a prize of \$4.

(t) Holders of tickets upon which any one of the “YOUR NUMBERS” play symbols matches any of the “WINNING NUMBERS” play symbols and a prize symbol of \$2.00 (TWO DOL) appears in the “prize” area under the matching “YOUR NUMBERS” play symbol, on a single ticket, shall be entitled to a prize of \$2.

(u) Holders of tickets upon which any one of the “YOUR NUMBERS” play symbols matches any of the “WINNING NUMBERS” play symbols and a prize symbol of \$1.00 (ONE DOL) appears in the “prize” area under the matching “YOUR NUMBERS” play symbol, on a single ticket, shall be entitled to a prize of \$1.

(v) Holders of tickets upon which any one of the “YOUR NUMBERS” play symbols matches any of the “WINNING NUMBERS” play symbols and a prize symbol of FREE (TICKET) appears in the “prize” area under the matching “YOUR NUMBERS” play symbol, on a single ticket, shall be entitled to a prize of one Wild Numbers 5X instant lottery game ticket or one Pennsylvania Lottery instant lottery game ticket of equivalent sale price which is currently on sale.

8. *Number and Description of Prizes and Approximate Odds:* The following table sets forth the approximate number of winners, amounts of prizes, and approximate odds of winning:

<i>When Any Of Your Numbers Match Any Winning Number, Win Prize Shown Under The Matching Number. Win With:</i>	<i>Win:</i>	<i>Approximate Odds Are 1 In:</i>	<i>Approximate No. Of Winners Per 10,800,000 Tickets:</i>
FREE	FREE \$1 TICKET	9.52	1,134,000
\$1 × 2	\$2	33.33	324,000
\$2	\$2	33.33	324,000
(\$2 × 2) + \$1	\$5	1,000	10,800
\$1 w/ 5X	\$5	32.26	334,800
\$5	\$5	333.33	32,400

<i>When Any Of Your Numbers Match Any Winning Number, Win Prize Shown Under The Matching Number. Win With:</i>	<i>Win:</i>	<i>Approximate Odds Are 1 In:</i>	<i>Approximate No. Of Winners Per 10,800,000 Tickets:</i>
\$5 × 2	\$10	1,000	10,800
(\$4 × 2) + \$2	\$10	1,000	10,800
\$2 w/ 5X	\$10	200	54,000
\$10	\$10	1,000	10,800
\$10 × 2	\$20	6,000	1,800
\$5 × 4	\$20	6,000	1,800
(\$2 w/ 5X) + (\$5 × 2)	\$20	1,500	7,200
(\$2 w/ 5X) × 2	\$20	1,500	7,200
\$4 w/ 5X	\$20	6,000	1,800
\$20	\$20	8,000	1,350
(\$5 × 3) + \$10	\$25	12,000	900
(((\$1 w/ 5X) × 3) + \$10	\$25	1,000	10,800
\$5 w/ 5X	\$25	1,091	9,900
\$25	\$25	12,000	900
\$25 × 2	\$50	12,000	900
(((\$4 w/ 5X) × 2) + (\$2 w/ 5X)	\$50	12,000	900
(\$5 w/ 5X) × 2	\$50	12,000	900
\$10 w/ 5X	\$50	12,000	900
\$50	\$50	12,000	900
\$25 × 4	\$100	40,000	270
\$50 × 2	\$100	40,000	270
(((\$5 w/ 5X) × 2) + (\$25 × 2)	\$100	40,000	270
(\$5 w/ 5X) × 4	\$100	12,000	900
(\$10 w/ 5X) × 2	\$100	12,000	900
\$20 w/ 5X	\$100	12,000	900
\$100	\$100	40,000	270
(\$25 w/ 5X) × 4	\$500	120,000	90
(\$50 w/ 5X) × 2	\$500	120,000	90
\$100 w/ 5X	\$500	120,000	90
\$500	\$500	120,000	90
\$500 × 2	\$1,000	1,080,000	10
(\$100 w/ 5X) × 2	\$1,000	1,080,000	10
\$1,000	\$1,000	1,080,000	10
\$5,000	\$5,000	1,080,000	10

Reveal a "5X" (5TIMES) symbol, win 5 TIMES the prize shown under that symbol.

9. *Retailer Incentive Awards:* The Lottery may conduct a separate Retailer Incentive Program for retailers who sell Wild Numbers 5X instant lottery tickets.

10. *Retailer Bonus:* The Lottery may offer a retailer bonus in connection with the sale of Pennsylvania instant lottery game tickets. If a retailer bonus is offered, a Lottery retailer shall be eligible for a bonus as described in this section. Lottery retailers who sell a winning ticket that entitles the ticket holder to a prize, either payable in a single installment or having a guaranteed minimum payout, of at least \$100,000 and not exceeding \$500,000 shall be paid a bonus of \$500. Lottery retailers who sell a

winning ticket that entitles the ticket holder to a prize, either payable in a single installment or having a guaranteed minimum payout, of at least \$500,001 and not exceeding \$1,000,000 shall be paid a bonus of \$5,000. Lottery retailers who sell a winning ticket that entitles the ticket holder to a prize, either payable in a single installment or having a guaranteed minimum payout, of at least \$1,000,001 and not exceeding \$10,000,000 shall be paid a bonus of \$10,000. A Lottery retailer is entitled only to the largest bonus for which he qualifies on a winning ticket. A bonus will be initiated for payment after the instant ticket is claimed and validated. A bonus will not be awarded to a Lottery retailer that sells a non-



winning Pennsylvania Lottery instant ticket used to enter a Pennsylvania Lottery second-chance drawing or promotion that is subsequently selected to win a prize.

11. *Unclaimed Prize Money*: For a period of 1 year from the announced close of Wild Numbers 5X, prize money from winning Wild Numbers 5X instant lottery game tickets will be retained by the Secretary for payment to the persons entitled thereto. If no claim is made within 1 year of the announced close of the Wild Numbers 5X instant lottery game, the right of a ticket holder to claim the prize represented by the ticket, if any, will expire and the prize money will be paid into the State Lottery Fund and used for purposes provided for by statute.

12. *Governing Law*: In purchasing a ticket, the customer agrees to comply with and abide by the State Lottery Law (72 P.S. §§ 3761-101—3761-314), 61 Pa. Code Part V (relating to State Lotteries) and the provisions contained in this notice.

13. *Termination of the Game*: The Secretary may announce a termination date, after which no further tickets from this game may be sold. The announcement will be disseminated through media used to advertise or promote Wild Numbers 5X or through normal communications methods.

C. DANIEL HASSELL,  
Secretary

[Pa.B. Doc. No. 19-380. Filed for public inspection March 15, 2019, 9:00 a.m.]

## DEPARTMENT OF REVENUE

### Pennsylvania Wild Numbers 10X Instant Lottery Game 1394

Under the State Lottery Law (72 P.S. §§ 3761-101—3761-314) and 61 Pa. Code § 819.203 (relating to notice of instant game rules), the Secretary of Revenue hereby provides public notice of the rules for the following instant lottery game:

1. *Name*: The name of the game is Pennsylvania Wild Numbers 10X (hereinafter “Wild Numbers 10X”). The game number is PA-1394.

2. *Price*: The price of a Wild Numbers 10X instant lottery game ticket is \$2.

3. *Play Symbols*: Each Wild Numbers 10X instant lottery game ticket will contain one play area featuring a “WINNING NUMBERS” and a “YOUR NUMBERS” area. The play symbols and their captions, located in the “WINNING NUMBERS” area, are: 1 (ONE), 2 (TWO), 3 (THREE), 4 (FOUR), 5 (FIVE), 6 (SIX), 7 (SEVEN), 8 (EIGHT), 9 (NINE), 11 (ELEVN), 12 (TWLV), 13 (THRTN), 14 (FORTN), 15 (FIFTN), 16 (SIXTN), 17 (SVNTN), 18 (EGHTN), 19 (NINTN), 20 (TWENT), 21 (TWYONE), 22 (TWYTWO), 23 (TWYTHR), 24 (TWYFOR), 25 (TWYFIV), 26 (TWYSIX), 27 (TWYSVN), 28 (TWYEGT), 29 (TWYNIN), and 30 (THIRTY). The play symbols and their captions, located in the “YOUR NUMBERS” area, are: 1 (ONE), 2 (TWO), 3 (THREE), 4 (FOUR), 5 (FIVE), 6 (SIX), 7 (SEVEN), 8 (EIGHT), 9 (NINE), 11 (ELEVN), 12 (TWLV), 13 (THRTN), 14

(FORTN), 15 (FIFTN), 16 (SIXTN), 17 (SVNTN), 18 (EGHTN), 19 (NINTN), 20 (TWENT), 21 (TWYONE), 22 (TWYTWO), 23 (TWYTHR), 24 (TWYFOR), 25 (TWYFIV), 26 (TWYSIX), 27 (TWYSVN), 28 (TWYEGT), 29 (TWYNIN), 30 (THIRTY), Moneybag (MONEYBAG) symbol, and a 10X (10TIMES) symbol.

4. *Prize Symbols*: The prize symbols and their captions, located in the play area are: \$2<sup>00</sup> (TWO DOL), \$4<sup>00</sup> (FOR DOL), \$5<sup>00</sup> (FIV DOL), \$10<sup>00</sup> (TEN DOL), \$20<sup>00</sup> (TWENTY), \$40<sup>00</sup> (FORTY), \$50<sup>00</sup> (FIFTY), \$100 (ONE HUN), \$200 (TWO HUN), \$1,000 (ONE THO), and \$10,000 (TEN THO). A player can win up to 10 times on a ticket.

5. *Prizes*: The prizes that can be won in this game are: \$2, \$4, \$5, \$10, \$20, \$40, \$50, \$100, \$200, \$1,000, and \$10,000.

6. *Approximate Number of Tickets Printed For the Game*: Approximately 12,600,000 tickets will be printed for the Wild Numbers 10X instant lottery game.

#### 7. *Determination of Prize Winners*:

(a) Holders of tickets upon which any one of the “YOUR NUMBERS” play symbols matches any of the “WINNING NUMBERS” play symbols and a prize symbol of \$10,000 (TEN THO) appears in the “prize” area under the matching “YOUR NUMBERS” play symbol, on a single ticket, shall be entitled to a prize of \$10,000.

(b) Holders of tickets upon which any one of the “YOUR NUMBERS” play symbols matches any of the “WINNING NUMBERS” play symbols and a prize symbol of \$1,000 (ONE THO) appears in the “prize” area under the matching “YOUR NUMBERS” play symbol, on a single ticket, shall be entitled to a prize of \$1,000.

(c) Holders of tickets upon which any one of the “YOUR NUMBERS” play symbols is a Moneybag (MONEYBAG) symbol and a prize symbol of \$1,000 (ONE THO) appears in the “prize” area under that Moneybag (MONEYBAG) symbol, on a single ticket, shall be entitled to a prize of \$1,000.

(d) Holders of tickets upon which any one of the “YOUR NUMBERS” play symbols is a 10X (10TIMES) symbol and a prize symbol of \$100 (ONE HUN) appears in the “prize” area under that 10X (10TIMES) symbol, on a single ticket, shall be entitled to a prize of \$1,000.

(e) Holders of tickets upon which any one of the “YOUR NUMBERS” play symbols matches any of the “WINNING NUMBERS” play symbols and a prize symbol of \$200 (TWO HUN) appears in the “prize” area under the matching “YOUR NUMBERS” play symbol, on a single ticket, shall be entitled to a prize of \$200.

(f) Holders of tickets upon which any one of the “YOUR NUMBERS” play symbols is a Moneybag (MONEYBAG) symbol and a prize symbol of \$200 (TWO HUN) appears in the “prize” area under that Moneybag (MONEYBAG) symbol, on a single ticket, shall be entitled to a prize of \$200.

(g) Holders of tickets upon which any one of the “YOUR NUMBERS” play symbols is a 10X (10TIMES) symbol and a prize symbol of \$20<sup>00</sup> (TWENTY) appears in the “prize” area under that 10X (10TIMES) symbol, on a single ticket, shall be entitled to a prize of \$200.



(h) Holders of tickets upon which any one of the "YOUR NUMBERS" play symbols matches any of the "WINNING NUMBERS" play symbols and a prize symbol of \$100 (ONE HUN) appears in the "prize" area under the matching "YOUR NUMBERS" play symbol, on a single ticket, shall be entitled to a prize of \$100.

(i) Holders of tickets upon which any one of the "YOUR NUMBERS" play symbols is a Moneybag (MONEYBAG) symbol and a prize symbol of \$100 (ONE HUN) appears in the "prize" area under that Moneybag (MONEYBAG) symbol, on a single ticket, shall be entitled to a prize of \$100.

(j) Holders of tickets upon which any one of the "YOUR NUMBERS" play symbols is a 10X (10TIMES) symbol and a prize symbol of \$10<sup>00</sup> (TEN DOL) appears in the "prize" area under that 10X (10TIMES) symbol, on a single ticket, shall be entitled to a prize of \$100.

(k) Holders of tickets upon which any one of the "YOUR NUMBERS" play symbols matches any of the "WINNING NUMBERS" play symbols and a prize symbol of \$50<sup>00</sup> (FIFTY) appears in the "prize" area under the matching "YOUR NUMBERS" play symbol, on a single ticket, shall be entitled to a prize of \$50.

(l) Holders of tickets upon which any one of the "YOUR NUMBERS" play symbols is a Moneybag (MONEYBAG) symbol and a prize symbol of \$50<sup>00</sup> (FIFTY) appears in the "prize" area under that Moneybag (MONEYBAG) symbol, on a single ticket, shall be entitled to a prize of \$50.

(m) Holders of tickets upon which any one of the "YOUR NUMBERS" play symbols is a 10X (10TIMES) symbol and a prize symbol of \$5<sup>00</sup> (FIV DOL) appears in the "prize" area under that 10X (10TIMES) symbol, on a single ticket, shall be entitled to a prize of \$50.

(n) Holders of tickets upon which any one of the "YOUR NUMBERS" play symbols matches any of the "WINNING NUMBERS" play symbols and a prize symbol of \$40<sup>00</sup> (FORTY) appears in the "prize" area under the matching "YOUR NUMBERS" play symbol, on a single ticket, shall be entitled to a prize of \$40.

(o) Holders of tickets upon which any one of the "YOUR NUMBERS" play symbols is a Moneybag (MONEYBAG) symbol and a prize symbol of \$40<sup>00</sup> (FORTY) appears in the "prize" area under that Moneybag (MONEYBAG) symbol, on a single ticket, shall be entitled to a prize of \$40.

(p) Holders of tickets upon which any one of the "YOUR NUMBERS" play symbols is a 10X (10TIMES) symbol and a prize symbol of \$4<sup>00</sup> (FOR DOL) appears in the "prize" area under that 10X (10TIMES) symbol, on a single ticket, shall be entitled to a prize of \$40.

(q) Holders of tickets upon which any one of the "YOUR NUMBERS" play symbols matches any of the "WINNING NUMBERS" play symbols and a prize symbol of \$20<sup>00</sup> (TWENTY) appears in the "prize" area under the matching "YOUR NUMBERS" play symbol, on a single ticket, shall be entitled to a prize of \$20.

(r) Holders of tickets upon which any one of the "YOUR NUMBERS" play symbols is a Moneybag (MONEYBAG) symbol and a prize symbol of \$20<sup>00</sup> (TWENTY) appears

in the "prize" area under that Moneybag (MONEYBAG) symbol, on a single ticket, shall be entitled to a prize of \$20.

(s) Holders of tickets upon which any one of the "YOUR NUMBERS" play symbols is a 10X (10TIMES) symbol and a prize symbol of \$2<sup>00</sup> (TWO DOL) appears in the "prize" area under that 10X (10TIMES) symbol, on a single ticket, shall be entitled to a prize of \$20.

(t) Holders of tickets upon which any one of the "YOUR NUMBERS" play symbols matches any of the "WINNING NUMBERS" play symbols and a prize symbol of \$10<sup>00</sup> (TEN DOL) appears in the "prize" area under the matching "YOUR NUMBERS" play symbol, on a single ticket, shall be entitled to a prize of \$10.

(u) Holders of tickets upon which any one of the "YOUR NUMBERS" play symbols is a Moneybag (MONEYBAG) symbol and a prize symbol of \$10<sup>00</sup> (TEN DOL) appears in the "prize" area under that Moneybag (MONEYBAG) symbol, on a single ticket, shall be entitled to a prize of \$10.

(v) Holders of tickets upon which any one of the "YOUR NUMBERS" play symbols matches any of the "WINNING NUMBERS" play symbols and a prize symbol of \$5<sup>00</sup> (FIV DOL) appears in the "prize" area under the matching "YOUR NUMBERS" play symbol, on a single ticket, shall be entitled to a prize of \$5.

(w) Holders of tickets upon which any one of the "YOUR NUMBERS" play symbols is a Moneybag (MONEYBAG) symbol and a prize symbol of \$5<sup>00</sup> (FIV DOL) appears in the "prize" area under that Moneybag (MONEYBAG) symbol, on a single ticket, shall be entitled to a prize of \$5.

(x) Holders of tickets upon which any one of the "YOUR NUMBERS" play symbols matches any of the "WINNING NUMBERS" play symbols and a prize symbol of \$4<sup>00</sup> (FOR DOL) appears in the "prize" area under the matching "YOUR NUMBERS" play symbol, on a single ticket, shall be entitled to a prize of \$4.

(y) Holders of tickets upon which any one of the "YOUR NUMBERS" play symbols is a Moneybag (MONEYBAG) symbol and a prize symbol of \$4<sup>00</sup> (FOR DOL) appears in the "prize" area under that Moneybag (MONEYBAG) symbol, on a single ticket, shall be entitled to a prize of \$4.

(z) Holders of tickets upon which any one of the "YOUR NUMBERS" play symbols matches any of the "WINNING NUMBERS" play symbols and a prize symbol of \$2<sup>00</sup> (TWO DOL) appears in the "prize" area under the matching "YOUR NUMBERS" play symbol, on a single ticket, shall be entitled to a prize of \$2.

(aa) Holders of tickets upon which any one of the "YOUR NUMBERS" play symbols is a Moneybag (MONEYBAG) symbol and a prize symbol of \$2<sup>00</sup> (TWO DOL) appears in the "prize" area under that Moneybag (MONEYBAG) symbol, on a single ticket, shall be entitled to a prize of \$2.

*8. Number and Description of Prizes and Approximate Odds:* The following table sets forth the approximate number of winners, amounts of prizes, and approximate odds of winning:

<i>When Any Of Your Numbers Match Any Winning Number; Win Prize Shown Under The Matching Number. Win With:</i>	<i>Win:</i>	<i>Approximate Odds Are 1 In:</i>	<i>Approximate No. Of Winners Per 12,600,000 Tickets:</i>
\$2 w/ MONEYBAG	\$2	15	840,000
\$2	\$2	37.5	336,000
\$2 × 2	\$4	75	168,000
\$4 w/ MONEYBAG	\$4	37.5	336,000
\$4	\$4	75	168,000
\$5 w/ MONEYBAG	\$5	62.5	201,600
\$5	\$5	75	168,000
\$5 × 2	\$10	250	50,400
\$10 w/ MONEYBAG	\$10	75	168,000
\$10	\$10	250	50,400
\$2 × 10	\$20	750	16,800
\$10 × 2	\$20	750	16,800
\$2 w/ 10X	\$20	136.36	92,400
\$20 w/ MONEYBAG	\$20	300	42,000
\$20	\$20	750	16,800
\$4 × 10	\$40	12,000	1,050
(\$2 w/ 10X) + (\$2 × 8) + \$4	\$40	3,000	4,200
(\$2 w/ 10X) × 2	\$40	3,000	4,200
\$4 w/ 10X	\$40	1,200	10,500
\$40 w/ MONEYBAG	\$40	3,000	4,200
\$40	\$40	12,000	1,050
\$5 × 10	\$50	4,000	3,150
(\$4 w/ 10X) + (\$2 × 5)	\$50	6,000	2,100
\$5 w/ 10X	\$50	1,200	10,500
\$50 w/ MONEYBAG	\$50	3,000	4,200
\$50	\$50	12,000	1,050
\$10 × 10	\$100	12,000	1,050
(((\$4 w/ 10X) × 2) + (\$2 w/ 10X))	\$100	12,000	1,050
(\$5 w/ 10X) × 2	\$100	12,000	1,050
\$10 w/ 10X	\$100	12,000	1,050
\$100 w/ MONEYBAG	\$100	2,400	5,250
\$100	\$100	12,000	1,050
\$20 × 10	\$200	60,000	210
\$20 w/ 10X	\$200	120,000	105
\$200 w/ MONEYBAG	\$200	60,000	210
\$200	\$200	120,000	105
\$100 w/ 10X	\$1,000	1,260,000	10
\$1,000 w/ MONEYBAG	\$1,000	1,260,000	10
\$1,000	\$1,000	1,260,000	10
\$10,000	\$10,000	1,260,000	10

Reveal a “MONEYBAG” (MONEYBAG) symbol, win prize under that symbol automatically.

Reveal a “10X” (10TIMES) symbol, win 10 TIMES the prize shown under that symbol.

9. *Retailer Incentive Awards:* The Lottery may conduct a separate Retailer Incentive Program for retailers who sell Wild Numbers 10X instant lottery tickets.

10. *Retailer Bonus:* The Lottery may offer a retailer bonus in connection with the sale of Pennsylvania instant lottery game tickets. If a retailer bonus is offered, a Lottery retailer shall be eligible for a bonus as described in this section. Lottery retailers who sell a winning ticket that entitles the ticket holder to a prize, either payable in a single installment or having a guaranteed minimum payout, of at least \$100,000 and not exceeding \$500,000 shall be paid a bonus of \$500. Lottery retailers who sell a winning ticket that entitles the ticket holder to a prize, either payable in a single installment or having a guaranteed minimum payout, of at least \$500,001 and not exceeding \$1,000,000 shall be paid a bonus of \$5,000. Lottery retailers who sell a winning ticket that entitles the ticket holder to a prize, either payable in a single installment or having a guaranteed minimum payout, of at least \$1,000,001 and not exceeding \$10,000,000 shall be paid a bonus of \$10,000. A Lottery retailer is entitled only to the largest bonus for which he qualifies on a winning ticket. A bonus will be initiated for payment after the instant ticket is claimed and validated. A bonus will not be awarded to a Lottery retailer that sells a non-winning Pennsylvania Lottery instant ticket used to enter a Pennsylvania Lottery second-chance drawing or promotion that is subsequently selected to win a prize.

11. *Unclaimed Prize Money:* For a period of 1 year from the announced close of Wild Numbers 10X, prize money from winning Wild Numbers 10X instant lottery game tickets will be retained by the Secretary for payment to the persons entitled thereto. If no claim is made within 1 year of the announced close of the Wild Numbers 10X instant lottery game, the right of a ticket holder to claim the prize represented by the ticket, if any, will expire and the prize money will be paid into the State Lottery Fund and used for purposes provided for by statute.

12. *Governing Law:* In purchasing a ticket, the customer agrees to comply with and abide by the State Lottery Law (72 P.S. §§ 3761-101—3761-314), 61 Pa. Code Part V (relating to State Lotteries) and the provisions contained in this notice.

13. *Termination of the Game:* The Secretary may announce a termination date, after which no further tickets from this game may be sold. The announcement will be disseminated through media used to advertise or promote Wild Numbers 10X or through normal communications methods.

C. DANIEL HASSELL,  
Secretary

[Pa.B. Doc. No. 19-381. Filed for public inspection March 15, 2019, 9:00 a.m.]

## DEPARTMENT OF REVENUE

### Pennsylvania Wild Numbers 20X Instant Lottery Game 1392

Under the State Lottery Law (72 P.S. §§ 3761-101—3761-314) and 61 Pa. Code § 819.203 (relating to notice of instant game rules), the Secretary of Revenue hereby provides public notice of the rules for the following instant lottery game:

1. *Name:* The name of the game is Pennsylvania Wild Numbers 20X (hereinafter “Wild Numbers 20X”). The game number is PA-1392.

2. *Price:* The price of a Wild Numbers 20X instant lottery game ticket is \$5.

3. *Play Symbols:* Each Wild Numbers 20X instant lottery game ticket will contain one play area featuring a “WINNING NUMBERS” and a “YOUR NUMBERS” area. The play symbols and their captions, located in the “WINNING NUMBERS” area, are: 1 (ONE), 2 (TWO), 3 (THREE), 4 (FOUR), 5 (FIVE), 6 (SIX), 7 (SEVEN), 8 (EIGHT), 9 (NINE), 10 (TEN), 11 (ELEVN), 12 (TWLV), 13 (THRTN), 14 (FORTN), 15 (FIFTN), 16 (SIXTN), 17 (SVNTN), 18 (EGHTN), 19 (NINTN), 21 (TWYONE), 22 (TWYTWO), 23 (TWYTHR), 24 (TWYFOR), 25 (TWYFIV), 26 (TWYSIX), 27 (TWYSVN), 28 (TWYEGT), 29 (TWYNIN), and 30 (THIRT). The play symbols and their captions, located in the “YOUR NUMBERS” area, are: 1 (ONE), 2 (TWO), 3 (THREE), 4 (FOUR), 5 (FIVE), 6 (SIX), 7 (SEVEN), 8 (EIGHT), 9 (NINE), 10 (TEN), 11 (ELEVN), 12 (TWLV), 13 (THRTN), 14 (FORTN), 15 (FIFTN), 16 (SIXTN), 17 (SVNTN), 18 (EGHTN), 19 (NINTN), 21 (TWYONE), 22 (TWYTWO), 23 (TWYTHR), 24 (TWYFOR), 25 (TWYFIV), 26 (TWYSIX), 27 (TWYSVN), 28 (TWYEGT), 29 (TWYNIN), 30 (THIRT), 20X (20TIMES) symbol, and a WILD (WINALL) symbol.

4. *Prize Symbols:* The prize symbols and their captions, located in the play area are: \$5<sup>00</sup> (FIV DOL), \$10<sup>00</sup> (TEN DOL), \$20<sup>00</sup> (TWENTY), \$30<sup>00</sup> (THIRTY), \$50<sup>00</sup> (FIFTY), \$100 (ONE HUN), \$200 (TWO HUN), \$500 (FIV HUN), \$1,000 (ONE THO), \$10,000 (TEN THO), and \$100,000 (ONEHUNTHO). A player can win up to 12 times on a ticket.

5. *Prizes:* The prizes that can be won in this game are: \$5, \$10, \$20, \$30, \$50, \$100, \$200, \$500, \$1,000, \$10,000, and \$100,000.

6. *Approximate Number of Tickets Printed For the Game:* Approximately 12,000,000 tickets will be printed for the Wild Numbers 20X instant lottery game.

#### 7. Determination of Prize Winners:

(a) Holders of tickets upon which any one of the “YOUR NUMBERS” play symbols matches any of the “WINNING NUMBERS” play symbols and a prize symbol of \$100,000 (ONEHUNTHO) appears in the “prize” area under the matching “YOUR NUMBERS” play symbol, on a single ticket, shall be entitled to a prize of \$100,000.

(b) Holders of tickets upon which any one of the “YOUR NUMBERS” play symbols matches any of the “WINNING NUMBERS” play symbols and a prize symbol of \$10,000 (TEN THO) appears in the “prize” area under the matching “YOUR NUMBERS” play symbol, on a single ticket, shall be entitled to a prize of \$10,000.

(c) Holders of tickets upon which any one of the “YOUR NUMBERS” play symbols is a 20X (20TIMES) symbol and a prize symbol of \$500 (FIV HUN) appears in the “prize” area under that 20X (20TIMES) symbol, on a single ticket, shall be entitled to a prize of \$10,000.

(d) Holders of tickets upon which any one of the “YOUR NUMBERS” play symbols matches any of the “WINNING NUMBERS” play symbols and a prize symbol of \$1,000 (ONE THO) appears in the “prize” area under the matching “YOUR NUMBERS” play symbol, on a single ticket, shall be entitled to a prize of \$1,000.

(e) Holders of tickets upon which any one of the “YOUR NUMBERS” play symbols is a 20X (20TIMES)



symbol and a prize symbol of \$50.<sup>00</sup> (FIFTY) appears in the “prize” area under that 20X (20TIMES) symbol, on a single ticket, shall be entitled to a prize of \$1,000.

(f) Holders of tickets upon which any one of the “YOUR NUMBERS” play symbols is a WILD (WINALL) symbol, and a prize symbol of \$200 (TWO HUN) appears in two of the “prize” areas, a prize symbol of \$100 (ONE HUN) appears in five of the “prize” areas, and a prize symbol of \$20.<sup>00</sup> (TWENTY) appears in five of the “prize” areas, shall be entitled to a prize of \$1,000.

(g) Holders of tickets upon which any one of the “YOUR NUMBERS” play symbols is a WILD (WINALL) symbol, and a prize symbol of \$100 (ONE HUN) appears in eight of the “prize” areas, and a prize symbol of \$50.<sup>00</sup> (FIFTY) appears in four of the “prize” areas, shall be entitled to a prize of \$1,000.

(h) Holders of tickets upon which any one of the “YOUR NUMBERS” play symbols matches any of the “WINNING NUMBERS” play symbols and a prize symbol of \$500 (FIV HUN) appears in the “prize” area under the matching “YOUR NUMBERS” play symbol, on a single ticket, shall be entitled to a prize of \$500.

(i) Holders of tickets upon which any one of the “YOUR NUMBERS” play symbols is a WILD (WINALL) symbol, and a prize symbol of \$100 (ONE HUN) appears in three of the “prize” areas, a prize symbol of \$30.<sup>00</sup> (THIRTY) appears in three of the “prize” areas, a prize symbol of \$20.<sup>00</sup> (TWENTY) appears in five of the “prize” areas, and a prize symbol of \$10.<sup>00</sup> (TEN DOL) appears in one of the “prize” areas, shall be entitled to a prize of \$500.

(j) Holders of tickets upon which any one of the “YOUR NUMBERS” play symbols is a WILD (WINALL) symbol, and a prize symbol of \$50.<sup>00</sup> (FIFTY) appears in seven of the “prize” areas, and a prize symbol of \$30.<sup>00</sup> (THIRTY) appears in five of the “prize” areas shall be entitled to a prize of \$500.

(k) Holders of tickets upon which any one of the “YOUR NUMBERS” play symbols is a 20X (20TIMES) symbol and a prize symbol of \$20.<sup>00</sup> (TWENTY) appears in the “prize” area under that 20X (20TIMES) symbol, on a single ticket, shall be entitled to a prize of \$400.

(l) Holders of tickets upon which any one of the “YOUR NUMBERS” play symbols matches any of the “WINNING NUMBERS” play symbols and a prize symbol of \$200 (TWO HUN) appears in the “prize” area under the matching “YOUR NUMBERS” play symbol, on a single ticket, shall be entitled to a prize of \$200.

(m) Holders of tickets upon which any one of the “YOUR NUMBERS” play symbols is a 20X (20TIMES) symbol and a prize symbol of \$10.<sup>00</sup> (TEN DOL) appears in the “prize” area under that 20X (20TIMES) symbol, on a single ticket, shall be entitled to a prize of \$200.

(n) Holders of tickets upon which any one of the “YOUR NUMBERS” play symbols is a WILD (WINALL) symbol, and a prize symbol of \$5.<sup>00</sup> (FIV DOL) appears in ten of the “prize” areas, a prize symbol of \$100 (ONE HUN) appears in one of the “prize” areas, and a prize symbol of \$50.<sup>00</sup> (FIFTY) appears in one of the “prize” areas, shall be entitled to a prize of \$200.

(o) Holders of tickets upon which any one of the “YOUR NUMBERS” play symbols is a WILD (WINALL)

symbol, and a prize symbol of \$50.<sup>00</sup> (FIFTY) appears in two of the “prize” areas and a prize symbol of \$10.<sup>00</sup> (TEN DOL) appears in ten of the “prize” areas, shall be entitled to a prize of \$200.

(p) Holders of tickets upon which any one of the “YOUR NUMBERS” play symbols matches any of the “WINNING NUMBERS” play symbols and a prize symbol of \$100 (ONE HUN) appears in the “prize” area under the matching “YOUR NUMBERS” play symbol, on a single ticket, shall be entitled to a prize of \$100.

(q) Holders of tickets upon which any one of the “YOUR NUMBERS” play symbols is a 20X (20TIMES) symbol and a prize symbol of \$5.<sup>00</sup> (FIV DOL) appears in the “prize” area under that 20X (20TIMES) symbol, on a single ticket, shall be entitled to a prize of \$100.

(r) Holders of tickets upon which any one of the “YOUR NUMBERS” play symbols is a WILD (WINALL) symbol, and a prize symbol of \$20.<sup>00</sup> (TWENTY) appears in two of the “prize” areas, a prize symbol of \$10.<sup>00</sup> (TEN DOL) appears in two of the “prize” areas, and a prize symbol of \$5.<sup>00</sup> (FIV DOL) appears in eight of the “prize” areas, shall be entitled to a prize of \$100.

(s) Holders of tickets upon which any one of the “YOUR NUMBERS” play symbols is a WILD (WINALL) symbol, and a prize symbol of \$10.<sup>00</sup> (TEN DOL) appears in eight of the “prize” areas and a prize symbol of \$5.<sup>00</sup> (FIV DOL) appears in four of the “prize” areas, shall be entitled to a prize of \$100.

(t) Holders of tickets upon which any one of the “YOUR NUMBERS” play symbols matches any of the “WINNING NUMBERS” play symbols and a prize symbol of \$50.<sup>00</sup> (FIFTY) appears in the “prize” area under the matching “YOUR NUMBERS” play symbol, on a single ticket, shall be entitled to a prize of \$50.

(u) Holders of tickets upon which any one of the “YOUR NUMBERS” play symbols matches any of the “WINNING NUMBERS” play symbols and a prize symbol of \$30.<sup>00</sup> (THIRTY) appears in the “prize” area under the matching “YOUR NUMBERS” play symbol, on a single ticket, shall be entitled to a prize of \$30.

(v) Holders of tickets upon which any one of the “YOUR NUMBERS” play symbols matches any of the “WINNING NUMBERS” play symbols and a prize symbol of \$20.<sup>00</sup> (TWENTY) appears in the “prize” area under the matching “YOUR NUMBERS” play symbol, on a single ticket, shall be entitled to a prize of \$20.

(w) Holders of tickets upon which any one of the “YOUR NUMBERS” play symbols matches any of the “WINNING NUMBERS” play symbols and a prize symbol of \$10.<sup>00</sup> (TEN DOL) appears in the “prize” area under the matching “YOUR NUMBERS” play symbol, on a single ticket, shall be entitled to a prize of \$10.

(x) Holders of tickets upon which any one of the “YOUR NUMBERS” play symbols matches any of the “WINNING NUMBERS” play symbols and a prize symbol of \$5.<sup>00</sup> (FIV DOL) appears in the “prize” area under the matching “YOUR NUMBERS” play symbol, on a single ticket, shall be entitled to a prize of \$5.

8. *Number and Description of Prizes and Approximate Odds:* The following table sets forth the approximate number of winners, amounts of prizes, and approximate odds of winning:

<i>When Any Of Your Numbers Match Any Winning Number; Win Prize Shown Under The Matching Number. Win With:</i>	<i>Win:</i>	<i>Approximate Odds Are 1 In:</i>	<i>Approximate No. Of Winners Per 12,000,000 Tickets:</i>
\$5	\$5	7.5	1,600,000
\$5 × 2	\$10	60	200,000
\$10	\$10	60	200,000
\$5 × 4	\$20	120	100,000
\$10 × 2	\$20	120	100,000
(\$5 × 2) + \$10	\$20	40	300,000
\$20	\$20	120	100,000
\$5 × 6	\$30	600	20,000
\$10 × 3	\$30	600	20,000
\$20 + \$10	\$30	300	40,000
\$30	\$30	600	20,000
\$5 × 10	\$50	600	20,000
\$10 × 5	\$50	600	20,000
(\$20 × 2) + (\$5 × 2)	\$50	600	20,000
\$50	\$50	600	20,000
WILD w/ ((\$10 × 8) + (\$5 × 4))	\$100	1,200	10,000
WILD w/ ((\$20 × 2) + (\$10 × 2) + (\$5 × 8))	\$100	1,200	10,000
\$20 × 5	\$100	2,400	5,000
\$50 × 2	\$100	6,000	2,000
\$5 w/ 20X	\$100	300	40,000
\$100	\$100	12,000	1,000
WILD w/ ((\$50 × 2) + (\$10 × 10))	\$200	12,000	1,000
WILD w/ ((\$5 × 10) + \$100 + \$50)	\$200	12,000	1,000
\$50 × 4	\$200	24,000	500
\$100 × 2	\$200	24,000	500
(\$30 × 5) + \$50	\$200	24,000	500
(\$5 w/ 20X) + (\$20 × 5)	\$200	12,000	1,000
(\$5 w/ 20X) × 2	\$200	12,000	1,000
\$10 w/ 20X	\$200	12,000	1,000
\$200	\$200	24,000	500
WILD w/ ((\$50 × 7) + (\$30 × 5))	\$500	24,000	500
WILD w/ ((\$100 × 3) + (\$30 × 3) + (\$20 × 5) + \$10)	\$500	24,000	500
\$50 × 10	\$500	120,000	100
\$100 × 5	\$500	120,000	100
((\$10 w/ 20X) × 2) + (\$5 w/ 20X)	\$500	30,000	400
(\$20 w/ 20X) + (\$10 × 10)	\$500	30,000	400
(\$20 w/ 20X) + (\$50 × 2)	\$500	30,000	400
\$500	\$500	120,000	100
WILD w/ ((\$100 × 8) + (\$50 × 4))	\$1,000	60,000	200
WILD w/ ((\$200 × 2) + (\$100 × 5) + (\$20 × 5))	\$1,000	60,000	200
\$500 × 2	\$1,000	120,000	100
((\$20 w/ 20X) × 2) + (\$100 × 2)	\$1,000	60,000	200
\$50 w/ 20X	\$1,000	60,000	200
\$1,000	\$1,000	1,200,000	10

<i>When Any Of Your Numbers Match Any Winning Number; Win Prize Shown Under The Matching Number. Win With:</i>	<i>Win:</i>	<i>Approximate Odds Are 1 In:</i>	<i>Approximate No. Of Winners Per 12,000,000 Tickets:</i>
\$500 w/ 20X	\$10,000	1,200,000	10
\$10,000	\$10,000	1,200,000	10
\$100,000	\$100,000	1,200,000	10

Reveal a "20X" (20TIMES) symbol, win 20 TIMES the prize shown under that symbol.

Reveal a "WILD" (WINALL) symbol, win all 12 prizes shown!

9. *Retailer Incentive Awards:* The Lottery may conduct a separate Retailer Incentive Program for retailers who sell Wild Numbers 20X instant lottery tickets.

10. *Retailer Bonus:* The Lottery may offer a retailer bonus in connection with the sale of Pennsylvania instant lottery game tickets. If a retailer bonus is offered, a Lottery retailer shall be eligible for a bonus as described in this section. Lottery retailers who sell a winning ticket that entitles the ticket holder to a prize, either payable in a single installment or having a guaranteed minimum payout, of at least \$100,000 and not exceeding \$500,000 shall be paid a bonus of \$500. Lottery retailers who sell a winning ticket that entitles the ticket holder to a prize, either payable in a single installment or having a guaranteed minimum payout, of at least \$500,001 and not exceeding \$1,000,000 shall be paid a bonus of \$5,000. Lottery retailers who sell a winning ticket that entitles the ticket holder to a prize, either payable in a single installment or having a guaranteed minimum payout, of at least \$1,000,001 and not exceeding \$10,000,000 shall be paid a bonus of \$10,000. A Lottery retailer is entitled only to the largest bonus for which he qualifies on a winning ticket. A bonus will be initiated for payment after the instant ticket is claimed and validated. A bonus will not be awarded to a Lottery retailer that sells a non-winning Pennsylvania Lottery instant ticket used to enter a Pennsylvania Lottery second-chance drawing or promotion that is subsequently selected to win a prize.

11. *Unclaimed Prize Money:* For a period of 1 year from the announced close of Wild Numbers 20X, prize money from winning Wild Numbers 20X instant lottery game tickets will be retained by the Secretary for payment to the persons entitled thereto. If no claim is made within 1 year of the announced close of the Wild Numbers 20X instant lottery game, the right of a ticket holder to claim the prize represented by the ticket, if any, will expire and the prize money will be paid into the State Lottery Fund and used for purposes provided for by statute.

12. *Governing Law:* In purchasing a ticket, the customer agrees to comply with and abide by the State Lottery Law (72 P.S. §§ 3761-101—3761-314), 61 Pa. Code Part V (relating to State Lotteries) and the provisions contained in this notice.

13. *Termination of the Game:* The Secretary may announce a termination date, after which no further tickets from this game may be sold. The announcement will be

disseminated through media used to advertise or promote Wild Numbers 20X or through normal communications methods.

C. DANIEL HASSELL,  
*Secretary*

[Pa.B. Doc. No. 19-382. Filed for public inspection March 15, 2019, 9:00 a.m.]

## DEPARTMENT OF REVENUE

### Pennsylvania Wild Numbers 50X Instant Lottery Game 1391

Under the State Lottery Law (72 P.S. §§ 3761-101—3761-314) and 61 Pa. Code § 819.203 (relating to notice of instant game rules), the Secretary of Revenue hereby provides public notice of the rules for the following instant lottery game:

1. *Name:* The name of the game is Pennsylvania Wild Numbers 50X (hereinafter "Wild Numbers 50X"). The game number is PA-1391.

2. *Price:* The price of a Wild Numbers 50X instant lottery game ticket is \$10.

3. *Play Symbols:* Each Wild Numbers 50X instant lottery game ticket will contain one play area featuring a "WINNING NUMBERS" and a "YOUR NUMBERS" area. The play symbols and their captions, located in the "WINNING NUMBERS" area, are: 1 (ONE), 2 (TWO), 3 (THREE), 4 (FOUR), 5 (FIVE), 6 (SIX), 7 (SEVEN), 8 (EIGHT), 9 (NINE), 10 (TEN), 11 (ELEVN), 12 (TWLV), 13 (THRTN), 14 (FORTN), 15 (FIFTN), 16 (SIXTN), 17 (SVNTN), 18 (EGHTN), 19 (NINTN), 20 (TWENT), 21 (TWYONE), 22 (TWYTWO), 23 (TWYTHR), 24 (TWYFOR), 25 (TWYFIV), 26 (TWYSIX), 27 (TWYSVN), 28 (TWYEGT), 29 (TWYNIN), 30 (THIRT), 31 (THYONE), 32 (THYTWO), 33 (THYTHR), 34 (THYFOR), 35 (THYFIV), 36 (THYSIX), 37 (THYSVN), 38 (THYEGT), 39 (THYNIN), and 40 (FORT). The play symbols and their captions, located in the "YOUR NUMBERS" area, are: 1 (ONE), 2 (TWO), 3 (THREE), 4 (FOUR), 5 (FIVE), 6 (SIX), 7 (SEVEN), 8 (EIGHT), 9 (NINE), 10 (TEN), 11 (ELEVN), 12 (TWLV), 13 (THRTN), 14 (FORTN), 15 (FIFTN), 16 (SIXTN), 17 (SVNTN), 18 (EGHTN), 19 (NINTN), 20 (TWENT), 21 (TWYONE), 22 (TWYTWO), 23 (TWYTHR), 24 (TWYFOR), 25 (TWYFIV), 26 (TWYSIX), 27 (TWYSVN), 28 (TWYEGT), 29 (TWYNIN), 30 (THIRT), 31 (THYONE), 32 (THYTWO), 33



(THYTHR), 34 (THYFOR), 35 (THYFIV), 36 (THYSIX), 37 (THYSVN), 38 (THYEGT), 39 (THYNIN), 40 (FORT), \$50 Bill (WIN\$50) symbol, 50X (50TIMES) symbol, and a WILD (WINALL) symbol.

4. *Prize Symbols:* The prize symbols and their captions, located in the play area are \$10.<sup>00</sup> (TEN DOL), \$15.<sup>00</sup> (FIFTNDOL), \$20.<sup>00</sup> (TWENTY), \$40.<sup>00</sup> (FORTY), \$50.<sup>00</sup> (FIFTY), \$100 (ONE HUN), \$150 (ONEHUNFTY), \$500 (FIV HUN), \$1,000 (ONE THO), \$5,000 (FIV THO), \$10,000 (TEN THO), and \$300,000 (THRHUNTHO). A player can win up to 15 times on a ticket.

5. *Prizes:* The prizes that can be won in this game are: \$10, \$15, \$20, \$40, \$50, \$100, \$150, \$500, \$1,000, \$5,000, \$10,000, and \$300,000.

6. *Approximate Number of Tickets Printed For the Game:* Approximately 9,600,000 tickets will be printed for the Wild Numbers 50X instant lottery game.

7. *Determination of Prize Winners:*

(a) Holders of tickets upon which any one of the "YOUR NUMBERS" play symbols matches any of the "WINNING NUMBERS" play symbols and a prize symbol of \$300,000 (THRHUNTHO) appears in the "prize" area under the matching "YOUR NUMBERS" play symbol, on a single ticket, shall be entitled to a prize of \$300,000.

(b) Holders of tickets upon which any one of the "YOUR NUMBERS" play symbols matches any of the "WINNING NUMBERS" play symbols and a prize symbol of \$10,000 (TEN THO) appears in the "prize" area under the matching "YOUR NUMBERS" play symbol, on a single ticket, shall be entitled to a prize of \$10,000.

(c) Holders of tickets upon which any one of the "YOUR NUMBERS" play symbols matches any of the "WINNING NUMBERS" play symbols and a prize symbol of \$5,000 (FIV THO) appears in the "prize" area under the matching "YOUR NUMBERS" play symbol, on a single ticket, shall be entitled to a prize of \$5,000.

(d) Holders of tickets upon which any one of the "YOUR NUMBERS" play symbols is a 50X (50TIMES) symbol and a prize symbol of \$100 (ONE HUN) appears in the "prize" area under that 50X (50TIMES) symbol, on a single ticket, shall be entitled to a prize of \$5,000.

(e) Holders of tickets upon which any one of the "YOUR NUMBERS" play symbols is a 50X (50TIMES) symbol and a prize symbol of \$40.<sup>00</sup> (FORTY) appears in the "prize" area under that 50X (50TIMES) symbol, on a single ticket, shall be entitled to a prize of \$2,000.

(f) Holders of tickets upon which any one of the "YOUR NUMBERS" play symbols matches any of the "WINNING NUMBERS" play symbols and a prize symbol of \$1,000 (ONE THO) appears in the "prize" area under the matching "YOUR NUMBERS" play symbol, on a single ticket, shall be entitled to a prize of \$1,000.

(g) Holders of tickets upon which any one of the "YOUR NUMBERS" play symbols is a 50X (50TIMES) symbol and a prize symbol of \$20.<sup>00</sup> (TWENTY) appears in the "prize" area under that 50X (50TIMES) symbol, on a single ticket, shall be entitled to a prize of \$1,000.

(h) Holders of tickets upon which any one of the "YOUR NUMBERS" play symbols is a WILD (WINALL) symbol, and a prize symbol of \$150 (ONEHUNFTY) appears in four of the "prize" areas, a prize symbol of \$50.<sup>00</sup> (FIFTY) appears in six of the "prize" areas, and a prize symbol of \$20.<sup>00</sup> (TWENTY) appears in five of the "prize" areas shall be entitled to a prize of \$1,000.

(i) Holders of tickets upon which any one of the "YOUR NUMBERS" play symbols is a WILD (WINALL) symbol, and a prize symbol of \$100 (ONE HUN) appears in five of the "prize" areas and a prize symbol of \$50.<sup>00</sup> (FIFTY) appears in ten of the "prize" areas shall be entitled to a prize of \$1,000.

(j) Holders of tickets upon which any one of the "YOUR NUMBERS" play symbols is a 50X (50TIMES) symbol and a prize symbol of \$15.<sup>00</sup> (FIFTNDOL) appears in the "prize" area under that 50X (50TIMES) symbol, on a single ticket, shall be entitled to a prize of \$750.

(k) Holders of tickets upon which any one of the "YOUR NUMBERS" play symbols matches any of the "WINNING NUMBERS" play symbols and a prize symbol of \$500 (FIV HUN) appears in the "prize" area under the matching "YOUR NUMBERS" play symbol, on a single ticket, shall be entitled to a prize of \$500.

(l) Holders of tickets upon which any one of the "YOUR NUMBERS" play symbols is a 50X (50TIMES) symbol and a prize symbol of \$10.<sup>00</sup> (TEN DOL) appears in the "prize" area under that 50X (50TIMES) symbol, on a single ticket, shall be entitled to a prize of \$500.

(m) Holders of tickets upon which any one of the "YOUR NUMBERS" play symbols is a WILD (WINALL) symbol, and a prize symbol of \$100 (ONE HUN) appears in three of the "prize" areas, a prize symbol of \$50.<sup>00</sup> (FIFTY) appears in two of the "prize" areas, and a prize symbol of \$10.<sup>00</sup> (TEN DOL) appears in ten of the "prize" areas shall be entitled to a prize of \$500.

(n) Holders of tickets upon which any one of the "YOUR NUMBERS" play symbols is a WILD (WINALL) symbol, and a prize symbol of \$40.<sup>00</sup> (FORTY) appears in ten of the "prize" areas and a prize symbol of \$20.<sup>00</sup> (TWENTY) appears in five of the "prize" areas shall be entitled to a prize of \$500.

(o) Holders of tickets upon which any one of the "YOUR NUMBERS" play symbols matches any of the "WINNING NUMBERS" play symbols and a prize symbol of \$150 (ONEHUNFTY) appears in the "prize" area under the matching "YOUR NUMBERS" play symbol, on a single ticket, shall be entitled to a prize of \$150.

(p) Holders of tickets upon which any one of the "YOUR NUMBERS" play symbols is a WILD (WINALL) symbol, and a prize symbol of \$10.<sup>00</sup> (TEN DOL) appears in fifteen of the "prize" areas shall be entitled to a prize of \$150.

(q) Holders of tickets upon which any one of the "YOUR NUMBERS" play symbols matches any of the "WINNING NUMBERS" play symbols and a prize symbol of \$100 (ONE HUN) appears in the "prize" area under the matching "YOUR NUMBERS" play symbol, on a single ticket, shall be entitled to a prize of \$100.

(r) Holders of tickets upon which any one of the "YOUR NUMBERS" play symbols matches any of the "WINNING NUMBERS" play symbols and a prize symbol of \$50.<sup>00</sup> (FIFTY) appears in the "prize" area under the matching "YOUR NUMBERS" play symbol, on a single ticket, shall be entitled to a prize of \$50.

(s) Holders of tickets upon which any one of the "YOUR NUMBERS" play symbols is a \$50 Bill (WIN\$50) symbol and a prize symbol of \$50.<sup>00</sup> (FIFTY) appears in the "prize" area under that \$50 Bill (WIN\$50) symbol, on a single ticket, shall be entitled to a prize of \$50.

(t) Holders of tickets upon which any one of the "YOUR NUMBERS" play symbols matches any of the "WINNING

NUMBERS” play symbols and a prize symbol of \$40.<sup>00</sup> (FORTY) appears in the “prize” area under the matching “YOUR NUMBERS” play symbol, on a single ticket, shall be entitled to a prize of \$40.

(u) Holders of tickets upon which any one of the “YOUR NUMBERS” play symbols matches any of the “WINNING NUMBERS” play symbols and a prize symbol of \$20.<sup>00</sup> (TWENTY) appears in the “prize” area under the matching “YOUR NUMBERS” play symbol, on a single ticket, shall be entitled to a prize of \$20.

(v) Holders of tickets upon which any one of the “YOUR NUMBERS” play symbols matches any of the “WINNING NUMBERS” play symbols and a prize symbol

of \$15.<sup>00</sup> (FIFTNDOL) appears in the “prize” area under the matching “YOUR NUMBERS” play symbol, on a single ticket, shall be entitled to a prize of \$15.

(w) Holders of tickets upon which any one of the “YOUR NUMBERS” play symbols matches any of the “WINNING NUMBERS” play symbols and a prize symbol of \$10.<sup>00</sup> (TEN DOL) appears in the “prize” area under the matching “YOUR NUMBERS” play symbol, on a single ticket, shall be entitled to a prize of \$10.

8. *Number and Description of Prizes and Approximate Odds:* The following table sets forth the approximate number of winners, amounts of prizes, and approximate odds of winning:

<i>When Any Of Your Numbers Match Any Winning Number; Win Prize Shown Under The Matching Number: Win With:</i>	<i>Win:</i>	<i>Approximate Odds Are 1 In:</i>	<i>Approximate No. Of Winners Per 9,600,000 Tickets:</i>
\$10	\$10	8.7	1,104,000
\$15	\$15	13.64	704,000
\$10 × 2	\$20	60	160,000
\$20	\$20	60	160,000
\$10 × 4	\$40	600	16,000
\$20 × 2	\$40	600	16,000
(\$10 × 2) + \$20	\$40	600	16,000
(\$15 × 2) + \$10	\$40	600	16,000
\$40	\$40	600	16,000
\$10 × 5	\$50	600	16,000
(\$15 × 2) + \$20	\$50	600	16,000
(\$20 × 2) + \$10	\$50	600	16,000
\$50 w/ \$50 BILL	\$50	28.57	336,000
\$50	\$50	600	16,000
\$10 × 10	\$100	12,000	800
\$20 × 5	\$100	12,000	800
(\$50 w/ \$50 BILL) + (\$10 × 5)	\$100	1,200	8,000
(\$50 w/ \$50 BILL) + (\$20 × 2) + \$10	\$100	1,200	8,000
(\$50 w/ \$50 BILL) + \$50	\$100	1,200	8,000
(\$50 w/ \$50 BILL) × 2	\$100	1,200	8,000
\$100	\$100	12,000	800
WILD w/ (\$10 × 15)	\$150	2,000	4,800
\$15 × 10	\$150	120,000	80
\$50 × 3	\$150	120,000	80
(\$50 w/ \$50 BILL) + (\$10 × 10)	\$150	24,000	400
(((\$50 w/ \$50 BILL) × 2) + \$50	\$150	24,000	400
(\$50 w/ \$50 BILL) × 3	\$150	12,000	800
\$150	\$150	120,000	80
WILD w/ ((\$40 × 10) + (\$20 × 5))	\$500	8,000	1,200
WILD w/ ((\$100 × 3) + (\$50 × 2) + (\$10 × 10))	\$500	12,000	800
\$50 × 10	\$500	120,000	80
(\$40 × 10) + (\$20 × 5)	\$500	120,000	80
(((\$50 w/ \$50 BILL) × 2) + (\$50 × 4) + (\$40 × 5)	\$500	120,000	80

<i>When Any Of Your Numbers Match Any Winning Number; Win Prize Shown Under The Matching Number. Win With:</i>	<i>Win:</i>	<i>Approximate Odds Are 1 In:</i>	<i>Approximate No. Of Winners Per 9,600,000 Tickets:</i>
$((\$50 \text{ w/ } \$50 \text{ BILL}) \times 5) + (\$50 \times 5)$	\$500	120,000	80
$(\$50 \text{ w/ } \$50 \text{ BILL}) \times 10$	\$500	120,000	80
\$10 w/ 50X	\$500	648.65	14,800
\$500	\$500	24,000	400
WILD w/ $((\$100 \times 5) + (\$50 \times 10))$	\$1,000	12,000	800
WILD w/ $((\$150 \times 4) + (\$50 \times 6) + (\$20 \times 5))$	\$1,000	24,000	400
\$100 $\times 10$	\$1,000	120,000	80
$(\$10 \text{ w/ } 50\text{X}) + \$500$	\$1,000	120,000	80
$(\$15 \text{ w/ } 50\text{X}) + (\$50 \times 5)$	\$1,000	120,000	80
\$20 w/ 50X	\$1,000	12,000	800
\$1,000	\$1,000	120,000	80
$(\$20 \text{ w/ } 50\text{X}) \times 5$	\$5,000	960,000	10
\$100 w/ 50X	\$5,000	960,000	10
\$5,000	\$5,000	960,000	10
$(\$40 \text{ w/ } 50\text{X}) \times 5$	\$10,000	960,000	10
\$10,000	\$10,000	960,000	10
\$300,000	\$300,000	960,000	10

Reveal a “\$50 BILL” (WIN\$50) symbol, win \$50 instantly! Reveal a “50X” (50TIMES) symbol, win 50 TIMES the prize shown under that symbol.

Reveal a “WILD” (WINALL) symbol, win all 15 prizes shown.

9. *Retailer Incentive Awards:* The Lottery may conduct a separate Retailer Incentive Program for retailers who sell Wild Numbers 50X instant lottery tickets.

10. *Retailer Bonus:* The Lottery may offer a retailer bonus in connection with the sale of Pennsylvania instant lottery game tickets. If a retailer bonus is offered, a Lottery retailer shall be eligible for a bonus as described in this section. Lottery retailers who sell a winning ticket that entitles the ticket holder to a prize, either payable in a single installment or having a guaranteed minimum payout, of at least \$100,000 and not exceeding \$500,000 shall be paid a bonus of \$500. Lottery retailers who sell a winning ticket that entitles the ticket holder to a prize, either payable in a single installment or having a guaranteed minimum payout, of at least \$500,001 and not exceeding \$1,000,000 shall be paid a bonus of \$5,000. Lottery retailers who sell a winning ticket that entitles the ticket holder to a prize, either payable in a single installment or having a guaranteed minimum payout, of at least \$1,000,001 and not exceeding \$10,000,000 shall be paid a bonus of \$10,000. A Lottery retailer is entitled only to the largest bonus for which he qualifies on a winning ticket. A bonus will be initiated for payment after the instant ticket is claimed and validated. A bonus will not be awarded to a Lottery retailer that sells a non-winning Pennsylvania Lottery instant ticket used to enter a Pennsylvania Lottery second-chance drawing or promotion that is subsequently selected to win a prize.

11. *Unclaimed Prize Money:* For a period of 1 year from the announced close of Wild Numbers 50X, prize money from winning Wild Numbers 50X instant lottery game tickets will be retained by the Secretary for payment to the persons entitled thereto. If no claim is made

within 1 year of the announced close of the Wild Numbers 50X instant lottery game, the right of a ticket holder to claim the prize represented by the ticket, if any, will expire and the prize money will be paid into the State Lottery Fund and used for purposes provided for by statute.

12. *Governing Law:* In purchasing a ticket, the customer agrees to comply with and abide by the State Lottery Law (72 P.S. §§ 3761-101—3761-314), 61 Pa. Code Part V (relating to State Lotteries) and the provisions contained in this notice.

13. *Termination of the Game:* The Secretary may announce a termination date, after which no further tickets from this game may be sold. The announcement will be disseminated through media used to advertise or promote Wild Numbers 50X or through normal communications methods.

C. DANIEL HASSELL,  
*Secretary*

[Pa.B. Doc. No. 19-383. Filed for public inspection March 15, 2019, 9:00 a.m.]

## DEPARTMENT OF TRANSPORTATION

### Application for Lease of Right-of-Way

Under 67 Pa. Code § 495.4(d) (relating to application procedure), an application to lease highway right-of-way

has been submitted to the Department of Transportation by Delaware River Waterfront Corporation, 121 North Columbus Boulevard, Philadelphia, PA 19106 seeking to lease highway right-of-way located at 1300 North Delaware Avenue, Philadelphia, PA 19147, Philadelphia County, containing 49,864 ± square feet/hectares, adjacent to SR 0095, Section GR1 RW, for purposes of parking.

Interested persons are invited to submit, within 30 days from the publication of this notice in the *Pennsylvania Bulletin*, written comments, suggestions or objections regarding the approval of this application to Kenneth M. McClain, PE, District Executive, Engineering District 6.0, 7000 Geerdes Boulevard, King of Prussia, PA 19406-1525.

Questions regarding this application or the proposed use may be directed to Barbara DiCianno, Right-of-Way Administrator, 7000 Geerdes Boulevard, King of Prussia, PA 19406, (610) 205-6504.

LESLIE S. RICHARDS,  
*Secretary*

[Pa.B. Doc. No. 19-384. Filed for public inspection March 15, 2019, 9:00 a.m.]

## DEPARTMENT OF TRANSPORTATION

### Twelve Year Transportation Program; Public Comment Period

Every 2 years the Commonwealth updates the Twelve Year Transportation Program (TYP). For the 2021 TYP update, the State Transportation Commission (Commission) and Department of Transportation encourage the public to Tell Us What You Think during the open comment period, March 11, 2019, through April 26, 2019. The public is invited to take the transportation survey at [Survey.TalkPATransportation.com](http://Survey.TalkPATransportation.com). Residents of this Commonwealth can also participate in an online public meeting on March 20, 2019, at 6:30 p.m. To register, visit [stconlinepublicmeeting2019.eventbrite.com](http://stconlinepublicmeeting2019.eventbrite.com).

For more information, contact the Commission, (717) 783-2262, RA-PennDOTSTC@pa.gov.

LESLIE S. RICHARDS,  
*Secretary*

[Pa.B. Doc. No. 19-385. Filed for public inspection March 15, 2019, 9:00 a.m.]

## FISH AND BOAT COMMISSION

### Boat and Marine Forfeiture; Maximum Amount

Chapter 53, Subchapter C of 30 Pa.C.S. (relating to boat and marine forfeiture) applies only to boats and related equipment with a resale value based upon established industry standards equal to or less than the maximum amount set forth in 30 Pa.C.S. § 5331(c) (relating to scope of subchapter). This subsection provides that for the year 2006, the maximum amount will be \$5,000 and for each year thereafter, the maximum amount will be fixed annually by the Fish and Boat Commission (Commission) based upon the maximum

amount in the prior year as adjusted to reflect the change in the Consumer Price Index for All Urban Consumers for the United States for all items as published by the United States Department of Labor, Bureau of Labor Statistics, for the previous 12-month period. The subsection further provides that the maximum amount as adjusted will be rounded to the nearest multiple of \$5 and that the Commission will give notice of the new maximum amount by publication in the *Pennsylvania Bulletin*. The Commission previously fixed the maximum amount for 2018 at \$6,230.

Under 30 Pa.C.S. § 5331(c), the Commission has fixed the maximum amount for 2019 as \$6,380.

TIMOTHY D. SCHAEFFER,  
*Executive Director*

[Pa.B. Doc. No. 19-386. Filed for public inspection March 15, 2019, 9:00 a.m.]

## FISH AND BOAT COMMISSION

### Mentored Youth Fishing Day Program; Trout

Acting under the authority of 58 Pa. Code § 65.20 (relating to Mentored Youth Fishing Day Program), the Executive Director has designated March 23 and April 6, 2019, as Mentored Youth Fishing Days for trout, beginning at 8 a.m. and ending at 7:30 p.m., in stocked trout waters designated under 58 Pa. Code § 63.3 (relating to fishing in stocked trout waters) and the waters identified as follows that are normally closed to trout fishing on those dates. This designation under 58 Pa. Code § 65.20 will be effective upon publication of this notice in the *Pennsylvania Bulletin*.

To participate, anglers 16 years of age or older (adult anglers) must possess a valid Pennsylvania fishing license and current trout/salmon permit and be accompanied by a youth (less than 16 years of age) who has obtained a mentored youth permit or a voluntary youth license from the Fish and Boat Commission (Commission). Youth anglers must obtain a 2019 mentored youth permit or a voluntary youth license from the Commission and be accompanied by a licensed adult angler in order to participate.

Only youth anglers with a 2019 voluntary youth license or mentored youth permit may possess a total of two trout (combined species) with a minimum length of 7 inches. Adult anglers are prohibited from possessing trout. Other Commonwealth inland regulations will apply. It is unlawful to fish in waters designated as part of the Mentored Youth Fishing Day Program (Program) except in compliance with the requirements of 58 Pa. Code § 65.20 when participating in the Program.

The waters included in the Program on March 23, 2019, are those stocked trout waters in 18 southeastern counties and 2 waters crossing from those counties that are regulated under 58 Pa. Code § 65.12 (relating to regional opening day of trout season). The waters included in the Program on April 6, 2019, are the stocked trout waters in the remaining counties. Special regulation areas are not included in the Program. A listing of stocked trout waters is published in the Commission's "Summary of Fishing Regulations and Laws" available from the Commission at P.O. Box 67000, Harrisburg, PA 17106-7000. The listing is also available at <http://pfbcpa.gov/fishpub/summaryad/troutwaters.html>.



In addition, the Executive Director has identified the following water as being included in the Program on March 23, 2019:

County	Water
Lancaster	Donegal Creek, 150 yards upstream and downstream of Route 772

The Executive Director has identified the following waters as being included in the Program on April 6, 2019:

County	Water
Bradford/Tioga	Seeley Creek (headwaters downstream to PA/NY border)
Centre	Little Sandy Run and Ponds (headwaters at State Line Road, downstream to Lower Adult Pond)
Centre	Wolf Run (sections 1, 2, and 3—headwaters to mouth)
Elk	Blue Valley Pond
Jefferson	Reitz Run, Beaver Township

TIMOTHY D. SCHAEFFER,  
*Executive Director*

[Pa.B. Doc. No. 19-387. Filed for public inspection March 15, 2019, 9:00 a.m.]

The Commission will consider adding the following waters to the catch and release lakes program:

County	Water
Jefferson	Kyle Lake
Crawford	Tamarack Lake

At this time, the Commission is soliciting public input concerning the previously listed designations. Persons with comments, objections or suggestions concerning the designations are invited to submit comments in writing to the Executive Director, Fish and Boat Commission, P.O. Box 67000, Harrisburg, PA 17106-7000, within 30 days after publication of this notice in the *Pennsylvania Bulletin*. Comments submitted by facsimile will not be accepted.

Comments also may be submitted electronically by completing the form at [www.fishandboat.com/regcomments](http://www.fishandboat.com/regcomments). If an acknowledgment of electronic comments is not received by the sender within 2 working days, the comments should be retransmitted to ensure receipt. Electronic comments submitted in any other manner will not be accepted.

TIMOTHY D. SCHAEFFER,  
*Executive Director*

[Pa.B. Doc. No. 19-388. Filed for public inspection March 15, 2019, 9:00 a.m.]

## FISH AND BOAT COMMISSION

### Proposed Special Regulation Designations

The Fish and Boat Commission (Commission) has approved guidelines with regard to encouraging public participation on possible changes to the designation of streams, stream sections or lakes for special regulation programs. Under 58 Pa. Code Chapter 65 (relating to special fishing regulations), the Commission designates or redesignates certain streams, stream sections and lakes as being subject to special fishing regulations. These designations and redesignations are effective after Commission approval when they are posted at the site and a notice is published in the *Pennsylvania Bulletin*. Under the Commission's guidelines, a notice concerning the proposed designation or redesignation of a stream, stream section or lake under special regulations ordinarily will be published in the *Pennsylvania Bulletin* before the matter is reviewed by the Commissioners.

At the next Commission meeting on April 29 and 30, 2019, the Commission will consider taking the following actions with respect to waters subject to special fishing regulations under 58 Pa. Code Chapter 65, effective January 1, 2020.

#### 58 Pa. Code § 65.9. Big bass special regulations

The Commission will consider removing the following water from its list of "big bass" waters:

County	Water
Jefferson	Kyle Lake

#### 58 Pa. Code § 65.17. Catch and release lakes

The Commission will consider removing the following water from the catch and release lakes program:

County	Water
Sullivan and Luzerne	Lake Jean

## FISH AND BOAT COMMISSION

### Proposed Special Regulation Designations

The Fish and Boat Commission (Commission) has approved guidelines with regard to encouraging public participation on possible changes to the designation of streams, stream sections or lakes for special regulation programs. Under 58 Pa. Code Chapter 65 (relating to special fishing regulations), the Commission designates certain streams, stream sections and lakes as being subject to special fishing regulations. Under the Commission's guidelines, a notice concerning the proposed designation or redesignation of a stream, stream section or lake under special regulations ordinarily will be published in the *Pennsylvania Bulletin* before the matter is reviewed by the Commissioners.

At the next Commission meeting on April 29 and 30, 2019, the Commission will consider a proposal to add Section 03 of Spruce Creek, Huntingdon County, to its Catch-and-Release Artificial Lures Only Program under 58 Pa. Code § 65.5 (relating to catch and release artificial lures only) effective January 1, 2020.

At this time, the Commission is soliciting public input concerning this designation. Persons with comments, objections or suggestions concerning the designation are invited to submit comments in writing to the Executive Director, Fish and Boat Commission, P.O. Box 67000, Harrisburg, PA 17106-7000, within 30 days after publication of this notice in the *Pennsylvania Bulletin*. Comments submitted by facsimile will not be accepted.

Comments also may be submitted electronically by completing the form at [www.fishandboat.com/regcomments](http://www.fishandboat.com/regcomments). If an acknowledgment of electronic comments is not received by the sender within 2 working days, the comments should be retransmitted to ensure

receipt. Electronic comments submitted in any other manner will not be accepted.

TIMOTHY D. SCHAEFFER,  
*Executive Director*

[Pa.B. Doc. No. 19-389. Filed for public inspection March 15, 2019, 9:00 a.m.]

## INSURANCE DEPARTMENT

### **Alleged Violation of Insurance Laws; Rebecca E. Vasinda; Doc. No. SC19-03-002**

Notice is hereby given of the Order to Show Cause issued on March 5, 2019, by the Deputy Insurance Commissioner in the previously-referenced matter. Violation of the following is alleged: sections 611-A(7), (9), (17) and (20) and 645-A of The Insurance Department Act of 1921 (40 P.S. §§ 310.11(7), (9), (17) and (20) and 310.45).

The respondent shall file a written answer to the Order to Show Cause within 30 days of the date of issue. If respondent files a timely answer, a formal administrative hearing shall be held in accordance with 2 Pa.C.S. §§ 501—588 (relating to Administrative Agency Law), 1 Pa. Code Part II (relating to General Rules of Administrative Practice and Procedure), 31 Pa. Code §§ 56.1—56.3 (relating to Special Rules of Administrative Practice and Procedure) and other relevant procedural provisions of law.

Answers, motions preliminary to those at hearing, protests, petitions to intervene or notices of intervention, if any, must be filed in writing with the Hearings Administrator, Insurance Department, Administrative Hearings Office, 901 North 7th Street, Harrisburg, PA 17102.

Persons with a disability who wish to attend the previously-referenced administrative hearing, and require an auxiliary aid, service or other accommodation to participate in the hearing, contact Joseph Korman, Agency ADA Coordinator, at (717) 705-4194.

JESSICA K. ALTMAN,  
*Insurance Commissioner*

[Pa.B. Doc. No. 19-390. Filed for public inspection March 15, 2019, 9:00 a.m.]

## INSURANCE DEPARTMENT

### **Application and Request for a Certificate of Authority to Provide a Continuing Care Retirement Community by Buckingham Place SNF, LLC**

Buckingham Place SNF, LLC has applied for a Certificate of Authority to operate a Continuing Care Retirement Community at Buckingham Valley Nursing and Rehabilitation Center in Newton, PA. The initial filing was received on February 28, 2019, and was under the Continuing-Care Provider Registration and Disclosure Act (40 P.S. §§ 3201—3225).

Persons wishing to comment on the grounds of public or private interest to the issuance of a Certificate of Authority are invited to submit a written statement to the

Insurance Department (Department) within 30 days from the date of this issue of the *Pennsylvania Bulletin*. Each written statement must include name, address and telephone number of the interested party; identification of the application to which the statement is addressed; and a concise statement with sufficient details to inform the Department of the exact basis of the statement. Written statements should be directed to Karen M. Feather, Insurance Department, 1345 Strawberry Square, Harrisburg, PA 17120, fax (717) 787-8557, kfeather@pa.gov.

JESSICA K. ALTMAN,  
*Insurance Commissioner*

[Pa.B. Doc. No. 19-391. Filed for public inspection March 15, 2019, 9:00 a.m.]

## INSURANCE DEPARTMENT

### **Application and Request for a Certificate of Authority to Provide a Continuing Care Retirement Community by Chester Place SNF, LLC**

Chester Place SNF, LLC has applied for a Certificate of Authority to operate a Continuing Care Retirement Community at Green Meadows Nursing and Rehabilitation Center in Malvern, PA. The initial filing was received on February 28, 2019, and was made under the Continuing-Care Provider Registration and Disclosure Act (40 P.S. §§ 3201—3225).

Persons wishing to comment on the grounds of public or private interest to the issuance of a Certificate of Authority are invited to submit a written statement to the Insurance Department (Department) within 30 days from the date of this issue of the *Pennsylvania Bulletin*. Each written statement must include name, address and telephone number of the interested party; identification of the application to which the statement is addressed; and a concise statement with sufficient details to inform the Department of the exact basis of the statement. Written statements should be directed to Karen M. Feather, Insurance Department, 1345 Strawberry Square, Harrisburg, PA 17120, fax (717) 787-8557, kfeather@pa.gov.

JESSICA K. ALTMAN,  
*Insurance Commissioner*

[Pa.B. Doc. No. 19-392. Filed for public inspection March 15, 2019, 9:00 a.m.]

## INSURANCE DEPARTMENT

### **Brighthouse Life Insurance Company; Rate Increase Filing for Several Individual LTC Forms (MILL-131718140)**

Brighthouse Life Insurance Company is requesting approval to increase the premium 23.7% on 349 policyholders with the following individual LTC policy form number: H-LTC2J-5.

Unless formal administrative action is taken prior to May 30, 2019, 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](http://www.insurance.pa.gov) (hover the cursor over the "Consumers" tab, then select "Long Term Care Rate Filings").

Copies of the filing are also available for public inspection, by appointment, during normal working hours at the Department's Harrisburg office.

Interested parties are invited to submit written comments, suggestions or objections to James Lavery, Actuary, Insurance Department, Insurance Product Regulation, Room 1311, Strawberry Square, Harrisburg, PA 17120, [jlavery@pa.gov](mailto:jlavery@pa.gov) within 30 days after publication of this notice in the *Pennsylvania Bulletin*.

JESSICA K. ALTMAN,  
Insurance Commissioner

[Pa.B. Doc. No. 19-393. Filed for public inspection March 15, 2019, 9:00 a.m.]

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## INSURANCE DEPARTMENT

### Brighthouse Life Insurance Company; Rate Increase Filing for Several Individual LTC Forms (MILL-131718212)

Brighthouse Life Insurance Company is requesting approval to increase the premium 23.7% on 42 policyholders with the following individual LTC policy form number: H-LTC3J-2.

Unless formal administrative action is taken prior to May 30, 2019, 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](http://www.insurance.pa.gov) (hover the cursor over the "Consumers" tab, then select "Long Term Care Rate Filings").

Copies of the filing are also available for public inspection, by appointment, during normal working hours at the Department's Harrisburg office.

Interested parties are invited to submit written comments, suggestions or objections to James Lavery, Actuary, Insurance Department, Insurance Product Regulation, Room 1311, Strawberry Square, Harrisburg, PA 17120, [jlavery@pa.gov](mailto:jlavery@pa.gov) within 30 days after publication of this notice in the *Pennsylvania Bulletin*.

JESSICA K. ALTMAN,  
Insurance Commissioner

[Pa.B. Doc. No. 19-394. Filed for public inspection March 15, 2019, 9:00 a.m.]

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## INSURANCE DEPARTMENT

### Brighthouse Life Insurance Company; Rate Increase Filing for Several Individual LTC Forms (MILL-131718971)

Brighthouse Life Insurance Company is requesting approval to increase the premium 21.6% on 778 policyholders with the following individual LTC policy form number: H-LTC4JQ7.

Unless formal administrative action is taken prior to May 30, 2019, 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](http://www.insurance.pa.gov) (hover the cursor over the "Consumers" tab, then select "Long Term Care Rate Filings").

Copies of the filing are also available for public inspection, by appointment, during normal working hours at the Department's Harrisburg office.

Interested parties are invited to submit written comments, suggestions or objections to James Lavery, Actuary, Insurance Department, Insurance Product Regulation, Room 1311, Strawberry Square, Harrisburg, PA 17120, [jlavery@pa.gov](mailto:jlavery@pa.gov) within 30 days after publication of this notice in the *Pennsylvania Bulletin*.

JESSICA K. ALTMAN,  
Insurance Commissioner

[Pa.B. Doc. No. 19-395. Filed for public inspection March 15, 2019, 9:00 a.m.]

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## INSURANCE DEPARTMENT

### Brighthouse Life Insurance Company; Rate Increase Filing for Several Individual LTC Forms (MILL-131718987)

Brighthouse Life Insurance Company is requesting approval to increase the premium 56.1% on 691 policyholders with the following individual LTC policy form numbers: H-LTC3JP and H-LTC3JP27.

Unless formal administrative action is taken prior to May 30, 2019, 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](http://www.insurance.pa.gov) (hover the cursor over the "Consumers" tab, then select "Long Term Care Rate Filings").

Copies of the filing are also available for public inspection, by appointment, during normal working hours at the Department's Harrisburg office.

Interested parties are invited to submit written comments, suggestions or objections to James Lavery, Actuary, Insurance Department, Insurance Product Regulation, Room 1311, Strawberry Square, Harrisburg, PA 17120, [jlavery@pa.gov](mailto:jlavery@pa.gov) within 30 days after publication of this notice in the *Pennsylvania Bulletin*.

JESSICA K. ALTMAN,  
Insurance Commissioner

[Pa.B. Doc. No. 19-396. Filed for public inspection March 15, 2019, 9:00 a.m.]

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## INSURANCE DEPARTMENT

### Brighthouse Life Insurance Company; Rate Increase Filing for Several Individual LTC Forms (MILL-131718989)

Brighthouse Life Insurance Company is requesting approval to increase the premium 21.1% on 351 policy-



holders with the following individual LTC policy form number: H-LTC3JQ3.

Unless formal administrative action is taken prior to May 30, 2019, 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](http://www.insurance.pa.gov) (hover the cursor over the "Consumers" tab, then select "Long Term Care Rate Filings").

Copies of the filing are also available for public inspection, by appointment, during normal working hours at the Department's Harrisburg office.

Interested parties are invited to submit written comments, suggestions or objections to James Laverty, Actuary, Insurance Department, Insurance Product Regulation, Room 1311, Strawberry Square, Harrisburg, PA 17120, [jlaverty@pa.gov](mailto:jlaverty@pa.gov) within 30 days after publication of this notice in the *Pennsylvania Bulletin*.

JESSICA K. ALTMAN,  
Insurance Commissioner

[Pa.B. Doc. No. 19-397. Filed for public inspection March 15, 2019, 9:00 a.m.]

## INSURANCE DEPARTMENT

### Brighthouse Life Insurance Company; Rate Increase Filing for Several Individual LTC Forms (MILL-131719003)

Brighthouse Life Insurance Company is requesting approval to increase the premium 23.7% on 57 policyholders with the following individual LTC policy form number: H-LTC3JFO26.

Unless formal administrative action is taken prior to May 30, 2019, 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](http://www.insurance.pa.gov) (hover the cursor over the "Consumers" tab, then select "Long Term Care Rate Filings").

Copies of the filing are also available for public inspection, by appointment, during normal working hours at the Department's Harrisburg office.

Interested parties are invited to submit written comments, suggestions or objections to James Laverty, Actuary, Insurance Department, Insurance Product Regulation, Room 1311, Strawberry Square, Harrisburg, PA 17120, [jlaverty@pa.gov](mailto:jlaverty@pa.gov) within 30 days after publication of this notice in the *Pennsylvania Bulletin*.

JESSICA K. ALTMAN,  
Insurance Commissioner

[Pa.B. Doc. No. 19-398. Filed for public inspection March 15, 2019, 9:00 a.m.]

## INSURANCE DEPARTMENT

### Brighthouse Life Insurance Company; Rate Increase Filing for Several Individual LTC Forms (MILL-131719005)

Brighthouse Life Insurance Company is requesting approval to increase the premium 25.9% on 59 policyholders with the following individual LTC policy form number: H-LTC3JFQ7.

Unless formal administrative action is taken prior to May 30, 2019, 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](http://www.insurance.pa.gov) (hover the cursor over the "Consumers" tab, then select "Long Term Care Rate Filings").

Copies of the filing are also available for public inspection, by appointment, during normal working hours at the Department's Harrisburg office.

Interested parties are invited to submit written comments, suggestions or objections to James Laverty, Actuary, Insurance Department, Insurance Product Regulation, Room 1311, Strawberry Square, Harrisburg, PA 17120, [jlaverty@pa.gov](mailto:jlaverty@pa.gov) within 30 days after publication of this notice in the *Pennsylvania Bulletin*.

JESSICA K. ALTMAN,  
Insurance Commissioner

[Pa.B. Doc. No. 19-399. Filed for public inspection March 15, 2019, 9:00 a.m.]

## INSURANCE DEPARTMENT

### Brighthouse Life Insurance Company; Rate Increase Filing for Several Individual LTC Forms (MILL-131719034)

Brighthouse Life Insurance Company is requesting approval to increase the premium 21.6% on 34 policyholders with the following individual LTC policy form number: H-LTC4JFQ15.

Unless formal administrative action is taken prior to May 30, 2019, 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](http://www.insurance.pa.gov) (hover the cursor over the "Consumers" tab, then select "Long Term Care Rate Filings").

Copies of the filing are also available for public inspection, by appointment, during normal working hours at the Department's Harrisburg office.

Interested parties are invited to submit written comments, suggestions or objections to James Laverty, Actuary, Insurance Department, Insurance Product Regulation, Room 1311, Strawberry Square, Harrisburg, PA 17120, [jlaverty@pa.gov](mailto:jlaverty@pa.gov) within 30 days after publication of this notice in the *Pennsylvania Bulletin*.

JESSICA K. ALTMAN,  
Insurance Commissioner

[Pa.B. Doc. No. 19-400. Filed for public inspection March 15, 2019, 9:00 a.m.]



## INSURANCE DEPARTMENT

### Review Procedure Hearings under the Unfair Insurance Practices Act

The following insureds have requested a hearing as authorized by section 8 of the Unfair Insurance Practices Act (act) (40 P.S. § 1171.8) in connection with the companies' termination of the insureds' homeowners policies. The hearings will be held in accordance with the requirements of the act; 2 Pa.C.S. §§ 501—508, 561—588 and 701—704 (relating to Administrative Agency Law); 1 Pa. Code Part II (relating to General Rules of Administrative Practice and Procedure); and 31 Pa. Code §§ 56.1—56.3 (relating to Special Rules of Administrative Practice and Procedure). The administrative hearings will be held as follows. Failure by the appellants to appear at the scheduled hearing may result in dismissal with prejudice.

The hearings will be held in Hearing Room 2026, Piatt Building, 301 5th Avenue, Pittsburgh, PA 15222.

Appeal of Stephanie L. Wimbs; Donegal Mutual Insurance Company; File No. 18-176-230360; Doc. No. P18-12-020; April 24, 2019, 9 a.m.

Appeal of John Calvert; Erie Insurance Exchange; File No. 18-118-229637; Doc. No. P18-11-018; April 24, 2019, 10 a.m.

Appeal of Estate of Ruthadele C. White; Erie Insurance Exchange; File No. 18-118-221523; Doc. No. P19-01-009; April 24, 2019, 11 a.m.

Appeal of Craig Richel; Encompass Home and Auto Insurance Company; File No. 18-118-229847; Doc. No. P18-12-005; April 24, 2019, 1 p.m.

Following the hearings and receipt of the stenographic transcript, the Insurance Commissioner (Commissioner) will issue a written order resolving the factual issues presented at the hearings and stating what remedial action, if any, is required. The Commissioner's Order will be sent to those persons participating in the hearings or their designated representatives. The Order of the Commissioner may be subject to judicial review by the Commonwealth Court.

Persons with a disability who wish to attend a previously-referenced administrative hearing and require an auxiliary aid, service or other accommodation to participate in the hearings, should contact Joseph Korman at (717) 787-4429, jkorman@pa.gov.

JESSICA K. ALTMAN,  
*Insurance Commissioner*

[Pa.B. Doc. No. 19-401. Filed for public inspection March 15, 2019, 9:00 a.m.]

## INSURANCE DEPARTMENT

### Time Insurance Company II; Rate Increase Filing for Several Individual LTC Forms (MULF-131849945)

Time Insurance Company II is requesting approval to increase the premium an aggregate 147.5% on 964 policyholders with the following individual LTC policy form numbers: 4060-PA, 4061-PA, 4062-PA, 4063-PA, 4072-PA and 4073-PA. The increase will average 147.5% but individual policyholders can receive increases ranging from 25.4% to 235.3%.

Unless formal administrative action is taken prior to May 30, 2019, 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](http://www.insurance.pa.gov) (hover the cursor over the "Consumers" tab, then select "Long Term Care Rate Filings").

Copies of the filing are also available for public inspection, by appointment, during normal working hours at the Department's Harrisburg office.

Interested parties are invited to submit written comments, suggestions or objections to James Laverty, Actuary, Insurance Department, Insurance Product Regulation, Room 1311, Strawberry Square, Harrisburg, PA 17120, [jlaverty@pa.gov](mailto:jlaverty@pa.gov) within 30 days after publication of this notice in the *Pennsylvania Bulletin*.

JESSICA K. ALTMAN,  
*Insurance Commissioner*

[Pa.B. Doc. No. 19-402. Filed for public inspection March 15, 2019, 9:00 a.m.]

## LEGISLATIVE REFERENCE BUREAU

### Documents Filed But Not Published

The Legislative Reference Bureau (Bureau) accepted the following documents during the preceding calendar month for filing without publication under 1 Pa. Code § 3.13(b) (relating to contents of *Bulletin*). The Bureau will continue to publish on a monthly basis either a summary table identifying the documents accepted during the preceding calendar month under this subsection or a statement that no documents have been received. For questions concerning or copies of documents filed, but not published, call (717) 783-1530.

*Governor's Office*

Management Directive No. 315.8—Restitution of Overpayments and Collection of Employee Debts, Amended February 6, 2019.

DUANE M. SEARLE,  
*Director*  
*Pennsylvania Code and Bulletin*

[Pa.B. Doc. No. 19-403. Filed for public inspection March 15, 2019, 9:00 a.m.]

# OFFICE OF ATTORNEY GENERAL

[ OFFICIAL OPINION 2019-2 ]

## Request for Legal Opinion Concerning the Department of Human Services Concerning the Constitutionality of Section 3215(c) of the Pennsylvania Abortion Control Act Regarding Prohibiting the Expenditure of Medical Assistance Funds on Elective Abortion Services

February 19, 2019

Teresa D. Miller, Secretary  
 Pennsylvania Department of Human Services  
 P.O. Box 2675  
 Harrisburg, PA 17105

Dear Ms. Miller:

In accordance with Section 204(a) of the Commonwealth Attorneys Act, 71 P.S. § 732-204(a) (the “CAA”), which allows Commonwealth agencies to seek a binding opinion on a matter arising in connection with the exercise of the official powers or duties of the agency, you requested a legal opinion on behalf of the Pennsylvania Department of Human Services (“DHS”) concerning the constitutionality of Section 3215(c) of the Pennsylvania Abortion Control Act, 18 Pa.C.S.A. § 3201 et. seq. (the “Act”), which prohibits the expenditure of Medical Assistance funds on elective abortion services.<sup>1</sup> After careful review, we conclude that, at the present time, Section 3215(c) is constitutional. As such, DHS is bound to follow it.

When providing legal advice to a Commonwealth agency, Section 204(a)(3) of the CAA requires the Attorney General “to uphold and defend the constitutionality of all statutes so as to prevent their suspension or abrogation in the absence of a controlling decision by a court of competent jurisdiction.” 71 P.S. § 732-204(a)(3). While the concept of a “controlling decision by a court of competent jurisdiction” is not predisposed to precise definition, here, a 1985 Pennsylvania Supreme Court case, *Fischer v. Department of Public Welfare*, 509 Pa. 293 (1985), governs the exact legal question you have posed. In *Fischer*, the appellants contended the Act’s funding restriction violated the following Articles of the Pennsylvania Constitution: (1) the equal protection guarantees in Article I § 1 and Article III § 32, (2) the nondiscriminatory provision in Article I § 26, and (3) the Equal Rights Amendment in Article I § 28.<sup>2</sup> *Fischer* at 299.

For the equal protection claims, the appellants argued that the Court should find either that abortion was a fundamental right or that indigent women constituted a suspect classification, such that a strict scrutiny analysis would have to be applied. *Id.* at 305. In the alternative, they argued that the Act failed even a rational basis test. *Id.* The appellants also contended that, when the state limited Medical Assistance funding to women who elected

to continue pregnancy or whose lives were in danger, it discriminated against other women who elected to have an abortion. *Id.* at 310. Finally, the appellants claimed that the creation of a statutory classification distinguishing between pregnant women who chose to give birth and those who chose to have an abortion infringed upon the Equal Rights Amendment. *Id.* at 312.

The Pennsylvania Supreme Court held in *Fischer* that the Act implicated neither a fundamental right<sup>3</sup> nor a suspect class.<sup>4</sup> *Fischer* at 307. It, therefore, applied a rational basis test, noting this was “the standard by which we have traditionally measured distinctions within government benefit programs.” *Id.* at 309. Under that standard, the Court held that the Act accomplished a legitimate governmental interest of preserving potential life in a manner that was not arbitrary or unreasonable. *Id.*

The Court further rejected the appellants’ argument that the non-discrimination clause in Article I § 26 created greater guarantees than the equal protection provisions. *Fischer* at 310-311. It did not define a new substantive civil right but instead “made more explicit the citizenry’s constitutional safeguards not to be harassed or punished for the exercise of their constitutional rights.” *Id.* at 311. According to the Court, the Act did not punish women for exercising their right to choose an abortion—it merely “decided not to fund that choice in favor of an alternative social policy.” *Id.* at 312.

The Court also held that the Equal Rights Amendment afforded no relief because the fact that the Act affected only women did not necessarily entail discrimination on the basis of sex. *Fischer* at 314. Indeed, the Court found the decision to carry a fetus to term so unique that there was no corresponding condition in men and no analogy to situations where distinctions were based exclusively on gender stereotypes. *Id.* at 315.

*Fischer* is directly on point here and is still good law. It is also binding precedent from the highest court with jurisdiction over the issue. Put otherwise, *Fischer* is “a controlling decision from a court of competent jurisdiction.” 71 P.S. § 732-204(a)(3). Therefore, Section 3215(c) of the Act is constitutional.

That said, our research has also uncovered a separate case on this issue that is presently pending before the Commonwealth Court of Pennsylvania. That matter is *Allegheny Reproductive Health Center, et al. v. Pennsylvania Department of Human Services, et al.*, 26 MD 2019 (Pa. Cmwlth.). In *Allegheny Reproductive Health Center*, the Petitioners seek reconsideration of *Fischer*, arguing that *Fischer* was incorrectly reasoned at the time and “goes against recent developments in Pennsylvania law with respect to independent interpretations of our state constitution. . . .” See Complaint page 2. While our research has not revealed any intervening Pennsylvania case law overruling or abrogating *Fischer*, it is conceivable that, in deciding an eventual appeal in *Allegheny Reproductive Health Center*, the Pennsylvania Supreme Court could ultimately modify or overturn *Fischer* as the Petitioners in *Allegheny Reproductive Health Center* have requested. Unless and until that time, however, *Fischer* remains the controlling authority on this issue and is binding upon DHS.

<sup>1</sup> The Act authorizes the expenditure of funds only for abortions necessary to prevent the death of the mother or in cases of pregnancy as a result of rape or incest. 18 Pa.C.S.A. § 3215(c). “Elective abortion services” are abortions that are not performed to either avert the death of the mother or terminate pregnancies resulting from rape or incest.

<sup>2</sup> The appellants in *Fischer* did not raise any federal Constitutional claims; rather, they argued the Court should interpret the Pennsylvania Constitution more expansively than the United States Supreme Court had interpreted the federal Constitution. *Fischer* at 304. The United States Supreme Court had previously ruled in *Harris v. McRae*, 448 U.S. 297 (1980), that a federally enacted abortion funding restriction, the Hyde Amendment, was constitutional. In a separate case, *William v. Zbaraz*, 448 U.S. 358 (1980), the United States Supreme Court also upheld the ability of a state to enact a statute limiting abortion funding to where abortions were necessary to prevent the death of the mother. This federal jurisprudence has not changed in the intervening years.

<sup>3</sup> The Court construed the “right” to be that of having “the state subsidize the individual exercise of a constitutionally protected right, when it chooses to subsidize alternative constitutional rights”—a right not found in the Pennsylvania Constitution. *Id.* at 307.

<sup>4</sup> The Court declined to consider financial need alone as identifying a suspect class for equal protection analysis. *Id.*

In accordance with Section 204(a)(1) of the Commonwealth Attorneys Act, 71 P.S. § 732-204(a)(1), you may rely on the advice set forth in this Opinion and shall not in any way be held liable for doing so.

JONATHAN SCOTT GOLDMAN,  
Executive Deputy Attorney General

[Pa.B. Doc. No. 19-404. Filed for public inspection March 15, 2019, 9:00 a.m.]

## OFFICE OF ATTORNEY GENERAL

[ OFFICIAL OPINION 2019-1 ]

### Request for Legal Opinion Concerning the Game Commission's Authority to Issue Hunting or Furtaking Licenses to Customers that Pay with a Debit or Credit Card Where Such Forms of Payment Require a "Swipe Fee"

January 28, 2019

Bradley C. Bechtel, Esq.  
Chief Counsel  
Pennsylvania Game Commission  
2001 Elmerton Avenue  
Harrisburg, PA 17110

Dear Mr. Bechtel:

In accordance with Section 204(a) of the Commonwealth Attorneys Act, 71 P.S. § 732-204(a), which allows Commonwealth agencies to seek a binding opinion on a matter arising in connection with the exercise of the official powers or duties of the agency, you requested a legal opinion on behalf of the Pennsylvania Game Commission (PGC) concerning its authority to issue hunting or furtaking licenses to customers that pay with a debit or credit card where such forms of payment require a "swipe fee." After careful review, we conclude the PGC's governing statute provides it the discretion to authorize such payments.

Section 2726 of the Game and Wildlife Code ("Code") makes it unlawful for an Agent<sup>1</sup> to knowingly issue a hunting or furtaking license "at a fee greater than the fee<sup>2</sup> prescribed in this title. . . ." 34 Pa.C.S. § 2726(a)(1)(v). The Code specifies only two fees through which an Agent may charge additional money. We address each in turn.

First, Section 2709(c) sets an "Agent Fee" of \$1.00 for each license or replacement license as "full compensation for [the Agent's] services." 34 Pa.C.S. § 2709(c). The swipe fee at issue is not compensation for the Agent's services; a third party processor receives this fee directly from the customer as compensation for its payment services. The Agent receives no part of the swipe fee and charges the same amount for the license without regard to the form of payment. Rather, the swipe fee is an optional cost to the customer that may be paid in exchange for the convenience of paying with a debit or credit card.

Second, Section 2709(d) authorizes a fee for "transaction costs" associated with the Pennsylvania Automated License Service ("PALS"); the Code limits this fee to actual costs, not to exceed \$1.00. 34 Pa.C.S. § 2709(d).

<sup>1</sup> Agents are defined to include County Treasurers and certain PGC employees. 34 Pa.C.S. § 2722(a).

<sup>2</sup> This fee includes the applicable license fee set by 34 Pa.C.S. § 2709(a) and the agent fee and transactions costs described in 34 Pa.C.S. §§ 2709(c)-(d).

The Code does not define these "transaction costs" or otherwise indicate whether a "transaction cost" includes a third party processor's swipe fee. Where a governing statute is ambiguous, the law grants the Commonwealth agency's interpretation controlling weight unless clearly erroneous. See *Whitaker Borough v. Pennsylvania Labor Relations Bd.*, 556 Pa. 559, 562, 729 A.2d 1109, 1110 (1999).

The absence of a definition for "transaction costs" creates just such an ambiguity, leaving its resolution to the PGC's expertise. Under Pennsylvania law, the Legislature supplies, either expressly or by implication, the power and authority exercised by administrative agencies. See *Commonwealth v. Butler County Mushroom Farm*, 499 Pa. 509, 454 A.2d 1 (1982). Further, the law vests an administrative agency with "the implied authority necessary to the effectuation of its express mandates, because the Legislature cannot foresee all the problems incidental to the agency's carrying out its duties and responsibilities." *Sewer Authority of Scranton v. Pennsylvania Infrastructure Investment Authority*, 81 A.3d 1031, 1039 (Pa. Cmwlth. 2013).

Under this implied grant of authority, the PGC may provide its own reasonable definition of what does, and does not, constitute a "transaction cost." Given its nature as a cost imposed by, and remitted solely to, a third party, the PGC possesses full authority to determine that a swipe fee is not a "transaction cost" of PALS. This interpretation of Section 2709(d) is not clearly erroneous; rather, it is a logical construction and does not conflict with the plain language of the Code.

For the foregoing reasons, PGC may authorize the payment of hunting or furtaking licenses by debit and credit cards where a third-party processor imposes a swipe fee because such a fee is neither an "Agent Fee" nor a "transaction cost" and its payment does not violate the Code.

In accordance with Section 204(a)(1) of the Commonwealth Attorneys Act, 71 P.S. § 732-204(a)(1), you may rely on the advice set forth in this Opinion and shall not in any way be held liable for doing so.

JOSH SHAPIRO,  
Attorney General

[Pa.B. Doc. No. 19-405. Filed for public inspection March 15, 2019, 9:00 a.m.]

## PENNSYLVANIA INFRASTRUCTURE INVESTMENT AUTHORITY

### DEPARTMENT OF ENVIRONMENTAL PROTECTION

#### Environmental Assessment Approval for PENNVEST Funding Consideration

*Scope:* Clean Water and Drinking Water State Revolving Fund Projects for April 17, 2019, Pennsylvania Infrastructure Investment Authority (PENNVEST) Board Meeting Consideration



*Description:* PENNVEST, which administers the Commonwealth’s Clean Water Fund (CWSRF) and Drinking Water State Revolving Fund (DWSRF), is intended to be the funding source for the following projects. The Department of Environmental Protection’s (Department) review of these projects, and the information received in the Environmental Report for these projects, has not identified any significant, adverse environmental impact resulting from any of the proposed projects. The Department hereby approves the Environmental Assessment for each project. If no significant comments are received during this comment period, the Environmental Assessment will be considered approved and funding for the project will be considered by PENNVEST.

To be considered, the Department must receive comments on this approval by April 15, 2019. Electronic comments should be submitted using the Department’s eComment site at [www.ahs.dep.pa.gov/eComment](http://www.ahs.dep.pa.gov/eComment). Written comments can be submitted by e-mail to [ecomment@pa.gov](mailto:ecomment@pa.gov) or by mail to the Policy Office, Department of Environmental Protection, Rachel Carson State Office Building, P.O. Box 2063, Harrisburg, PA 17105-2063. Use “PENNVEST SRF-Environmental Assessment” as the subject line in written communication.

For more information about the approval of the following Environmental Assessments or the Clean Water and Drinking Water State Revolving Loan Programs contact Richard Wright at [riwright@pa.gov](mailto:riwright@pa.gov) or the Bureau of Clean Water, Department of Environmental Protection, P.O. Box 8774, Harrisburg, PA 17105-8774, (717) 772-4059, or visit the Department’s web site at [http://www.dep.pa.gov/Business/Water/CleanWater/Infrastructure Finance/Pages/default.aspx](http://www.dep.pa.gov/Business/Water/CleanWater/InfrastructureFinance/Pages/default.aspx).

Any comments received during the comment period, along with the Department’s comment and response document will be available at the Department’s web site at <http://www.dep.pa.gov/Business/Water/CleanWater/InfrastructureFinance/Pages/EnvironmentalReview.aspx>.

Upon their approval the full list of approved projects and their costs can be found in a press release on PENNVEST’s web site at [www.pennvest.pa.gov](http://www.pennvest.pa.gov).

*CWSRF Projects Being Considered:*

<i>Applicant:</i>	Jackson East Taylor Sewer Authority
<i>County:</i>	Cambria
<i>Applicant Address:</i>	2603 William Penn Avenue Johnstown, PA 15909

*Project Description:* This is a sanitary sewer extension project in the Fords Corner, Pike Road and Chickaree areas of Jackson Township. The Township plans to install approximately 24,000 linear feet of sewer collection line to capture 98 homes and 3 businesses. Along the sewer extension, the Authority will be constructing a new pump station and replacing pumps in two existing pump stations. The Authority office will be replaced. Treatment will be provided at the existing Johnstown—Dornick Point sewage treatment plant.

*Problem Description:* There are existing malfunctioning onlot septic systems. These malfunctioning onlot systems are having an impact on public health and will be eliminated as a result of the project.

<i>Applicant:</i>	East Carroll Township
<i>County:</i>	Cambria
<i>Applicant Address:</i>	3350 Brick Road Carrolltown, PA 15772

*Project Description:* This is a sanitary sewer project to connect 50 existing customers in the Magee Road, Beech Road and Carroll Road areas of East Carroll Township. The Township plans to install approximately 13,000 linear feet of 8-inch sewer collection line. Treatment will be provided at the existing Patton Borough sewage treatment plant.

*Problem Description:* The East Carroll Township has limited availability of soils suitable for onlot system development. There are existing malfunctioning onlot septic systems and direct surface discharges that are having an impact on public health.

<i>Applicant:</i>	Johnstown Redevelopment Authority
<i>County:</i>	Cambria
<i>Applicant Address:</i>	401 Washington Street Johnstown, PA 15901

*Project Description:* This is a sanitary sewer rehabilitation project to correct existing defective sewers in the Fairfield Avenue area of the City of Johnstown. The Authority plans to replace or rehabilitate approximately 8,425 linear feet of 8-inch, 10-inch, 12-inch, 18-inch and 24-inch sewer collection line. Construction methods will include open cut and trenchless/slip lining technologies. The project includes the cleaning and televising of approximately 6,000 linear feet of 54-inch interceptor. Treatment will be provided at the existing Johnstown—Dornick Point sewage treatment plant.

*Problem Description:* Under a Consent Order and Agreement, the Authority is obligated to implement a rehabilitation plan that would reduce the amount of infiltration and inflow entering the Authority’s collection system during wet weather events and thus eliminate sanitary sewer overflow discharges of raw sewage into the waters of this Commonwealth.

<i>Applicant:</i>	City of Johnstown
<i>County:</i>	Cambria
<i>Applicant Address:</i>	401 Main Street Johnstown, PA 15901

*Project Description:* This is a sanitary sewer rehabilitation project to correct existing defective sewers in the Fairfield Avenue area of the City of Johnstown. The City plans to replace or rehabilitate approximately 2,465 linear feet of 8-inch and 4,500 linear feet of 6-inch sewer collection line. Manholes within the design will also be replaced or rehabilitated. Private storm sewer lines will be separated from the sanitary sewer system. Treatment will be provided at the existing Johnstown—Dornick Point sewage treatment plant.

*Problem Description:* Under a Consent Order and Agreement, the City is obligated to implement a rehabilitation plan that would reduce the amount of infiltration and inflow entering the City’s collection system during wet weather events and thus eliminate sanitary sewer overflow discharges of raw sewage into the waters of this Commonwealth.



<i>Applicant:</i>	Municipal Authority of The Borough of Bedford
<i>County:</i>	Bedford
<i>Applicant Address:</i>	244 West Penn Street Bedford, PA 15522-1226

*Project Description:* This is a sanitary sewer rehabilitation project to correct existing defective sewers in the Borough of Bedford and a small portion of Bedford Township. The Borough plans to replace approximately 30,000 linear feet of sewer collection line with polyvinyl chloride pipe.

*Problem Description:* The Borough of Bedford experiences occasional wet weather overflows that discharge from a permitted combined sewer overflow. The aging vitrified clay pipe is subjected to infiltration and inflow.

<i>Applicant:</i>	North East Borough Sewer Authority
<i>County:</i>	Erie
<i>Applicant Address:</i>	31 West Main Street North East, PA 16428

*Project Description:* This is a wastewater improvements project in North East Borough. The North East Borough Site 2 wastewater treatment plant currently discharges to Sixteen Mile Creek, approximately 4,000 linear feet upstream of its confluence with Lake Erie. The proposed project is for the installation of a new wastewater pump station, force main and outfall to convey the treated wastewater from the North East Borough Site 2 treatment facility to a location approximately 2,700 feet offshore in Lake Erie. The effluent pump station will have a design capacity of approximately 3,500 gallons per minute. The force main will be approximately 6,700 linear feet in total length and be 18-inches in diameter. The majority of installation will be by directional drilling with a small portion being open-cut.

*Problem Description:* Sixteen Mile Creek provides little dilution for the treatment plant discharge, resulting in very stringent effluent limitations. The project will relieve Sixteen Mile Creek from being effluent dominated. The revised effluent limits, by moving the outfall, will result in numerous benefits including reducing operating costs, eliminating chemical additives and lowering the probability of effluent violations.

*DWSRF Projects Being Considered:*

<i>Applicant:</i>	East Stroudsburg Borough
<i>County:</i>	Monroe
<i>Applicant Address:</i>	24 Analomink Street East Stroudsburg, PA 18301

*Project Description:* The Borough of East Stroudsburg is proposing to replace the existing raw water supply intake and transmission pipeline from the intake struc-

ture of Middle Dam to the East Stroudsburg Water Filtration Plant. This project is being undertaken in conjunction with major rehabilitation work on Middle Dam. The existing transmission line will be abandoned in place and replaced by the new pipeline.

*Problem Description:* The Borough of East Stroudsburg owns and maintains Middle Dam across Sambo Creek. The dam impounds the Borough's water supply reservoir. The Department's Division of Dam Safety identified deficiencies with the dam, which are being addressed by upcoming major rehabilitation work. Existing water supply piping through the dam is over 100 years old and existing transmission piping from the dam to the water treatment plant is over 50 years old. Replacing this aging infrastructure can be cost-effectively accomplished in conjunction with the dam rehabilitation work.

<i>Applicant:</i>	New Sewickley Township Municipal Authority
<i>County:</i>	Beaver
<i>Applicant Address:</i>	233 Miller Road Rochester, PA 15074

*Project Description:* The New Sewickley Township Municipal Authority proposes the installation of approximately 5,200 linear feet of 6-inch and 8-inch diameter ductile iron (DI) pipe to replace all asbestos cement (AC) pipe located in the Harvey Run Road system. New DI water mains will be installed parallel to the AC pipe while the AC pipe remains in service. Each replacement water main will be either the same size as or one size smaller than the water main it replaces, as appropriate. Reinstatement of water service laterals to customers in the project area will be included as part of the project. Due to health and environmental concerns with handling and disposal of pipe containing asbestos, completion of the project involves leaving the AC pipe undisturbed. The project is an in-kind replacement of existing water mains. No water main extensions or additional water customers are proposed with this project. Two new fire hydrants are proposed at water main dead-ends to facilitate system flushing.

*Problem Description:* The New Sewickley Township Municipal Authority has approximately 5,200 linear feet of water distribution mains comprised of aging asbestos cement pipe. The main is old and deteriorating requiring replacement. Due to the asbestos in the existing pipe, repairs on the line are difficult. New distribution main will reduce breakage and will be easy to repair. New fire hydrants will help flush the dead-end distribution mains.

PATRICK McDONNELL,  
*Secretary*  
*Department of Environmental Protection*

BRION JOHNSON,  
*Executive Director*  
*Pennsylvania Infrastructure Investment Authority*

[Pa.B. Doc. No. 19-406. Filed for public inspection March 15, 2019, 9:00 a.m.]

## PENNSYLVANIA PUBLIC UTILITY COMMISSION

### Cancellation of Certificates of Public Convenience for Common Carriers; Failure to Operate or Report Any Operating Revenue

Public Meeting held  
February 28, 2019

*Commissioners Present:* Gladys M. Brown, Chairperson;  
David W. Sweet, Vice Chairperson; Norman J. Kennard;  
Andrew G. Place; John F. Coleman, Jr.

*Cancellation of Certificates of Public Convenience for  
Common Carriers; Failure to Operate or Report Any  
Operating Revenue; M-2019-3007610*

#### Tentative Order

*By the Commission:*

The Public Utility Code requires that by March 31 of each year, every public utility must file a report detailing its gross intrastate operating revenue for the preceding calendar year. 66 Pa.C.S. § 510(b). This report is essential for the Commission to fund its operations and to properly allocate assessment costs among the regulated utility community. Id. Additionally, common carriers are required to operate continuously and without unreasonable interruptions of service. 66 Pa.C.S. § 1501, 52 Pa. Code §§ 29.61-62. Commission regulations authorize the cancellation of a common carrier's Certificate of Public Convenience (CPC) for failure to comply with operating and reporting requirements, as well as other provisions of the Public Utility Code. 52 Pa. Code §§ 29.12 (Motor Carriers of Passengers) and 31.12 (Motor Carriers of Property).

The Commission has undertaken a review of its records to determine whether various utilities are in compliance with its operating and reporting requirements. That review has revealed that a significant number of common carriers have repeatedly failed to file the required annual assessment report and failed to establish that they are operating continuously as required. Specifically, each carrier listed in Appendix A, attached hereto, has failed to report any operating revenue to the Commission for each of the last multiple years and has consequently failed to establish any operations for that same period of time.

The Commission's Bureau of Administration sent a final warning letter to each carrier listed in Appendix A, requesting that they either file an assessment report detailing their annual revenue or notify the Commission of their desire to abandon their CPCs. Carriers were provided twenty (20) days to comply. The letter further warned the carriers that failure to comply would result in the Commission taking appropriate action to cancel their

CPCs. None of the carriers listed in Appendix A responded to the warning letter.

Under the circumstances, we tentatively conclude that the motor carriers listed in Appendix A are not in compliance with the reporting requirements of 66 Pa.C.S. § 510(b) nor are they in compliance with the operational requirements of 66 Pa.C.S. § 1501, 52 Pa. Code §§ 29.61-62. As such, it is appropriate to initiate the process for cancelling their CPCs as being in the public interest; *Therefore,*

*It Is Ordered:*

1. That cancellation of the Certificates of Public Convenience of each motor carrier listed in Appendix A is hereby tentatively approved as being in the public interest.

2. That the Secretary serve a copy of this Tentative Order upon the Bureau of Investigation & Enforcement, the Bureau of Technical Utility Services, the Bureau of Administration, Department of Revenue—Bureau of Corporation Taxes, Department of Transportation, and all motor carriers listed in Appendix A. The Tentative Order shall be filed at each carrier's docket number.

3. That the Law Bureau shall publish a copy of this Tentative Order in the *Pennsylvania Bulletin*.

4. That all parties listed in Ordering Paragraph No. 2, to the extent they challenge cancellation of the CPC, must file comments within 20 days after publication in the *Pennsylvania Bulletin*. Comments shall be sent to the Pennsylvania Public Utility Commission, Attn: Secretary Rosemary Chiavetta, Commonwealth Keystone Building, 400 North Street, 2nd Floor, Harrisburg, PA 17120.

5. Alternatively, carriers listed in Appendix A may file an Assessment Report for calendar year 2017 gross intrastate operating revenues, within 20 days after publication in the *Pennsylvania Bulletin*. Reports shall be sent to the Pennsylvania Public Utility Commission, Attn: Secretary Rosemary Chiavetta, Commonwealth Keystone Building, 400 North Street, 2nd Floor, Harrisburg, PA 17120.

6. That absent the timely filing of comments challenging cancellation of the CPC, or the timely reporting of a carrier's 2017 gross intrastate operating revenue, the Law Bureau shall prepare a Final Order for entry by the Secretary cancelling the carrier's CPC.

7. That upon entry of the Final Order described in Ordering Paragraph No. 6 above, the Certificate of Public Convenience of each non-compliant carrier shall be cancelled, and each non-compliant carrier listed in Appendix A will be stricken from all active utility lists maintained by the Commission's Bureau of Technical Utility Services and the Fiscal & Assessments Section of the Bureau of Administration.

ROSEMARY CHIAVETTA,  
*Secretary*

#### Appendix A

##### Carriers Not Reporting Revenue for Multiple Years

<i>Utility Code</i>	<i>Carrier Name</i>	<i>Docket No.</i>
630724	MARTHA A. BLACKMON	A-00105474
6310309	DISCOUNT CAB SERVICE, LLC	A-2010-2195541
631051	DASHMESH CAB CORP.	A-00111733
631740	FRANCIS E. CRINER	A-00105811

<i>Utility Code</i>	<i>Carrier Name</i>	<i>Docket No.</i>
631838	GREENS TAXI, INC.	A-00115729, A-00115729F0002, A-00115729F0003, A-00115729F0004
632356	BLUE & WHITE USA, INC.	A-00119928, A-00119928F0002
640763	ST MARYS AREA AMUBLANCE SERVICE, INC.	A-00116119
640787	DANVILLE AMBULANCE SERVICE, INC.	A-00116289
640981	MM TRANSPORTATION, LLC	A-00117758
6410110	FIRST CLASS LIMOS, INC.	A-2008-2039976
6410946	CITY TOURS, INC.	A-2009-2097215
641274	RONALD C. JONES	A-00120191, A-00120191F0002
6413343	RIDE AND REBUILD, LLC	A-2011-2233406
6413891	RPD PLUS EXECUTIVE COACH, LLC	A-2011-2262741, A-2011-2263555
6414204	ADVANCE CARE, INC.	A-2012-2285059
6414291	ALSTAR MEDICAL TRANSPORTATION, INC.	A-2012-2290580
6414761	ATLANTIS LIMOUSINE SERVICE, LLC	A-2012-2309340
641484	FJG TRANSPORTATION, INC.	A-00121716
6416227	ABC TRANSIT, INC.	A-2013-2398408
641643	BRONNER, CAROL JEAN	A-00122750
641660	A-1 QUALITY LIMOUSINE SERV, LLC	A-00122888
641665	BISHOP, PAUL A.	A-00122946
641755	ADVANTAGE MEDICAL TRANSPORT, INC.	A-00123352
641849	LIMO TODAY, INC.	A-00124027
641859	ARNOLD FIRE—EMS OF ARNOLD, PA	A-00124069
641882	EQUERE, PETER	A-00124186
649841	PREMIER LUXURY RENTALS, INC.	A-2008-2024530, A-2010-2187490
700115	WHIPSTOCK NATURAL GAS SERVICES, LLC	A-00108852
700140	FULLER, GENE HOMES, INC.	A-00108928
700282	BEN L. MAY	A-00109307
700784	PAULISICK, ROBERT M.	A-00110981
701009	DAVIDSON TRANSFER & STORAGE CO.	A-00111747
701052	LEGACY LANDSCAPE MATERIALS, INC.	A-00111799
701133	OHIO TRANSPORT CORPORATION	A-00111896
701358	BG & BG, INC.	A-00112172
701370	A.J.G. TRUCKING, INC.	A-00107214
701410	SWEIGART, GARY LEE	A-00112233
701544	ARROW TRUCKING CO.	A-00112411
701789	STANISLAW, ROGER A.	A-00112805
701847	LARRY L. FULTZ	A-00112905
701939	T. S. TRANSFER, INC.	A-00113058
702166	GAZZELLA CORPORATE COURIER EXPR	A-00113434
702197	ALLENTOWN NEWS AGENCY	A-00106107
702369	HARDROCK TRUCKING & EXCAVATING, LLC	A-00113733
702470	GLEESON, TIMOTHY F.	A-00113868
702498	WALKER, BRANDON P.	A-00113920
702538	PRINCETON ARMORED SERVICE, INC.	A-00113981



<i>Utility Code</i>	<i>Carrier Name</i>	<i>Docket No.</i>
702748	QSC EQUIPMENT, INC.	A-00114356
702775	DILLON, KENNETH G.	A-00114401
702867	KOPPES, M.H., CLAY PRODUCTS COM	A-00114570
702935	BRIGHT TRANSPORTATION, LP	A-00114676
702956	G L ADAMS EXCAVATING, INC.	A-00114707
703041	G.W. ROWE & SON DEVELOPMENT CO., INC.	A-00114828
703195	STOVER'S GRADING & EXCAVATING,	A-00115022
703280	APPALACHIAN TRANSPORT, INC.	A-00115121
703330	MICHEL DISTRIBUTION SERVS, INC.	A-00115200
703497	CALFO RED LINE TRANSFER, INC.	A-00115472
703816	BEAVEX INCORPORATED	A-00115967
703883	CTX, INC.	A-00116082
704058	KOVATCH, LAWRENCE FRANCIS	A-00116360
704132	CARLIN MESSENGER SERVICE, LLC	A-00116462
704138	RT CAREY TRUCKING, LLC	A-00116471
704378	ANTIQUE TRANSPORT CO.	A-00116837
704401	JOHNSTON, MICHELE, INC.	A-00116875
705005	STANLEY S. KARP, SR.	A-00117814
705294	BUTLER, GEORGE H.	A-00118296
705337	SPIRIT DELIVERY & DIST SERV, INC.	A-00118372
705431	MCGANN & CHESTER, LLC	A-00118499
706201	NETWORK EXPRESS, INC.	A-00119803
706279	QUIGLEY, LARRY DON	A-00119930
706399	ERNEST D. ROSS, JR.	A-00120172
706405	DIVERSIFIED COMMODITIES, INC.	A-2019-3006975
706567	WHITE, THOMAS	A-00120464
706707	MILDRED A. KISSEL	A-00120714
707019	LWENYA, BEN AMUGUNE	A-00121283
707138	JOHN C. DELAUTER	A-00121541
707250	R E DAUMER TRUCKING, INC.	A-00121717
707342	DCH TRUCKING, LLC	A-00121855
707360	BESTWAY SYSTEMS, INC.	A-00121879
707449	TOTAL TRANSPORTATION TRUCKING,I	A-00121990
707541	MECHANICS PLUS TOWING & TRANS, INC.	A-00122140
707595	SHIMSHOCK, INC.	A-00122226
707608	STORAGE MOBILITY OF EASTERN PA	A-00122252
707609	STORAGE MOBILITY OF SCRANTON	A-00122253
707904	DMP TRUCKING, INC.	A-00122696
708135	DART TRANSPORT, INC.	A-00123003
708327	BERNHARDT TRUCKING, INC.	A-00123302
708443	COMPLETE MILLWORK SOLUTIONS, INC.	A-00123475
708518	IRVIN C. GALLAHER, JR.	A-00123587
708537	ROBERT HIGGINS	A-00123611
708587	BELL, DAVID C.	A-00123690
708809	HANNAHS TRANSPORT, LLC	A-00124026
708851	BUCKLEY, MARK J.	A-00124092
708943	MAPLE GROVE TOWING, INC.	A-00124224
712405	BETTERS COMPANY, INC.	A-00107118

<i>Utility Code</i>	<i>Carrier Name</i>	<i>Docket No.</i>
725965	CTR DEL. SER. OF WASHINGTON, INC.	A-00105659
743161	E. F. CORPORATION	A-00108347
745000	EVANS DELIVERY COMPANY, INC.	A-00095172
752200	FRANK DELIVERY SERVICE, INC.	A-00095640
760300	GRAEBEL/EASTERN MOVERS, INC.	A-00099425
760305	GRAEBEL/PITTSBURGH MOVERS, INC.	A-00104969
778390	KARNER, CURT A.	A-00107646
822140	PIERCE, PAUL E.	A-00103102
835420	RYAN MOVING & STORAGE, INC. OF ERIE	A-00025550
841135	SHAMROCK MINERALS CORPORATION	A-00106000
841240	SHANAHAN TRANSFER & STORAGE CO.	A-00025407
846050	GENE'S MOVING SERVICE, INC.	A-00106856
860010	VOLPE EXPRESS, INC.	A-00107410
862990	DUKE MOVING AND STORAGE, INC.	A-00101712
866650	HARRY WILLIAMS T/A EAGLE TAXI	A-00102568, A-00102568F0002
890445	USA CARTAGE, INC.	A-00110418
890669	FINLEYS' CUSTOM SERVICES, INC.	A-00111267
890754	GARDA CL ATLANTIC, INC.	A-00099633
890938	EDMIL FUELS, INC.	A-00105031
890995	FRITO-LAY, INC.	A-00106742
8910020	DEAMER TRUCKING, LTD	A-2008-2036389
8910205	PRETTY MELL'S TRUCKING, LLC	A-2008-2046388
8910358	LOI TU LUU	A-2008-2056977
8910362	BLACK BEAR TRUCKING, LLC	A-2009-2088174
8910427	A J KONOPKA EXCAVATING, INC.	A-2008-2060597
8910508	VOLPE DEDICATED, INC.	A-2008-2065514
8910572	MOORE TRUCKING, LLC	A-2008-2072429
891060	HANLY, DAVE, INC.	A-00107714
8910739	HODGES TRUCKING COMPANY, LLC	A-2009-2088091
891085	HIATAL, INC.	A-00107735
8910962	PIKE COUNTY PAVING, LLC	A-2009-2098379
8911172	MJM TRUCKING, INC.	A-2009-2111737
8911290	MINUTEMAN SPILL RESPONSE, INC.	A-2009-2123954
8911556	THOMAS PATRICK COTTER	A-2009-2141821
8911722	JOEL VOUGHT	A-2010-2152632
8911920	LOREN BAHR T/A WINDFALL TRANSPORT	A-2010-2166427
8912020	WILLIAM D. MERCER, JR.	A-2010-2169665
8912021	JOSEPH ORISCHAK	A-2010-2169686
8912210	JEREMYS ROUSTABOUTS & BACKHOE INCORPORATED	A-2010-2177765
8912223	RANDY E. MYERS	A-2010-2178410
8912353	ENDLESS MOUNTAIN EXPRESS, INC.	A-2010-2183927
8912591	TEXAS TRANSCO, INC.	A-2010-2193558
8912620	S & E TRUCKING COMPANY	A-2010-2195476
8912629	MICHAEL BICKINGS	A-2010-2195792
8912933	QUE TRUCKING, LLC	A-2010-2208173
8912938	KEN FRANKS TRUCKING, LLC	A-2010-2208210

<i>Utility Code</i>	<i>Carrier Name</i>	<i>Docket No.</i>
8912988	MCGHEE MOVING AND LOGISTICS, INC.	A-2010-2214113, A-2011-2219035
8913251	DKM TRANSPORTATION AND WELDING ENTERPRISES LIMITED	A-2011-2222425
8913259	ROPING THE WIND RANCH & TRUCKING, LLC	A-2011-2206855
8913349	MELO PROPERTY SERVICES, LLC	A-2011-2233612
8913369	TEN MILE PAVING, LLC	A-2011-2234640
8913405	CMP TRUCKING, LLC	A-2011-2235769
8913664	PAUL MORRISROE	A-2011-2273495
8913774	TXD TRANSPORT, LP	A-2011-2256133
8913808	H D HAULING, LLC	A-2011-2257441
8913830	ALL ABOUT FREIGHT, LLC	A-2011-2258498
8913831	BRIAN J. PAUL	A-2012-2330014
8914175	MINUTEMAN ENVIRONMENTAL SERVICES, INC.	A-2012-2282845
8914230	CHARLES E. SCHRECEGOST	A-2012-2286478
8914427	DR WELL SITE SERVICES, LLC	A-2012-2294207
891453	RANKER, DANIEL L.	A-00107859
8914665	AARON C. HERSHBERGER	A-2012-2304445
8914680	EDWARD M. COX, JR.	A-2012-2332955
8915074	AMWARE FULFILLMENT OF PENNSYLVANIA, LLC	A-2012-2309954
8915081	TICK-TOCK TRANSPORTATION, LLC	A-2012-2321805
8915084	CDB TRUCKING, LLC	A-2012-2321936
8915136	KAUFFMAN, LLC	A-2012-2325831
8915151	KIRBY OFFSHORE MARINE, INC.	A-2012-2326291
8915176	WAYNE HARMAN	A-2012-2327957
8915205	KEEP IT MOVING, LLC	A-2017-2617127
8915548	SHEESLEY SUPPLY COMPANY, INC.	A-2013-2352766
8915702	GRAND SLAM EXPEDITED, INC.	A-2013-2360633
8915784	MICHAEL JOHN HUYA, III	A-2013-2366214
8915912	DAVID M. PHILLIPS, JR.	A-2013-2377572
8916130	COOP TRANSPORT EXPRESS, LLC	A-2013-2392099
8916191	GUNNER TRUCKING, LLC	A-2018-2644211
8916284	LEHIGH VALLEY LINES, INC.	A-2014-2401291
8916342	GP PONCE TRANSPORT, LLC	A-2014-2406045
8916498	ANDREW W. SCHMIDT	A-2014-2418004
8916641	LIBERATOR PERFORMANCE SALES & SERVICE, INC.	A-2014-2427024
899733	COURIER EXPRESS US, INC.	A-2008-2022421
899791	PHILIP S. RISSLER T/A PHILIP RISSLER TRUCKING	A-2008-2023882
899858	COLLINCE TANTSING	A-2008-2024737

[Pa.B. Doc. No. 19-407. Filed for public inspection March 15, 2019, 9:00 a.m.]



# PENNSYLVANIA PUBLIC UTILITY COMMISSION

## Electric Generation Supplier License Cancellations of Companies with an Expired Financial Security or Insufficient Financial Security Amount

Public Meeting held  
February 28, 2019

*Commissioners Present:* Gladys M. Brown, Chairperson;  
David W. Sweet, Vice Chairperson; Norman J. Kennard;  
Andrew G. Place; John F. Coleman, Jr.

*Electric Generation Supplier License Cancellations of  
Companies with an Expired Financial Security or  
Insufficient Financial Security Amount;  
M-2019-3006865*

### Tentative Order

*By the Commission:*

The Commission’s regulations at 52 Pa. Code § 54.40(a) state that an Electric Generation Supplier (EGS) license will not be issued or remain in force until the licensee furnishes a bond or other security approved by the Commission. In addition, 52 Pa. Code § 54.40(d) states that the maintenance of an EGS license is contingent on the licensee providing proof to the Commission that a

bond or other approved security in the amount directed by the Commission has been obtained.

Each EGS must file an original bond, letter of credit, continuation certificate, amendment, or other approved financial instrument with Rosemary Chiavetta, Secretary, Pennsylvania Public Utility Commission, 400 North Street, Harrisburg, PA 17120 prior to the EGS’s current security expiration date. Each financial instrument must be an original document that displays a “wet” signature or digital signature, preferable in blue ink, and displays a “raised seal” or original notary stamp. The name of the principal on the original financial instrument must match exactly with the name that appears on the EGS’s license issued by the Commission.

Failure to file before the financial security’s expiration date may cause Commission staff to initiate a formal proceeding that may lead to the following: cancellation of each company’s electric supplier license, removal of each company’s information from the Commission’s website and notification to all electric distribution companies, in which each company is licensed to do business, of the cancellation of the license.

As of February 15, 2019, each EGS listed in the Supplier Table below has not provided proof to the Commission that it has a bond or other approved security in the amount directed by the Commission, to replace its expired bond.

*Supplier Table—List of Electric Generation Suppliers*

<i>Docket Number</i>	<i>Company Name</i>	<i>Financial Security Expiration Date</i>	<i>Commission Approved Amount</i>
A-2013-2345509	BKE MECHANICAL, INC.	2/4/19	Yes
A-2013-2353800	PRO-STAR ENERGY SERVICES, LLC	1/15/19	Yes

As part of its EGS license validation procedures, the Commission’s Bureau of Technical Utility Services sent a 90-day Security Renewal Notice Letter to each entity in the Supplier Table above stating that original documentation of a bond, or other approved security, must be filed within 30 days prior to each entity’s security expiration date. None of the companies listed in the Supplier Table provided the required documentation.

Based on the above facts, we tentatively conclude that the EGSs listed in the Supplier Table are not in compliance with 52 Pa. Code § 54.40(a) and (d) and therefore it is appropriate to initiate the cancellation process for each EGS license of each company listed in the Supplier Table, without the necessity of a formal complaint, as being in the public interest; *Therefore,*

*It Is Ordered That:*

1. Cancellation of the Electric Generation Supplier Licenses of each company listed in the Supplier Table is hereby tentatively approved as being in the public interest.

2. The Secretary serve a copy of this Tentative Order upon the Office of Consumer Advocate, the Office of Small Business Advocate, the Bureau of Investigation & Enforcement, the Department of Revenue—Bureau of Corporation Taxes, all electric distribution companies, all of the Electric Generation Suppliers in the Supplier Table and

publish a copy of this Tentative Order in the *Pennsylvania Bulletin* with a 30-day comment period.

3. Absent the filing of adverse public comment or the filing of an approved security within 30 days after publication in the *Pennsylvania Bulletin*, the Bureau of Technical Utility Services shall prepare a Final Order for entry by the Secretary.

4. Upon entry of the Final Order described in Ordering Paragraph No. 3 above, each company listed in the Supplier Table will be stricken from all active utility lists maintained by the Commission’s Bureau of Technical Utility Services and the Assessment Section of the Bureau of Administration, removed from the Commission’s website, and notifications be sent to all electric distribution companies in which the Electric Generation Suppliers are licensed to do business.

5. Upon entry of the Final Order described in Ordering Paragraph No. 3, each electric distribution company in which the Electric Generation Suppliers are licensed to do business, shall return the customers of the Electric Generation Suppliers to default service.

ROSEMARY CHIAVETTA,  
*Secretary*

[Pa.B. Doc. No. 19-408. Filed for public inspection March 15, 2019, 9:00 a.m.]

## PENNSYLVANIA PUBLIC UTILITY COMMISSION

### Energy Affordability for Low-Income Customers; Doc. No. M-2017-2587711

The Pennsylvania Public Utility Commission (Commission) opened this proceeding in 2017 as the first step in evaluating the affordability, cost-effectiveness and prudence of Universal Service Programs. At the public meeting of January 17, 2019, the Commission entered an Order calling, inter alia, for jurisdictional natural gas distribution companies and electric distribution companies to submit supplemental information and data by February 19, 2019. Order at OPs # 5 and # 10. The Order also established a comment and reply comment schedule. Order at OP # 11.

A stakeholder meeting regarding the January 2019 Order was held on February 6, 2019, in Harrisburg, PA. As a result of the discussion and consensus at the stakeholder meeting, the Commission intends to clarify the supplemental information and data to be filed.

This Secretarial Letter stays the submission and comment periods listed in the January 2019 Order, pending the issuance of revised submission and comment periods in a subsequent Secretarial Letter. The revised timelines will be specified in conjunction with the Commission's clarifications regarding the requisite supplemental information and data. All other provisions of the January 2019 Order remain in effect.

If there are any questions, contact Joseph Magee, [jmagee@pa.gov](mailto:jmagee@pa.gov), (717) 772-1204. Parties are directed to provide to Joseph Magee the contact names, telephone numbers and e-mail addresses for persons in their organizations to be used for the informal exchange of information related to this proceeding.

ROSEMARY CHIAVETTA,  
*Secretary*

[Pa.B. Doc. No. 19-409. Filed for public inspection March 15, 2019, 9:00 a.m.]

## PENNSYLVANIA PUBLIC UTILITY COMMISSION

### Implementation of Section 1329 of the Public Utility Code

Public Meeting held  
February 28, 2019

*Commissioners Present:* Gladys M. Brown, Chairperson;  
David W. Sweet, Vice Chairperson; Norman J. Kennard;  
Andrew G. Place; John F. Coleman, Jr.

*Implementation of Section 1329 of the Public Utility Code;*  
*M-2016-2543193*

#### Final Supplemental Implementation Order

*By the Commission:*

On April 14, 2016, Act 12 of 2016 amended Chapter 13 of the Pennsylvania Public Utility Code by adding Section 1329 to become effective June 13, 2016. 66 Pa.C.S. § 1329. On July 21, 2016, the Commission entered its Tentative Implementation Order addressing the imple-

mentation of Section 1329 and, subsequently, on October 27, 2016, the Commission entered its Final Implementation Order (FIO) to guide stakeholders in the implementation of Section 1329.

While Section 1329 has encouraged the sale of public water and wastewater assets at market rates, the Commission's experience to date with Section 1329 applications indicates that our procedures and guidelines can be improved. Namely, the Commission issues this Order to improve the quality of valuations, ensure that the adjudication process is both fair and efficient, and, ultimately, reduce litigation surrounding Section 1329 determinations.

Aside from fundamental stakeholder disagreement over appropriate utility valuation principles, there are difficulties related to the six-month consideration period available to applicants under 66 Pa.C.S. § 1329(d)(2). That is, the six-month statutory deadline comes at the price of an accelerated litigation schedule. In addition, in some cases, the Commission has observed substantial variances in underlying valuation assumptions related to the same property. Further guidance can provide more consistency in final valuations as well as the testimony submitted in support of valuations. Lastly, to aid fair and efficient Section 1329 review, the initial application should include enough relevant information so that parties can meaningfully participate in the application without causing exhaustive discovery and within the statutory timeline of Section 1329.

Throughout 2018 the Commission conducted stakeholder workshops to informally develop proposed revisions to the standard materials required for Section 1329 applications, guidelines for selling utility valuations, testimony, and procedural guidelines. On September 20, 2018, with the benefit of these workshops and approximately two years of experience applying Section 1329, the Commission issued a Tentative Supplemental Implementation Order (TSIO). The Commission invited interested persons to submit comments and offer recommendations regarding the TSIO within thirty (30) days after publication in the *Pennsylvania Bulletin* and submit reply comments fifteen (15) days thereafter.

The Commission received comments from Aqua Pennsylvania, Inc. (Aqua), the Bureau of Investigation and Enforcement (BIE), the Chester Water Authority (CWA), Herbert, Rowland and Grubic, Inc. (HRG), the Office of Consumer Advocate (OCA), the Pennsylvania Municipal Authorities Association (PMAA), Pennsylvania-American Water Company (PAWC), SUEZ Water Pennsylvania, Inc. (SWPA), and the York Water Company (York Water). The Commission received reply comments from Aqua, BIE, the OCA, the PMAA, PAWC, and SWPA.<sup>1</sup>

On January 25, 2018, PAWC filed a Petition for Leave to File Supplemental Comments on the TSIO. PAWC Supplemental Comments proposed a notice procedure and pro forma customer notice documents. On January 28, 2019, via Secretarial Letter, the Commission granted PAWC's Petition and established a reply comment deadline of February 7, 2019. The Commission received reply comments from Aqua, BIE, the OCA, and the PMAA.

#### *Discussion*

After considering the TSIO comments, supplemental comments, and reply comments thereto, the Commission now issues this Final Supplemental Implementation Order (FSIO) to improve the Commission's Section 1329

<sup>1</sup> SWPA indicated generally that it agrees with the Comments of Aqua, PAWC, and York.

review process. As with the TSIO, the FSIO is organized in sequential order according to the procedural timeline of a Section 1329 application. To the extent that we have not addressed a particular comment, it has been duly considered and is not adopted.

*Checklist for Applications Requesting Section 1329 Approval*

Subsections 1329(d)(1)(i)—(v) enumerate categories of information that the Buyer<sup>2</sup> is obligated to provide as part of a Section 1329 acquisition application. The Commission will not officially accept a Section 1329 application, thus initiating the six-month consideration period of Section 1329(d)(2), until a Buyer has shown that its application is complete. To clarify its expectations of what constitutes a complete application the Commission developed an Application Filing Checklist, which it requires applicants to attach to applications at the time of filing.

The TSIO proposed revisions to the Application Filing Checklist in its Appendix A. General changes included formatting for ease of future edits and sequencing checklist items to reflect the chronology in which checklist items may be compiled. Checklist instructions also clarify that an individual document may be used to satisfy more than one checklist item so long as appropriate cross-references are used to direct attention to exactly where the required information may be found in the filing. The general instructions further provided that service of an accepted filing on affected political subdivisions may be accomplished electronically if the recipient can accept electronic service. We directed stakeholders to review the entire proposed revised Checklist, including specific revisions to Items 2—4, 7—10, 13, 14, 17—20, 22, and 25. We requested comments on whether the Checklist was too broad, is complete, or should be expanded to include additional items.

Below we first address comments and reply comments on the proposed revised Application Filing Checklist in its entirety. We then address comments and reply comments regarding specific revisions to the Items identified in the TSIO. The parties generally do not oppose revisions to Items 2, 3, 7, 10, 17, 19, 22, and 25. Accordingly, these revisions remain intact and we will not address them further. A copy of the final Application Filing Checklist is attached hereto as Appendix A.

*Comments*

As to the entire Checklist, the OCA suggested that page numbers should be filled in on the Checklist included with a filing. OCA Comments at 4. In addition, the OCA suggested the use of Bates stamping for all pages in a filing. Id. The OCA opined that Bates stamping would allow all parties to be able to reference specific pages and sections of the filing in a consistent way. Id.

SWPA recommended that the Commission create a modified checklist and an expedited process based on the size of the purchased system. SWPA Comments at 2. In particular, SWPA recommended a “short form” checklist for systems with less than 1,000 customers or a purchase price of less than \$10 million. Id. SWPA opined that it is unreasonable to require the same extensive information for a small acquisition that is required of a large acquisition. Id. SWPA further suggested that the modified checklist should be used if the average of the two independent valuations are within ten percent of each other and the purchase price is within ten percent of the purchasing company’s investment per customer. Id.

<sup>2</sup> Buyer refers to either an “Acquiring Public Utility” or “Entity” under Section 1329(g), while Seller refers to a “Selling Utility” under Section 1329(g).

Similarly, York Water argued that the Checklist is onerous with many of the items regarding costs, values, and environmental issues being either unnecessary or redundant. York Water Comments at 1. York Water suggested the use of a materiality threshold where acquisitions falling below the threshold would have a streamlined approval process. Id. York Water recommended that the threshold be established on a “cost/customers” basis or an overall cost not to exceed a certain amount, such as \$5 million. Id.

*Reply Comments*

Aqua opposed the OCA’s suggestion to use Bates stamping. Aqua Reply at 3. Aqua argued that the applications filed to date have provided clear, sufficient numbering of exhibits to allow parties to reference information in the filing. Id. Aqua also noted that large, multi-exhibit filings, such as rate cases, do not require Bates stamping. Id.

PAWC also opposed the use of Bates stamping. PAWC Reply Comments at 7. PAWC noted that its applications are divided into exhibits that match the items on the Checklist. Id. PAWC argued that the OCA failed to consider that Bates stamping could only be done once the application is completed and, once Bates stamping is done, it would be difficult to insert a page at the last minute, if need be. Id.

Conversely, BIE supported the use of Bates stamping for purposes of organization and efficiency due to the size of the filings. BIE Reply Comments at 2. BIE noted that some Section 1329 applications have consisted of 1,400 pages. Id.

In response to SWPA and York Water’s concerns regarding the length of the Checklist, BIE pointed out that, by filing the information sought in the Checklist, the discovery exchange after an application is transferred to the Office of Administrative Law Judge (OALJ) would be lessened. Id. at 3. BIE noted that, due to the six-month deadline, it is imperative that the parties and the Administrative Law Judge (ALJ) have as much information as possible from the outset of the proceeding in order to provide the Commission with a full and complete record. Id.

The OCA rejected SWPA’s proposed modified checklist and York Water’s proposed materiality threshold. OCA Reply Comments at 2. The OCA argued that the use of a cost per customer basis to determine level of review in SWPA’s proposal may not be a reliable indicator. Id. The OCA also argued that some applications that might meet the threshold in York Water’s proposal may still have a major impact on rate base and rates that would need to be fully examined. Id. With regard to both proposals, the OCA argued that shortening the Checklist will put the Commission’s Bureau of Technical Utility Services (TUS) and the parties at a major disadvantage in reviewing applications within the statutory deadline. Id.

PAWC, on the other hand, agreed with SWPA’s proposal to create a modified checklist. PAWC Reply Comments at 5. PAWC also agreed with York Water that a reduced checklist should be used for small transactions. Id. at 6. PAWC noted that, if additional information is necessary for small transactions, parties may request that information in discovery. Id. at 5-6.

*Conclusion*

We decline to adopt Bates stamping and note that it is clear that page references are required in the filed checklist. We agree with Aqua and PAWC that applicants have clearly and sufficiently identified exhibits to enable



the parties to reference the information contained therein. As PAWC noted, requiring Bates stamping would limit applicants from making additions to the application that may be received only shortly before filing and we encourage the submission of complete applications. Indeed, the 10-day TUS review of Section 1329 applications often results in amendments to applications. In addition, Bates stamping may hinder any potential need to amend an application, if additional information is obtained after filing. Therefore, we decline to revise the Checklist to require Bates stamping.

We also reject the proposals of SWPA and York to create a modified checklist or establish a materiality threshold for small transactions. We note that the General Assembly did not choose to include such a threshold. We agree with BIE regarding the importance of providing the parties and the ALJ with as much information as possible at the outset of the proceeding in light of the six-month deadline. Providing the information required by the Checklist reduces the need for substantial discovery and related disputes and supports the development of a full and complete record, even required for smaller transactions. Moreover, as the OCA noted, the thresholds proposed by SWPA and York may not be appropriate indicators and we decline to distinguish between what is a small transaction and a large transaction at this time.

#### *Checklist Item 4*

In the TSIO, we proposed to revise Item 4 of the Section 1329 Application Filing Checklist as follows:

4. Provide responses to Section 1329 Application Standard Data Requests.

TSIO Appendix A at 1. The purpose of this revision was to address the responses to the Standard Data Requests.

#### *Comments*

Aqua indicated that it does not oppose Item 4 as revised. Aqua Comments at 5. Aqua requested that the Commission make clear that rejection or acceptance of an application does not hinge on a substantive review of the Standard Data Requests. Id.

The OCA noted that existing Item 4 requires an applicant to provide its schedules, studies, and workpapers in electronic working format. OCA Comments at 7. The OCA indicated that it disagrees with the Commission's decision to revise Item 4 as set forth in the TSIO. Id. The OCA argued that electronic working documents are a crucial component of the existing Checklist, because the information included in the electronic working documents is necessary to understand the analyses contained in the filing. Id. at 7-8. The OCA further argued that the Standard Data Requests should supplement the information being provided with the filing, not replace the provision of electronic working documents. Id. at 4, 8.

#### *Reply Comments*

In response to the OCA's comments regarding existing Item 4, PAWC noted its concern that materials filed with the Commission are placed on the Commission's website. PAWC Reply Comments at 8. PAWC argued that the formulas and other calculations embedded in spreadsheets and other working electronic files are confidential, proprietary information. Id. PAWC requests that, if existing Item 4 is retained, the Commission direct the Secretary's Bureau not to place working electronic files on the Commission's website. Id.

#### **Conclusion**

As it pertains to Aqua's request for clarification that rejection or acceptance of an application does not hinge on a substantive review of the Standard Data Requests, we note the following language in the TSIO:

The Commission would clarify here that the Bureau of Technical Utility Services does not review the veracity or substantive quality of information that an applicant may submit to fulfill the threshold requirements of the Application Checklist. The Bureau of Technical Utility Services is to evaluate only whether the Application Checklist is complete and responsive to the data requested. It shall not refuse to perfect an application on the basis that the Bureau is dissatisfied with the quality of the items submitted in response, or whether additional information may later be required.

TSIO at 15. We do not believe that further clarification on this point is necessary.

Upon consideration of the OCA's comments on Item 4 of the Section 1329 Application Filing Checklist, we believe that Item 4 should be modified as follows:

4. Provide responses to Section 1329 Application Standard Data Requests, including electronic working documents (i.e., Excel spreadsheets) for all the filing's schedules, studies, and working papers to the extent practicable.

See Appendix A at 1. This revision addresses responses to the Standard Data Requests and maintains the existing requirement that applicants provide electronic working documents for all the filing's schedules, studies, and working papers, while avoiding unnecessary duplication as between the Checklist and the Standard Data Requests.

To alleviate PAWC's concerns regarding the potential confidential nature of electronic working documents, applicants should provide any confidential or proprietary electronic working documents (i.e., Excel spreadsheets) to the Secretary's Bureau on a separate disc, labeled CONFIDENTIAL in clear and conspicuous letters, in a separate envelope attached to the application. It is the applicant's responsibility to identify all confidential or proprietary documents. Applicants providing confidential or proprietary electronic working documents in response to Item 4 should also follow standard procedures for the filing of documents containing confidential or proprietary information with the Commission. Applicants may refer to the instructions for submitting confidential information provided in the Section 1329 Application Filing Checklist. See Appendix A at 7. Further, consistent with the Commission's regulations at 52 Pa. Code § 1.32(b)(4), filings containing confidential or proprietary information may not be filed electronically and the Commission will post only redacted, public versions on the electronic filing system. Likewise, the Commission will post only non-confidential and non-proprietary PDF versions of Excel files on the electronic filing system.

#### *Checklist Item 8*

In the TSIO, we proposed to revise Item 8 of the Section 1329 Application Filing Checklist as follows:

8. Provide a verification statement that one utility valuation expert was selected by the buyer and the other utility valuation expert was selected by the seller.

TSIO Appendix A at 1. The purpose of this revision was to verify UVE independence. In the TSIO, we noted that



Item 8 was addressed to the Buyer and Seller regarding the UVE selection process and that Item 8 is distinct from Item 9, which is addressed to the respective UVEs.

*Comments*

Aqua stated that it does not oppose Item 8 as revised. Aqua Comments at 5. Aqua requested clarification that this statement may be made in the application verified by an officer or authorized employee of the Company. Id. Aqua noted that, in its previous Section 1329 applications, the Company has included verifications from the UVEs stating that each was selected by either the Buyer or the Seller. Id.

*Reply Comments*

No party filed reply comments specifically addressing Aqua's request.

*Conclusion*

As stated in the TSIO and above, Item 8 is addressed to the Buyer and Seller regarding the UVE selection process. TSIO at 10. Accordingly, the applicant should provide a verification statement of the Buyer that one utility valuation expert was selected by the Buyer as well as a verification statement of the Seller that the other utility valuation expert was selected by the Seller. For clarification purposes, we believe it is appropriate to modify Item 8 as follows:

8. Buyer and Seller Verification Statements:

- a. Provide a verification statement of the Buyer that [ **one** ] its utility valuation expert was selected by the Buyer. [ **and** ]
- b. Provide a verification statement of the Seller that [ **the other** ] its utility valuation expert was selected by the Seller.

See Appendix A at 1. These verification statements may be signed by an officer or authorized employee of the Buyer and Seller respectively.

*Checklist Item 9*

In the TSIO, we proposed to revise Item 9 of the Section 1329 Application Filing Checklist as follows:

9. Utility Valuation Expert Verification Statements:
  - a. Buyer Utility Valuation Expert has no affiliation with the buyer or seller.
  - b. Buyer Utility Valuation Expert determined fair market value in compliance with the most recent edition of the Uniform Standards of Professional Appraisal Practice as of the date of the report, employing the cost, market, and income approaches.
  - c. Buyer Utility Valuation Expert applied applicable jurisdictional exceptions to the submitted appraisal.
  - d. Seller Utility Valuation Expert has no affiliation with the buyer or seller.
  - e. Seller Utility Valuation Expert determined fair market value in compliance with the most recent edition of the Uniform Standards of Professional Appraisal Practice as of the date of the report employing the cost, market, and income approaches.
  - f. Seller Utility Valuation Expert applied applicable jurisdictional exceptions to the submitted appraisal.

TSIO Appendix A at 2. The purpose of this revision is to verify that the Buyer and Seller UVEs have no affiliation with either the Buyer or the Seller. This revision is also directed at verifying that the fair market valuation was

performed in compliance with the most recent edition of the Uniform Standards of Professional Appraisals Practice (USPAP) and that the appropriate jurisdictional exceptions were applied to the submitted appraisal. Moreover, as discussed above, Item 9 is distinct from Item 8. Items 9.a through 9.f are addressed to the respective UVEs. Each UVE is expected to submit a verification supporting their independence and submitted appraisal.

*Comments*

Aqua stated that it does not oppose Item 9 as revised. Aqua Comments at 5. Aqua requested clarification that the items listed in Item 9 may be incorporated into two overall verifications from the Buyer's and the Seller's respective UVEs, rather than a separate verification statement for each item. Id.

*Reply Comments*

No party filed reply comments specifically addressing Aqua's request.

*Conclusion*

We agree with Aqua the items listed in Item 9 may be incorporated into two overall verifications from the Buyer's and the Seller's respective UVEs, rather than a separate verification statement for Item 9.a through 9.f. However, we do not believe that it is necessary to modify the language of Item 9 to reflect this point. Therefore, the revisions to Item 9 set forth in the TSIO remain intact.

*Checklist Items 13 and 14*

In the TSIO, we proposed to revise Item 13 of the Section 1329 Application Filing Checklist as follows:

13. Provide seller direct testimony supporting the application including seller UVE direct testimony.

TSIO Appendix A at 2. This revision indicates that the Seller may provide testimony supporting the transaction, if it so chooses. Unless a Buyer and Seller agree otherwise, a Seller is responsible for its own testimony.

In the TSIO, we proposed to revise Item 14 of the Section 1329 Application Filing Checklist as follows:

14. Provide buyer direct testimony supporting the application, including buyer UVE direct testimony.

TSIO Appendix A at 2. This revision indicates that the Buyer is to provide testimony supporting the transaction. Unless the Buyer and Seller agree otherwise, the Buyer will be responsible for its own testimony.

Items 13 and 14 indicate that, if Buyer and Seller wish to submit individual direct testimony in support of the proposed acquisition, all direct testimony must be filed concurrent with the application. The six-month consideration period of Section 1329(d)(2) requires direct testimony to be filed concurrent with the application. In addition, the Seller and Buyer UVE will submit written direct testimony in support of their respective appraisals along with the initial filing.

*Comments*

Aqua stated that it does not oppose Item 13 as revised. Aqua Comments at 6. Aqua noted that it may choose to file the Seller's direct testimony and the Seller's UVE direct testimony along with its application for administrative ease. Id.

PAWC claimed that the Checklist would require the Seller to provide testimony supporting the transaction and that the Buyer would be submitting the testimony of the Seller in the application. PAWC Comments at 3. PAWC argued that the TSIO does not address whether

the procedural and evidentiary issue of whether the Buyer may challenge the testimony of the Seller that must be included in the application. *Id.* PAWC also argued that, just because the Buyer is submitting the Seller's testimony in its application, that testimony should not become the Buyer's testimony such that the Buyer is denied the right to challenge the testimony. *Id.* PAWC requested that the Commission clarify that inclusion of Seller testimony with the application does not constitute sponsorship of that testimony by the Buyer. *Id.* PAWC also raised concerns regarding a hypothetical instance in which the Seller declines to intervene and there is no agreement between the Buyer and Seller for the Buyer to sponsor the Seller's testimony. *Id.* PAWC requested that, if the Seller declines to intervene and the Buyer declines to sponsor the Seller's testimony, the Commission sua sponte enter the testimony into the evidentiary record provided that it is properly authenticated through a verification or affidavit. *Id.*

#### *Reply Comments*

In response to PAWC's arguments, BIE noted that it understands that filing the Seller's testimony with the application could potentially create an issue if the Buyer wants to challenge the Seller's testimony, being that the Buyer and Seller are two distinct parties to the litigation. BIE Reply Comments at 6. BIE argued, however, that having the Seller's UVE testimony at the outset of the proceeding is essential to ensuring that the parties can fully evaluate the filing. *Id.* at 6-7. BIE stated that it strongly supports the requirement imposed by the TSIO that all UVE testimony be provided at the time the application is filed. *Id.* at 6.

The OCA noted that, if the Seller declines to intervene and the Buyer declines to sponsor the Seller's testimony, one solution is to join the Seller as an indispensable party. OCA Reply Comments at 16.

#### *Conclusion*

As indicated in the TSIO and above, revisions to Item 13 include the following: Seller to provide testimony supporting transaction, if any. TSIO at 9. Contrary to PAWC's arguments, the Seller is not required to provide direct testimony supporting the transaction. The Seller may choose to omit direct testimony at its own risk. A key purpose of this item is to avoid the submission of Seller direct testimony late in the six-month timeframe, which hampers review by other parties of the Section 1329 application. If the Seller wishes to submit individual direct testimony, however, the Seller must sponsor that testimony absent an agreement with the Buyer to the contrary. As stated in the TSIO, each party must sponsor its individual testimony absent demonstrated agreement otherwise included in the application. TSIO at 10. Likewise, if a Seller chooses to individually sponsor testimony supporting an application the Buyer remains free to challenge the Seller's testimony as it believes appropriate.<sup>3</sup>

In addition, the Commission clarifies that Buyer and Seller direct testimony supporting the application is distinct from UVE direct testimony. For clarification purposes, we modify Items 13 and 14 as follows:

#### 13. Seller Testimony:

- a. Provide seller direct testimony supporting the application, if any. [ **including** ]
- b. Provide seller UVE direct testimony.

#### 14. Buyer Testimony:

- a. Provide buyer direct testimony supporting the application. [ **including** ]
- b. Provide buyer UVE direct testimony.

See Appendix A at 2. Both the Buyer and the Seller UVEs must provide direct testimony in a format like that discussed below. See *supra* at 88. As we directed in the TSIO, UVEs must submit written direct testimony in support of any appraisal completed pursuant to Section 1329(a)(5) and submitted in support of a request for fair market valuation for rate setting purposes.

Moreover, in the TSIO, we stated that, absent a showing of extenuating and extraordinary hardship, late-filed direct testimony will not be accepted or considered. Also, a request to submit late-filed direct testimony shall be considered a request to extend the six-month consideration period to provide for appropriate due process. These provisions of the TSIO remain intact.

Further, regarding PAWC's concern that the Seller may decline to intervene without an agreement for the Buyer to sponsor the Seller's testimony, we note that, in each of the approximately eight proceedings initiated under Section 1329 to date, the Seller has petitioned to intervene in the proceeding. We decline to speculate as to hypothetical circumstances. Regarding the OCA's proposed solution, pleadings requesting the joinder of indispensable parties will be considered on a case-by-case basis.

#### *Checklist Item 18*

In the TSIO, we proposed to revise Item 18 of the Section 1329 Application Filing Checklist by modifying the following subsection:

#### 18. Rates:

- d. Provide a copy of the notification sent, or which will be sent, to affected customers describing the filing and the anticipated effect on rates.

TSIO Appendix A at 3-4. The purpose of this revision is to make clear that applicants are to provide notice to affected customers contemporaneously with the proposed application, not after closing, such that affected customers receive adequate notice of the proposed transaction and have the opportunity to participate in the proceeding.

As indicated earlier, given the circumstances of the issuance of the TSIO and the increasing complexity of litigation surrounding the implementation of Section 1329, we granted PAWC's Petition for Leave to File Supplemental Comments on the TSIO as to notice and provided for reply comments thereto.

#### *Comments*

Aqua stated that it does not agree with Item 18 as revised. Aqua Comments at 7. Aqua claimed that it is unclear from the TSIO whether the Commission proposed notice is to be provided to existing or acquired customers, or both. *Id.* Aqua noted that it will provide the draft customer letter to the Commission that will be sent to acquired customer upon closing, as it has done with previous applications. *Id.* at 7-8. Aqua stated that it will provide any notice sent by the municipality to customers only if the municipality sent such notice. *Id.* at 8. Aqua further noted that it has provided supplemental notice through publication in newspapers of general circulation for acquired customers. *Id.*

<sup>3</sup> The Buyer and Seller may agree that the Buyer will sponsor the Seller's testimony supporting the application.

Aqua commented that it does not agree with expanding notice to all customers. *Id.* Aqua claimed that, if notice is provided by bill insert, some customers may get 30 days' notice, some customers may get less than 30 days' notice, and some customers will not receive notice until weeks or months after the protest period has passed. *Id.* Aqua also claimed that direct mailing is impractical and is not required unless there is a general rate increase. *Id.* at 8-9. Aqua argued that, in Section 1329 applications, neither a general rate increase nor an increase in rates is proposed to existing or acquired customers. *Id.* at 9. Aqua further argued that newspaper notice in a paper of general circulation in the acquired customers' service territory is adequate. *Id.*

In addition, Aqua averred that Item 18 will add confusion to the proceeding. *Id.* Aqua claimed that notice to existing customers would be highly speculative as to the effect of the acquisition on rates and that asking the Company to predict its rate design is impractical. *Id.* at 10. Aqua further claimed that direct notice will add approximately \$200,000 per application that would be included in transaction and closing costs. *Id.*

The OCA suggested the use of a collaborative or working group to address issues such as how to implement notice and how to present the rate impacts and the supporting materials in the filing. OCA Comments at 1-2.

The PMAA commented that timely individualized notice should be provided to all ratepayers of the municipal or authority-owned system subject of the proposed acquisition and all of the acquiring entity's existing ratepayers, regardless of geographic location. PMAA Comments at 3. The PMAA argued that notice published in the *Pennsylvania Bulletin* or a newspaper of general circulation is not sufficient. *Id.* The PMAA claimed, citing *McCloskey v. Pa. PUC*, 195 A.2d 1055 (Pa. Cmwlth. 2018) (*New Garden*), that an investor-owned utility's water or wastewater acquisition in one part of the Commonwealth may have an effect on the rates of its existing ratepayers in another part of the Commonwealth. *Id.* The PMAA also argued that the investor-owned entity must provide current and future rates applicable to ratepayers affected by the transaction and that any proposed deferment in rate increases must be clearly stated because it may impact ratepayers at some future date. *Id.*

PAWC commented that notice to the Seller's customers may present challenges for a Buyer to the extent that customer information is deemed confidential. PAWC Comments at 4. PAWC requested that the Commission address how the Buyer can obtain customer information, if notice to the Seller's customers is required. *Id.*

In addition, PAWC argued that notice should not be provided until the application is accepted. *Id.* PAWC argued that a rate case-style bill insert is unworkable because it takes a 30-day billing cycle to notify all customers. *Id.* at 5. PAWC argued that the alternative of a direct mailer would be extremely costly. *Id.* PAWC claimed that bill insert or bill message would be the most cost effective, but that this approach would require the Commission to modify the litigation schedule and hearing process, unless the Buyer and Seller agree to a voluntary extension. *Id.* PAWC suggested a two-track litigation schedule and PAWC argued that the first track should include notice through the *Pennsylvania Bulletin*, newspaper notice, and direct notice to the statutory advocates, DEP, and surrounding municipalities. *Id.* PAWC argued that second track should include individual ratepayer notice via bill insert over a 30-day billing cycle and that ratepayers should be afforded an opportunity to submit

comments within 14 days of the end of the billing cycle. PAWC argued that the comments should be entered into the evidentiary record with the parties responding on the record. *Id.* at 6. PAWC claimed that a paper hearing has been deemed to satisfy due process requirements. *Id.*

Further, PAWC requested that the Commission give guidance on what the notice must say. *Id.* PAWC argued that, at the time of the acquisition, the rate impact of the acquisition is unknowable and that utilities are limited in the information they can give to customers. *Id.* at 6. PAWC argued that the notice should state that (1) the Buyer has filed an application, (2) the Buyer had requested to add up to \$X to rate base in its next rate case, (3) the increase may impact customers rates in the Buyer's next rate proceeding, but the precise impact is unknown at present, (4) and customers have a right to protest or intervene and will have an opportunity to participate in a future base rate proceeding. *Id.* at 6-7.

#### *Reply Comments*

BIE replied that Item 18(d) aligns with the *New Garden* decision. BIE Reply Comments at 2. BIE stated that it supports the OCA's proposal to use a collaborative or working group to determine how to implement notice. *Id.* BIE suggested that questions raised by PAWC, including who is to receive notice, when customers should be notified, and how customers should be notified, should be addressed in a collaborative or working group in order to obtain a resolution that is suitable for all parties. *Id.* at 3.

The OCA argued, pointing to *New Garden*, that direct notice to customers is required. OCA Reply Comments at 3. The OCA indicated that it is willing to work with the Commission and stakeholders to develop a notice that provides sufficient information regarding the rate impact on customers of the Section 1329 filing and information on what a customer can do in response to the notice. *Id.* The OCA claimed that the Commonwealth Court's decision in *New Garden* addresses the issues raised by Aqua. *Id.* at 3-4. The OCA claimed that Section 1329, by definition, involves a ratemaking rate base determination and that, in *New Garden*, the Court found that there are due process issues that need to be addressed by providing customers, existing and acquired, with notice of the filing. *Id.* at 4.

In response to PAWC's concerns on how the Seller's customers will receive notice, the OCA argued that it is clear that the Seller has access to its own customer information and can work with the Buyer to ensure that notice is provided to those customers. *Id.* The OCA suggested that this be addressed in the APA. *Id.* In response to PAWC's claim that notice should not be provided until an application is accepted, the OCA proposed that notice be provided during the 30-day billing cycle leading up to the filing of an application. *Id.* at 5. The OCA argued that waiting until the application is accepted would mean that litigation would conclude before customers are able to meaningfully participate. *Id.* at 4-5. Further, the OCA indicated that it does not agree that PAWC's proposed two-track litigation schedule, including the use of a paper hearing, meets the requirements of due process. *Id.* at 6. The OCA argued that the *New Garden* Court found that substantial property interests were at stake in Section 1329 proceedings and that direct notice and a meaningful opportunity to be heard was required. *Id.*

The PMAA argued that *New Garden* is controlling regarding notice. PMAA Comments at 2. The PMAA indicated that it disagrees with comments that seek to



narrow notice or limit notice recipients, including comments suggesting that direct notice would add additional costs or confusion to Section 1329 proceedings. *Id.* The PMAA reiterated that it believes that *New Garden* mandates individualized notice to ratepayers of the municipal or authority-owned system and all of the acquiring entity's existing ratepayers. *Id.* Additionally, the PMAA argued that the rates to be assessed against all of an investor-owned utility's customers and potential customers as a result of an acquisition must be clear. *Id.*

PAWC argued that Section 1329 Applicants should comply with the requirements of *New Garden* to reduce the risk that a Commission decision approving a fair-market valuation would be appealed and, possibly, overturned. PAWC Reply Comments at 2. PAWC claimed that Aqua's comments appear inconsistent with *New Garden*. *Id.* PAWC continued to suggest a two-track litigation schedule. *Id.* Additionally, PAWC noted that it does not oppose the OCA's suggestion to use a collaborative or working group to address issues that may remain after the TSIO. *Id.* at 6. PAWC noted, however, that it opposes the use of such a mechanism to slow down or otherwise impede the use of Section 1329. *Id.* Further, PAWC noted that it opposes the PMAA's suggestions regarding information on future rate increases. *Id.* at 14. PAWC argued that such information is speculative. *Id.*

SWPA indicated that it does not agree with PMAA's assertion that timely individualized notice should be given to all of the acquiring utility's existing ratepayers irrespective of geographic location. SWPA Comments at 2. SWPA stated that it agrees with Aqua and PAWC's comments regarding notice. *Id.*

#### *PAWC's Supplemental Comments*

PAWC suggested that the Commission require Section 1329 applicants to take a two-prong approach to notice. First, PAWC proposes that Acquiring Utilities provide notice of the proposed transaction in a form like that of 52 Pa. Code § 53.45. PAWC Supp. Comments at 2. PAWC proposes that this general notice include information regarding the proposed acquisition and rate base addition. The pro forma customer notice provided with PAWC's Supplemental Comments also discussed ways in which to support or challenge the acquisition and how to access documents filed in support of the application and other additional information. PAWC Supp. Comments, Appendix A. PAWC proposes that affected customers would receive this general notice concurrent with the submission of a Section 1329 application. PAWC Supp. Comments at 2.

Next, PAWC proposes that Acquiring Utilities would prepare a "Statement of Reasons and Potential Bill Impact," which would be referenced in the above customer notice. PAWC Supp. Comments at 2. PAWC opines that this approach is similar to that of Section 1308 general rate proceedings. *Id.* PAWC proposed that the Statement of Reasons and Potential Bill Impact be included in the Application Filing Checklist and reviewed by TUS. *Id.* PAWC further proposed that, if TUS finds the Statement of Reasons and Potential Bill Impact deficient, the applicant should have an opportunity to revise it. *Id.* PAWC included with its Supplemental Comments proposed language in a pro forma Statement of Reasons and Potential Bill Impact and a pro forma customer notice. See PAWC Supp. Comments, Attachments A-B.

PAWC claimed that its approach is consistent with *New Garden* because it is modeled on 52 Pa. Code § 53.45. PAWC Supp. Comments at 2-3. PAWC also claimed that

its approach recognizes that, while the rate base valuation of an acquired system is set through a Section 1329 proceeding, actual rates recognizing that valuation will not be set until a future base rate proceeding. As such, the future rate effect of the valuation is subject to a high degree of speculation at the application stage. *Id.* at 3. PAWC opined that including a speculative rate increase percentage in the customer notice would be misleading. *Id.* PAWC suggested that, under its approach, customers who desire additional information would be directed by the customer notice to the Statement of Reasons and Potential Bill Impact, which would be readily available upon contact to the company, as in a base rate case, and would provide a more accurate explanation of the range of potential rate effects that could result from including a Section 1329 valuation in a future base rate case. *Id.*

#### *Reply Comments*

Aqua noted that it filed a petition for allowance of Appeal of the *New Garden* decision and argued that the Commission should revisit any customer notice requirements that may result from the TSIO should *New Garden* be overturned or modified. Aqua Supp. Comments at 3. Aqua stated that it generally agrees with PAWC's proposal and does not propose any edits to the proposed documents. *Id.* at 3-4. Aqua raised concerns regarding the process of notice. *Id.* at 4. Aqua claimed that, under the conditional acceptances for the Exeter<sup>4</sup> and Steelton<sup>5</sup> applications, the Commission will fully accept an application and the six-month period will begin after the applicant files a verification for individualized notice and proof of publication for traditional newspaper notification with the Commission. *Id.* Aqua argued that the conditional acceptance in the Exeter and Steelton Applications will add substantial time outside the application process that was envisioned to be six months. *Id.*

Aqua argued that direct mailing will add substantial costs to each proposed transaction. *Id.* Aqua also argued that newspaper notification has generally been provided after an application is accepted. *Id.* at 5. Aqua claimed that the Commission usually directs the form of newspaper notice in a Secretarial Letter and that it did not see a form of notice provided in the Exeter or Steelton applications. *Id.* Aqua also claimed that it would not be able to provide a date certain for the deadline to file a complaint in the individualized notice or newspaper notice. *Id.* Further, Aqua claimed that, the timing of newspaper publication and obtaining affidavits will add upward of four weeks to the process. *Id.* Similarly, Aqua averred that a bill stuffer sent out during the utility's billing cycle will add upwards of four or more weeks, if the Commission requires that the entire billing cycle run before verification can be filed. *Id.*

Aqua requested that the Commission consider fully accepting an application under a direct mailing approach when the Company files a verification that the direct mailing has occurred, then direct newspaper publication. *Id.* Aqua argued that it would then be able to provide a certain date for when complaints should be filed. *Id.* at 5-6. Under a bill stuffer approach, Aqua requested that the Commission consider fully accepting an application when the utility files a verification that it has begun providing bill inserts under its billing cycle, then direct

<sup>4</sup> Application of Pennsylvania-American Water Company Pursuant to Sections 507, 1102 and 1329 of the Public Utility Code for Approval of its Acquisition of the Wastewater Assets of Exeter Township, Docket No. A-2018-3004933 (Exeter application).

<sup>5</sup> Application of Pennsylvania-American Water Company Pursuant to Sections 507, 1102 and 1329 of the Public Utility Code for Approval of its Acquisition of the Water Assets of Steelton Borough Authority, Docket No. A-2019-3006880 (Steelton application).



newspaper publication. *Id.* at 6. Lastly, with regard to the Exeter and Steelton applications, Aqua requested that the Commission clarify the phrase “area involved” in the Secretarial Letters for a utility providing notice in a newspaper of general circulation. *Id.* Aqua noted that it interpreted this phrase as being the requested service territory, not the entire service territory. *Id.*

BIE indicated that it is concerned about PAWC’s proposal because the notice deviates from the clear, concise language in 52 Pa. Code § 53.45 and it places the burden of requesting rate impact information on customers, rather than the utility as required in Section 53.45. BIE Supp. Comments at 2. BIE noted that, unlike the language in Section 53.45, PAWC’s initial notice will not provide affected customers with any information about the potential rate impact the acquisition would have on their rates. *Id.* at 3. BIE claimed that the language of PAWC’s proposed Statement of Reasons and Potential Bill Impact will confuse a typical residential customer by using technical terms. *Id.* at 3-4. BIE argued that PAWC’s proposed language, contrasted with the clear, concise language in Section 53.45 does not adhere to the Commonwealth Court’s directive. *Id.* at 4.

BIE further argued that the *New Garden* Court intended for Section 1329 application notice to mirror the notice requirements of Section 53.45, which would include a percentage of rate impact. *Id.* BIE indicated that it supports the language proposed by the OCA in its Petition to Reject or Hold in Abeyance Acceptance of Application and Petition for Stay relevant to the Exeter application.<sup>6</sup> BIE at 4-5. BIE claimed that this language concisely informs customers about the potential rate impact. *Id.* at 5.

BIE further indicated that it disagrees with PAWC’s proposed two-pronged notice approach because it fails to adhere to the requirements of Section 53.45. *Id.* BIE claimed that the initial notice will simply indicate that rates will not change until the next rate case and that it is unclear what impact the acquisition will have on customer rates. *Id.* BIE further claimed that the more detailed Statement of Reasons and Potential Bill Impact will only be provided to customers upon request. *Id.* BIE argued that PAWC’s proposal improperly places the burden on the customers to seek out this information. *Id.* at 6. BIE averred that requiring the customer to seek out the actual rate impact is unacceptable because it fails to adhere to the delivery methods intended by the Commonwealth Court, which are those used in general rate cases. *Id.*

Finally, BIE noted that it supports the use of a collaborative or working group to determine how to implement customer notice. *Id.* BIE argued that, while efficiency is important, it is more important to get this issue right. *Id.* at 7. BIE argued that, in a collaborative, interested stakeholders would be able to work through the issue and reach a mutual resolution. *Id.* BIE maintained that the resolution must ensure that customers obtain the necessary information in a way that is meaningful to them. *Id.*

The OCA asserted that the two-step notice procedure proposed by PAWC does not meet the requirements of 52 Pa. Code §§ 53.45(b)(1)–(4) and the Commonwealth

Court’s decision in *New Garden*. OCA Supp. Comments at 1. The OCA indicated that it is willing to work with the parties and the Commission to resolve the conflicting positions regarding the content of notices sent to customers. *Id.* The OCA also noted that it has filed several petitions in pending application proceedings under Section 1329 seeking stay of those proceedings so that issues can be resolved across-the-board. *Id.*

The OCA argued that, in *New Garden*, the Commonwealth Court held that, to meet due process requirements, individualized notice must be provided directly to all ratepayers and ratepayers must be afforded an opportunity to participate in a Section 1329 proceeding. *Id.* at 2. Citing *New Garden*, the OCA argued that notice is required because the ratemaking rate base determination is fundamental to a determination of rates and a rate increase involves a substantial property right. *Id.* The OCA noted that the Commission’s regulations contain explicit language for the notice that the utility sends to customers in a rate case, including the impact on customers’ bills. *Id.* The OCA claimed that PAWC’s proposed notice does not include any information regarding potential bill impact and does not satisfy Section 53.45 or comply with *New Garden*. *Id.* The OCA further claimed that the two-step process does not remedy this failure. *Id.* at 3.

The OCA recommended that the Commission adopt a single notice that is provided to all customers and includes information regarding the impact of the ratemaking rate base on customers’ bills. *Id.* The OCA argued that the Court in *New Garden* directed that notice be provided in accordance with Section 53.45, which requires the notice to show the impact on customers’ bills, separated by customer class, and using a typical usage level. *Id.* In the interest of moving the implementation process forward, the OCA proposed that the notice in Section 1329 proceedings show the impact on the revenue requirement depending on whether the revenue requirement increase related to the ratemaking rate base determination is allocated to existing water or wastewater customers, to acquired customers, or to both. *Id.* The OCA averred that this is the minimum rate impact information that can be included in a notice, while still advising customers that future rates could increase. *Id.* at 3-4.

The OCA recommended adding this information to the proposed PAWC notice in chart form. *Id.* at 4. The OCA noted that the chart used by PAWC is an effective means to supply the information. *Id.* If a chart is not used, the OCA proposed adding one or two sentences to the notice to state the range of potential rate impact. *Id.* The OCA proposed additional specific revisions to PAWC’s proposed notice. *Id.* In particular, the OCA proposed to add similar language to what is included in rate case notices regarding the PUC’s role modified to reflect that it is an application proceeding. *Id.* at 4-5. The OCA pointed to language that the PUC may approve, modify, or deny the acquisition and may approve, modify, or deny the requested addition to rate base as an example. *Id.* at 5. In addition, the OCA proposed to add its contact information with a description of its role. *Id.* The OCA provided attachments with its proposed revisions to PAWC’s notice in both chart and sentence form as well as redline versions. See OCA Supp. Comments, Attachments A-B.

Further, the OCA stated that it does not recommend that the Commission adopt PAWC’s pro forma Statement of Reasons and Potential Bill Impact. *Id.* The OCA argued that the statements contained therein are unique to the acquiring entity and the particular acquisition. *Id.* The

<sup>6</sup> The OCA Petition to which BIE refers is the Exeter application, *supra*. On February 8, 2019, the Commission issued a Secretarial Letter informing the OCA that, because it had not yet formally accepted the Exeter application, that docket was inactive and that it would entertain filings in the docket when the Commission formally accepted the application pursuant to Section 1329. Because it has not formally accepted the Exeter application, the Commission has not as yet taken final action related to it.

OCA noted that Section 1329 does not require the acquiring entity to be an existing Pennsylvania utility. *Id.*

The PMAA stated that it is willing to work with the Commission and other stakeholders to develop a notice to be used as a template, provided that such notice contains adequate information regarding the rate impact on ratepayers and the options ratepayers have in response to the notice. PMAA Supp. Comments at 2. The PMAA asserted that notice must be consistent with *New Garden* and Section 53.45. *Id.* The PMAA claimed that PAWC's proposed pro forma notice fails to meet the requirements of Section 53.45. *Id.* at 3. In particular, the PMAA claimed that the notice fails to inform the investor-owned utility's ratepayers of the impact of the proposed acquisition on their rates, advise ratepayers that they are permitted to be a witness at a public input hearing, provide ratepayers with options in response to the notice, and identify and explain the PUC's role in the rate approval process. *Id.* The PMAA also averred that the proposed Statement of Reasons and Potential Bill Impact is a mere promotional piece for the pending acquisition. *Id.* at 3-4. The PMAA argued that PAWC is proposing one document that fails to include critical information for ratepayers, while requesting that applicants prepare another document containing information with no nexus to the requirements set forth in *New Garden* and the Commission's regulations. *Id.* at 4.

Further, the PMAA also noted that it filed an amicus brief in support of Aqua's petition for allowance of appeal pertaining to the *New Garden* decision. *Id.* The PMAA claimed that, because the Pennsylvania Supreme Court has not acted upon the petition for allowance of appeal, the requirements set forth in *New Garden* need to form the basis of notice to ratepayers. *Id.* at 4-5.

#### Conclusion

On October 11, 2018, approximately three weeks after the issuance of the TSIO, the Commonwealth Court issued its Order in *New Garden*. The Court determined that, since Section 1329 proceedings include a determination of rate base, which affects customer rates, individual notice must be given to all customers affected by the proposed sale as well as an opportunity for them to participate in the Section 1329 proceeding. *Id.* at 1069. The Court vacated the Commission's Order approving the *New Garden* transaction, directed the Commission to provide notice to all affected customers in accordance with 52 Pa. Code § 53.45, and remanded the matter to the Commission for further proceedings in accordance with the notice requirement of *New Garden*. *Id.* Aqua, the acquiring public utility in the *New Garden* transaction, timely petitioned the Pennsylvania Supreme Court for allowance of appeal of this decision. *See McCloskey v. Pa. PUC*, 743 MAL 2018 (Nov. 8, 2018). Given the procedural posture of *New Garden*, we note that notice requirements set forth here remain subject to the Supreme Court disposition of that case.

First, we clarify that, at present, the Commission has no active Section 1329 applications pending before it. For instance, as it pertains to the Exeter and Steelton applications, the Commission issued conditional acceptance letters on December 19, 2018, and January 17, 2019, respectively. The conditions established therein are not yet satisfied. The Commission has not issued final acceptance letters and, as such, the 10-day application consideration periods before TUS have not yet begun to run. Section 1329 conditional acceptance letters are interlocutory instruction, not final Commission action. Additionally, the Exeter and Steelton conditional acceptance

letters do not endorse or approve any form of notice or notice content. The letters direct the applicants to, inter alia, provide individual notice to all potentially affected customers; it remains to be seen whether the notices proposed or used by the applicants will comply with *New Garden*.

The issue of appropriate notice to those affected by proposed system acquisitions subject to Section 1329 valuation has generated substantial disagreement among stakeholders. As is discussed elsewhere in this Order, the pending appeal of *New Garden* creates uncertainty regarding whether the notice considerations addressed by stakeholders in response to the TSIO are required in full or at all. However, one definitive conclusion may be drawn from *New Garden*. Namely, even after Commonwealth Court review, Section 1329 stands as a legitimate regulatory tool. In its current legal posture, *New Garden* provides instruction on how Acquiring Public Utilities, Entities, and Selling Utilities are to provide adequate procedural due process to all affected customers of an acquisition subject to Section 1329 valuation.

As a valid statutory valuation mechanism, Section 1329 is available to Acquiring Public Utilities, Entities, and Selling Utilities as a regulatory tool for the consolidation of water and wastewater systems throughout the Commonwealth. Similarly, the legal and practical consequence of *New Garden* in that context is discrete. That is, *New Garden* directs the Commission to develop a 52 Pa. Code § 53.45 compliant notice mechanism for all ratepayers such that ratepayers have the opportunity to be heard and to present evidence that may be taken into account by the Commission.<sup>7</sup> The Commission will operate under the *New Garden* precedent, unless instructed otherwise by a court of competent jurisdiction.

In their supplemental comments, the OCA and PAWC provided versions of customer notice forms that each believed are compliant with 52 Pa. Code § 53.45. The critical difference between these competing versions is their respective approach to the potential future rate effect of any particular transaction. Other matters, such as the role of the PUC and actions that customers may take, are largely fungible and would likely be serviceable regardless of the version selected.

The rub of the notice falls to how one is to handle the myriad of potential rate effects under various rate case scenarios, some more likely than others, but all representing hypotheticals of what might be. The Commission notes that such a future rate case may not even be the "next" rate case filed subsequent to Commission approval of a Section 1329 valuation request. Shoehorning a variety of potential Section 1329 rate effects into the general base rate notice requirements of 52 Pa. Code § 53.45 is, as it were, easier said than done. Establishing the high and low bookends of future rate recovery of Section 1329 fair-market valuations is a speculative enterprise because those limits are inherently dependent on many factors reserved for the subsequent base rate case in which a wide variety of cost and other ratemaking inputs are reviewed and adjudicated. These include, but are not limited to, operating expenses, depreciation, state and federal income taxes, cost of debt, cost of equity, capital structure, cost of service studies, water/wastewater revenue allocations, and rate design. While these inputs are known and certain as part of a utility's proposed rate increase, and therefore quantifiable for

<sup>7</sup> We note that in *New Garden* the language of Senior Judge Pellegrini literally directs the Commission "to provide notice to all ratepayers in accordance with 52 Pa. Code § 53.45." Of course, providing such actual notice under regulation Section 53.45 is the responsibility of the public utility filing for relief.

purposes of a customer notice for a base rate case, quantifying these inputs for a future rate case, under various assumptions or scenarios as proposed by some of the commenters, is beyond the scope of 52 Pa. Code § 53.45, which was drafted for the purpose of providing notice of a base rate increase as proposed by the utility.

What makes the Section 53.45 notice acceptable for a base rate case is that it contains a reasonable degree of certainty. It does not attempt to prognosticate all possible rate case outcomes or to predict the Commission’s adjudication. To do so would be folly. What that notice does project is a concrete rate increase request placed before the Commission for review.

In the Commission’s judgment, providing a notice with a complex set of potential rate increase based on a variety of assumptions and scenarios, or even a range of potential outcomes, will not provide any meaningful notice to affected customers. A notice of this sort would be more confusing than informative. For example, the Section 1329 valuation could have a highly unlikely rate effect of \$0. Equally unlikely is a full allocation of all costs—acquisition and perhaps others—to a rate division consisting of only the customers of the acquired municipal system. The more likely outcome is indeterminate; it will be found somewhere between possible extremes.

Under these circumstances, and in order to provide meaningful notice to residential, commercial and industrial customers regarding the effect of the proposed acquisition on their bills, the Commission directs that Section 1329 applicants are to provide one notice to all customers potentially affected by the proposed transaction, including the customers of the Selling Utility, based on the results of the most recently adjudicated rate case. As is explained above, language like that found in the Pro Forma Notice of Proposed Acquisition and Rate Base Addition proposed by PAWC would suffice to satisfy the Application Filing Checklist. As to the potential rate effect of the proposed valuation and rate base addition, Buyers shall follow the 52 Pa. Code § 53.45 format rate case example by customer class, except that Buyers will provide a NON-BINDING ESTIMATE of the likely incremental rate effect of the proposed valuation rate base addition of a typical customer’s bill using reasonably certain data.

Using fictitious numbers for illustrative purposes only, this should appear in the notice as follows:

<i>Rate Class</i>	<i>Average Usage</i>	<i>Estimated Monthly Increase</i>
Residential	4,000 gal/month	\$0.03
Commercial	22,000 gal/month	\$0.03
Industrial	500,000 gal/month	\$0.03

Moreover, to avoid the speculative aspects of using assumptions and scenarios of potential future rate cases, the manner of calculating the above incremental rate increase should mirror the actual results of company’s most recently adjudicated base rate proceeding whether fully litigated or settled. If a Buyer has filed the thirty-day notice of 52 Pa. Code § 53.45(a), or has filed a rate case, it should calculate the above using data as proposed in its upcoming or filed rate case.

As to potential subsidy among existing and current customers, the Buyer should assume that the costs of the acquisition will be subsidized according to traditional single-tariff pricing models the Buyer has previously employed. While even these factors are (at best) an

estimate, they work to avoid speculation of what a years-distant rate filing might entail, and how that speculation might translate into a specific rate design or cost allocation after Commission action. Of course, the Buyer and Seller notices may contain different numbers depending on the terms of the acquisition in question.

As to issues of timing, Section 1329 applicants are free to employ either model addressed in 52 Pa. Code § 53.45—the direct mailing of a written or printed notice or by the alternative method of a bill insert. As to the latter, Aqua is correct that *New Garden* will require more advance planning on the part of Buyers if they wish to avail themselves of the accelerated six-month consideration period of Section 1329.

Lastly, we reiterate that, as revised in the TSIO, Item 18(d) of the Application Filing Checklist requires applicants provide a copy of the notice sent or to be sent to affected customers describing the filing and the anticipated effect on rates. Item 18(d) is consistent with the directives above and, as such, the revisions to Item 18(d) set forth in the TSIO remain intact.

*Checklist Item 20*

In the TSIO, we proposed to revise Item 20 of the Section 1329 Application Filing Checklist by adding the following subsection:

20. Proof of Compliance—provide proof of compliance with applicable design, construction and operation standards of DEP or of the county health department, or both, including:

...

f. Provide documentation of all Notices of Violation issued to seller by DEP for the last 5 years, an explanation of each, including a description of any corrective or compliance measures taken.

...

TSIO Appendix A at 4-5. The purpose of this revision is to distinguish between Department of Environmental Protection (DEP) violations and Notices of Violation, which may not in fact be a substantiated violation of law.

*Comments*

Aqua stated that it does not oppose Item 20.f as revised. Aqua Comments at 11. Aqua requested clarification that the request will come to the selling municipality and the Buyer will provide, to the best of its ability, what information the Seller may have. Id. Aqua argued that the Buyer should not have to utilize its limited resources to track down information from DEP during the due diligence process that may or may not confirm prior notices of violation. Id.

*Reply Comments*

PAWC indicated that it agrees with Aqua. PAWC Reply Comments at 3. PAWC noted that it is concerned that an application may be rejected due to the failure to include information that is within the sole custody and control of the Seller. Id.

*Conclusion*

While the information required by Item 20 regarding DEP violations and Notices of Violation may be requested of the Seller from the Buyer as Aqua suggested, the applicant is expected to provide this information in response to the Checklist. The Section 1329 application process is voluntary. If a Seller does not wish to comply, it bears the risk of that decision. Moreover, as the Buyer is seeking to acquire and operate the Seller’s system, the



Commission believes that it is in the Buyer's interest to attempt to obtain information regarding DEP violations and Notices of Violation, including corrective and compliance measures, as a part of necessary due diligence. Therefore, we decline to modify the language of Item 20. The revisions to Item 20 set forth in the TSIO remain intact.

#### *Public Meetings and the Six-Month Consideration Period*

In the TSIO, we recognized concerns regarding procedural schedules in Section 1329 proceedings due to the relationship between the mandatory six-month deadline of Section 1329(d)(2) and the investigation, analysis, and effort demanded to provide competent representation in these proceedings. We also recognized scheduling concerns resulting from the relationship between the six-month deadline and the Public Meeting schedule to which that deadline is applied.

These types of statutory deadlines require the presiding ALJ and the parties to "back-into" a procedural schedule that accommodates the Section 1329 application filing date and the last Public Meeting within the proscribed six-month period. Problems may arise if there is only one Public Meeting in a month or if a Public Meeting is rescheduled or canceled. These issues may result in a procedural schedule as much as thirty days short of what is an already ambitious six-month consideration period. In the TSIO, the Commission proposed several options as a remedy.

First, we proposed that applicants consider the effect of a specific filing date, including consideration of the ten-day review of the Application Filing Checklist by TUS established in the FIO. For example, filing on a Wednesday, as opposed to a Friday, will assist in avoiding days wasted awaiting *Pennsylvania Bulletin* publication. Similarly, applicants should avoid submitting filings on dates where the six-month consideration period stands to run afoul of the published Public Meeting schedule. We further proposed that applicants may consider voluntarily extending the consideration period to avoid undue time pressure for the litigants or Commission staff charged with evaluating the proceeding.

Second, we proposed to permit TUS to hold acceptance of an application for up to five calendar days if doing so would avoid the problem of establishing a consideration period of 170 days or less.

Third, we proposed using planned notational voting to consider and adjudicate Section 1329 applications to permit the use of the entire six-month period that Section 1329 provides. See 4 Pa. Code § 1.43(c).

#### *Comments*

Aqua indicated that it agrees with the first proposal. Aqua Comments at 12. Aqua noted that, in its most recent application, it sought a filing date that would maximize the consideration period for all parties. Id. Aqua further noted that it will take into consideration *Pennsylvania Bulletin* publication dates, although it may file in the latter part of a week in order to make a Public Meeting date. Id. Aqua stated that it opposes the second proposal and argued that the Commission should not permit TUS to hold acceptance of applications for an additional five calendar days. Id. at 12-13. As to the third proposal, Aqua indicated that it does not oppose the use of notational voting.

BIE pointed out that, recently, applicants have been mindful of the Public Meeting schedule in filing applications. BIE Comments at 4. BIE stated that it supports

the use of planned notational voting in situations where the consideration period falls short of a full six months. Id. at 5. BIE noted that planned notational voting would aid stakeholders in creating a more robust record for review. Id.

The OCA identified a voluntary extension of the suspension period and the scheduling of a special Public Meeting as additional options. OCA Comments at 5. The OCA argued that the scheduling of a special Public Meeting would provide a reasonable approach when there is only one Public Meeting per month. Id. The OCA stated that it prefers these alternative options. Id. at 5-6. Regarding notational voting, the OCA submitted that notational voting could be used, if it is the only way to avoid a shortened consideration period when there is not a Public Meeting that will allow a 180-day period, or a special Public Meeting cannot be held. Id. at 6. The OCA argued that a process to permit the parties and ALJ to know that notational voting will be used must be activated when the filing is under review, because the schedule is developed at that time. Id.

PAWC argued that an extension of the ten-day review period for TUS seems unnecessary because the Commission can use notational voting to meet its statutory obligations. PAWC Comments at 7. PAWC also requested that the Commission reconsider the timeline in the FIO and that parties be given additional time to prepare and litigate cases and consider utilizing the certification of the record procedure. Id. at 8.

#### *Reply Comments*

Aqua argued that it is fairly simple for utilities to back into a public meeting date that will allow the parties the most amount of time for processing an application. Aqua Reply Comments at 3. Aqua committed to filing in this manner, absent extraordinary circumstances, and noted that the timing issue should be alleviated for utilities that have been through the process. Id.

BIE argued that the benefit of TUS holding an application for an additional five calendar days outweighs Aqua and PAWC's concerns regarding a five-day delay of the acceptance of an application. BIE Reply Comments at 4. BIE also indicated that it agrees with the OCA that, if planned notational voting is to be used, the parties should be notified so that the additional time can be included in the litigation schedule. Id. BIE requested that the parties be notified prior to the Prehearing Conference. Id.

The OCA contended that Aqua's opposition to a five-day extension to the ten-day review period for TUS is not reasonable. OCA Reply Comments at 6. The OCA noted that the extension will benefit all parties. Id. at 7. In response to PAWC's argument that a five-day extension seems unnecessary as notational voting is available, the OCA maintained that notational voting should be used as a last resort and only if other options will not work to ensure a minimum of 170 days. Id. The OCA agreed with PAWC that certification of the record is one option that would provide more time to prepare and litigate the case. Id.

PAWC stated that it agrees with Aqua's comments. PAWC Reply Comments at 3. PAWC argued that it is legally questionable and unnecessary to allow staff to extend the six-month period. Id. PAWC argued that notational voting should be used to maximize the consideration period and that the Commission can provide the parties with more time without artificially extending the six-month review period. Id.

### Conclusion

In consideration of the above comments and reply comments, the Commission determines to take a multi-prong approach to maximize the availability of the six-month consideration period. This approach reflects a combination of the proposals in the TSIO and allows for flexibility and case-by-case consideration of the needs of the applicant, the parties, and Commission staff.

We first direct applicants to consider the effect of a particular filing date on the length of the consideration period, including the ten-day review of the Application Filing Checklist by TUS, the timeframe for publication in the *Pennsylvania Bulletin*, and the Public Meeting schedule. Applicants should consider these factors with the goal of attaining a consideration period of 170 to 180 days. We agree with Aqua that it is feasible for applicants to back into a Public Meeting date that will maximize the use of the six-month consideration period and we expect all applicants to make a good faith effort to do so.

If an applicant nonetheless files an application such that the consideration period is less than 170 days, TUS will encourage the applicant to voluntarily extend the consideration period to between 170 and 180 days. If the applicant declines, TUS is permitted to hold acceptance of the application one to five additional calendar days to achieve a consideration period of 170 to 180 days.

Lastly, with regard to PAWC's request that we reconsider the timeline set forth in the FIO, we note that, as provided in the FIO, the proposed model timeline is a guide for achieving a Commission final order within the six-month deadline and, in our opinion, the parties are free to propose modifications to the presiding ALJ. FIO at 35. We expect any proposed modifications to recognize the requirements of due process in a particular proceeding and be tailored to the development of a full and complete record for Commission review. Id.

### Public Notice of Accepted Section 1329 Applications

In the TSIO, we recognized that, because a docket number is not assigned to an application seeking Section 1329 valuation until after TUS determines that the applicant has satisfied the Application Filing Checklist and the application is suitable to accept for filing, interested stakeholders cannot enter a notice of appearance until after the filing is accepted. At that time, e-filing and e-service are unavailable as these services require at least pending party status. As such, stakeholders have no timely way to know that they can file a notice of appearance and that tolling of the six-month consideration period has begun. We also recognized that a three or four-day delay in notice of acceptance can make a difference in the context of a six-month consideration period.

To address this situation, we directed interested stakeholders to make full use of the general aspects of the Commission's e-filing system and provided instructions for creating a generic e-filing subscription that provides a user with an electronic email alert when the Commission accepts a Section 1329 filing.

### Comments

Aqua indicated that it does not oppose the section of the TSIO addressing public notice of accepted Section 1329 applications. Aqua Comments at 12.

The OCA claimed that, according to the TSIO, the reason that a Secretarial Letter accepting an application cannot be sent to stakeholders, including statutory advocates, is because the docket number is not assigned until

the filing is accepted and, thus, stakeholders cannot have pending party status. OCA Comments at 6. The OCA suggested that the Commission serve the statutory advocates with all Secretarial Letters that accept or reject a Section 1329 filing. Id. at 6. The OCA suggested that another option would be to assign a docket number at an earlier point in the process. Id. at 7. The OCA argued that doing so would allow stakeholders to follow a proceeding by docket number and intervene to obtain pending party status and would permit the customer notice to include the docket number. Id. The OCA further argued that this would be similar to the assignment of a docket number to a general rate increase filing at the time of the 30-day notice letter and the assignment of a docket number when a utility asks for a waiver of the regulation between the end of the test year and the filing of the rate increase request. Id.

### Reply Comments

Aqua stated that it does not oppose the OCA's suggestion that statutory advocates be served with copies of any acceptance or rejection letter as it will provide timely notice of the beginning of the six-month consideration period. Aqua Reply Comments at 4.

PAWC indicated that it does not object to the OCA's suggestion that statutory advocates be served with a copy of the Secretarial Letter accepting or rejecting an application. PAWC Reply Comments at 8. PAWC argued that this approach would allow the statutory advocates to intervene in a case earlier and may alleviate the problem of TUS data requests being issued before the statutory advocates intervene, but answers not being due until after they intervene. Id.

### Conclusion

In the FIO, we directed that the acquiring utility or entity should notify the Commission and the statutory advocates when they enter into a service contract with a UVE to appraise a potential acquisition. FIO at 35. Buyers have done so by filing "UVE letters" and, to date, UVE letters have appeared in the instant docket, M-2016-2543193, rather than in individual dockets.

For purposes of administrative efficiency, the Secretary's Bureau will now assign a docket number upon receipt of the UVE letter pertaining to that acquisition. We clarify that for the purposes of Section 1329, the assignment of a docket number is a ministerial document tracking mechanism with no legal significance. The assignment of a docket number does not indicate that a filing has been accepted and, therefore, a docket will remain inactive until a Section 1329 application under that docket number has been formally accepted by the Commission. Filings in an inactive docket will not be considered until the time at which the docket becomes active.

In the FIO, we stated that notice of rejection of a Section 1329 filing, in the form of a Secretarial Letter, shall be provided to the statutory advocates, the entities required to be served with the application, and anyone else on the application's certificate of service so that all parties or potential parties are aware of the acceptance or rejection of the filing. FIO at 25. We agree with the OCA that the statutory advocates should also be served with notice of acceptance of a Section 1329 filing as has been done in recent Section 1329 applications. We memorialize this requirement here.

Consistent with our directive in the TSIO, we continue to encourage interested stakeholders and potential parties should to make full use of the general aspects of the

Commission's e-filing system by creating a generic e-filing subscription that provides an electronic email alert when the Commission accepts any Section 1329 filing.

*Standard Data Requests for Applications Seeking Section 1329 Valuation*

In the TSIO, we clarified that TUS does not review the veracity or substantive quality of information that an applicant may submit to fulfill the threshold requirements of the Application Filing Checklist. In accordance with the FIO, TUS reviews whether the applicant has included, in good faith, the information required by the Commission for the initial filing such that the six-month consideration period of Section 1329(d)(2) may begin without causing (1) the applicant to suffer a summary rejection, if the application were to remain under TUS review, and (2) due process and other procedural concerns before the OALJ. TUS is not precluded from making subsequent data requests, provided that the data requests are issued before the Commission receives a protest or filing in opposition to an application.

In the TSIO, we determined to incorporate Standard Data Requests into Item 4 of the Application Filing Checklist in lieu of electronic working documents and provided proposed Standard Data Requests as well as instructions. See TSIO, Appendix B. The Standard Data Requests are designed to make the process of investigation and analysis of the Section 1329 application more efficient by providing key information at the outset of the application proceeding. Providing the information in the Standard Data Requests is intended, along with other initiatives, to address issues created by the Section 1329(d)(2) six-month consideration period.

Further, in terms of additional discovery, we declined to establish universal discovery modifications for Section 1329 proceedings. We encourage the voluntary modification of its discovery regulations at 52 Pa. Code §§ 5.321—5.372 due to the six-month consideration period. We also strongly encourage applicants to propose discovery rules and conditions suitable for the circumstances of each Section 1329 proceeding.

Below we first address comments and reply comments on the Standard Data Requests in their entirety, TUS data requests, and discovery modifications. We then address comments and reply comments regarding specific data requests. Portions of the Standard Data Requests that did not generate comment remain intact and will not be addressed further. A copy of the final Standard Data Requests is attached as Appendix B.

*Comments*

Aqua generally noted that certain information can be provided in the Standard Data Requests to assist in the application review process and that TUS may serve data requests on an applicant, provided that no protest or opposition filing has been made. Aqua Comments at 14. With regard to discovery modifications, Aqua noted that it will work with the parties once the application is accepted as complete to establish mutually agreeable discovery schedules and enter stipulated discovery schedule agreements so the parties will not have to wait for a prehearing order. Id.

BIE opined that, due to the compressed schedules of Section 1329 transactions, the standard discovery response time of 20 days is inappropriate. BIE Comments at 8. BIE further opined that it has frequently filed motions to expedite discovery before a prehearing conference is held. Id. BIE suggested that a discovery conference take place soon after acceptance of an application so

that modification can be established. Id. at 9. In this regard, BIE recognized the willingness of utilities in Section 1329 proceedings to voluntarily agree to discovery modifications. Id. BIE also encouraged OALJ to impose modifications if the parties do not propose them on their own. Id.

CWA suggested a number of additions to the Standard Data Requests. CWA Comments at 3—6. CWA argued, *inter alia*, that the Commission should request information used to determine the asset inventory of the system and information regarding assets that may represent contributed plant. Id. at 3. CWA also argued that the Commission should require the Buyer and Seller to provide a bill comparison for a typical residential customer at the rates of the Seller upon acquisition and at the approved standard tariff pricing rates of the Buyer as well as require the Buyer to provide a pro forma income statement for the acquired system as a stand-alone entity at the rates of the Seller upon acquisition and reflecting the anticipated expenses of the Buyer. Id. at 4-5. Additionally, CWA requested that, for water and wastewater systems in the Delaware River Basin, the Commission require the Buyer and Seller to provide copies of the current dockets authorizing water diversions or wastewater discharge. Id. at 5. For systems operating under a DEP Consent Order, CWA requested that the Commission require the Buyer and the Seller to provide copies of the Orders and explain the compliance status. Id. For wastewater systems, CWA requested that the Buyer and the Seller inform the Commission if DEP has issued any determinations of overload of conveyance or treatment capacity. Id. Further, CWA suggested that the Seller describe the process used to identify and select the Buyer. Id. CWA also suggested that corporate resolutions of the stockholders or referendum of the public bodies authorizing the transaction be provided to the Commission. Id. at 5-6.

The OCA also proposed additions to the Standard Data Requests. OCA Comments at 8. The OCA argued that its additional data requests are reasonable to assist intervening parties in understanding the appraisals in the context of valuations that the Buyer and Seller may have made independently of the Section 1329 requirements. Id. The OCA's proposed additional data requests include the following:

1. Provide a copy of any valuation studies BUYER used in its evaluation of the Seller's system that have not already been provided.
2. Provide a copy of any valuation studies SELLER used, in preparation for sending or receiving the request for proposals, if application, regarding the proposed sale of the system.

OCA Attachment A.

PAWC stated generally that the Commission should reconsider the Standard Data Requests. PAWC Comments at 10. PAWC averred generally that some of the Standard Data Requests are unduly burdensome and seek documentation that is not relevant. Id. In addition, PAWC claimed that the TSIO does not address the situation in which TUS issues data requests and the Commission receives a protest or opposition to the application before the responses are due. Id. at 9. PAWC argued that TUS data requests should be deemed withdrawn when the application is assigned to the OALJ. Id. PAWC argued that answering the TUS data requests serves no practical purpose and increases the costs to ratepayers with no corresponding benefit. Id. at 10. Moreover, with regard to



discovery modifications, PAWC noted that it agrees with the Commission refusal to establish modified discovery rules for all Section 1329 proceedings. *Id.* at 11. PAWC argued that a five-day response time is not warranted in future proceedings. *Id.* PAWC also argued that the Commission should establish a presumption that a seven-day discovery response period is reasonable absent good cause shown. *Id.*

With regard to TUS's data requests, SWPA noted that, in a prior proceeding, TUS took the position that SWPA was required to answer two sets of data requests, despite reassignment of the applications from TUS to OALJ. SWPA Comments at 2. SWPA further noted that many of the data requests were duplicative of discovery requests that SWPA would later receive from the public advocates. *Id.* SWPA requested that the Commission clarify that, once a protest is filed, the applicant no longer has an obligation to answer the TUS data requests. *Id.*

#### *Reply Comments*

Aqua argued that, with regard to the OCA's proposed additions to the Standard Data Requests, the fair market valuations submitted with the Section 1329 application in determination of the fair market value are the only relevant valuations. Aqua Reply Comments at 4. Aqua further argued that any other valuations that are not completed in accordance with the USPAP and the jurisdictional exceptions do not provide comparable information relevant to the determination of fair market value. *Id.*

In response to PAWC and SWPA's arguments regarding TUS's data requests, BIE argued that, to ensure that the parties are aware of the data requests, TUS could serve the data requests on BIE, the OCA, and OSBA. BIE Reply Comments at 8. BIE noted that, if the applicant is no longer required to answer the TUS data requests after reassignment to the OALJ, the parties would have to re-serve the applicant with the same or similar questions within the short litigation window. *Id.* BIE requested that the Commission direct applicants to answer TUS's data requests so that the same questions would not have to be regenerated as discovery. *Id.* With regard to discovery modifications, BIE stated that it opposes PAWC's proposal to establish a presumption that a seven-day response period is reasonable for discovery absent good cause shown. *Id.* at 7. BIE argued that the requirement of good cause would place an unnecessary burden on the parties. *Id.* BIE also noted that, in the TSIO, the Commission did not impose universal discovery rule modifications for Section 1329 proceedings because each application is independent and can warrant different modifications. *Id.*

In response to PAWC's claims that the Standard Data Requests are burdensome and seek information not pertinent to the application, the OCA argued that the information sought is pertinent and the Standard Data Requests will remove the pressure of answering the same questions during an expedited litigation period. OCA Reply Comments at 8. In response to PAWC and SWPA's arguments regarding TUS's data requests, the OCA noted that answering TUS's data requests could avoid requiring the parties to ask similar questions and restarting the time for responses in an abbreviated litigation timeframe. *Id.* With regard to discovery modifications, the OCA argued that, if any discovery response period presumption is created, it should be five days as it has been in many Section 1329 proceedings. *Id.* The OCA noted that the parties have used reasonable discovery modifications in Section 1329 proceedings to date. *Id.*

PAWC indicated that it disagrees with CWA's suggestion that applicants be required to submit numerous documents in addition to those already identified in the Standard Data Requests. PAWC Reply Comments at 18. For instance, PAWC stated it disagrees with CWA's suggestion to establish a record of the steps taken by the Seller leading to the negotiation of the agreement. *Id.* PAWC argued that the Commission is not authorized to second-guess the decision of municipal officials selling the system. *Id.* PAWC also argued that many of the documents suggested by CWA would not be useful to the Commission. *Id.* For example, PAWC stated it sees no value in requiring documents from the Delaware River Basin Commission. *Id.*

PAWC also objected to the OCA's proposed additional data requests. *Id.* at 8. PAWC argued that the Commission is not a super board of directors and does not have authority to second-guess municipal officials. *Id.* at 9. PAWC also argued that the negotiated purchase price should not be compared to how high the Buyer or how low the Seller was willing to go in negotiations. *Id.* Further, PAWC noted that, if the transaction does not proceed to closing, the parties may renegotiate, and it would be unfair for one party to have the proprietary business information of the other and there is a risk that a competitor would have this proprietary information to use in the rebid process. *Id.* As it pertains to discovery modifications, PAWC opposed BIE's suggestion that a discovery conference be held soon after the acceptance of an application. *Id.* at 12.

SWPA stated that it does not support CWA's suggestion that referendums of the public bodies authorizing the transaction be provided to the Commission. SWPA Reply Comments. SWPA argued that an authority's board members and the municipal administration are best suited to decide whether or not to sell and that a municipality should not be compelled to conduct a referendum. *Id.* SWPA also stated that it does not agree with the OCA's proposed additional data requests. *Id.* SWPA argued that the UVE appraisals should suffice in establishing the fair market value and submission of the Buyer's and Seller's independent and confidential evaluation studies should not be required. *Id.* SWPA also argued that the Buyer's evaluation provides strategic information that should not be accessible to its competition. *Id.*

#### *Conclusion*

As it pertains to the Standard Data Requests in their entirety, we decline to adopt CWA's proposed additional data requests. While CWA identified information that may be pertinent in some Section 1329 proceedings, we believe that CWA's proposed data requests would be more appropriately addressed on a case-by-case basis. As stated in the TSIO, the Standard Data Requests are based largely on data requests routinely propounded in Section 1329 proceedings. The Standard Data Request are designed to make the investigation and analysis process more efficient for all stakeholders. Requiring a surplus of information that may only be pertinent to some, but not all, Section 1329 proceedings as part of the Standard Data Request does not likely support an efficient review process.

We also decline to adopt the OCA's proposed additional data requests. We agree with Aqua and PAWC that the fair market valuations submitted with the Section 1329 application are the relevant valuations. Pursuant to Section 1329, two UVEs shall perform appraisals for the purpose of establishing fair market value and each UVE shall determine fair market value in accordance with the

USPAP. 66 Pa.C.S. §§ 1329(a)(2)-(3). Valuations that the Buyer and Seller made independently of the Section 1329 requirements are not pertinent to the Commission's inquiry in Section 1329 proceedings and may not have been conducted in compliance with the USPAP. Although not included in the Standard Data Request, the OCA (and other parties) remain free to request such data in Section 1329 application proceedings as appropriate.

As to the TUS data requests, we agree with BIE that applicants should answer TUS data requests even after the matter is assigned to OALJ. We set forth the Standard Data Requests to make the process of investigating and analyzing Section 1329 applications more efficient in light of the six-month consideration period. We find that requiring applicants to answer TUS data requests will likewise make this process more efficient. Requiring applicants to answer TUS data requests will avoid the need for parties to serve the same or similar interrogatories in discovery after the parties agree to discovery protocols.

Answering TUS's data requests will also streamline the process for applicants, who would otherwise begin preparing answers to TUS data requests, abandon those answers upon assignment to OALJ, and soon after being asked the same or similar questions by the parties. We also agree with BIE that, for complete transparency, TUS should serve its data requests on BIE, OCA, and OSBA to ensure that the parties are aware of the data requests to avoid duplication. If applicants respond to TUS data requests, they are free to object to duplicate inquires pursuant to our discovery regulations.

Regarding the role of TUS in requests for Section 1329 valuation, we clarify that Section 1329 provides for consideration of a fair market rate base valuation of certain acquired municipal utilities and a short clock for decisions on those valuations. Section 1329 does not repeal Chapter 11 of the Public Utility Code and Commission obligations under that Chapter. Applications subject to Section 1329 valuation require the Commission to exercise its public interest examination of all acquisition and transfer of control applications submitted for its approval. Point being that while the TUS role in establishing whether an acquisition application qualifies for accelerated Section 1329 consideration is limited, its authority to consider and examine these applications pursuant to Chapter 11 remains undiminished.

Lastly, we decline to establish universal discovery rule modifications applicable to all Section 1329 proceedings. However, we strongly encourage applicants to propose discovery rule modifications appropriate for Section 1329 proceedings. As Aqua suggested, parties should work to establish mutually agreeable discovery schedules once an application is accepted and enter a stipulated discovery schedule agreement to avoid waiting until the issuance of a prehearing order after a prehearing conference. We encourage the use of this approach. If applicants or parties do not propose discovery rule modifications, we encourage the OALJ to impose appropriate modifications to aid in the efficient disposition of the application.

#### *Standard Data Request No. 1*

In the TSIO, we proposed that Standard Data Request No. 1 seek to obtain the following information:

1. Estimate the potential range of monthly cost impact on existing and acquired customers following the Buyer's next base rate case, utilizing (a) a scenario in which the acquired system's cost of service is fully allocated to the acquired customers and

(b) a scenario in which any anticipated cost of service revenue deficiency associated with the acquired system is shared equally by acquired customers and existing customers. In the case of a wastewater acquisition, assume no combined water and wastewater revenue requirement.

TSIO Appendix B at 3.

#### *Comments*

Aqua stated that it does not oppose Standard Data Request No. 1 under the condition that the Commission is very clear that the estimates in the application are only estimates. Aqua Comments at 14. Aqua claimed that this question has the potential to turn each Section 1329 proceeding into a full base rate inquiry. Id. Aqua further claimed that it cannot be held to these estimates in the next base rate case. Id. Aqua requested that the Commission clearly state that the answers to No. 1 are simply to provide transparency and data points to the parties on what rates could be. Id.

#### *Reply Comments*

The OCA noted that No. 1 specifically asks for an estimate of the monthly cost impact on existing and acquired customers. OCA Reply Comments at 9. The OCA also noted that the concern raised regarding a full base rate case is unfounded. Id. The OCA argued that the Buyer can calculate a revenue requirement associated with the acquired plant, operation and maintenance expenses, and return, which does not constitute a full-blown rate case. Id. The OCA further argued that this information along with estimates of the rate impact are important in Section 1329 cases because Section 1329 required a ratemaking rate base determination. Id. Additionally, the OCA noted that estimates need to be free of assumptions that could skew the real impact and that the assumption stated in No. 1 (no combined water or wastewater revenue requirement) be followed. Id. The OCA argued that allowing the Buyer to assume that any of the costs can be spread to existing customers would minimize the impact of the ratemaking rate base. Id.

The PMAA stated it generally disagrees with comments opposing a requirement that the acquiring utility provide an estimate of the annual revenue of the municipal system under the acquiring utility's ownership. PMAA Reply Comments at 3.

#### *Conclusion*

Regarding Aqua's concerns, it is clear that Standard Data Request No. 1 concerns estimates. Standard Data Request No. 1 requires an estimate of the potential range of monthly cost impact on existing and acquired customers following the Buyer's next base rate case under the scenarios stated therein. This is not intended to turn the Section 1329 proceeding into a full base rate inquiry. Moreover, while we understand that this potential range may change from the time the Buyer files a Section 1329 application to the time of the Buyer's next base rate case, we expect the Buyer to provide good faith estimates in response to Standard Data Request No. 1. These estimates are requested for transparency purposes and are intended to provide data points as to what rates may result from the transaction. We recognized that, between the time of the Section 1329 transaction and the utility's next base rate case, there may be a host of cost factors that may increase or decrease the overall cost of service.

Also, we conclude that in the case of wastewater acquisitions, requiring an assumption that acquisition costs, or some portion of those costs, will not be shared

among water and wastewater customers is not realistic. It is now common practice under 66 Pa.C.S. § 1311 for Class A water companies to employ the shared revenue requirement rate mechanism. We therefore revise Standard Data Request No. 1 to read as follows:

1. Estimate the potential [ **range of** ] monthly incremental cost impact on existing and acquired customers following the actual results of the Buyer's most recently adjudicated [ **next** ] base rate proceeding, whether litigated or settled, [ **case, utilizing (a) a scenario in which the acquired system's cost of service is fully** ] allocate[ **ed** ]ing [ **to** ] the fair market value of the acquired system according to the Buyer's previously approved single-tariff pricing model. [ **customers and (b) a scenario in which any anticipated cost of service revenue deficiency associated with the acquired system is shared equally by acquired customers and existing customers.** ]

a. In the case of a wastewater acquisition, a Buyer that employs a combined revenue requirement pursuant to 66 Pa.C.S. § 1311 will provide information assum[ **e** ]ing [ **no** ] a combined water and wastewater revenue requirement consistent with its most recent adjudicated base rate proceeding.

b. If a Buyer has filed the thirty-day notice of 52 Pa. Code § 53.45(a), or has filed a rate case, it should calculate the above using data as proposed in its upcoming or filed rate case.

See Appendix B at 3. Providing this information, in conjunction with the information requested in Standard Data Request No. 7 below, will provide a more realistic range of possible rate effects of the proposed acquisition and will also inform our review of any rate stabilization plan required pursuant to Section 1329(d)(1)(v).

#### *Standard Data Request No. 4*

In the TSIO, we proposed that Standard Data Request No. 4 seek to obtain the following information:

4. Provide an estimate of the annual revenue requirement of the municipal system under the Buyer's ownership. Provide the assumptions for the annual revenue requirement, including expected rate of return, expected depreciation expense, O&M expenses, etc.

TSIO Appendix B at 3.

#### *Comments*

Aqua stated that it opposes Standard Data Request No. 4 because it asks for a cost of service study provided up front with the application. Aqua Comments at 15. Aqua noted that, in previous applications, it agreed to provide cost of service information in the Company's next rate case. Id. Aqua further noted that the rate estimates in Standard Data Request No. 1 and revenue requirement estimates are linked; estimates as to the annual revenue requirement are only estimates. Id. Aqua claimed that the estimated revenue requirement is subject to change and may be affected by factors not known at the time of the filing. Id. Moreover, Aqua argued that a Section 1329 proceeding is not a base rate case and that the Company cannot be held to these estimates in the next base rate case. Id. Aqua requested that the Commission clearly state that the answers to Standard Data Request No. 4 are simply to provide transparency and data points to the parties on what rates could be. Id.

#### *Reply Comments*

The OCA noted that Aqua's interpretation is not supported. OCA Reply Comments at 10. The OCA argued that asking the Buyer to provide an estimate of the annual revenue requirement and the assumptions used in calculation that revenue requirement is not the same as a cost of service study. Id. The OCA also argued that calculating the revenue requirement for the Buyer to serve the municipal system is something that is based on information the Buyer already has. Id.

As noted above, the PMAA stated generally that it disagrees with comments opposing a requirement that the acquiring utility provide an estimate of the annual revenue of the municipal system under the acquiring utility's ownership. PMAA Reply Comments at 3. The PMAA argued that a "cost of service study," which includes an estimate of the annual revenue requirement of the municipal system under the acquiring utility's ownership, provides relevant information. Id.

PAWC stated that it agrees with Aqua that No. 4 is unnecessary because of other information that an applicant must provide. PAWC Reply Comments at 4. PAWC noted that the cost to develop all the information required by the Standard Data Requests is borne by ratepayers. Id. PAWC argued that the benefits from No. 4 are minimal and that the Commission can consider the rate impact of the acquisition without this information. PAWC also argued that every Order approving a Section 1329 application has included a requirement that the Buyer submit a cost of service study in its next base rate case. Id.

#### *Conclusion*

Standard Data Request No. 4 requests only estimates; an estimate of the annual revenue requirement of the municipal system under the Buyer's ownership. A cost of service study is a requirement under 52 Pa. Code § 53.53, regarding rate cases in excess of \$1 million. We do not require Section 1329 applicants to prepare and file a cost of service study with each application. Moreover, while we understand that the estimate may change from the time the Buyer files a Section 1329 application to the time of the Buyer's next base rate case, we expect the Buyer to provide a good faith estimate in response to No. 4. This estimate is requested for transparency purposes and is intended to point to what rates may result from the transaction.

#### *Standard Data Request No. 7*

In the TSIO, we proposed that Standard Data Request No. 7 seek to obtain the following information:

7. In the next rate case, does buyer anticipate includ[ **ing** ] the acquired system in a combined revenue requirement?

TSIO Appendix B at 3.

#### *Comments*

Aqua indicated that it opposes Standard Data Request No. 7. Aqua Comments at 16. Aqua argued that No. 7 requires forward-looking statements in the application concerning whether the Company would propose to operate the acquired system as a stand-alone system or include it with a combined revenue requirement. Id. Aqua further argued that requiring this determination at the time of filing is speculative because the development of the Company's future rate design will not occur at that time. Id.



PAWC argued that answers to data requests regarding future events will be speculative. PAWC Comments at 10. With regard to No. 7, PAWC noted that the Buyer's next base rate case may be years away. *Id.* PAWC argued that No. 7 is premature at the time an application is filed.

*Reply Comments*

In response, the OCA argued that the question asks what the Buyer anticipates and does not lock in any particular response. OCA Reply Comments at 10. The OCA noted that it is important to understand what the Buyer anticipates, especially if the rate impact of the transaction is reasonable only if the buyer used the combined revenue requirement option. *Id.*

*Conclusion*

Contrary to Aqua's argument, Standard Data Request No. 7 does not require a determination as to whether a Buyer will include the acquired system in a combined revenue requirement in its next rate case. This data request asks only what the Buyer anticipates in the next base rate case. We note that a Buyer will not be penalized for answering that it has made no prediction regarding whether the acquired system will be included in a combined revenue requirement. However, where the Buyer anticipates that the acquired system will be included in a combined revenue requirement in the Buyer's next rate case, we expect the Buyer to answer accordingly. In addition, as discussed above, this information will inform our review of filing materials required pursuant to Section 1329(d)(1).

*Standard Data Request No. 9*

In the TSIO, we proposed that Standard Data Request No. 9 seek to obtain the following information:

9. Are there any leases, easements, and access to public rights-of-way that Buyer will need in order to provide service which will not be conveyed at closing? If yes, identify when the conveyance will take place and whether there will be additional costs involved.

TSIO Appendix B at 3.

*Comments*

Aqua indicated that it opposes Standard Data Request No. 9 to the extent that the Buyer may not have received a completed title report from its title agent by the application date. Aqua Comments at 16. Aqua proposed to remove No. 9 from the list and that this question be issued in discovery by the parties. *Id.*

*Reply Comments*

The OCA argued that, if the Buyer has not received all of the information at the time of filing, the Buyer can list the information it has and indicate that it awaits additional information. OCA Reply Comments at 10-11. The OCA noted that the information requested in No. 9 is important because it is helpful to know what rights of way the Buyer needs to be able to provide service. *Id.* at 11.

PAWC stated that it agrees with Aqua that No. 9 should be removed from the Standard Data Requests and address at a later date during discovery. PAWC Reply Comments at 4. PAWC noted that the concern is that an application will be rejected for failing to provide information that is unavailable at the time the application is filed. *Id.*

*Conclusion*

As a threshold matter, the Commission wishes to know whether Buyers will have adequate control or access to

facilities needed to provide safe, adequate, and reasonably reliable service in the acquired territory. This is an essential consideration related to the Commission's public safety mandate under the Public Utility Code. If a buyer has not yet received a completed title report from its title agent by the filing date, the Buyer should indicate the same in response to Standard Data Request No. 9 and provide the information when it becomes available to the Buyer. The goal of the Standard Data Requests is to make the investigation an analysis of Section 1329 proceedings more efficient not only for parties, but also for the Commission itself. When the information requested in No. 9 is available at the time of filing, it should be provided at the outset of the proceeding. When this information is not available at the time of filing, the applicant must indicate as much.

*Standard Data Request No. 10*

In the TSIO, we proposed that Standard Data Request No. 10 seek to obtain the following information:

10. Provide a breakdown of the estimated transaction and closing costs. Provide invoices to support any transaction and closing costs that have already been incurred.

TSIO Appendix B at 4.

*Comments*

Aqua requested clarification that the breakdown referred to in Standard Data Request No. 10 will be provided in general categories, i.e., legal expense incurred and projected, UVE fees incurred and projected, and projected settlement costs to close the transaction. Aqua Comments at 17. Aqua also reiterated that final costs may vary from what is stated in the Standard Data Requests at the time of filing. *Id.*

PAWC noted that a claim for transaction and closing costs incurred during the acquisition may be included in the Buyer's next rate case, but the amount of the transaction and closing costs are determined in the subsequent rate proceeding, rather than the application proceeding. PAWC Comments at 10. PAWC argued that the request for documentation of the transaction and closing costs in No. 10 is premature.

*Reply Comments*

Citing Section 1329(d)(1)(iv), the OCA argued that an applicant is required to include the transaction and closing costs incurred by the acquiring public utility that will be included in its rate base. OCA Reply Comments at 11. The OCA argued that No. 10 simply asks for a breakdown of the costs that are required to be included with the application and invoices for any costs that have already been incurred. *Id.* The OCA claimed that No. 10 is reasonable and consistent with statutory requirements. *Id.*

*Conclusion*

Section 1329 provides that, as an attachment to its application, the Buyer shall include an estimate of the transaction and closing costs incurred by the Buyer that will be included in its rate base. 66 Pa.C.S. § 1329(d)(iv). As to format, we believe that it is acceptable for the breakdown of transaction and closing costs referred to in Standard Data Request No. 10 to be provided in general categories. We recognize that the final transaction and closing costs may vary from the time of filing to the time of closing and note that the applicant should advise the Commission and the parties of any changes to its prior estimates. In addition, the language of Section

1329(d)(1)(iv) is mandatory, not permissive. As such, these estimated costs and expenses must be identified and disclosed as part of the Section 1329 application.

*Standard Data Request No. 11*

In the TSIO, we proposed that Standard Data Request No. 11 seek to obtain the following information:

11. Please describe general expense savings and efficiencies under Buyer's ownership. State the basis for all assumptions used in developing these costs and provide all supporting documentation for the assumptions, if available.

TSIO Appendix B at 4.

*Comments*

Aqua indicated that it opposes Standard Data Request No. 11. Aqua Comments at 17. Aqua argued that No. 11 requests speculative information and that many efficiencies are realized through operation of the system. Id.

*Reply Comments*

The OCA argued that, if the Buyer projects any expense savings or efficiencies as part of the acquisition, the Buyer should be able to identify, describe, and support these efficiencies. OCA Reply Comments at 11. The OCA argued that No. 11 would require the Buyer to support its position and provide more than general statements that there are efficiencies as part of the transaction. Id.

The PMAA stated that it supports the TSIO to the extent that it required certain information regarding the transaction, including a description of general expense savings and efficiencies under the acquiring utility's ownership, with which the Commission and customers of the acquiring utility can evaluate and analyze the costs and benefits of the transaction. PMAA Reply Comments at 3.

*Conclusion*

As it pertains to Aqua's concerns regarding Standard Data Request No. 11, we direct that applicants describe the known and anticipated general expense savings and efficiencies under the Buyer's ownership of the acquired system. Therefore, we modify the language of Standard Data Request No. 11 as follows:

11. Please describe known and anticipated general expense savings and efficiencies under Buyer's ownership. State the basis for all assumptions used in developing these costs and provide all supporting documentation for the assumptions, if available.

See Appendix B at 4. Where there are no known general expense savings and efficiencies, the applicant should state that and describe anticipated general expense savings and efficiencies, if any. For both known and anticipated general expense savings and efficiencies, the applicant should provide the basis for all assumptions used in developing the costs and supporting documentation for the assumptions, if available.

*Standard Data Requests No. 13, 14 and 15*

In the TSIO, we proposed that Standard Data Requests No. 13, 14, and 15 seek to obtain the following information:

13. Please provide a copy of all proposals received by the Seller and any accompanying exhibits with respect to the proposed sale of the system.
14. Please provide a copy of any proposals or exhibits made by Buyer for the purchase of Seller that have not already been provided.

15. Has Buyer made any previous offer to purchase the Seller wastewater system? If yes, provide a copy of the offer and relevant communications.

TSIO Appendix B at 4.

*Comments*

Aqua stated that it opposes Standard Data Requests No. 13, 14, and 15. Aqua Comment at 17-18. With regard to No. 13, Aqua argued that the proposals received by the Seller may not be public information, protected by confidentiality, and could create competitive disadvantage between competing utilities. Id. Aqua further argued that these documents are in the possession of the Seller and may not be available to the buyer at the time of filing. Id. With regard to No. 14, Aqua noted that it has agreed to provide its request for proposal and that the request for proposal is the document that was considered by the Seller for the sale of the system. Id. Aqua argued that No. 14 as written is overly broad and could encompass a number of documents that are highly confidential, protected by attorney client privilege, or competitive in nature. Id. at 18. Similarly, Aqua argued that No. 15 as written is overly broad. Id. Aqua proposed that No. 15 be limited to the offer of the Buyer and the response of the Seller to that offer. Id.

*Reply Comments*

The OCA noted that No. 13 is directed to the Seller. OCA Reply Comments at 12. The OCA argued that, as a party to the Asset Purchase Agreement (APA), the Seller should be a party to the proceeding and that the Seller has been a party in each of the Section 1329 proceedings to date. Id. The OCA further argued that the Seller would be in the possession of the documents requested in No. 13 and could provide the documents pursuant to a confidentiality agreement. Id. The OCA argued that No. 14 could be clarified to address Aqua's concerns by restricting the question to proposal or exhibits that were provided by the Buyer to the Seller. OCA Reply Comments at 12. With regard to No. 15, the OCA argued that that the question could be clarified to show that it is requesting communications between the Buyer and Seller and is not seeking any internal communications. Id.

PAWC stated generally that it questions the relevance of Standard Data Requests No. 13-15 to the issue before the Commission. PAWC Reply Comments at 5. PAWC argued that the Legislation has not given the Commission the authority to act as a super board of directors with regard to the business decisions of a utility's management or authority to second-guess the judgment of municipal officials when selecting among several offers to purchase its assets. Id. PAWC argued that this information should not be requested in a data request applicable to all applications. Id.

*Conclusion*

We agree with Aqua and PAWC that Standard Data Request No. 13 should be eliminated. As Aqua noted, the proposals received by the Seller may be confidential between the bidders and the Seller and the bidders are not involved in the particular Section 1329 proceeding. This data request may result in unnecessary confidentiality concerns at this juncture of a Section 1329 proceeding. Therefore, we remove No. 13 from the Standard Data Requests.<sup>8</sup> Moreover, the statute provides that the just, reasonable, and lawful amount of rate base shall be based on the lower of the purchase price or the fair market value.

<sup>8</sup>The removal of No. 13 affects the numbering of subsequent Standard Data Requests.

We also agree with Aqua that the more pertinent document is the Buyer's proposal for the purchase of the Seller's system, which is the document that was considered by the Seller for the sale of the system. Accordingly, we modify Standard Data Request No. 14 (now, No. 13) to request only this information. This data request is revised as follows:

13. Please provide a copy of [ **any** ] the proposal[ **s** ] [ **or** ] and exhibits [ **made by** ] of the Buyer for the purchase of Seller's system [ **that have not already been provided** ].

See Appendix B at 4. This information along with the Seller's proposal requested in Standard Data Request No. 12 is relevant to fully understand the nature of the transaction between the Buyer and Seller.

Moreover, we agree with Aqua that Standard Data Request No. 15 (now, No. 14) should be modified to clarify that we are requesting only the offer of the Buyer and the response of the Seller and we agree with the OCA that No. 15 is not requesting internal communications. The more relevant documents are the offer of the Buyer and the Seller's response to that offer. Therefore, we revise this data request as follows:

14. [ **Has Buyer made any previous offer to purchase the Seller wastewater system? If yes, p** ] Provide a copy of the Buyer's offer to purchase the Seller's system and [ **relevant communications** ] the Seller's response to that offer.

See Appendix B at 4. Like Standard Data Requests No. 12 and 14, this information is pertinent to the development of a comprehensive understanding of the transaction for which the applicant is seeking approval under Section 1329.

Lastly, regarding concerns that the information requested in Nos. 14-15 may be confidential or proprietary, we reiterate that, when submitting confidential information, applicants should follow standard procedures for the filing of documents containing confidential information with the Commission. Applicants should also refer to the instructions for submitting confidential information provided in the Section 1329 Application Filing Checklist. See Appendix A at 7. Further, consistent with the Commission's regulations at 52 Pa. Code § 1.32(b)(4), filings containing confidential information may not be filed electronically and the Commission will post only redacted, public versions on the electronic filing system.

#### *Standard Data Request No. 16*

In the TSIO, we proposed that Standard Data Request No. 16 seek to obtain the following information:

16. For each UVE in this case, please provide the following:
- A list of valuations of utility property performed by the UVE;
  - A list of appraisals of utility property performed by the UVE;
  - A list of all dockets in which the UVE submitted testimony to a public utility commission related to the appraisal of utility property; and
  - An electronic copy of any testimony in which the UVE testified on fair value acquisitions.

TSIO Appendix B at 4.

#### *Comments*

Aqua stated that it opposes Standard Data Request Nos. 16.a—d. Aqua Comments at 18. Aqua argued that valuations and appraisals of utility property are private engagements and that public disclosure may not be acceptable. Id. Aqua claimed that, for Section 1329 applications before the Commission, a listing of docket numbers should be sufficient. Id. Aqua further argued that for valuations/appraisals not before the Commission, the Company can provide docket numbers of the relevant proceedings. Id. Aqua also requested clarification that, if testimony is provided orally in a proceeding, the Company and the UVE may not have access to the relevant transcript. Id.

PAWC argued that, with regard to No. 16.d, requesting an electronic copy of any testimony in which the UVE testified on fair value acquisitions, seems unnecessary. PAWC Comments at 11. PAWC argued that it does not see why TUS needs this information. Id. PAWC also argued that listing all dockets in which a UVE submitted testimony to a public utility commission related to the appraisal of utility property is adequate. Id. Further, PAWC argued that the cost of No. 16.d outweighs the benefits.

#### *Reply Comments*

In response to Aqua's comments, the OCA suggested that, if the appraisals are private and not part of the public proceeding, the information could be redacted, and a description could be given. OCA Reply Comments at 13. The OCA argued that the docket numbers would not be sufficient because testimony is not posted on the Commission's website. Id. In addition, the OCA noted that electronic links for other jurisdictions where the UVE testified would be acceptable. Id. The OCA also noted that the UVE has this information readily available and providing it would not be burdensome. Id. In response to PAWC's comments, the OCA argued that the information sought by the Standard Data Requests is not only for TUS. Id. The OCA noted that the cost for the UVE to provide the information is minimal given that the UVEs keep this information as a normal part of business and that No. 13 allows electronic submission of this information. Id.

#### *Conclusion*

We agree with the OCA that the cost to provide the information requested in Standard Data Request No. 16.a—d is minimal given that UVEs retain this information in the course of business, typically in a curriculum vitae. If the information requested in 16.a—c is already provided with the application, such as in a curriculum vitae attached to the UVE's testimony, the applicant may simply point to the location of that information. To address PAWC's concerns regarding No. 16.d, we believe that limiting copies of testimony to those from only the past two years is reasonable and appropriate. In addition, we agree with the OCA that electronic links in lieu of electronic copies of testimony are acceptable. We revise No. 16.d (now, No. 15.d) as follows:

15. For each UVE in this case, please provide the following, if not already provided:

- ...  
d. An electronic copy of or electronic link to [ **any** ] testimony in which the UVE testified on public utility fair value acquisitions in the past two years.

See Appendix B at 4. Further, with regard to Aqua's concerns regarding this data request, we note that, if the



testimony was provided orally and the applicant and the UVE do not have access to the testimony, the applicant should note the same.

*Standard Data Requests No. 26 and 27*

In the TSIO, we proposed that Standard Data Requests No. 26 and 27 seek to obtain the following information:

26. Are there any outstanding compliance issues that the Seller's system has pending with the PA Department of Environmental Protection. If yes, provide the following information:

- a. Identify the compliance issue(s);
- b. Provide an estimated date of compliance;
- c. Explain Buyer's plan for remediation;
- d. Provide Buyer's estimated costs for remediation; and,
- e. Indicate whether the cost of remediation was factored into either or both fair market valuation appraisals offered in this proceeding.

27. Are there any outstanding compliance issues that the Seller's system has pending with the US Environmental Protection Agency. If yes, provide the following information:

- a. Identify the compliance issue(s);
- b. Provide an estimated date of compliance;
- c. Explain Buyer's plan for remediation;
- d. Provide Buyer's estimated costs for remediation; and
- e. Indicate whether the cost of remediation was factored into either or both fair market valuation appraisals offered in this proceeding.

TSIO Appendix B at 5-6.

*Comments*

Aqua stated that it does not oppose Standard Data Requests No. 26 and 27 concerning a general description of the potential environmental compliance issues of the system and a general outline of any plans that the Company may have for fixing the compliance issues. Aqua Comments at 19-20. Aqua stated that it opposes providing estimated dates of compliance, plans for remediation, estimated costs of remediation, and if those costs were factor in the appraisals. Id. at 20. Aqua claimed that it will not have incurred the expense at the time of filing to have an engineer develop an engineering study on the compliance issues and provide options and alternatives to remediating the compliance issues along with the associated costs. Id. Aqua suggested that compliance be generally discussed as the specifics will not be known at the time of filing. Id. at 20, 21.

*Reply Comments*

With regard to No. 26, the OCA argued that No. 26.a and 26.b may be addressed in the APA's appendices. OCA Reply Comments at 14. In addition, the OCA argued that it seems likely that the Buyer would have made some estimate of plans for remediation and costs so that it understood what exposure it would have related to compliance issues. Id. The OCA argued that this does not require an engineering study. Id. The OCA also argued that whether the UVEs factored the cost of remediation into their appraisals should be readily known based on the appraisals. Id. The OCA further noted that Aqua's opposition to No. 27 is unfounded for the same reasons. Id.

*Conclusion*

Initially, we correct numbering of the Standard Data Requests No. 26 and No. 27 in the TSIO, which are now properly labeled as No. 20 and 21. See Appendix B at 5. However, we refer to these as No. 26 and 27 above to avoid confusion as parties referred to the same in comments and reply comments. Below we refer to these data requests as Standard Data Requests No. 20 and 21 to align with Appendix B.

As with other data requests discussed above, we note that Standard Data Requests No. 20.b—e and 21.b—e are intended to request only estimates (at minimum). Accordingly, we make the following revisions to No. 20 and 21:

20. Are there any outstanding compliance issues that the Seller's system has pending with the PA Department of Environmental Protection. If yes, provide the following information:

...

c. Explain Buyer's anticipated or actual plan for remediation;

...

e. Indicate whether the cost of remediation was or is anticipated to be factored into either or both fair market valuation appraisals offered in this proceeding.

21. Are there any outstanding compliance issues that the Seller's system has pending with the US Environmental Protection Agency. If yes, provide the following information:

...

c. Explain Buyer's anticipated or actual plan for remediation;

...

e. Indicate whether the cost of remediation was or is anticipated to be factored into either or both fair market valuation appraisals offered in this proceeding.

See Appendix B at 5-6. We ask that Section 1329 applicants make a good faith effort to provide this information to the extent that it exists at the time of filing.

*The Uniform Standards of Professional Appraisal Practice*

In the TSIO, the Commission discussed the potential for substantial variances in the fair market valuation of the same properties due to inconsistent assumptions or flaws in appraisal methodology. To the extent that we can establish appropriate guidelines and consistent assumptions for UVE appraisals, it can be expected that variances in the fair market value appraisals for the same property can be reduced, and concomitantly, the Commission and stakeholders can have more confidence in the reasonableness of the negotiated purchase price.

The Commission invited stakeholders to discuss the range of values in Section 1329 proceedings to date and comment on whether the Commission should use that data as a "check" on the reasonableness of the negotiated purchase price. For instance, if an acquiring public utility's average rate base per customer were approximately \$3,500, what multiple of that amount represents a reasonable acquisition price, given that a Section 1329 fair market value implicitly endorses that some acquisition subsidy will occur?

In addition, the Commission recognized that the Appraisal Standard Board updates the Uniform Standards of Professional Appraisal Practice (USPAP) every two years. The Commission interpreted the language of Section 1329(a)(3) to mandate that UVEs verify the use of the current edition effective when the UVE developed the submitted appraisal. The TSIO concluded that appraisals based on outdated or expired versions of the USPAP cannot support valuations under Section 1329 and will not be accepted as competent evidence.

#### *Comments*

With regard to the use of a range of values, Aqua proposed that ratemaking rate base requests exceeding \$15,000 net plant per customer should be more thoroughly reviewed by the Commission for whether such a transaction would be in the public interest. Aqua Comments at 21-22. For ratemaking rate base requests between \$7,500 and \$15,000 net plant per customer, Aqua proposed that the Commission require documentation of the stand-alone rate impact of such request on the acquired customers. Id. at 22. Aqua further proposed that a ratemaking rate base request that is \$7,500 and below should garner less scrutiny from the Commission and provide an additional data point that such a transaction is likely to be in the public interest. Id. Aqua also indicated that it agrees that the most recent version of the USPAP should be used. Id.

BIE strongly discouraged the use of a range of values from previous Section 1329 proceedings as a check on the reasonableness of a negotiated purchase price. BIE Comments at 6. BIE claimed that using a range of values is arbitrary due to the differing circumstances of individual system value. Id. BIE argued that each system to be acquired should be assessed on the specific facts and circumstances related to the system, such as size, customer count, and compliance with environmental standards, which have an effect on the average rate base cost per customer. Id. In addition, BIE argued that there have not been enough Section 1329 proceedings to create such a range of values. Id. BIE claimed that using a range of values could arbitrarily inflate purchase prices, thereby harming ratepayers who pay for the return of and on the rate base. Id.

HRG commented that it has reservations regarding the Commission drawing conclusions based on previously complete valuation proceedings. HRG Comments at 1. HRG argued that the number of completed Section 1329 proceedings may be a relatively small data set from which to draw any fair and reasonable conclusions. Id. at 1-2. HRG noted that, after a few more years of completed proceedings, some type of statistical deviation/model could be produced with a larger data set. Id. at 2. HRG also argued that location has an impact on price such that two identical systems—one in an urban area and one in a rural area—could have different valuations because of original cost. Id. In addition, HRG claimed that it is noticing a possible trend for transactions with a plant and transactions that are strictly collection and conveyance/distribution systems, but that fair and reasonable conclusions cannot be drawn without a larger data set. Id. Moreover, HRG argued that the number of customers may not be the best means for checking the reasonableness of a negotiated purchase price.

The OCA stated that it is concerned that the use of a standard net plant per customer amount or metric is not reasonable outside of each application. OCA Comments at 8. The OCA argued that the facts of each case must be considered and the cost per customer amount must be put

into context. Id. The OCA argued that such considerations cannot be applied generally to all 1329 acquisitions. Id. at 9. The OCA also claimed that future costs may vary depending on whether the buyer needs to invest money in the acquired system and whether there are provisions in the APA that could prevent future costs from being allocated to the acquired customers. Id. Lastly, the OCA stated that it agrees that the most recent version of the USPAP should be used. Id.

#### *Reply Comments*

Aqua reiterated its proposals for ratemaking rate base requests exceeding \$15,000, between \$7,500 and \$15,000, and at or below \$7,500. Aqua Reply Comments at 5.

BIE argued that Aqua's proposal fails to consider that each system to be acquired has differing circumstances, characteristics, and challenges, including size, customer count, compliance with environmental standards, and location, which would impact the net plant per customer. BIE Reply Comments at 6. BIE argued that solely because a system's net plant per customer is valued under \$15,000 does not mean the transaction is more likely to be in the public interest and should receive less scrutiny. Id. BIE argued that no conclusive determinations should be made simply because of the net plant per customer. Id. Further, BIE maintained that each acquisition should be analyzed based on its own individual facts and circumstances. Id.

The OCA reiterated that it does not support generic criteria for deciding what kind of review an application should receive. OCA Reply Comments at 15. The OCA argued that the cost per customer is only one piece of a very large puzzle. Id. The OCA noted that, if a system is dilapidated and requires rehabilitation, \$7,500 or even \$4,000 per customer could be excessive. Id. The OCA claimed that there is a similar problem with comparing the average cost per acquired customer to the existing cost per customer. Id. The OCA argued that the cost per customer simply does not address the validity of the appraisals, the reasonableness of the purchase price of the acquired system, or the standards for approval of such applications.

PAWC stated that it agrees with BIE's opposition to the use of a range of values. PAWC Reply Comments at 11. PAWC claimed that Section 1329 is clear that the average of two UVE valuations is to be used as a check on the negotiated purchase price and that other data points should not be used for that purpose. Id. PAWC argued that every transaction is different, and that it is inappropriate to use the range of values from prior Section 1329 proceedings as a check on the reasonableness of the negotiated purchase price. Id. Further, PAWC stated that it agrees that UVEs should be required to use the version of the USPAP in effect at the time they perform their evaluation. Id. at 13.

#### *Conclusion*

First, we note that Section 1329 does not contain valuation guardrails. We also agree with BIE and HRG that, to date, there have not been not enough proceedings under Section 1329 to establish a reliable range of values and that the present number of proceedings is a relatively small data set from which to draw conclusions. Therefore, we decline to use a range of values as a check on the reasonableness of a negotiated purchase price at this time. We decline to adopt Aqua's proposals for these reasons. Nonetheless, the Commission is not opposed to revisiting this issue in the future when a larger set of

data points are available for water and wastewater system acquisitions in a variety of sizes, locations, and circumstances.

Additionally, the parties generally agree that UVEs should use the most recent version of the USPAP. As provided in the TSIO and above, we interpret Section 1329(a)(3) to mandate that UVEs verify the use of the USPAP edition effective when the UVE developed the submitted appraisal. Our interpretation of this Section remains intact. Appraisals based on outdated or expired versions of the USPAP cannot support valuations under Section 1329 and will not be accepted as competent evidence.

#### *Jurisdictional Exceptions*

In the TSIO, we proposed to establish several jurisdictional exceptions that UVEs will apply when developing the cost, income, and market valuation approaches pursuant to the USPAP as required of Section 1329 appraisals. Consistent with the USPAP's Jurisdictional Exception Rule, we proposed these jurisdictional exceptions in order to establish appropriate guidelines and consistent assumptions for Section 1329 appraisals by UVEs, comply with Commission precedent, and reduce variances in the fair market value appraisals for the same property. In conjunction with the TSIO, we provided Additional Guidelines for Utility Valuation Experts (Additional Guidelines), including jurisdictional exceptions under the cost, income, and market approaches.

Below we first address comments and reply comments on the Additional Guidelines in their entirety. We then address comments and reply comments regarding the jurisdictional exceptions for the cost, income, or market approaches specifically. Portions of the Additional Guidelines that did not generate comment remain intact and will not be addressed further herein. A copy of the final Additional Guidelines, including jurisdictional exceptions, is attached hereto as Appendix C.

#### *Comments*

Regarding the Additional Guidelines, Aqua requested clarification that the fee referenced in No. 3.c is limited to 2.5% is for each UVE and totals 5% consistent with Section 1329(b)(3). Aqua Comments at 23. In addition, Aqua argued that, with regard to other minor jurisdictional exceptions in Pennsylvania, if a minor jurisdictional exception is missed by a UVE, it should not invalidate the UVE's report. Id. at 26.

BIE stated that it supports the Additional Guidelines for Utility Valuation Experts and the jurisdictional exceptions. BIE Comments at 5. BIE noted that the list is not exhaustive and that the list is comprised only of exclusions that interested parties have experienced in Section 1329 applications to date. Id. BIE argued that the list should be considered a living document in which stakeholders can add or amend exclusions that may arise in future applications. Id.

PAWC indicated concern about the procedure by which the Commission might create future jurisdictional exceptions. PAWC Comments at 11. PAWC claimed that, since jurisdictional exceptions have state-wide application, they should not be adopted in a specific case involving a limited number of parties. Id. PAWC argued that they should be adopted through a proceeding, such as a supplemental implementation order or a policy statement proceeding, in which all interested parties are provided notice and an opportunity to be heard. Id.

#### *Reply Comments*

BIE indicated that it disagrees with PAWC's suggestion that the jurisdictional exceptions only be adopted through a proceeding such a supplemental implementation order or policy statement and not through specific cases. BIE Reply Comments at 5. BIE argued that the list should have the ability to be modified so that, when an application sheds light upon a new issue, it can potentially be added to this list. Id. BIE argued that adopting PAWC's position may severely limit the parties to Section 1329 proceedings in their ability to review filings and make recommendations. Id.

PAWC requested that the Commission clarify that an order should only be considered a jurisdictional exception where it is an order of general applicability in a proceeding in which all interested parties have been afforded due process on the jurisdictional exception in question. PAWC Reply Comments at 10. PAWC argued that the approval of a settlement agreement between one utility and the statutory advocates should not establish a jurisdictional exception that is binding on all utilities. Id.

#### *Conclusion*

As it pertains to the Additional Guidelines generally, No. 3.c states that UVEs, along with Seller and Buyer, must establish that a UVE fee is limited to 2.5% of fair market value. Appendix C at 1. Further, Section 1329(b)(3) provides that "Fees eligible for inclusion may be of an amount not exceeding 5% of the fair market value of the selling utility or a fee approved by the commission. 66 Pa.C.S. § 1329(b)(3). The total fee for both UVEs is 5%. We agree with Aqua that the fee referenced here means 2.5% for each UVE. Further clarification is unnecessary.

Regarding Aqua's concern that a UVE may inadvertently overlook a minor jurisdictional exception, we expect UVEs to make a good faith effort to adhere to all jurisdictional exceptions but understand that an unintentional omission is possible. If a UVE overlooks a minor jurisdictional exception, we expect the UVE to promptly notify the parties and correct the error. Patterns of omission that significantly impact the accuracy of an appraisal should be evaluated on a case-by-case basis.

In terms of jurisdictional exceptions that may not be included in the Additional Guidelines, we agree with BIE that the list is not exhaustive. As stated in the TSIO, there are other minor jurisdictional exceptions, such as recovery of public fire hydrant costs in utility rates pursuant to 66 Pa.C.S. § 1328, that are not explicitly included in the list. UVEs should be cognizant of the peculiar facets of Pennsylvania law and adjust appraisals accordingly. A Section 1329 appraisal is compliant with the USPAP, when it resolves a conflict between the USPAP and Pennsylvania law by giving preference to Pennsylvania law. The list in the Additional Guidelines is intended to serve as a guide to highlight some of the major jurisdictional exceptions in Pennsylvania that have arisen in Section 1329 proceedings to date; it is not comprehensive. The application of additional jurisdictional exceptions may be necessary in a particular appraisal depending on the circumstances of that transaction. However, in future cases, a settlement agreement between one utility and the statutory advocates in a particular case will not automatically bind other utilities to the jurisdictional exceptions contained therein. To the extent that a stakeholder believes that the Commission should modify its jurisdictional guidelines, it is free to petition for modification at any time.



*Cost, Income, and Market Approaches*

The cost approach measures value by determining the amount of money required to replace or reproduce future service capability of the system; this approach develops the total cost less accrued depreciation. In the TSIO, we provided:

1. Cost approach may measure value by:
  - a. determining investment required to replace or reproduce future service capability
  - b. developing total cost less accrued depreciation for Selling Utility assets
  - c. determining the original cost of the system
2. Cost approach materials shall:
  - a. explain choice of reproduction cost vs. replacement cost
  - b. not adjust the cost of land by the ENR index
  - c. exclude overhead costs, future capital improvements, and going concern value
  - d. use consistent rate of inflation for all classes of assets, unless reasonably justified

TSIO Appendix C at 2.

The income approach is based on the principle that capitalizing or discounting the future income stream to a present value can indicate the value of a business. Two methods can be used: capitalization of earning or cash flow or the discounted cash flow (DCF) method. In the TSIO, we provided:

1. Income approach may measure value by:
  - a. Capitalization of earnings or cash flow
  - b. Discounted cash flow (DCF) method
2. Income approach materials shall exclude:
  - a. Going concern value
  - b. Future capital improvements
  - c. Erosion of cash flow
  - d. Rate base/rate of return estimates

TSIO Appendix C at 2.

The market approach is based on the principle that the value of the system to be acquired can be estimated by comparison to the market value of companies in the same or similar line of business (market multiples method), or comparison to the purchases or sales of businesses in the same or similar line of business (selected transactions method). In the TSIO we provided:

1. Market approach shall use the current customer count of the Selling Utility
2. Market approach shall exclude:
  - a. Future capital improvements
  - b. Any type of adjustment or adder in the nature of "going concern" or goodwill

TSIO Appendix C at 2.

*Comments*

For the cost approach, Aqua requested clarification that, in No. 1.b, the total cost less depreciation is not the only value to establish the cost approach. Aqua Comments at 24. Aqua also requested clarification that, in No. 1.c, the original cost is not the only value to establish the cost approach. Id. For the income approach, Aqua stated that it opposes No. 2.b. Id. at 25. Aqua argued that future

capital improvements are used in the development of the DCF method and that capital improvements are considered and subtracted out in the development of the Debt Free Net Cash Flows. Id. Aqua argued that excluding future capital improvement from consideration in developing the DCF method will artificially increase the overall income approach value. Id.

For the cost approach, CWA argued that this approach should identify the original cost of land when first dedicated to utility service. CWA Comments at 3. CWA argued that, because the value of land is not depreciable, the current value of land should not be included in the valuation of the acquired system, nor should the value of the land be factored by the ENR index or any other index. Id. CWA also argued that the UVEs should explain what depreciation rates were used to estimate accrued depreciation and explain if those rates differ from the Commission authorized rates for the Buyer. Id.

The OCA proposed modifications and additions to the jurisdictional exceptions for the cost, market, and income approach. First, for all approaches, the OCA proposed the following addition:

1. The going concern, overhead, and provision for erosion of cash flow or return add ons shall not be used or included in appraisals.

OCA Comments, Attachment B at 2. Next, for the cost approach, the OCA proposed the following addition:

- If the reproduction cost methodology is used, valuation of the collection mains will not be treated differently or as special circumstance unless reasonably justified.

OCA Comments, Attachment B at 1. For the income approach, the OCA proposed the following modifications and additions:

2. Income approach materials shall exclude:
  - ...
  - c. Erosion of cash flow or erosion on return
  - d. Rate base/rate of return methodology

3. Calculations done under the Income Approach will clearly describe the basis for discount rate(s) in the report rather than only in the exhibits. The following information should be provided about the discount rate(s) used:

- a. The capital structure used in the analysis with an explanation as to why the capital structure was selected. If Company's actual capital structure was not used, explain why.
- b. The cost of equity used in the analysis, and the basis for the cost of equity.
- c. The cost of debt used in the analysis. If the Company's actual cost of debt was not used, explain why not.
4. If a capitalization rate is used, the calculation of the capitalization rate and the basis for the growth rate will be disclosed and fully explained.

OCA Comments, Attachment B at 2. Lastly, for the market approach, the OCA proposed the following additions:

3. Speculative growth adjustments will not be used, consistent with *New Garden* (Order pp. 52-53). U.S. Census Data and relevant and applicable regional planning commission reports may be used as a basis

to determine growth in a subject area. OCA reserved the right to challenge the specific use of the data in each case.

4. The proxy group used for calculating market value should not be limited to only companies which engage in Pennsylvania fair market value acquisitions. Aqua agrees that it will provide the terms of this agreement to any UVE prior to engaging the UVE.

5. Net book financials multiplier shall not be used.

6. Comparable sales used to establish the valuation should not be limited to those that the UVE previously appraised.

7. Comparable sales used to establish the valuation should use the current customers.

8. Comparable sales used to establish the valuation should not include the value of future capital improvement projects.

Id. The OCA claimed that its proposed jurisdictional exceptions are based on cases that have been filed to date under Section 1329. OCA Comments at 9. The OCA argued that its proposed jurisdictional exceptions are reasonable and should be adopted. Id.

For the cost approach, HRG argued that overhead costs should be permitted in No. 2.c. HRG Comments at 2. HRG noted that overhead costs include engineering, review fees, legal fees, permitting, surveying, financing, and construction administration and inspection. Id. HRG argued that overhead costs are required to replace the same facilities prior to the actual construction cost of the sanitary sewers. Id. HRG claimed that, depending on size, an overhead percentage in the range of 30% to 35% covers the soft cost of the project. Id. HRG claimed that the total project cost includes the cost to physically construct the asset along with overhead costs, which are integral to the project and necessary for what is physically constructed to properly function, meet regulatory requirement, and have the legal ability to be installed. Id. HRG argued that soft costs are fundamental in reproducing the system and it would be improper not to include these costs. Id. HRG argued that the Commission should consider allowing 25% to 30% of overhead costs, which is a conservative estimate, to be included in the cost approach. Id.

*Reply Comments*

Aqua stated that it generally does not oppose the OCA's modifications and additions as the language largely tracks prior settlement agreements on file with the Commission. Aqua Reply Comments at 5-6.

For the cost approach, the OCA argued that overhead costs should not be added to the known original cost. OCA Reply Comments at 15. The OCA argued that, if there were a situation where overhead costs were warranted, the UVE should demonstrate that overhead costs are definitively not already part of the original cost and provide an actual breakdown of overhead costs incurred. Id. at 15-16. The OCA claimed that simply using a percentage of the cost of the mains is speculative and not sufficient. Id.

PAWC stated that it agrees with HRG that, for the cost approach, the phrasing of No. 2.c should be "exclude overhead cost add-on." PAWC Reply Comments at 17. PAWC claims that the phrase "overhead cost add-on" is consistent with the language used in Section 1329 settlements involving PAWC and Aqua. Id. PAWC argued that, generally, overhead costs are capitalized and included in

the overall costs of a construction project and, when the construction project is placed in service, the overhead costs are then allocated to the major asset components of the project. Id. PAWC argued that, as a result, overhead costs should be included in the original cost of assets. Id.

Additionally, PAWC stated that it objects to the OCA's proposed No. 3 and 4 for the market approach and proposed No. 3 and 4 for the income approach. PAWC Reply Comments at 10. PAWC argued that, if included at all, these items are more appropriately included in the Additional Guidelines. Id. PAWC claimed that proposed No. 3 and 4 for the market approach seem to be taken verbatim from a settlement agreement and should be edited before becoming applicable on a state-wide basis. Id. PAWC also claimed that proposed No. 4 for the income approach does not appear necessary to resolve a conflict between the USPAP and Pennsylvania law. Id.

*Conclusion*

First, as to Aqua's concern regarding the cost approach, we note that No. 1 makes clear that the total cost less depreciation referenced in No. 1.b is only one measure of value. Likewise, the original cost referenced in No. 1.c is only one measure of value. As for CWA's concerns regarding this approach, we note that No. 2.b states that cost approach materials shall not adjust the cost of land by the ENR index.

Next, we generally accept the OCA's proposed modifications and additions to the jurisdictional exceptions, including those applicable to all approaches as well as those applicable to the cost, income, and market approaches individually. We note that these modifications and additions are based largely on adjustments accepted by the Commission in prior Section 1329 proceedings. For instance, speculative growth adjustments should not be used. We also note that, for this reason, Aqua does not oppose these modifications and additions. Additionally, we agree with PAWC's recommendation to revise proposed No. 3 and No. 4 under the market and income approaches by eliminating references to specific utilities or parties as the jurisdictional exceptions are intended to be applicable to all Section 1329 proceedings. The list of revised jurisdictional exceptions is follows:

**Jurisdictional Exceptions**

As a general matter, going concern, overhead, and erosion of cash flow or return add-ons shall not be included in appraisals under the cost, income, or market approaches.

**Cost Approach**

- ...
- 2. Cost approach materials shall:
  - a. explain choice of reproduction cost vs. replacement cost
    - i. If the reproduction cost methodology is used, valuation of the collection mains will not be treated differently or as special circumstance, unless reasonably justified.

**Income Approach**

- ...
- 2. Income approach materials shall exclude:
  - ...
  - c. erosion of cash flow or erosion on return

- d. rate base/rate of return [ estimates ] methodology
3. Calculations done under the income approach will clearly describe the basis for discount rate(s) in the report rather than only in the exhibits. The following information should be provided about the discount rate(s) used:
- a. the capital structure used in the analysis with an explanation as to why the capital structure was selected
- i. If Company's actual capital structure was not used, explain why.
- b. the cost of equity used in the analysis, and the basis for the cost of equity
- c. the cost of debt used in the analysis
- i. If the Company's actual cost of debt was not used, explain why not.
4. If a capitalization rate is used, the calculation of the capitalization rate and the basis for the growth rate will be disclosed and fully explained.

### Market Approach

- ...
2. Market approach shall exclude:
- ...
- b. Any type of adjustment or adder in the nature of [ **“going concern” or** ] goodwill.
3. Speculative growth adjustments will not be used. U.S. Census Data and relevant and applicable regional planning commission reports may be used as a basis to determine growth in a subject area.
4. The proxy group used for calculating market value should not be limited to only companies which engage in Pennsylvania fair market value acquisitions.
5. Net book financials multiplier shall not be used.
6. Comparable sales used to establish the valuation should not be limited to those that the UVE previously appraised.
7. Comparable sales used to establish the valuation should use the current customers.
8. Comparable sales used to establish the valuation should not include the value of future capital improvement projects.

See Appendix C at 2-3.

Lastly, we reiterate that, while the Additional Guidelines include many jurisdictional exceptions that have arisen in Section 1329 proceedings thus far, the list is not comprehensive, and the application of additional jurisdictional exceptions may be necessary in a particular Section 1329 valuation based on the circumstances of the transaction at issue.

### *UVE Direct Testimony*

In the TSIO, we concluded that, as experts testifying to the valuation of rate base assets, UVEs must submit written direct testimony in support of any appraisal completed pursuant to Section 1329(a)(5) and submitted in support of a request for fair market valuation for rate setting purposes. We directed that UVE direct testimony be filed as part of the application as set forth in the Application Filing Checklist. To assist Buyers, Sellers, and UVEs, we included with the TSIO a direct testimony template and examples of the types of substantive issues

that UVEs should address in direct testimony. See TSIO Appendix D. We directed that UVEs submit written direct testimony substantially in the form of Appendix D, and at minimum, addressing the topics contained therein. We asked stakeholders to provide comments on how the template may be improved to make Section 1329 applications more efficient for applicants, litigants, and the Commission.

### *Comments*

Aqua stated that it does not oppose providing direct testimony of the UVEs with the application. Aqua Comments at 26. Aqua argued that the sample UVE direct testimony included with the TSIO is a guide for UVEs and that testimony provided by the UVEs that does not exactly mirror the question and answer in that sample should not be considered deficient in determining whether an application is complete. Id.

BIE noted that, previously, the Seller's UVE direct testimony was not introduced at the outset of the case and was submitted on the same date as rebuttal testimony. BIE Comments at 7. BIE argued that all testimony supporting the application should be introduced with the application to give all parties a fair opportunity for thorough investigation. Id. BIE also argued that it is important that UVE testimony cover the substantive issues within Appendix D to streamline the process and reduce the need for discovery. Id. BIE claimed that, if UVE testimony adheres to Appendix D as a baseline, parties will be able to quickly determine whether applicants meet minimum compliance with Section 1329. Id. at 7-8. Further, BIE noted that Appendix D asks the UVE to identify how they determined a value under the cost, income, and market approach and to provide an explanation for the weighting given to each approach. Id. at 8. BIE argued that the weighting methodology used by the UVE can have a significant impact on the resulting acquisition price and should be supported thoroughly by the UVE. Id.

The OCA indicated that it strongly supports the Commission's requirement that UVE testimony must be provided with the application and in the same format required of expert witnesses. OCA Comments at 10. The OCA noted its support for the suggestion in the model UVE testimony that the UVE state whether the UVE has any affiliation with either the Seller or the Buyer. Id. The OCA argued that the Commission's directives regarding UVE testimony permit all stakeholders to better understand the basis of the UVEs recommendations and analyses and, as a result, will help to reduce discovery and streamline the issues raised in testimony. Id. The OCA proposed minor wording changes to the direct testimony template. See OCA Comments, Attachment C.

PAWC made arguments similar to those raised with regard to Items 13 and 14. See PAWC Comments at 3. PAWC commented that a UVE is independent of the entity hiring it and that a Buyer or Seller cannot dictate to its UVE what the fair market valuation will conclude or what the UVE will say in its testimony. PAWC Comments at 7. PAWC argued that the TSIO should make clear that a Buyer or Seller may challenge the testimony and report of its own UVE and the other party's UVE, if so desired. Id.

### *Reply Comments*

Aqua indicated that it does not oppose the changes suggested by the OCA. Aqua Reply Comments at 6. Aqua reiterated that the sample UVE direct testimony included with the TSIO is a guide for UVEs. Id.



In response to PAWC's arguments, BIE noted that it understands that filing the Seller's testimony with the application could potentially create an issue if the Buyer wants to challenge the Seller's testimony, as the Buyer and Seller are two distinct parties to the litigation. BIE Reply Comments at 6. BIE reiterated that it strongly supports the requirement that all UVE testimony be provided at the time an application is filed. Id.

In response to PAWC's arguments, the OCA noted that, if the Seller declines to intervene and the Buyer declines to sponsor the Seller's testimony, one solution is to join the Seller as an indispensable party. OCA Reply Comments at 16.

PAWC stated that it has no objections to the OCA's proposed changes. PAWC Reply Comments at 10. PAWC requested that the Commission clarify that the suggested language in the template is only a suggestion. Id. at 11. PAWC argued that UVEs may modify the template as necessary and appropriate in any particular case. Id.

#### *Conclusion*

Regarding Aqua's concern that UVE testimony that does not mirror the template will be considered deficient in determining whether an application is complete, we reiterate that TUS does not review the veracity or substantive quality of information that an applicant may submit to fulfill the threshold requirements of the Application Filing Checklist. TSIO at 15. A non-material variation from the template alone shall not be grounds for a determination that a filing is insufficient.

As for concerns regarding UVE variance from the template, we note that the template is intended to serve as a starting point for UVEs to develop suitable testimony. As stated in the TSIO and above, UVEs registered pursuant to 66 Pa.C.S. § 1329(a)(1) shall submit written direct testimony substantially in the form of Appendix D, and at a minimum, addressing the topics contained in Appendix D. The template may be used by UVEs to establish minimum compliance. While the template provides a baseline for UVE direct testimony, UVEs may and are expected to expand upon the template as necessary to properly address the nuances of a particular transaction.

With regard to the OCA's proposed minor wording changes to the template, we note that the proposed changes are unopposed, and we adopt several of these changes. A copy of the final UVE direct testimony template is attached hereto as Appendix D.

#### *Issues Not Identified in the TSIO for Review and Modification*

As noted above, in the TSIO, we sought comments and recommendations regarding the Commission's proposals to improve the processes, evidence, and guidelines for Section 1329 applications. We noted that only certain areas of the FIO were subject to review and modification and that we would address only those areas.

In comments, supplemental comments, and reply comments, some parties discussed issues not identified in the TSIO as areas of the FIO subject to review and modification. At this time, we decline to revise the FIO as to these issues, which include, inter alia, the use of a single application for water and wastewater acquisitions, the establishment of a 30-day review period for appeals of

staff determinations to reject incomplete applications, the scope and standard of the Commission's review and analysis, and the burden of proof for applicants. We note that the majority of these issues have been addressed in prior proceedings and Commission orders involving Section 1329. Moreover, the TSIO is clear that we will revise only the areas of the FIO identified therein.

#### *Conclusion*

While Section 1329 of the Pennsylvania Public Utility Code has proven useful as a tool to ensure that the price paid for public business assets by private interests reflects market rates, it is not without its challenges. The Commission seeks to improve existing procedures and guidelines to create more certainty in the process, improve the quality of valuations, ensure that the adjudication process is both fair and efficient, and, ultimately, reduce litigation regarding the Commission's final determinations. This Final Supplemental Implementation Order sets forth the procedures and guidelines necessary to achieve those goals; *Therefore,*

#### *It Is Ordered That:*

1. The Commission hereby adopts the procedures and guidelines set forth herein.
2. The Commission hereby adopts the Section 1329 Application Filing Checklist attached as Appendix A and as set forth herein.
3. The Commission hereby adopts the Section 1329 Application Standard Data Requests attached as Appendix B and as set forth herein.
4. In addition to others as may be appropriate, the Commission hereby adopts the Additional Guidelines for Utility Valuation Experts, including the jurisdictional exceptions to the Uniform Standards of Professional Appraisal Practice, attached as Appendix C and as set forth herein.
5. The Commission concludes that Utility Valuation Experts registered pursuant to 66 Pa.C.S. § 1329(a)(1) shall submit written direct testimony substantially in the form of Appendix D, and at minimum, addressing the topics contained in Appendix D to accompany all applications for fair market valuation pursuant to Section 1329.
6. A copy of this Final Supplemental Implementation Order shall be published in the *Pennsylvania Bulletin* and posted on the Commission's website at [www.puc.pa.gov](http://www.puc.pa.gov).
7. A copy of this Final Supplemental Implementation Order and the Appendices shall be served on all jurisdictional water and wastewater companies, the National Association of Water Companies—Pennsylvania Chapter, the Pennsylvania State Association of Township Supervisors, the Pennsylvania State Association of Boroughs, the Pennsylvania Municipal Authorities Association, the Pennsylvania Rural Water Association, the Commission's Bureau of Investigation and Enforcement, the Office of Consumer Advocate, and the Office of Small Business Advocate.
8. This docket shall be marked closed.

ROSEMARY CHIAVETTA,  
*Secretary*

## Appendix A

**Pennsylvania Public Utility Commission  
66 Pa.C.S. § 1329 Application Filing Checklist—Water/Wastewater**

Circle No or Yes for each item. If yes, identify the document, section, and page number containing the item as found within the filing including appropriate cross-reference of duplicate documents. If no, provide a detailed explanation of why the information is not included in the filing.

1.	Transmittal letter with caption and statement that the filing is pursuant to 66 Pa.C.S. § 1329.	No	Yes	Page No.
2.	Verification form that is signed by an officer or authorized employee of the company, is dated, and accurately references the case.	No	Yes	Page No.
3.	Certificate of Service indicating that a complete copy of the application with exhibits was served by registered or certified mail, return receipt requested, or by hand delivery, upon the statutory advocates (OCA, OSBA) and the Bureau of Investigation and Enforcement. <sup>9</sup>	No	Yes	Page No.
4.	Provide responses to Section 1329 Application Standard Data Requests, including electronic working documents (i.e., Excel spreadsheets) for all the filing's schedules, studies, and working papers to the extent practicable.	No	Yes	Page No.
5.	Provide copies of two independent appraisals by separate utility valuation experts for use in establishing the fair market value of the Selling Utility.	No	Yes	Page No.
6.	State the purchase price of the seller as agreed to by the buyer and seller. <sup>10</sup>	No	Yes	Page No.
7.	State the total fees paid to the utility valuation experts for providing the completed appraisals for the acquisition and provide documentation, i.e., the valuation service agreement and all associated invoices, supporting the subject fee amounts.	No	Yes	Page No.
8.	Buyer and Seller Verification Statements:			
	a. Provide a verification statement of the Buyer that its utility valuation expert was selected by the Buyer.	No	Yes	Page No.
	b. Provide a verification statement of the Seller that its utility valuation expert was selected by the Seller.	No	Yes	Page No.
9.	Utility Valuation Expert Verification Statements:			
	a. Buyer Utility Valuation Expert has no affiliation with the buyer or seller	No	Yes	Page No.
	b. Buyer Utility Valuation Expert determined fair market value in compliance with the most recent edition of the Uniform Standards of Professional Appraisal Practice as of the date of the report employing the cost, market, and income approaches.	No	Yes	Page No.
	c. Buyer Utility Valuation Expert applied applicable jurisdictional exceptions to the submitted appraisal.	No	Yes	Page No.
	d. Seller Utility Valuation Expert has no affiliation with the buyer or seller	No	Yes	Page No.
	e. Seller Utility Valuation Expert determined fair market value in compliance with the most recent edition of the Uniform Standards of Professional Appraisal Practice as of the date of the report employing the cost, market, and income approaches.	No	Yes	Page No.
	f. Seller Utility Valuation Expert applied applicable jurisdictional exceptions to the submitted appraisal.	No	Yes	Page No.
10.	Estimated or, if available, actual transaction and closing costs incurred by the buyer that will be included in its rate base.	No	Yes	Page No.
11.	State the ratemaking rate base as required in 66 Pa.C.S. § 1329 and specify whether it is based on either the fair market value determined by the valuation experts or the asset purchase price.	No	Yes	Page No.
12.	Provide a proposed tariff containing a rate equal to the existing rates of the seller at the time of the acquisition and a rate stabilization plan, if applicable to the acquisition.	No	Yes	Page No.
13.	Seller Testimony			
	a. Provide seller direct testimony supporting the application, if any.	No	Yes	Page No.
	b. Provide seller UVE direct testimony.	No	Yes	Page No.
14.	Buyer Testimony:			
	a. Provide buyer direct testimony supporting the application.	No	Yes	Page No.
	b. Provide buyer UVE direct testimony.	No	Yes	Page No.
15.	Plant in Service:			

<sup>9</sup> See Notes on last page of this Checklist; filers will be instructed to also serve other parties when the application is accepted.

<sup>10</sup> "Seller" refers to the selling municipality; "buyer" refers to the acquiring entity.

	a. Provide an inventory of the used and useful plant assets to be transferred. Identify separately any utility plant that is held for future use. <sup>11</sup>	No	Yes	Page No.
	b. Provide a list of all non-depreciable property such as land and rights-of-way.	No	Yes	Page No.
	c. State the DEP-permitted productive or treatment capacity of sources or treatment facility and the pipe sizes and material used for construction for all transmission and distribution or collection facilities.	No	Yes	Page No.
	d. State the elevations of major facilities and service areas.	No	Yes	Page No.
	e. State the approximate time schedule for installation of the various component facilities.	No	Yes	Page No.
	f. State the tentative journal entries for booking the acquisition.	No	Yes	Page No.
16.	Map of Service Area—provide a scalable map or plan of suitable scale highlighting the boundaries of the proposed service area that includes:			
	a. The extent of the proposed service area with any existing adjoining service areas identified.	No	Yes	Page No.
	b. A north arrow depicting map orientation.	No	Yes	Page No.
	c. A written description of the boundaries for the service territory utilizing bearing angles and distances.	No	Yes	Page No.
	d. Size of the service territory area in terms of acres or square miles.	No	Yes	Page No.
	e. Identification and depiction of all municipal boundaries relative to the service area.	No	Yes	Page No.
	f. Depiction of the location or route of the waterworks or wastewater collection, treatment or disposal facilities.	No	Yes	Page No.
17.	Customers:			
	a. State the seller's actual number of customers by class and quantify the related consumption or gallons treated in the current calendar year and future number of connections anticipated for the next 5 years and, if available, the next 10 years.	No	Yes	Page No.
	b. Buyer shall demonstrate its ability to provide adequate water supply, treatment, storage and distribution or adequate wastewater collection, treatment or disposal capacity to meet present and future customer demands.	No	Yes	Page No.
	c. For <b>water</b> system acquisitions, quantify the number of public and private fire hydrants.	No	Yes	Page No.
18.	Rates:			
	a. State the current rates of the seller.	No	Yes	Page No.
	b. Provide a copy of the seller's current rules and regulations for service.	No	Yes	Page No.
	c. Provide a proposed tariff or tariff supplement showing the rates, proposed rules, and conditions of service.	No	Yes	Page No.
	d. Provide a copy of the notification sent, or which will be sent, to affected customers describing the filing and the anticipated effect on rates.	No	Yes	Page No.
19.	Cost of Service:			
	a. Provide a copy of the seller's two most recent audited financial statements.	No	Yes	Page No.
	b. Provide a copy of the seller's two most recent adopted budgets.	No	Yes	Page No.
	c. Provide a copy of the seller's most recent annual report filed with the Commonwealth's Department of Community and Economic Development.	No	Yes	Page No.
	d. Provide calculations quantifying the projected revenues and expenses for the acquisition.	No	Yes	Page No.
	e. State whether the seller has any outstanding loans on the utility plant and identify the nature, terms, and payment history.	No	Yes	Page No.
20.	Proof of Compliance—provide proof of compliance with applicable design, construction and operation standards of DEP or of the county health department, or both, including:			
	a. For <b>water</b> system acquisitions, provide copies of the public water supply/water quality management permits for the utility plant.	No	Yes	Page No.
	b. For <b>wastewater</b> system acquisitions, provide copies of the water quality management and National Pollution Discharge Elimination System (NPDES) permits for the utility plant.	No	Yes	Page No.
	c. For <b>wastewater</b> system acquisitions, provide a copy of the Chapter 94 Municipal Wasteload Management Report that was most recently submitted to DEP.	No	Yes	Page No.
	d. Valid buyer's certified operators' certificates appropriate to the facilities being acquired.	No	Yes	Page No.

<sup>11</sup> The inventory is to be developed from available records, maps, work orders, debt issue closing documents funding construction projects, and other sources to ensure an accurate listing of utility plant by utility account.



	e. Provide documentation evidencing a 5-year compliance history with DEP with an explanation of each violation for the seller's utilities that have been providing service as well as provide a copy of any DEP-approved corrective action plans.	No	Yes	Page No.
	f. Provide documentation of all Notices of Violation issued to seller by DEP for the last 5 years, an explanation of each, including a description of any corrective or compliance measures taken.	No	Yes	Page No.
	g. Provide documentation evidencing a 5-year compliance history with DEP of other utilities owned or operated, or both, by the buyer, including affiliates, and their officers and parent corporations with regard to the provision of utility service. <sup>12</sup>	No	Yes	Page No.
	h. Provide a statement clarifying whether the acquired plant will be physically interconnected to the buyer's system or be operated as a standalone system.	No	Yes	Page No.
	i. Provide a statement that explains how the acquisition will fit into the current operations of the buyer.	No	Yes	Page No.
	j. Provide a statement that identifies the staff, district or division of the buyer that will operate and manage the acquisition.	No	Yes	Page No.
	k. Provide a statement quantifying the distance in miles the acquisition is from the buyer's existing system or facilities.	No	Yes	Page No.
	l. Provide a statement that identifies all planned physical, operational and managerial changes of the buyer that will occur after closing and state the timeframe and cost for each.	No	Yes	Page No.
21.	Affected Persons. State the identity of all public utilities, municipalities, municipal authorities, cooperatives and associations which provide public water service or wastewater collection, treatment or disposal service within each municipality, or a municipality directly adjacent to the municipality(ies), in which the applicant seeks to provide service that abuts or is situated within one mile of the applicant's proposed facilities.	No	Yes	Page No.
22.	Other requirements—demonstrate compliance with the following:	No	Yes	Page No.
	a. For <b>wastewater</b> system acquisitions, demonstrate compliance with the DEP-approved Act 537 Official Sewage Facilities Plans for the affected municipalities (including the extent of the requested service territory).	No	Yes	Page No.
	b. For <b>wastewater</b> system acquisitions, provide a copy of the DEP-approved Act 537 Official Sewage Facilities Plans for the affected municipalities.	No	Yes	Page No.
	c. For <b>wastewater</b> system acquisitions, state the method of water service being provided in the requested wastewater service territory (i.e., public water or private wells) and identify the name of water utility, if applicable.	No	Yes	Page No.
	d. For <b>water</b> system acquisitions, state the method of wastewater service being provided in the requested water service territory (i.e., public wastewater or private on-lot) and identify the name of wastewater utility, if applicable.	No	Yes	Page No.
	e. Provide evidence the filing is consistent with the affected municipality and county comprehensive plans if the filing proposes to expand service beyond the existing plant footprint.	No	Yes	Page No.
23.	Verification:			
	a. For <b>water</b> system acquisitions, provide a verification that the water sources and customers are metered in accordance with 52 Pa. Code § 65.7 (relating to metered service). If unmetered water service is currently provided, the applicant shall provide a metering plan to the Commission.	No	Yes	Page No.
	b. Include a statement that there is no affiliation between the buyer and seller.	No	Yes	Page No.
	c. Include a statement that the agreement was conducted at arm's length.	No	Yes	Page No.
	d. Include a statement explaining how the customers will benefit from the Buyer's ownership.	No	Yes	Page No.
24.	Asset Purchase Agreement (APA):	No	Yes	Page No.
	a. Provide a copy of the APA that is signed by all parties.	No	Yes	Page No.
	b. APA clearly states the purchase price and terms.	No	Yes	Page No.
	c. APA clearly states whether all assets or only a portion of the assets are to be purchased (e.g., water treatment and distribution or wastewater collection and treatment).	No	Yes	Page No.
	d. APA adequately describes the assets to be acquired.	No	Yes	Page No.
	e. APA adequately describes the assets to be excluded.	No	Yes	Page No.
25.	Provide a copy of all municipal and affiliate contracts to be assumed by buyer as part of the acquisition and a list and annual dollar value of other contracts.	No	Yes	Page No.

<sup>12</sup> Regarding Checklist Item 20(g), Class A public utilities need only submit compliance history for operations in the neighboring areas or a statement attesting to their compliance with this item.

*Notes:*

All information disclosed within this application is considered public information unless specifically labeled confidential. Applicants are responsible for disclosing to the Secretary's Bureau that which is privileged or confidential information and not otherwise available to the public. **Submit one copy of all confidential information, on documents stamped CONFIDENTIAL at the top in clear and conspicuous letters, in a separate envelope (but still attached to the application) to the Secretary's Office along with the Application.**

If you e-file your application, separately mail any confidential information specifically identifying that you have e-filed the application. Be sure to specify the Applicant's name, and provide the e-filing confirmation page.

Once the application is reviewed and accepted as filed, the Commission will issue a secretarial letter instructing the Applicant to publish notice in local newspapers of general circulation and to serve (electronically if acceptable to recipient) the following:

- each city, borough, town, township, county and related planning office which is included whole or in part in the proposed service area;
- a water or wastewater utility, municipal corporation or authority which provides water or wastewater collection, treatment or disposal service to the public and whose service area abuts or is within 1 mile of the service area proposed in the application; and
- the Department of Environmental Protection's central and regional offices.

### Appendix B

#### Section 1329 Application Standard Data Requests

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##### Instructions for Standard Data Requests

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Pursuant to the Commission directives in the February 28, 2019, Final Supplemental Implementation Order at Docket No. M-2016-2543193, and in accordance with 66 Pa.C.S. §§ 503—505, the Commission directs that an Applicant(s) requesting fair market valuation of acquired utility assets pursuant to 66 Pa.C.S. § 1329 shall answer the Section 1329 Application Standard Data Requests in writing and shall verify the same on behalf of the Applicant(s).

- 1) These Standard Data Requests shall be construed as a continuing request. The Applicant(s) is obliged to change, supplement and correct all answers to data requests to conform to available information; including such information as first becomes available to the Applicant(s) after the answers hereto are filed.
- 2) Restate the data request immediately preceding each response.
- 3) Identify the name, title, and business address of each person(s) providing each response.
- 4) Provide the date on which the response was created.
- 5) Divulge all information that is within the knowledge, possession, control, or custody of Applicant(s) or may be reasonably ascertained thereby. The term "Applicant," "Applicants," "Company," whether used generically or by name, or "you," as used herein includes the

Applicant(s) its agents, employees, contractors, or other representatives who will provide data in support of the Application.

6) As used herein the word "document" or "workpaper" includes, but is not limited to, the original and all copies in whatever form, stored or contained in or on whatever media or medium including computerized memory, magnetic, electronic, or optical media, regardless of origin and whether or not including additional writing thereon or attached thereto, and may consist of:

- a) notations of any sort concerning conversations, telephone calls, meetings or other communications;
- b) bulletins, transcripts, diaries, analyses, summaries, correspondence and enclosures, circulars, opinions, studies, investigations, questionnaires and surveys;
- c) worksheets, and all drafts, preliminary versions, alterations, modifications, revisions, changes, amendments and written comments concerning the foregoing.

7) Documents may be submitted under proprietary or confidential seal, but a claim of confidentiality does not excuse Applicant(s) from providing timely responses.

8) Responses must be provided along with the Application.

9) Pursuant to 52 Pa. Code § 1.36, if persons other than those submitting a verification in support of the Application sponsor responses to these Standard Data Requests each must sign and date a copy of a verification.

#### **Rates/Ratemaking**

1. Estimate the potential monthly incremental cost impact on existing and acquired customers following the actual results of the Buyer's most recently adjudicated base rate proceeding, whether litigated or settled, allocating the fair market value of the acquired system according to the Buyer's previously approved single-tariff pricing model.

a. In the case of a wastewater acquisition, a Buyer that employs a combined revenue requirement pursuant to 66 Pa.C.S. § 1311 will provide information assuming a combined water and wastewater revenue requirement consistent with its most recent adjudicated base rate proceeding.

b. If a Buyer has filed the thirty-day notice of 52 Pa. Code § 53.45(a), or has filed a rate case, it should calculate the above using data as proposed in its upcoming or filed rate case.

2. If the Buyer has a present intention to increase the acquired system's rates to a certain level, please state the basis for the targeted rate.

3. Provide the annual depreciation expense using the purchase price/proposed rate base. If the exact depreciation expense is not available, provide the best estimate of the annual depreciation expense. Show how the depreciation expense is calculated.

4. Provide an estimate of the annual revenue requirement of the municipal system under the Buyer's ownership. Provide the assumptions for the annual revenue requirement, including expected rate of return, expected depreciation expense, O&M expenses, etc.

5. Other than the STAS, does Buyer's current water/wastewater tariff include any provisions that would fall under "pass-through costs or charges imposed by the Commonwealth of Pennsylvania"?

6. Provide a listing of any entities that currently receive free service from the Seller.

7. In the next rate case, does buyer anticipate including the acquired system in a combined revenue requirement?

8. If Seller has increased rates in the last year, please state the date of the increase and provide a copy of the new rate schedule and the total annual revenues produced under the new rates.

9. Are there any leases, easements, and access to public rights-of-way that Buyer will need in order to provide service which will not be conveyed at closing? If yes, identify when the conveyance will take place and whether there will be additional costs involved.

#### **Costs/Benefits**

10. Provide a breakdown of the estimated transaction and closing costs. Provide invoices to support any transaction and closing costs that have already been incurred.

11. Please describe known and anticipated general expense savings and efficiencies under Buyer's ownership. State the basis for all assumptions used in developing these costs and provide all supporting documentation for the assumptions, if available.

12. Please provide a copy of the Seller's request for proposals (if there was one) and any accompanying exhibits with respect to the proposed sale of the system.

13. Please provide a copy of the proposal and exhibits of the Buyer for the purchase of Seller's system.

14. Provide a copy of the Buyer's offer to purchase the Seller's system and the Seller's response to that offer.

#### **Appraisals**

15. For each UVE in this case, please provide the following, if not already provided:

a. A list of valuations of utility property performed by the UVE;

b. A list of appraisals of utility property performed by the UVE;

c. A list of all dockets in which the UVE submitted testimony to a public utility commission related to the appraisal of utility property; and

d. An electronic copy of or electronic link to testimony in which the UVE testified on public utility fair value acquisitions in the past two years.

16. Please explain each discount rate used in the appraisals, including explanations of the capital structure, cost of equity and cost of debt. State the basis for each input. Provide all sources, documentation, calculations and/or workpapers used in determining the inputs.

17. Please explain whether the UVE used replacement cost or reproduction cost and why that methodology was chosen.

18. Please provide a copy of the source for the purchase price and number of customers for each comparable acquisition used in the appraisals.

19. Have Buyer's and Seller's UVE corresponded with regard to their respective fair market value appraisals of the assets at issue in this case? If yes, provide the following information:

a. Identify the nature and date(s) of correspondence;

b. Identify the type(s) of correspondence (i.e. written, verbal, etc); and,

c. Provide copies of any written correspondence exchanged between the UVEs

#### **Miscellaneous**

20. Are there any outstanding compliance issues that the Seller's system has pending with the PA Department of Environmental Protection. If yes, provide the following information:

a. Identify the compliance issue(s);

b. Provide an estimated date of compliance;

c. Explain Buyer's anticipated or actual plan for remediation;

d. Provide Buyer's estimated costs for remediation; and,

e. Indicate whether the cost of remediation was or is anticipated to be factored into either or both fair market valuation appraisals offered in this proceeding.

21. Are there any outstanding compliance issues that the Seller's system has pending with the US Environmental Protection Agency. If yes, provide the following information:

a. Identify the compliance issue(s);

b. Provide an estimated date of compliance;

c. Explain Buyer's anticipated or actual plan for remediation;

d. Provide Buyer's estimated costs for remediation; and

e. Indicate whether the cost of remediation was or is anticipated to be factored into either or both fair market valuation appraisals offered in this proceeding.

#### **Appendix C**

#### **Pennsylvania Public Utility Commission Additional Guidelines for Utility Valuation Experts General**

1. 66 Pa.C.S. § 1329(a) requires the use of the current biennial edition of the Uniform Standards for Professional Appraisal Practice (USPAP) to develop cost, market, and income valuations of the Selling Utility. Valuations developed from outdated or expired editions of the USPAP do not constitute competent evidence and will not be accepted by the Commission as satisfying the Application Checklist.

2. By Order, the Commission recognizes the use of the Jurisdictional Exception Rule of the USPAP. Materials submitted in support of a request for Section 1329 fair market valuation pursuant to the USPAP must conform to applicable Pennsylvania law even if in conflict with USPAP. For purposes of Section 1329, Pennsylvania law includes the Pennsylvania Constitution, statutes, regulations, court precedent, and administrative rules and orders issued by administrative agencies.

3. UVEs, along with Seller and Buyer, must establish that a UVE:

a. is a Commission registered UVE

b. has no conflict of interest pursuant to the USPAP

c. fee is limited to 2.5% of fair market value

d. incorporated the licensed engineer's assessment of the tangible assets of the Selling Utility into the UVE appraisal as required by Section 1329(a)(4)

e. has verified that valuation methods used (cost, income and market) comply with the current edition of the USPAP



4. UVE materials submitted in support of a request for Section 1329 fair market valuation must:

- a. explain the basis of the individual weight given to the cost, market, and income approach
- b. use the Commission’s quarterly earnings report for capital structure, cost of debt, cost of equity and weighted average cost of capital. The quarterly earnings report used must be contemporaneous with the production of the valuation.

5. Both the Seller and Buyer UVE will support their respective appraisals with data and written direct testimony at the time a request for Section 1329 valuation is filed with the Commission. The Commission will not accept untimely direct testimony, or untimely testimony in the nature of direct, regarding a UVE appraisal.

**Jurisdictional Exceptions**

As a general matter, going concern, overhead, and erosion of cash flow or return add-ons shall not be included in appraisals under the cost, income, or market approaches.

**Cost Approach**

- 1. Cost approach may measure value by:
  - a. determining investment required to replace or reproduce future service capability
  - b. developing total cost less accrued depreciation for Selling Utility assets
  - c. determining the original cost of the system
- 2. Cost approach materials shall:
  - a. explain choice of reproduction cost vs. replacement cost
    - i. If the reproduction cost methodology is used, valuation of the collection mains will not be treated differently or as special circumstance, unless reasonably justified.
  - b. not adjust the cost of land by the ENR index
  - c. exclude overhead costs, future capital improvements, and going concern value
  - d. use consistent rate of inflation for all classes of assets, unless reasonably justified

**Income Approach**

- 1. Income approach may measure value by:
  - a. Capitalization of earnings or cash flow
  - b. Discounted cash flow (DCF) method
- 2. Income approach materials shall exclude:

- a. Going concern value
- b. Future capital improvements
- c. Erosion of cash flow or erosion on return
- d. Rate base/rate of return methodology

3. Calculations done under the income approach will clearly describe the basis for discount rate(s) in the report rather than only in the exhibits. The following information should be provided about the discount rate(s) used:

- a. the capital structure used in the analysis with an explanation as to why the capital structure was selected
  - i. If Company’s actual capital structure was not used, explain why.
  - b. the cost of equity used in the analysis, and the basis for the cost of equity
  - c. the cost of debt used in the analysis
    - 1. If the Company’s actual cost of debt was not used, explain why not.
    - 4. If a capitalization rate is used, the calculation of the capitalization rate and the basis for the growth rate will be disclosed and fully explained.

**Market Approach**

- 1. Market approach shall use the current customer count of the Selling Utility
- 2. Market approach shall exclude:
  - a. Future capital improvements
  - b. Any type of adjustment or adder in the nature of goodwill
- 3. Speculative growth adjustments will not be used. U.S. Census Data and relevant and applicable regional planning commission reports may be used as a basis to determine growth in a subject area.
- 4. The proxy group used for calculating market value should not be limited to only companies which engage in Pennsylvania fair market value acquisitions.
- 5. Net book financials multiplier shall not be used.
- 6. Comparable sales used to establish the valuation should not be limited to those that the UVE previously appraised.
- 7. Comparable sales used to establish the valuation should use the current customers.
- 8. Comparable sales used to establish the valuation should not include the value of future capital improvement projects.

**Appendix D**

SELLING/BUYING UTILITY STATEMENT NO. \_\_\_\_\_

**BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Application of \_\_\_\_\_ to Obtain :  
 a Fair Market Valuation for the Acquisition of the :  
 Water/Wastewater Assets of the Borough of \_\_\_\_\_ : A-20\_\_\_\_ - \_\_\_\_\_  
 \_\_\_\_\_ in \_\_\_\_\_ :  
 County, Pennsylvania :

**DIRECT TESTIMONY  
OF  
IMA UVE  
UTILITY VALUATION EXPERT  
SELLING/BUYING UTILITY  
Month/Day/Year**

**Q. Please state your name, business address, and occupation.**

A. My name is \_\_\_\_\_. My business address is \_\_\_\_\_. I am an associate/principal/owner/president of \_\_\_\_\_. This testimony was prepared with the assistance of \_\_\_\_\_ an employee of \_\_\_\_\_ under my direction.

**Q. Please describe your qualifications and indicate if you are registered as a Utility Valuation Expert with the Pennsylvania Public Utility Commission.**

A. A Curriculum Vitae for \_\_\_\_\_ and \_\_\_\_\_ is attached to this testimony. I am a registered Utility Valuation Expert with the Pennsylvania Public Utility Commission. I obtained that registration in MONTH of YEAR.

**Q. What is the purpose of your testimony?**

A. This direct testimony provides clarification and explanation of the appraisal I provided to the Selling/Buying Utility pursuant to 66 Pa.C.S. § 1329(a)(5) and in accordance with Uniform Standards of Professional Appraisal Practice YEAR Edition.

**Q: Are you advocating for any party or outcome?**

A: No. The Ethics Rule of the USPAP, applicable here pursuant to 66 Pa.C.S. § 1329(a)(3), requires that I perform the appraisal with impartiality, objectivity, and independence, and without accommodation of personal interests. In addition, the USPAP Ethics Rule requires that I not perform the assignment with bias, that I must not advocate the cause or interest of any party or issue and that I must not accept an assignment that includes the reporting of predetermined opinions and conclusions.

**Q. Do you have any affiliation with either the Selling Utility or the Acquiring Public Utility or Entity?**

A. No. Other than the current assignment to provide the subject appraisal, I have no business or personal relationships with any party to the proposed acquisition.

**Q. What is your fee arrangement to deliver the appraisal?**

A. A copy of the fee arrangement is attached as Appendix \_\_\_\_\_. In summary, I am to receive \$ \_\_\_\_\_ in compensation, which represents \_\_\_ % of the proposed valuation.

**Q. Will you receive that fee regardless of whether the Commission approves the proposed transaction or whether it closes?**

A. Yes. 66 Pa.C.S. § 1329(a)((3) mandates that I comply with the USPAP when developing my appraisal. Under the USPAP I cannot perform the appraisal with bias and acceptance of a fee contingent on a particular outcome like closing or Commission approval would violate that Ethics Rule.

**Q. Have you prepared any exhibits, schedules, or appendices to accompany your direct testimony?**

A. Yes. Schedules \_\_\_\_\_ and \_\_\_\_\_ are included herein, and Appendix \_\_\_\_\_ and \_\_\_\_\_ are attached. The appraisal I submitted to the Seller/Buyer pursuant to Section 1329(a)(5) is attached as well. All were prepared under my supervision and control.

**Q. Please summarize your results of the application of the cost, market, and income approaches to valuation.**

A. The summary the cost, market, and income approach is included below as Seller/Buyer UVE Schedule No. 1.

Approach	Indicated Value	Weight	Weighted Value
Cost Approach	\$	%	\$
Market Approach	\$	%	\$
Income Approach	\$	%	\$
		100%	\$
<b>Conclusion</b>			<b>\$</b>

**Q. Describe any assumptions, extraordinary assumptions, hypothetical conditions, and/or limiting conditions that you applied to the valuation**

A. I employed an assumption regarding...

**Q. How was each assumption used and what was its result?**

A. I used the assumption about \_\_\_\_\_ to account for \_\_\_\_\_. The result was that \_\_\_\_\_. I also used an assumption regarding \_\_\_\_\_ because of the \_\_\_\_\_. The result there was to \_\_\_\_\_.

**Q. How did you develop the weighting applied to each approach in your appraisal and why are the individual weights you chose appropriate for this proposed transaction?**

**A.** For the cost approach I chose a weighting of \_\_\_\_ %. It is my opinion that this weighting is appropriate for the cost approach because...

For the market approach I chose a weighting of \_\_\_\_ %. It is my opinion that this weighting is appropriate for the cost approach because...

For the income approach I chose a weighting of \_\_\_\_ %. It is my opinion that this weighting is appropriate for the cost approach because...

**Q. Did you conduct an on-site inspection of the Selling Utility assets, and if so, what was its result on the appraisal?**

**A.** I inspected the Selling Utility assets on DATE, accompanied by Selling Utility employee \_\_\_\_\_. I inspected the \_\_\_\_\_, distribution/collection system in and around \_\_\_\_\_, and the \_\_\_\_\_. As a result, I determined that \_\_\_\_\_. This influenced my appraisal to the effect that \_\_\_\_\_.

**Q. What Utility Earnings Report was used to create the capital structure used in your appraisal?**

**A.** I used the QUARTER, YEAR Earnings Report of COMPANY.

**Q. What capital structure was used in your appraisal?**

**A.** The capital structure used in my appraisal is included below as Seller/Buyer UVE Schedule No. 2.

Type of Capital	Capital Ratio	Cost Rate	Weighted Cost
Debt	%	%	%
Preferred	%	%	%
Common Equity	%	%	%
<b>Total</b>	<b>100%</b>		<b>%</b>

**Cost Approach**

**Q. Regarding your application of the cost approach, what method did you use to determine the cost approach result (e.g. original cost, replacement cost, reproduction cost)?**

**A.** I used the \_\_\_\_\_ method.

**Q. What index, if any, did you use for that method?**

**A.** I used the \_\_\_\_\_ index.

**Q. Under your application of the cost approach what assets did you value or trend differently from other assets and why was that necessary?**

**A.** I valued the \_\_\_\_\_ independently of the \_\_\_\_\_. It is my opinion that an accurate appraisal requires this because \_\_\_\_\_.

**Q. Under your application of the cost approach, what year-end date did you use for calculating the depreciation reserve?**

**A.** I used the date of \_\_\_\_\_.

**Q. How did you determine the depreciation parameters of survival/retirement characteristics and service lives for the utility property under the cost approach?**

**A.** I determined those parameters by \_\_\_\_\_.

**Q. Why are those parameters appropriate?**

**A.** Those parameters are appropriate because \_\_\_\_\_.

**Market Approach**

**Q. Regarding your application of the market approach, what methods did you use to determine the market approach result?**

**A.** I used the \_\_\_\_\_ and \_\_\_\_\_ methods.

**Q. What assumptions, analyses, and/or adjustments did you make under each method?**

**A.** Under the \_\_\_\_\_ method, it is my opinion that \_\_\_\_\_ must be considered. Under the other method, I believe that an accurate result depends on adjusting \_\_\_\_\_ to better reflect that \_\_\_\_\_.

**Q. What were the results of each analysis you performed?**

**A.** The \_\_\_\_\_ analysis produced a result of \_\_\_\_\_. The other, a result of \_\_\_\_\_ was obtained.



**Q. Which results were used to determine your market approach result? Please explain why these results were used.**

A. I used the results of \_\_\_\_\_ because I believe those results represent an accurate assessment of \_\_\_\_\_.

**Q. What was the calculation you used to determine your overall market approach results?**

A. The calculation I used consisted of the following...

**Q. What comparable transactions or comparable sales, if any, did you evaluate to develop your market approach?**

A. I examined the flowing transactions to develop the result of my market approach. First, I examined the sale of \_\_\_\_\_ to \_\_\_\_\_ in YEAR. It is my opinion that this is a valid source of comparison to the transaction here because...

I next examined the sale of \_\_\_\_\_ to \_\_\_\_\_ in YEAR. I am of the opinion that this too is a valid source of comparison to the transaction here because...

Finally, I examined the sale of \_\_\_\_\_ to \_\_\_\_\_ in YEAR. This is a valid source of comparison to the instant transaction because...

### **Income Approach**

**Q. Regarding your application of the income approach, what method did you use to determine the income approach result?**

A. I used the \_\_\_\_\_ method.

**Q. What assumptions did you employ to develop your income approach result?**

A. Under the income approach, it is my opinion that \_\_\_\_\_ must be considered. I believe that an accurate result depends on adjusting \_\_\_\_\_ to better reflect how \_\_\_\_\_.

**Q. What discount rate did you use to calculate your income approach?**

A. I used a discount rate of \_\_\_\_\_.

**Q. What capital structure inputs differ from those identified in Seller/Buyer UVE Schedule No. 2?**

A. For the income approach I used a different input of \_\_\_\_\_ for the \_\_\_\_\_ because it is my opinion that \_\_\_\_\_. I believe it necessary to deviate from the Buyer's actual cost of capital because \_\_\_\_\_.

**Q. What is the source and basis of the alternative input you propose in the income approach?**

A. The source of the input may be found at \_\_\_\_\_. I have included a copy as Appendix C. The basis of this input is the \_\_\_\_\_.

**Q. If you used a terminal value in your discounted cash flow analysis what is the number of years over which the cash flows are considered?**

A. I considered those cash flows over \_\_\_\_\_ years.

**Q. What is the basis for using this number of years?**

A. It is my opinion that it is necessary to use \_\_\_\_\_ years to calculate terminal value because...

**Q. What number of Selling Utility customers or equivalent dwelling units did you use to value the Seller's system and how did you develop that number?**

A. I used \_\_\_\_\_ customers/EDUs. I obtained that number by examining \_\_\_\_\_ and \_\_\_\_\_. I then calculated the total used by \_\_\_\_\_.

**Q. Did you make any updates to your appraisal after it was submitted to the Seller/Buyer, and if so, what was the update, when was it made, and why was it necessary?**

A. I did not update or revise my appraisal after it was submitted to the Buyer/Seller.

**Q. Does this conclude your direct testimony?**

A. It does. However, by filing this direct testimony I understand that I may have the opportunity to submit testimony responsive to challenges to my appraisal.

[Pa.B. Doc. No. 19-410. Filed for public inspection March 15, 2019, 9:00 a.m.]

## **PENNSYLVANIA PUBLIC UTILITY COMMISSION**

### **Service of Notice of Motor Carrier Applications**

The following temporary authority and/or permanent authority applications for the right to render service as a

common carrier or contract carrier in this Commonwealth have been filed with the Pennsylvania Public Utility Commission. Formal protests and petitions to intervene must be filed in accordance with 52 Pa. Code (relating to public utilities). A protest shall indicate whether it applies to the temporary authority application, the permanent authority application, or both. Protests may only be filed if there is evidence that the applicant lacks fitness.

Protests based on endangering or impairing operations of an existing carrier will not be honored. 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 April 1, 2019. Documents filed in support of the applications are available for inspection and copying at the Office of the Secretary between 8 a.m. and 4:30 p.m., Monday through Friday, and at the business address of the respective applicant.

**Application of the following for approval to begin operating as common carriers for transportation of persons as described under the application.**

**A-2019-3007659. Lucille Paylor, Gregory Paylor, Tenants by Entirety** (260 Neil Road, Shippensburg, Cumberland County, PA 17257) for the right to begin to transport, as a common carrier, by motor vehicle, persons in paratransit service between points in the Counties of Cumberland, Dauphin, Franklin and Lancaster.

**Application 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 the application.**

**A-2019-3007166. Masha Mobile Moving and Storage, LLC, t/a Zippy Shell of Greater Philadelphia** (204 Marie Road, West Chester, PA 19380) for the right to begin to transport, as a common carrier, by motor vehicle, household goods in use, between points in Pennsylvania.

ROSEMARY CHIAVETTA,  
*Secretary*

[Pa.B. Doc. No. 19-411. Filed for public inspection March 15, 2019, 9:00 a.m.]

## PENNSYLVANIA PUBLIC UTILITY COMMISSION

### Wastewater Service

**A-2019-3008204. Aqua Pennsylvania Wastewater, Inc.** Application of Aqua Pennsylvania Wastewater, Inc. for approval to begin to offer, render, furnish and supply wastewater service to the public in an additional portion of Limerick Township, Montgomery County.

Formal protests and petitions to intervene must be filed in accordance with 52 Pa. Code (relating to public utilities) on or before April 1, 2019. 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. 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.pa.gov](http://www.puc.pa.gov) and at the applicant's business address.

*Applicant:* Aqua Pennsylvania Wastewater, Inc.

*Through and By Counsel:* Thomas T. Niesen, Esq., Thomas, Niesen and Thomas, LLC, 212 Locust Street, Suite 302, Harrisburg, PA 17101

ROSEMARY CHIAVETTA,  
*Secretary*

[Pa.B. Doc. No. 19-412. Filed for public inspection March 15, 2019, 9:00 a.m.]

## STATE HORSE RACING COMMISSION

### Claiming Regulations and Procedures; Thoroughbred Horse Racing

The State Horse Racing Commission (Commission) provides notice that on February 26, 2019, at its regularly scheduled public meeting, it issued an Order adopting, as a temporary regulation, an amendment to its existing thoroughbred claiming rules and regulations in 58 Pa. Code § 163.254 (relating to starting of claimed horses) by reducing the present 30-day time period to a 20-day time period for a subsequent start of a claimed horse in another race. This amendment was requested by the Pennsylvania Thoroughbred Horsemen's Association and the Horsemen's Benevolent and Protective Association. Entry of one's horses in claiming races and the ability to claim (that is, purchase) horses from out of those races is part of a voluntary program. Licensed individuals participating in claiming races understand the provisions, requirements and significant restrictions within claiming procedures. The Commission's Order was adopted under the authority of 3 Pa.C.S. §§ 9311(h) and 9312(6)(i) (relating to State Horse Racing Commission; and additional powers of commission), under Administrative Doc. No. 2019-2.

The general purpose of the Order is: (1) to specifically reduce the prohibition period to allow horses to participate in subsequent claiming races sooner; (2) to maintain a steady and consistent horse population at each licensed thoroughbred racetrack by increasing the horse's presence at the particular racetrack; and (3) to create uniformity and consistency of the rules at thoroughbred licensed racing facilities within the Commonwealth.

This Order and the Annex A will take effective upon publication in the *Pennsylvania Bulletin*. In addition, the Order and specific provisions have been posted and published on the Commission's web site and a copy may be accessed by the public at <http://www.agriculture.pa.gov/Animals/RacingCommission/commission/Pages/Publications.aspx>. The Commission will also provide copies of the Order upon request directed to (717) 787-5539.

THOMAS F. CHUCKAS, Jr.,  
*Director*

*Bureau of Thoroughbred Horse Racing*

[Pa.B. Doc. No. 19-413. Filed for public inspection March 15, 2019, 9:00 a.m.]

# PENNSYLVANIA BULLETIN

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Number 11

## Part II

This part contains the  
Rules and Regulations







# RULES AND REGULATIONS

## Title 4—ADMINISTRATION

### OFFICE OF ADMINISTRATION

#### [ 4 PA. CODE CH. 601—607 ]

#### Civil Service Reform

The Office of Administration hereby adopts temporary regulations by adding to Title 4 of the Pennsylvania Administrative Code, Part XV (relating to Office of Administration) and Subpart A (relating to Temporary Regulations—Civil Service Reform) to read as set forth in Annex A.

#### *Effective Date*

These temporary regulations will be effective on March 28, 2019.

#### *Statutory Authority*

Effective March 28, 2019, the act of June 28, 2018 (P.L. 460, No. 71) (Act 71) repeals the Civil Service Act of 1941, act of August 5, 1941 (P.L. 752, No. 286), as amended, (71 P.S. §§ 741.1—741.1005) (Civil Service Act), and provides for civil service reform in the areas of merit-based hiring, including civil service applications, examinations, certifications and promotions. Effective June 28, 2018, Act 71 authorized the Office of Administration to promulgate temporary regulations to implement Office of Administration duties as set forth in Act 71. The adoption of temporary regulations is not subject to sections 201—205 of the act of July 31, 1968 (P.L. 769, No. 240) (45 P.S. §§ 1201—1205), known as the Commonwealth Documents Law; section 204(b) of the Commonwealth Attorneys Act, act of October 15, 1980 (P.L. 950, No. 164) (71 P.S. § 732-204(b)); or the requirements of the Regulatory Review Act, act of June 25, 1982 (P.L. 633, No. 181) (71 P.S. §§ 745.1—745.15). See 71 Pa.C.S. § 2203(b) (relating to regulations). The temporary regulations will expire 3 years following the publication of these temporary regulations.

#### *Background and Need for the Temporary Regulations*

Act 71 transfers certain duties from the State Civil Service Commission (Commission) and the Director of the Commission to the Office of Administration. See 71 Pa.C.S. § 2201 (relating to transfer of duties). The Office of Administration is responsible for administering Act 71, except for Chapters 30 and 31 (relating to State Civil Service Commission and Director; and hearings and records). See 71 Pa.C.S. § 2202(a)(6) (relating to duties of Office of Administration). Under section 4 of Act 71, which pertains to effective dates, the Office of Administration must implement the transfer of duties beginning March 28, 2019. There is insufficient time to propose and publish final regulations prior to March 28, 2019. Accordingly, the Office of Administration elects to promulgate temporary regulations.

Under section 3 of Act 71, except for the added authority to promulgate temporary regulations; the transfer of the administration of merit system employment to the Office of Administration; the addition of Chapters 32 and 33 (relating to commission funds, costs and service; and records, status and appropriations); the transfer of records to the Office of Administration; and the addition of three terms to the definition section, the amendments in Act 71 are made to conform to the style of the *Pennsylvania Consolidated Statutes* and are not intended

to change or affect the legislative intent, judicial construction or administration and implementation of the Civil Service Act. Where practicable, and in the interest of continuity for appointing authorities and others, the Office of Administration followed the general format of the applicable Rules of The Civil Service Commission and incorporated the content of the corresponding Commission regulations into the temporary regulations. Notably, because the Commission did not promulgate regulations implementing the Act of July 7, 2016 (P.L. 465, No. 69) (Act 69) or the Act of November 21, 2016 (P.L. 1314, No. 167) (Act 167), and the content of those amendments were carried over into Act 71, the temporary regulations differ and/or include additional provisions implementing those amendments. The Office of Administration did not incorporate, in its temporary regulations, Commission regulations that merely restate provisions within Act 71, that are not applicable to the Office of Administration, or that are inconsistent with the Office of Administration's policies. Additionally, throughout the temporary regulations, when the Office of Administration incorporated the content of the Commission's regulations into the temporary regulations, the Office of Administration made revisions for clarity.

#### *Description of the Temporary Regulations*

Under section 3 of Act 71, 71 Pa.C.S. Part III (relating to civil service reform) is a continuation of the Civil Service Act, and except where indicated otherwise in Act 71, all activities initiated under the Civil Service Act continue and remain in full force and effect and may be completed under Act 71. Section 3 of Act 71 further provides that "contracts, obligations and collective bargaining agreements entered into under the Civil Service Act are not affected nor impaired by the repeal of the Civil Service Act." Given this clear statutory language, the Office of Administration determined it was unnecessary to address within each regulatory provision in the annex, the statutory transfer of duties or the continuation of activities performed under the Civil Service Act.

## GENERAL PROVISIONS

#### *Short Title*

Section 601.1 (relating to short title) sets forth the short title as "Merit System Employment Regulations." The Office of Administration selects this short title because it sufficiently describes the Office of Administration's duties in administering civil service employment within the Commonwealth and will not be confused with The Rules of The Civil Service Commission.

#### *Purpose*

Section 601.2 (relating to purpose) sets forth the purpose of the temporary regulations, which is to implement civil service reform as required by Act 71. The purpose of civil service reform, as reflected in Act 71, is "to create and sustain a modern merit system of employment within the Commonwealth work force that promotes the hiring, retention and promotion of highly qualified individuals, ensuring that government services are efficiently and effectively delivered to the public." See 71 Pa.C.S. § 2102 (relating to purpose). Under section 601.2(b), these temporary regulations implement and supplement the act and must be read together with the applicable provisions of the act.

### Definitions

Section 601.3 (relating to definitions) sets forth definitions for terms used in the temporary regulations. The Office of Administration incorporated, in its temporary regulations, applicable definitions from The Rules of The Civil Service Commission but made appropriate revisions to reflect the statutory transfer of duties from the Commission to the Office of Administration. See 4 Pa. Code § 91.3 (relating to definitions). The Office of Administration did not adopt, in its temporary regulations, terms specifically defined in Act 71, but rather, incorporated those terms by reference. Additionally, by incorporating the Commission's definitions into these temporary regulations, the Office of Administration made minor revisions for clarity. The Office of Administration also includes in its temporary regulations the following definitions: alternate rule, disability, eligible veteran, job specification, preferred reemployment list, reclassification, Senior Management Service and Special Advisor for Veterans' Programs.

A definition of "alternate rule" is necessary to distinguish between the rule of three and the ability of an appointing authority to select an alternate number other than three of the highest-ranking available individuals as permitted under 71 Pa.C.S. §§ 2401(b)(1)(iii) and 2402(b)(2) (relating to certification; and selection and appointment of eligibles). The Office of Administration defines the alternate rule as "a rule that gives appointing authorities the ability to select from all eligibles on an eligibility list or a specific alternative number of eligibles, other than three, but not less than three."

These temporary regulations include a definition of "disability" because that term is used in section 601.6 (relating to reasonable accommodations), which establishes procedures for requesting reasonable accommodations in the application and examination process. These temporary regulations define "disability" as follows: "as defined by the Americans with Disabilities Act of 1990, as amended (42 U.S.C.A. §§ 12101—12213) (ADA), a physical or mental impairment that substantially limits one or more major life activities, a record of such an impairment, or being regarded as having such an impairment."

These temporary regulations distinguish between veteran, as defined in Act 71, as compared to veterans that are eligible for veterans' preference under 51 Pa.C.S. Chapter 71 (relating to veterans' preference). In doing so, the Office of Administration defined eligible veteran as an individual, excluding spouses, who is eligible to receive an employment preference under 51 Pa.C.S. Chapter 71.

Under Act 71, the terms "job," "job title," "class" and "class of positions" are defined as a "group of positions in the classified service which are sufficiently similar in respect to the duties and responsibilities of the positions that the same: (1) descriptive title may be used for each position; (2) requirements as to experience, knowledge and ability are demanded of incumbents; (3) assessments may be used to choose qualified appointees; and (4) schedule of compensation may be made to apply with fairness under like working conditions." See 71 Pa.C.S. § 2102. For consistency and clarity, and where appropriate, the Office of Administration chooses to use the term "job" throughout the regulations instead of interchangeably using "job" and "class." Consistent with the use of the term "job," these temporary regulations use the term "job specification" and define it as a "written description of a job which defines and describes representative duties and responsibilities and sets forth the experience and

training that provides the knowledge, skills and abilities essential to the performance of the work of the job."

Although the Commission's regulations use the term "preferred reemployment list," the term is not defined in the regulations, but rather in Management Directive 580.30, Amended (Civil Service Leave of Absence and Return Rights). The Office of Administration adopted the definition from the management directive and defines "preferred reemployment list" as a "list of persons who had regular or probationary status and could not be returned from a civil service leave of absence due to the lack of a vacant position."

These temporary regulations define the term "reclassification." In defining reclassification, the Office of Administration adopted the Commission's definition of the term "reallocate," except that the Office of Administration uses the term "job" instead of class title within the definition. The Commission's regulations appear to use the terms "reclassify" and "reallocate" interchangeably; however, when referring to a change in a classification of a position from one job and code to another job and code, these temporary regulations use only the term "reclassification."

Although the Commission's regulations use the term "Senior Management Service," the term is not defined in the regulations, but rather in Management Directive 580.30, Amended (Civil Service Leave of Absence and Return Rights). The Office of Administration adopted the definition from the management directive and defines "Senior Management Service" as "[p]ositions in the commonwealth unclassified service that have broad policy participation and management responsibility."

These temporary regulations include a definition of "Special Advisor for Veterans' Programs" to provide a frame of reference for the section of these temporary regulations that sets forth the duties and responsibilities of the Special Advisor. The Office of Administration defines the "Special Advisor for Veterans' Programs" as the "individual appointed by the Secretary of Administration under 71 Pa.C.S. § 2202(a)(12) (relating to duties of Office of Administration)."

### Veterans' Preference

Section 601.4 (relating to veterans' preference) covers veterans' preference requirements for civil service employment. Under section 2201(a)(5) of Act 71, the Office of Administration is required to advertise that: "(i) veterans' preference is the law of this Commonwealth; (ii) to determine standing on each certified eligibility list, an additional 10 points shall be applied to the final examination score obtained by a veteran, in accordance with 51 Pa.C.S. § 7103 (relating to additional points in grading civil service examinations); and (iii) the same preferential rating given to veterans... shall be extended to include spouses of deceased or disabled veterans, in accordance with 51 Pa.C.S. § 7108 (relating to preference of spouses)."

The Office of Administration proposes this temporary regulation to ensure adherence to the legal requirements relating to veterans' preference. Notably, the Office of Administration does not incorporate the requirement in 51 Pa.C.S. § 7104(b) (relating to preference in appointment or promotion) which gives preference to veterans, in the context of veterans seeking promotion, as the Supreme Court of Pennsylvania held that provision unconstitutional. *Hoffman v. Township of Whitehall*, 677 A.2d 1200 (Pa. 1996).



*Age Preference*

Section 601.5 (relating to age preference) pertains to the statutory age preference requirement for the Department of Aging. See 71 P.S. § 581-3(b). While the Commission recognizes age preference in a management directive, the Office of Administration determined that it is more appropriate to include such requirements within its regulations. See Management Directive 580.21, Amended (Veterans' Preference on Classified Service Employment Certifications). These temporary regulations clarify that notwithstanding individuals qualifying for veterans' preference under 51 Pa.C.S. Chapter 71, individuals qualifying for age preference may be selected.

*Reasonable Accommodations*

Section 601.6 pertains to reasonable accommodations for individuals with disabilities seeking civil service appointments or promotions. The Commission's regulations do not have a corresponding provision. The Office of Administration includes this provision in its temporary regulations to ensure that individuals with disabilities understand how to request accommodations and to ensure compliance with Federal and State laws, including the ADA.

*Service to Departments, Boards and Commissions, Agencies and Political Subdivisions; Cooperation with Other Civil Service Agencies.*

Section 601.7 (relating to service to departments, boards and commissions, agencies and political subdivisions; cooperation with other civil service agencies) pertains to service to departments, boards, commissions, agencies and political subdivisions; and cooperation with other civil service agencies. This section implements 71 Pa.C.S. § 2901 (relating to service and cooperation). The Office of Administration incorporated in its temporary regulations the corresponding provisions of The Rules of The Civil Service Commission regarding acquisition of services and personnel actions by political subdivisions and made appropriate modifications to reflect the statutory transfer of duties from the Commission to the Office of Administration. See 4 Pa. Code § 93.8 (relating to service to departments, boards and commissions, agencies and political subdivisions; cooperation with other civil service agencies). The Office of Administration did not incorporate into its temporary regulations the Commission's regulation requiring maintenance of a list of classes of positions in the classified service and of classes of positions to which the services have been extended because this information will be accessible electronically on the Office of Administration's web site. See 4 Pa. Code § 93.8(a)(5). Additionally, the Office of Administration did not include in its temporary regulations the Commission's regulation that incorporates the act and regulations into contracts for services because this requirement is more appropriately addressed within those contracts. See 4 Pa. Code § 93.8(a)(6).

Regarding reimbursement for services, the Office of Administration incorporated in its temporary regulations the corresponding provisions of The Rules of The Civil Service Commission but modified reimbursement requirements for examinations delivered at test centers. See 4 Pa. Code § 93.8(b). Under these temporary regulations, an appointing authority will reimburse the Office of Administration on a semi-annual basis for the actual cost of preparing, administering and rating examinations delivered at test centers. Act 69 and Act 167 modernized the civil service hiring process, which resulted in a decrease in the use of test center examinations by appointing

authorities and an increase in the use of evaluations of experience and education. Under Act 71, the Office of Administration anticipates a continued decrease in the use of test center examinations. Because some agencies may choose not to use test center examinations or may significantly decrease the use of test center examinations, correlating the costs of the test center examination services to the actual service used by an appointing authority is a more equitable approach to reimbursement. Additionally, in incorporating the previously-referenced provisions of the Commission's regulations, the Office of Administration made minor revisions for clarity.

*Electronic records and signatures*

Section 601.8 (relating to electronic records and signatures) pertains to electronic records and signatures. This provision allows for the use and acceptance of electronic records, including electronic signatures, provided that such records and signatures conform to the Uniform Electronic Transactions Act (73 P.S. §§ 2260.303—2260.312), and other laws governing electronic records and signatures.

**SELECTION OF EMPLOYEES FOR ENTRANCE TO, OR PROMOTION IN, THE CLASSIFIED SERVICE**

*Examinations Requisite for Appointment and Promotion Application Requirements*

Section 602.1 (relating to application requirements) pertains to application requirements for the selection of employees for entrance to, or promotion in, the classified service and implements 71 Pa.C.S. § 2301 (relating to examinations requisite for appointment and promotion). The Office of Administration incorporated in its temporary regulations the corresponding provisions of The Rules of The Civil Service Commission and made appropriate revisions to reflect the statutory transfer of duties from the Commission to the Office of Administration. See 4 Pa. Code § 95.1 (relating to application requirements). In § 602.1(a)(1) and (3), the Office of Administration included provisions to reflect the usage of electronic applications and the implementation of vacancy-based hiring and postings. The Office of Administration clarified in § 602.1(b)(3) that the job specification is the primary basis and source of authority for the evaluation of the minimum qualifications of applicants for examinations. Section 602.1(b)(3) correlates to the Commission regulation at 4 Pa. Code § 95.14(a) (relating to use of class specifications in examinations); however, the Office of Administration believes this subject matter is more appropriately addressed under application requirements. Additionally, under § 602.1(c), the Office of Administration included sexual orientation, gender identity or expression, and AIDS or HIV status to the list of prohibited application questions.

In § 602.1(d), the Office of Administration incorporated in its temporary regulations the Commission regulation set forth at 4 Pa. Code § 95.1(d), but did not adopt provisions relating to applicants addicted to the use of narcotics or intoxicating beverages or with physical or mental disabilities. While the Office of Administration has the authority to specify "qualifications as permitted by law" in its regulations and in the announcements of examinations, the Office of Administration does not believe a general inquiry into addictions or physical and mental disabilities is appropriate in the application or examination process. See 71 Pa.C.S. § 2301(c). The Office of Administration includes in its temporary regulations a provision allowing for rejection of applicants and disqualification of eligibles for failure to meet Federal or State

law or regulations. Additionally, similar to the Commission regulation at 4 Pa. Code § 95.14, these temporary regulations allow for consideration of lack of professionalism, honesty, trustworthiness and dependability. In § 602.1(e), the Office of Administration includes a provision allowing the acceptance of applications filed after the announced final filing date if the Office of Administration determines extraordinary circumstances exist. In § 602.1(f), the Office of Administration did not include the Commission regulation addressing the conditional admittance and notice of acceptance of an application as those provisions are more appropriately addressed in a policy manual. See 4 Pa. Code § 95.1(f). Also, in incorporating the previously-referenced provisions of the Commission's regulations, the Office of Administration made minor revisions for clarity.

#### *Residence Requirements*

Section 602.2 (relating to residence requirements) pertains to residency requirements for the selection of employees for entrance to, or promotion in, the classified service and implements 71 Pa.C.S. § 2301(b). The Office of Administration incorporated in its temporary regulations the corresponding provisions of The Rules of The Civil Service Commission but made appropriate modifications to reflect the statutory transfer of duties from the Commission to the Office of Administration. See 4 Pa. Code § 95.2 (relating to residence requirements). Additionally, under § 602.2(a)(2), the Office of Administration clarified the statutory requirements for former residents. Also, in incorporating the previously-referenced provisions of the Commission's regulations, the Office of Administration made minor revisions for clarity.

#### *Selective Certifications*

Section 602.3 (relating to selective certifications) pertains to selective certification for the selection of employees for entrance to, or promotion in, the classified service. The Office of Administration did not adopt the corresponding Commission regulation at 4 Pa. Code § 95.5a (relating to special requirements) because it does not reflect the Act 69 amendment, which was also included in Act 71, requiring consideration of merit-related factors. See 71 Pa.C.S. § 2401(d). Under § 602.3(b), the Office of Administration clarified that appointing authorities must submit written requests to impose special requirements. The Office of Administration did not include specific provisions setting forth criteria necessary for selective certifications because Act 71 specifically addresses those requirements. See 71 Pa.C.S. § 2401(d).

#### *Promotion Procedure*

Section 602.4 (relating to promotion procedure) pertains to promotion procedures in the classified service and implements 71 Pa.C.S. § 2301(a) and (d). The Office of Administration incorporated in its temporary regulations the corresponding provisions of The Rules of The Civil Service Commission and made appropriate modifications to reflect the statutory transfer of duties from the Commission to the Office of Administration. See 4 Pa. Code § 95.7 (relating to promotion procedure). The Office of Administration did not adopt the Commission regulation at 4 Pa. Code § 95.7(c)(4)(v) because limiting promotions of individuals in unskilled positions to agencies listed in the definition of classified service is inconsistent with Act 71. See 71 Pa.C.S. § 2301(a)(1). Section 2301(a) of Act 71 does not limit promotion of individuals in unskilled positions to the classified positions set forth in the definition of classified service, but rather, provides for promotion into any classified position immediately above

the individuals' own position. Because the definition of classified service does not contain an all-inclusive list of agencies covered by Act 71, it is not appropriate to limit promotions to the agencies listed therein. These temporary regulations also clarify that competitive and noncompetitive promotion without examination is subject to Office of Administration approval and that appointing authorities must provide justification for using a noncompetitive promotion without examination. Additionally, in adopting the previously-referenced provisions of the Commission's regulations, the Office of Administration made minor revisions for clarity.

#### *Nature of Examinations*

##### *Frequency of Examinations*

Section 602.5 (relating to frequency of examinations) pertains to the frequency of examinations and implements 71 Pa.C.S. §§ 2302 and 2303 (relating to nature of examinations; and holding examination and rating competitors). The Office of Administration incorporated in its temporary regulations the corresponding provision of The Rules of The Civil Service Commission and made appropriate modifications to reflect the statutory transfer of duties from the Commission to the Office of Administration. See 4 Pa. Code § 95.11(a) (relating to frequency of examinations). The Office of Administration did not adopt the Commission regulation at 4 Pa. Code § 95.11(b) because this provision is redundant to section 95.11(a) and does not reflect changes in the administration of civil service examinations that occurred as a result of Act 69 and Act 167, which were subsequently incorporated into Act 71, that modernized the civil service hiring process. Additionally, in adopting the previously-referenced provisions of the Commission's regulations, the Office of Administration made minor revisions for clarity.

##### *Cooperation Regarding Examinations*

Section 602.6 (relating to cooperation regarding examinations) pertains to cooperation regarding examinations and implements 71 Pa.C.S. §§ 2302 and 2303. The Office of Administration incorporated in its temporary regulations the corresponding provisions of The Rules of The Civil Service Commission but made appropriate modifications to reflect the statutory transfer of duties from the Commission to the Office of Administration. See 4 Pa. Code § 95.12(a)—(c) (relating to cooperation regarding examinations). The Office of Administration did not adopt provisions in section 95.12(a) of the Commission's regulations that were redundant to other regulatory or statutory provisions or unnecessary given appointing authorities' ability to select the method of examination. Additionally, in adopting the previously-referenced provisions of the Commission's regulations, the Office of Administration made minor revisions for clarity.

##### *Tests in Examinations*

Section 602.7 (relating to tests in examinations) pertains to tests in examinations and implements 71 Pa.C.S. §§ 2301(d), 2302 and § 2305 (relating to ratings of competitors). The Office of Administration incorporated in its temporary regulations the corresponding provisions of The Rules of The Civil Service Commission and made appropriate modifications to reflect the statutory transfer of duties from the Commission to the Office of Administration. See 4 Pa. Code § 95.13 (relating to tests in examinations). In adopting the previously-referenced provisions of the Commission's regulations, the Office of Administration made minor revisions for clarity.

*Use of Position Description in Examinations.*

Section 602.8 (relating to use of position descriptions in examinations) pertains to use of position descriptions in examinations for the selection of employees for entrance to, or promotion in, the classified service, and implements 71 Pa.C.S. §§ 2301(c) and 2302. The Office of Administration incorporated in its temporary regulations the corresponding provisions of The Rules of The Civil Service Commission and made appropriate modifications to reflect the statutory transfer of duties from the Commission to the Office of Administration. See 4 Pa. Code § 95.14. In incorporating the Commission regulation relating to the basis for examination, the Office of Administration changed the primary basis from the classification standards for a job to position descriptions. Under Act 71, examinations must be practical in nature, relate to the duties and responsibilities of the position for which the applicant is being examined, and must fairly test the relative capacity and fitness of individuals examined to perform the duties of the position or class of positions to which the individuals seek to be appointed or promoted. See 71 Pa.C.S. § 2302(b). Consistent with Act 71, the Office of Administration chooses to focus the basis of the examination on the position description and duties because it believes this approach will provide a better assessment of the capacity and fitness of applicants and will result in a more qualified pool of eligibles. Additionally, the Office of Administration did not include in § 602.8 the Commission regulation making the job specification the primary basis and source of authority for the evaluation of the qualifications of applicants for examinations. See 4 Pa. Code § 95.14(a). Instead, the Office of Administration adopted this provision in § 602.1(b)(3) because the Office of Administration believes this subject matter is more appropriately addressed under application requirements.

Further, the Office of Administration did not incorporate in its temporary regulations the implied qualifications set forth in the Commission's regulations. See 4 Pa. Code § 95.14(b). The implied qualifications are redundant to inquiries made to determine merit and fitness under § 602.1(b) and (d) of these temporary regulations, are not appropriate inquiries in the application or examination process, and/or are more appropriately placed in job announcements.

*Administration of Examinations*

*Authority; Administration and Scoring of Examinations; Establishment and Maintenance of Competitive Standards; and Examination Accommodations*

Sections 602.9—602.12 pertain to the administration of examinations, including authority for the selection of the method of examination; administration and scoring of examination; and security of competitive standards, and implement 71 Pa.C.S. §§ 2301—2303 and 2305. The Office of Administration incorporated in its temporary regulations the corresponding provisions of The Rules of The Civil Service Commission and made appropriate modifications to reflect the statutory transfer of duties from the Commission to the Office of Administration. See 4 Pa. Code §§ 95.20, 95.21(c), 95.22 and 95.23. In incorporating the corresponding Commission regulations, the Office of Administration did not adopt provisions that were redundant to obligations and duties set forth in Act 71 or that were more appropriately placed in a policy manual or procedures. See 4 Pa. Code §§ 95.21(a), (b); 95.22(a) and 95.23(b) (relating to scheduling of examinations; administration and scoring of examinations; and security of competitive standards). Additionally, § 602.9

(relating to authority) differs from the corresponding Commission regulation at 4 Pa. Code § 95.20 (relating to authority) because the Office of Administration recognizes that appointing authorities are responsible for selecting the method of examination, as required under Act 71. See 71 Pa.C.S. § 2302(b). In § 602.12 (relating to examination accommodations), the Office of Administration incorporated in its temporary regulations the corresponding Commission regulation but clarified that special accommodations may include alternative formats, extended time and an alternate method of examination, after consultation with the appointing authority. See 4 Pa. Code § 95.49 (relating to special examinations). Additionally, in adopting the previously-referenced provisions of the Commission's regulations, the Office of Administration made revisions for clarity.

*Public Notice of Examinations*

*Content and Publication of Examination Announcements*

Section 602.13 (relating to content and publication of examination announcements) pertains to public notice of examinations and implements 71 Pa.C.S. § 2304 (relating to public notice of examinations). The Office of Administration incorporated in its temporary regulations the corresponding provision of The Rules of The Civil Service Commission and made appropriate modifications to reflect the statutory transfer of duties from the Commission to the Office of Administration. See 4 Pa. Code § 95.33(a) (relating to content and publication of examination announcements). The Office of Administration did not adopt the Commission regulations relating to maintenance of mailing lists, special assistance in recruitment or content of examination announcements as those provisions are more appropriately addressed in a policy manual. See 4 Pa. Code §§ 95.31, 95.32 (relating to maintenance of mailing lists; and special assistance in recruitment) and § 95.33(b). Additionally, in adopting the previously-referenced provision of the Commission's regulations, the Office of Administration made revisions for clarity.

*Ratings of Competitors*

*Qualifying Points on Examinations; Correction of Errors in Scoring or Eligibility; Calculation of Final Earned Ratings; Determination of Rank in Event of Tie; Examination Analysis and Alternatives; and Review of Eligibility or Examination Results.*

Sections 602.14—602.19 pertain to ratings of competitors, including qualifying points on examinations, correction of errors in scoring or eligibility, calculation of final earned ratings; determination of rank in event of tie; examination analysis and alternatives; and review of eligibility or examination results, and implement 71 Pa.C.S. § 2305 and §§ 2306 and 2307 (relating to establishment of eligible lists; and duration of eligible lists). The Office of Administration incorporated in its temporary regulations the corresponding provisions of The Rules of The Civil Service Commission and made appropriate modifications to reflect the statutory transfer of duties from the Commission to the Office of Administration. See 4 Pa. Code §§ 95.41, 95.45—95.49. In incorporating the previously-referenced provisions of the Commission, the Office of Administration made modifications to reflect vacancy-based hiring and the alternate rule to the rule of three as required by Act 71. See 71 Pa.C.S. §§ 2401 and 2402. The Office of Administration did not adopt corresponding Commission regulations relating to the effect of failing a higher but passing a lower level test and the effect of passing a higher but failing a lower level



test because those provisions do not reflect current testing procedures. See 4 Pa. Code § 95.41(c) and (d) (relating to qualifying points on examinations).

In § 602.19 (relating to review of eligibility or examination results), the Office of Administration incorporated in its temporary regulations the Commission's corresponding provision regarding procedures for challenging a finding of ineligibility or an examination score, except that the temporary regulations modified the time in which to challenge a finding of ineligibility or an examination score from 30 to 20 days. See 4 Pa. Code § 95.71 (relating to review of eligibility or examination results). Additionally, in adopting the previously-referenced provisions of the Commission's regulations, the Office of Administration made revisions for clarity.

#### *Establishment of Eligible Lists*

##### *Eligible Lists*

Section 602.20 (relating to eligible lists) pertains to the establishment of eligible lists and implements 71 Pa.C.S. § 2306. The Office of Administration incorporated in its temporary regulations the corresponding provisions of The Rules of The Civil Service Commission and made appropriate modifications to reflect the statutory transfer of duties from the Commission to the Office of Administration. See 4 Pa. Code § 95.51 (relating to eligible lists). Additionally, in adopting the previously-referenced provision of the Commission's regulations, the Office of Administration made revisions for clarity.

##### *Duration of Eligible Lists*

##### *Extension and Cancellation of Eligible Lists and Amendment of an Eligible List*

Sections 602.21 and 602.22 (relating to extension and cancellation of eligible lists; and amendment of an eligible list) pertain to the duration of employment and promotion list, including extension and cancellation of eligible lists and amendment of an eligible list, and implement 71 Pa.C.S. § 2307. The Office of Administration incorporated in its temporary regulations the corresponding provisions of The Rules of The Civil Service Commission and made appropriate modifications to reflect the statutory transfer of duties from the Commission to the Office of Administration. See 4 Pa. Code §§ 95.61 and 95.63 (relating to extension and cancellation of eligible lists; and amendment of an eligible list). The Office of Administration did not adopt the Commission regulation allowing up to 4 years for the duration of employment and promotion lists. Under Act 71, eligible lists terminate upon the establishment of an appropriate, new, eligible list, unless otherwise prescribed by the Office of Administration. While the Office of Administration may in its discretion fix the duration of eligibility list for a period of 4 years, the Office of Administration does not anticipate establishing lists for a 4-year period and thus, will consider the duration of lists on a case by case basis. See 4 Pa. Code 95.61(a). Additionally, in adopting the previously-referenced provisions of the Commission's regulations, the Office of Administration made revisions for clarity.

### **APPOINTMENT AND PROMOTION OF EMPLOYEES IN THE CLASSIFIED SERVICE**

#### *Certification*

##### *Multiple Lists; Certification of Eligible Lists; and Effect of Appointment from List.*

Sections 603.1—603.3 (relating to multiple lists; certification of eligible lists; and effect of appointment from list)

pertain to certification, including multiple lists, certification of eligible lists, effect of appointment from list, and restoration of eligibility and implement 71 Pa.C.S. § 2401. The Office of Administration incorporated in its temporary regulations corresponding provisions of The Rules of The Civil Service Commission and made appropriate modifications to the Commission's regulations to reflect the statutory transfer of duties from the Commission to the Office of Administration. See 4 Pa. Code §§ 97.1—97.4. As authorized by Act 71, the Office of Administration incorporated vacancy-based hiring standards throughout this subchapter. See 71 Pa.C.S. § 2401(1)(i). In incorporating the Commission's regulation relating to duration of certification (4 Pa. Code § 97.3(b) (relating to certification of eligible lists)), the Office of Administration modified the duration of the certification from 60 to 90 business days as required by Act 71. See 71 Pa.C.S. § 2402(b). Additionally, in adopting the previously-referenced provisions of the Commission's regulations, the Office of Administration made revisions for clarity.

#### *Selection and Appointment of Eligibles*

##### *Appointment Process; Removal of Eligible for Certification or Appointment; Prohibition Against Securing Withdrawal from Competition; and Consideration of Certified Eligibles.*

Sections 603.4—603.7 pertain to the appointment process; removal of eligibles; prohibition against securing withdrawal from competition; and consideration of certified eligible and implement 71 Pa.C.S. § 2402. The Office of Administration incorporated in its temporary regulations corresponding provisions of The Rules of The Civil Service Commission and made appropriate modifications to the Commission's regulations to reflect the statutory transfer of duties from the Commission to the Office of Administration. See 4 Pa. Code §§ 97.11, 97.13, 97.15 and 97.16. As authorized in Act 71, the Office of Administration incorporated standards for the alternate rule throughout this subchapter. See 71 Pa.C.S. §§ 2401 and 2402. In § 603.4(a) (relating to appointment process), the Office of Administration clarified that the rule of three does not prohibit an appointing authority from making an appointment if there are fewer than three available eligibles. This provision was previously in the Commission's definition of the rule of three; however, the Office of Administration determined that it is more appropriately placed in this section. Similarly, section 603.4(b)(4) clarifies that the alternate rule does not prohibit an appointing authority from making an appointment if there are fewer than the alternate rule elected by the appointing authority. In § 603.5 (relating to removal of eligible for certification or appointment), the Office of Administration expanded upon the procedures set forth in the Commission's corresponding regulation regarding removal of eligibles for certification or appointment. See 4 Pa. Code § 97.13 (relating to removal of eligible). In the Commission's corresponding regulation, Management Directive 580.34 (Removal of Eligibles for Certification or Appointment in the Classified Service) is incorporated by reference whereas the Office of Administration prefers regulatory requirements for those procedures. Additionally, in adopting the previously-referenced provisions of the Commission's regulations, the Office of Administration made revisions for clarity.

*Substitute Appointments*

*Conditions for Substitute Appointments and Promotions and Rights of Substitute Employees*

Sections 603.8 and 603.9 (relating to conditions for substitute appointments and promotions; and rights of substitute employees) pertain to substitute appointments in the appointment and promotion of employees in the classified service, which implements 71 Pa.C.S. § 2403 (relating to substitution during military leave). The Office of Administration incorporated in its temporary regulations corresponding provisions of The Rules of The Civil Service Commission and made appropriate modifications to the Commission's regulations to reflect the statutory transfer of duties from the Commission to the Office of Administration. See 4 Pa. Code §§ 97.20, 97.22 and 97.24 (relating to conditions for substitute appointments/promotions; rights of substitute employees; and duration of substitute appointments). Act 71 only provides for substitute appointments when an employee in the classified service is granted military leave; therefore, the Office of Administration did not incorporate in its temporary regulations the Commission's regulations that provide for substitute appointments for parental, sick or other leave where right of return is guaranteed or promotion. Additionally, the Office of Administration did not adopt corresponding Commission regulations that were procedural in nature and which are more appropriately addressed in a policy manual. See 4 Pa. Code § 97.21 (relating to evidence of substitute appointment). Additionally, in adopting the previously-referenced provisions of the Commission's regulations, the Office of Administration made revisions for clarity.

*Probationary Period*

*Duration and Extension of Probationary Periods; Effects of Leaves of Absence; Service in Higher-Level Position; Service in Same Level Position; Restoration to Eligible List; Trainee Jobs; Probation Following Promotion; and Notice About Performance.*

Sections 603.10—603.17 pertain to probationary periods, including duration and extension of probationary periods; effects of leaves of absence; service in higher-level position; service in same level position; restoration to eligible list; trainee jobs; probation following promotion; and notice about performance, and implement 71 Pa.C.S. §§ 2404 and 2605 (relating to probationary period; and rights of promoted employee during probationary period). The Office of Administration incorporated in its temporary regulations the corresponding provisions of The Rules of The Civil Service Commission and made appropriate modifications to reflect the statutory transfer of duties from the Commission to the Office of Administration. See 4 Pa. Code §§ 97.31—97.39. In § 603.10(a) (relating to duration and extension of probationary periods), consistent with Act 71, the Office of Administration clarified that the length of the probationary period is a minimum of 6 months, as prescribed by the Office of Administration. See 71 Pa.C.S. § 2404(a)(2). In § 603.10(c), the Office of Administration clarified that probationary periods must be successfully completed by employees before regular status is conferred and appointing authorities must act affirmatively to confer regular status. This clarification is consistent with the Commission's current practice and Management Directive 580.8, Amended (Classified Service Probationary Periods). For the same reasons noted previously under substitute appointments, the Office of Administration did not incorporate the Commission regulation requiring vacated positions to be filled on a substitute basis. See 4 Pa. Code

§ 97.38(1) (relating to probation following promotion). The Office of Administration also clarified in § 603.16(4) (relating to probation following promotion) that a promoted employee who has never held regular status in the classified service does not have a right to return to a probationary status position previously held. Additionally, in adopting the previously-referenced provisions of the Commission's regulations, the Office of Administration made revisions for clarity.

**EMPLOYEES IN THE CLASSIFIED SERVICE**

*Service Standards and Ratings*

*Establishment of System; Reporting of Performance Evaluations; Review of Performance Evaluations; and Application of Performance Evaluations*

Sections 604.1—604.4 pertain to the establishment of a job-related system of performance evaluations and implement 71 Pa.C.S. § 2501 (relating to performance ratings). The Office of Administration incorporated in its temporary regulations the corresponding provisions of The Rules of The Civil Service Commission. See 4 Pa. Code §§ 99.11 and 99.13—99.15. The Office of Administration did not adopt the Commission regulation addressing signatures on evaluation forms as those provisions are more appropriately addressed in policy manual. See 4 Pa. Code § 99.14 (relating to review of performance evaluations). In adopting the corresponding provisions of the Commission's regulations, the Office of Administration made modifications for clarity.

*Reassignments and Transfers*

*Reassignments and Transfers Authorized; Initiation of Transfers; Limitation on Transfer; Effect of Transfer on Probationary Period; and Transfer of Classified Service Employees Entering the Senior Management Service*

Sections 604.5—604.9 pertain to reassignments and transfers authorized under Act 71. See 71 Pa.C.S. § 2502 (relating to transfers and reassignments). The Office of Administration incorporated in its temporary regulations corresponding provisions of The Rules of The Civil Service Commission. See 4 Pa. Code §§ 99.21—99.24 and 99.27. In incorporating the corresponding provisions, the Office of Administration made appropriate modifications to reflect the statutory transfer of duties from the Commission to the Office of Administration. The Office of Administration did not adopt the Commission regulation relating to effect of reassignment on promotion rights because the content of this provision is more appropriately addressed within a policy manual. See 4 Pa. Code § 99.25 (relating to effect of reassignment on promotion rights). Additionally, in adopting the previously-referenced provisions of the Commission's regulations, the Office of Administration made minor revisions for clarity.

*Reductions in Pay or Demotions*

*Reductions of Pay Within the Same Job; Demotions to a Different Job; and Effect of Demotion on Status*

Sections 604.10—604.12 (relating to reductions of pay within the same job; demotions to a different job; and effect of demotion of status) pertain to reductions in pay or demotions, including reductions of pay within the same job, demotions to a different job and effect of demotion on status, and implement 71 Pa.C.S. §§ 2503 (relating to demotions) and 2605. The Office of Administration incorporated in its temporary regulations the corresponding provisions of The Rules of The Civil Service Commission without substantive change other than to reflect the statutory transfer of duties from the Commission to the Office of Administration. See 4 Pa. Code §§ 99.31, 99.32

and 99.34 (relating to reductions of pay within the same class; demotions to a different class; and effect of demotion on status). In adopting the previously-referenced provisions of the Commission's regulations, the Office of Administration made minor revisions for clarity.

*Reclassifications; Status of Incumbents of Reclassified Positions*

*Reclassifications and Effect of Reclassification on Probationary and Regular Status*

Sections 604.13 and 604.14 (relating to reclassifications; and effect of reclassification on probationary and regular status) pertain to reclassifications, including effect of reclassification and effect of reclassification on probationary and regular status, and implement 71 Pa.C.S. §§ 2505 (relating to effect of reclassifications) and 2605. The Office of Administration incorporated in its temporary regulations the corresponding provisions of The Rules of The Civil Service Commission and made appropriate revisions to reflect the statutory transfer of duties from the Commission to the Office of Administration. See 4 Pa. Code §§ 99.41 and 99.43 (relating to effect of reclassification; and effect of reclassification on probationary period). In § 604.14(b), appointing authorities must submit requests for reclassifications to the Office of Administration. Additionally, under § 604.13(c), the Office of Administration reserves the right to deny an appointing authority's request for reclassification if it appears the request is designed to circumvent merit system principles as set forth in Act 71. Additionally, in adopting the previously-referenced provisions of the Commission's regulations, the Office of Administration made minor revisions for clarity.

*Compensation*

*Effect of Change in Compensation Schedules*

Section 604.15 (relating to effect of change in compensation schedules) pertains to effect of change in compensation schedules and implements 71 Pa.C.S. § 2503 and §§ 2103 and 2609 (relating to definitions; and seniority). The Office of Administration incorporated in its temporary regulations the corresponding provision of The Rules of The Civil Service Commission without substantive change other than to reflect the statutory transfer of duties from the Commission to the Office of Administration. See 4 Pa. Code 99.52 (relating to effect of change in compensation schedules). In adopting the previously-referenced provision of the Commission's regulations, the Office of Administration made minor revisions for clarity.

**SEPARATION OF EMPLOYEES  
FROM CLASSIFIED SERVICE**

*Furlough*

*General Provisions*

Section 605.1 (relating to general provisions) pertains to furloughs and implements 71 Pa.C.S. §§ 2601 and 2602 (relating to temporary and permanent separations; and furlough). The Office of Administration incorporated in its temporary regulations the corresponding provision of The Rules of The Civil Service Commission without substantive change other than to reflect the statutory transfer of duties from the Commission to the Office of Administration. See 4 Pa. Code § 101.1 (relating to furlough). Additionally, in adopting the previously-referenced provisions of the Commission's regulations, the Office of Administration made minor revisions for clarity.

*Removal and Suspension*

*Generally*

Section 605.2 (relating to generally) pertains to removal and suspension and implements 71 Pa.C.S. §§ 2603 and 2607 (relating to suspension; and removal). The Office of Administration incorporated in its temporary regulations the corresponding provisions of The Rules of the Civil Service Commission regarding suspension and made appropriate revisions to reflect the statutory transfer of duties from the Commission to the Office of Administration. See 4 Pa. Code § 101.21(b) (relating to generally). The Office of Administration did not adopt the Commission's regulation at 4 Pa. Code § 101.21(a) because providing examples of good cause for suspension is unnecessary. In removing the examples of "good cause" for suspension, the Office of Administration recognizes that such determinations are based on the facts of each particular case. The Office of Administration also included the just cause standard for removal in this section which is based upon statutory authority in Act 71. See 71 Pa.C.S. § 2607. Additionally, in adopting the previously-referenced provisions of the Commission's regulations, the Office of Administration made minor revisions for clarity.

*Resignation*

*General Provisions: Notice of Acceptance or Rejection; Reemployment after Resignation; and Resignation Following Leave of Absence*

Sections 605.3—605.6 pertain to resignation, including notice of acceptance or rejection; reemployment after resignation; and resignation following leave of absence, and implement 71 Pa.C.S. 2606 (relating to resignation). The Office of Administration incorporated in its temporary regulations the corresponding provisions of The Rules of The Civil Service Commission and made appropriate revisions to reflect the statutory transfer of duties from the Commission to the Office of Administration. See 4 Pa. Code §§ 101.51, 101.52, 101.54 and 101.55. The Commission's regulations at 4 Pa. Code § 101.51 (relating to general) require written notice for resignations of voluntary termination of employment. The Office of Administration did not adopt the Commission's written notice requirement, but instead, § 605.3 (relating to general) of the temporary regulations recognizes either written or verbal resignations as authorized in Act 71. See 71 Pa.C.S. § 2606(a)(1). The Office of Administration also did not adopt the Commission regulation allowing for approval of reemployment after resignation only where the "former employee would derive no greater rights or privileges as a result of reinstatement than if continued as a regular employee or granted a leave of absence without pay." See 4 Pa. Code § 101.54(b) (relating to reemployment after resignation). The Office of Administration determined that this inquiry is one that an appointing authority should pursue when considering whether to request approval from the Office of Administration as the appointing authority is in a better position to know the circumstances of the reinstatement. Additionally, in adopting the previously-referenced provisions of the Commission's regulations, the Office of Administration made minor revisions for clarity.

*Leave of Absence*

*General; Extension or Renewal of Leave; and Returning Employees*

Sections 605.7—605.9 (relating to general; extension or renewal of leave; and returning employees) pertain to leave of absences, including extension or renewal of leave and returning employees, and implement 71 Pa.C.S.



§ 2608 (relating to leave of absence). The Office of Administration incorporated in its temporary regulations the corresponding provisions of The Rules of The Civil Service Commission and made appropriate revisions to reflect the statutory transfer of duties from the Commission to the Office of Administration. See 4 Pa. Code §§ 101.61, 101.62 and 101.64 (relating to general; extension or renewal of leave; and returning employees). The Office of Administration did not adopt the Commission regulation at 4 Pa. Code § 101.61(b) which addresses substitute employment. As previously indicated, substitute appointments are only applicable to military leave of absences, thus it is not necessary or appropriate to address substitute employment as it pertains to other types of leave of absences. See 71 Pa.C.S. § 2403. Additionally, in adopting the previously-referenced provisions of the Commission's regulations, the Office of Administration made revisions for clarity.

*Seniority*

*Break in Service*

Section 605.10 (relating to break in service) pertains to breaks in service and implements 71 Pa.C.S. § 2609. The Office of Administration incorporated in its temporary regulations the corresponding provision of The Rules of The Civil Service Commission and made modifications to reflect the statutory transfer of duties from the Commission to the Office of Administration. See 4 Pa. Code § 101.71 (relating to break in service). In adopting the previously-referenced provisions of the Commission's regulations, the Office of Administration clarified when break in service occurs. The Office of Administration did not adopt the Commission regulation giving service credit for seniority purposes to employees who return within 1 year after a break in service because Act 71 does not authorize such credit. Additionally, in adopting the previously-referenced provisions of the Commission's regulations, the Office of Administration made revisions for clarity.

**PROHIBITIONS, PENALTIES AND ENFORCEMENT**

*Office of Administration Review of Legality of Employment*

*Report of Personnel Change; Action on Personnel Change; and Effect of Out-of-Class Work*

Sections 606.1—606.3 (relating to report of personnel change; action on appointment or personnel change; and effect of out-of-class work) pertain to reporting requirements of personnel changes, action on personnel changes, and effect of out-of-class work and implement 71 Pa.C.S. § 2202(2), which grants the Office of Administration broad authority to direct and supervise the administrative work of merit system employment. The Office of Administration incorporated in its temporary regulations the corresponding provisions of The Rules of The Civil Service Commission and made appropriate revisions to reflect the statutory transfer of duties from the Commission to the Office of Administration. See 4 Pa. Code §§ 103.5—103.7 (relating to report of personnel changes; action on personnel changes; and effect of out-of-class work). The Office of Administration did not adopt Commission regulations that were procedural in nature or redundant to requirements set forth in Act 71. See 4 Pa. Code § 103.6(a) and (b). Additionally, in adopting the previously-referenced provisions of the Commission's regulations, the Office of Administration made revisions for clarity.

*Political Activity*

*Prohibited Political Activities; Exception and Applicability; Complaint Procedure; and Complaint Content*

Sections 606.4—606.6 (relating to prohibited political activities; exception and applicability; complaint procedure; and complaint content) pertain to political activity, including applicability of the political activity prohibition, complaint procedures and complaint content, and implement 71 Pa.C.S. § 2705 (relating to political activity). The Office of Administration incorporated in its temporary regulations the corresponding provisions of The Rules of The Civil Service Commission and made appropriate revisions to reflect the statutory transfer of duties from the Commission to the Office of Administration. See 4 Pa. Code §§ 103.11—103.13 (relating to exception to prohibited political activities; complaint procedure; and complaint form). Additionally, in § 606.4(b), the Office of Administration incorporated the corresponding Commission regulation at 4 Pa. Code § 103.11, but modified it to conform with case law regarding certain employees on creditable leaves of absence to serve certain collective bargaining organizations. See *Pinto v. State Civil Service Commission*, 912 A.2d 787 (Pa. 2006). The Office of Administration did not adopt Commission regulations that were redundant to other regulatory provisions (4 Pa. Code § 103.14 (relating to prohibition of assessments)) or redundant to the statutory duties set forth in Act 71 (4 Pa. Code § 103.15 (relating to prohibition of discrimination)). In adopting the previously-referenced provisions of the Commission's regulations, the Office of Administration made modifications for clarity.

*Removal and Disqualification of Officers and Employees*

*Falsification or Concealment of Material Information; Notice of Violation of Act or Regulations; and Penalty for Violation*

Sections 606.7—606.9 (relating to falsification or concealment of material information; notice of violation of act or regulations; and penalty for violation) pertain to removal and disqualification of officers and employees, including falsification or concealment of material information; notice of violation of act or regulations; and penalty for violation. Section 606.7 implements 71 Pa.C.S. § 3104(b) (relating to false statement made under oath constitute perjury), and §§ 606.8 and 606.9 implement 71 Pa.C.S. § 2706 (relating to removal and disqualification of officers and employees). The Office of Administration incorporated in its temporary regulations the corresponding provisions of The Rules of The Civil Service Commission and made appropriate revisions to reflect the statutory transfer of duties from the Commission to the Office of Administration. See 4 Pa. Code §§ 103.21—103.23 (relating to falsification or concealment of material information; notice of violation of act or rules; and penalty for violation). In incorporating the Commission's corresponding regulation at 4 Pa. Code § 103.23, the Office of Administration clarified in section 606.9 that individuals removed under 71 Pa.C.S. § 2706 are ineligible for reappointment for a period of time set by the Office of Administration and that the period of time may include permanent ineligibility. Additionally, in adopting the previously-referenced provisions of the Commission's regulations, the Office of Administration made other modifications for clarity.

## NOTICE AND HEARINGS

### *Notice*

#### *Written Notice Required; Personnel Actions; Statement of Reasons; and Signatory Authority.*

Sections 607.1—607.4 pertain to written notice requirements for personnel actions affecting employees and implement 71 Pa.C.S. § 2801 (relating to notice). The Office of Administration incorporated in its temporary regulations the corresponding provisions of The Rules of The Civil Service Commission and made appropriate revisions to reflect the statutory transfer of duties from the Commission to the Office of Administration. See 4 Pa. Code §§ 105.1—105.5. Section 607.1 (relating to written notice required) incorporates the Commission's corresponding regulation regarding advance notice for personnel actions. See 4 Pa. Code § 105.5 (relating to time limits). The Office of Administration included time limits in § 607.1(d) but did not adopt time limits that were redundant to the requirements set forth in Act 71 or that may be more appropriately addressed in a policy manual. In § 607.2 (relating to personnel actions), for consistency and clarity, the Office of Administration incorporated notice requirements for personnel actions relating to probationary employees. See 4 Pa. Code § 101.31 (relating to removal during probationary periods). Under section 607.1(e), written notices of permanent separation, suspension for cause, furlough or involuntary demotion of a regular status employee must provide information on the employee's right to appeal to the Commission. Section 607.2 also requires written notice for the removal of a probationary employee after promotion when the employee is returned to a position or job held prior to promotion. Additionally, in adopting the previously-referenced provisions of the Commission's regulations, the Office of Administration made modifications for clarity.

#### *Practice and Proceedings Before the Office of Administration*

#### *Applicability of General Rules of Administrative Practice and Procedure; Hearings Before the Office of Administration; Representation; Authority of Presiding Officer; Record of Proceedings; Evidence; Subpoenas, Post-Hearing Briefs; Final Disposition.*

Given the limited investigative nature of most hearings that will be held by the Office of Administration under Act 71, the Office of Administration determined that it was more practicable to promulgate regulations for its hearings rather than follow the general format and/or content of The Rules of The Civil Service Commission or adopt 1 Pa. Code, Part II (relating to General Rules of Administrative Practice and Procedure) (GRAPP).

Accordingly, § 607.5 (relating to applicability of General Rules of Administrative Practice and Procedure) supersedes 1 Pa. Code Part II and makes GRAPP inapplicable to proceedings before the Office of Administration. Under § 607.6(a) and (b) (relating to hearings before the Office of Administration), all hearings must be open to the public and either the Secretary of Administration or designees authorized by the Secretary of Administration as presiding officers may conduct hearings scheduled by the Office of Administration. Section 607.6(c) and (d) set forth the types of administrative hearings the Office of Administration may hold—discretionary hearings and eligible list cancellation hearings. See 71 Pa.C.S. §§ 2202(a)(10) and 2307(d).

Section 607.6(c) also provides burden of proof procedures for discretionary hearings under 71 Pa.C.S. § 2202(a)(10). Section 607.6(e) addresses hearing notice requirements, including advance notice of scheduled hearings, content of notices and required posting by the Office of Administration. Section 607.6(f) provides standards for consolidation procedures, which are comparable to GRAPP procedures. See 1 Pa. Code § 35.45 (relating to consolidation). In § 607.6(g), the Office of Administration allows for severance of proceedings when the proceedings lack a common question of law or fact. Similar to GRAPP procedures, § 607.6(h) gives presiding officers authority to grant requests for continuances; however, the temporary regulations require a showing of good cause. Similar to the Commission's regulations at 4 Pa. Code § 105.18(b) (relating to procedure under section 951(d) of the act (71 P.S. § 741.951(d))), § 607.6(i) allows hearings to proceed when an interested individual or appointing authority fail to appear. Section 607.6(j) allows for additional hearings and evidence under limited circumstances which is similar to GRAPP procedures. See 1 Pa. Code §§ 35.231—35.233 (relating to reopening of record).

Section 607.7 (relating to representation) concerns representation at hearings and is similar to the Commission's regulations at 4 Pa. Code § 105.14 (relating to legal representation). Section 607.8 (relating to authority of presiding officer) sets forth the authority of the presiding officer and is similar to GRAPP procedures. See 1 Pa. Code § 35.187 (relating to authority delegated to presiding officers). Section 607.9 (relating to record of proceedings) concerns the record of proceedings and is comparable with GRAPP procedures. See 1 Pa. Code § 35.131 (relating to recording of proceedings). Sections 607.10 and 607.11 (relating to evidence; and subpoenas) are similar to the Commission's regulations at 4 Pa. Code §§ 105.13(a) and 105.14(a) (relating to form of hearing; and subpoenas). Section 607.12 (relating to post-hearing briefs) permits post-hearing briefs and is similar to GRAPP procedures. See 1 Pa. Code §§ 35.191—35.193 (relating to proceedings in which briefs are to be filed; content and form of briefs; and filing and service of briefs). Section 607.13 (relating to final disposition) addresses final dispositions and allows for proposed final dispositions when the presiding officer is not the Secretary of Administration.

#### *Fiscal Impact and Paperwork Requirements*

This temporary rulemaking should have minimal adverse fiscal impact on the Commonwealth or its political subdivisions. These temporary regulations transfer existing duties from the Commission to the Office of Administration. Other than the costs of the transition of duties, which is a statutory mandate, the Office of Administration does not anticipate increased costs for appointing authorities, the Commission or the Office of Administration. In fact, after the initial transition, the Office of Administration anticipates a decrease in costs due to the continued reduction in the use of test center examinations as well as the decommissioning of outdated Commission information technology systems. Appointing authorities that choose to use test center examinations will pay the actual cost of administering those examinations, instead of spreading those costs amongst appointing authorities that choose not to utilize that type of examination.

#### *Sunset Date*

The Office of Administration will monitor the cost effectiveness of its regulations and will do so with respect to these temporary regulations. Because these temporary regulations will expire 3 years following the publication of

these temporary regulations, the Office of Administration will re-assess the regulations and the effectiveness of the temporary regulations in formulating proposed and final rulemakings.

*Regulatory Review*

These temporary regulations are statutorily exempt from the Regulatory Review Act (71 P.S. §§ 745.1—745.15).

*Public Comment*

During the drafting of these temporary regulations, the Office of Administration solicited and received comment from the public. The Office of Administration invited collaboration and comment from appointing authorities and other interested stakeholders while drafting these temporary regulations. After considering the input from appointing authorities and other interested stakeholders, the Office of Administration distributed an exposure draft to appointing authorities and stakeholders and again considered the input, and where appropriate, incorporated the suggestions and comments in the annex and preamble. The Office of Administration will solicit additional input when formulating the proposed and final rulemakings.

MICHAEL NEWSOME,  
*Secretary*

*(Editor’s Note: Title 4 of the Pennsylvania Code is amended by adding temporary regulations in §§ 601.1—601.8, 602.1—602.22, 603.1—603.17, 604.1—604.15, 605.1—605.10, 606.1—606.9 and 607.1—607.13 to read as set forth in Annex A.)*

**Fiscal Note:** 99-11. No fiscal impact; (8) recommends adoption.

**Annex A**

**TITLE 4. ADMINISTRATION**

**PART XV. OFFICE OF ADMINISTRATION**

**Subpart A. CIVIL SERVICE REFORM—  
TEMPORARY REGULATIONS**

**CHAPTER 601. GENERAL PROVISIONS**

**GENERAL PROVISIONS**

Sec.	
601.1.	Short title.
601.2.	Purpose.
601.3.	Definitions.
601.4.	Veterans’ preference.
601.5.	Age Preference
601.6.	Reasonable accommodations.
601.7.	Service to departments, boards and commissions, agencies and political subdivisions; cooperation with other civil service agencies.
601.8.	Electronic records and signatures.

**§ 601.1. Short title.**

This subpart shall be known and cited as the “Merit System Employment Regulations.”

**§ 601.2. Purpose.**

(a) This subpart is designed to effectuate the primary purpose of civil service reform, as required by 71 Pa.C.S. Part III (relating to civil service reform), declared to create and sustain a modern merit system of employment within the Commonwealth work force that promotes the hiring, retention and promotion of highly qualified individuals, ensuring that government services are efficiently and effectively delivered to the public.

(b) This subpart implements and supplements the act and is to be read together with the applicable provisions of the act.

**§ 601.3. Definitions.**

Words, terms and phrases, when used in this subpart, have the meaning as set forth in 71 Pa.C.S. Part III (relating to civil service reform), unless the context clearly indicates otherwise. The following words and terms, when used in this subpart, have the following meanings, unless the context clearly indicates otherwise:

*Act*—The Act of June 28, 2018 (P.L. 460, No. 71) (71 Pa.C.S. Part III (relating to civil service reform)).

*Alternate rule*—A rule that gives appointing authorities the ability to select from all eligibles on an eligibility list or a specific alternate number of eligibles, other than three, but not less than three.

*Certification*—The referral of one or more eligibles by the Office of Administration to an appointing authority, in order to fill one or more positions.

*Disability*—As defined by the Americans with Disabilities Act of 1990, as amended (42 U.S.C.A. §§ 12101—12213), a physical or mental impairment that substantially limits one or more major life activities, a record of such an impairment, or being regarded as having such an impairment.

*Eligible Veteran*—An individual, excluding a spouse, who is eligible to receive an employment preference pursuant to 51 Pa.C.S. Chapter 71 (relating to veterans’ preference).

*Emergency employee*—A qualified person hired by an appointing authority to meet an unexpected need and whose tenure will be not more than 60 work days.

*Examination*—A test, series of tests, or assessments used to determine the degree to which applicants or employees are qualified for appointment or promotion, including examinations delivered at test centers, oral tests, ratings of qualifications, performance tests, medical tests, physical or agility tests, personality or interest inventories, and biographical inventories.

*Job specification*—A written description of a job that defines and describes representative duties and responsibilities and sets forth the experience and training that provides the knowledge, skills and abilities essential to the performance of the work of the job.

*Leave of absence*—A temporary interruption of employment for which the employee is given a specified period of leave without pay for purposes such as illness, school attendance, cyclical employment, military duty or training, or employment in a non-civil service position.

*Minimum qualifications*—The education, experience, licensure, certification or other requirements that are established in the job specification for a job and which must be met by applicants or employees seeking appointment or promotion.

*Preferred reemployment list*—A list of persons who had regular or probationary status and could not be returned from a civil service leave of absence due to the lack of a vacant position.

*Probationary employee*—A person serving a probationary period prior to acquiring regular status in a classified service position.

*Provisional employee*—A person selected by an accelerated examination program and serving a 6-month working test period prior to the required probationary period.



*Reassignment*—The movement of an employee, within the same appointing authority, from one position to another position in the same job or in a similar job for which the employee qualifies at the same maximum salary.

*Reclassification*—The change of a classification of a position from one job and code to another job and code.

*Regular status*—Standing achieved by a classified service employee who has successfully completed a probationary period.

*Reinstatement*—The return to the classified service of a former employee who resigned or otherwise voluntarily separated from civil service employment.

*Resignation*—The voluntary termination of employment by an employee, which is evidenced by the employee's written or verbal notice.

*Rule of three*—The requirement that the appointing authority choose from among the three-highest-ranking available eligibles in filling a particular vacancy.

*Senior Management Service*—Positions in the Commonwealth unclassified service that have broad policy participation and management responsibility.

*Seniority*—The amount of time an employee has served in a position in the classified service, provided that the employment has been on a continuous basis, calculation and use of which is defined in this subpart.

*Separation*—The voluntary or involuntary termination of employment, which includes temporary and permanent terminations.

*Special Advisor for Veterans' Programs*—The individual appointed by the Secretary of Administration under 71 Pa.C.S. § 2202(a)(12) (relating to duties of Office of Administration).

*Suspension*—The temporary and involuntary separation of an employee.

*Temporary employee*—A qualified person appointed to a position from an eligible list for a period not to exceed 12 months.

*Trainee*—A qualified person appointed or promoted to a training level job.

*Training period*—The period of time prescribed for a trainee job, during which the incumbent receives general or specialized training, or both, upon the successful completion of which the trainee is promoted without further examination to the job for which trained.

*Transfer*—The movement of an employee from one appointing authority to a different appointing authority.

#### § 601.4. Veterans' preference.

(a) *Eligible Veterans.* In determining standing on each certified eligibility list, the Office of Administration will credit an additional 10 points to the final examination score obtained by an eligible veteran, in accordance with 51 Pa.C.S. Chapter 71 (relating to veterans' preference).

(b) *Spouses.* A spouse of a deceased or disabled veteran will receive the same credit to the final examination score given to an eligible veteran under subsection (a), in accordance with 51 Pa.C.S. Chapter 71.

(c) *Appointing Authorities.* An appointing authority shall give preference to eligible veterans and spouses of deceased or disabled veterans in accordance with the act, this subpart and 51 Pa.C.S. Chapter 71.

(d) *Required Documentation.* To establish veterans' preference, eligible veterans shall submit a copy of service discharge, DD Form 214 or other equivalent military documentation acceptable to the Office of Administration showing date of entry, into the military, successful completion of basic training, character of service, and where applicable, completion of the military service commitment.

(1) A widow or widower of an eligible veteran shall submit a copy of the spouse's documents as required in subsection (d) and a certified copy of the death certificate of the spouse.

(2) A spouse of a disabled veteran shall submit documentation as required by the Office of Administration, including a copy of the spouse's documents, as required in subsection (d); a United States Department of Veterans Affairs letter dated within the past 6 months verifying the eligible veteran's qualifying disability rating; and a signed statement from the disabled veteran authorizing the use of the preference in accordance with 51 Pa.C.S. § 7108 (relating to preference of spouses).

(e) *Special Advisor for Veterans' Programs.* The Secretary of Administration will appoint a Special Advisor for Veterans' Programs who shall be a veteran and will serve at the pleasure of the Secretary of Administration.

(f) *Powers and duties of the Special Advisor for Veterans' Programs.*

(1) The Office of Administration will provide the Special Advisor for Veterans' Programs a copy of the results of audits conducted by the Commission under 71 Pa.C.S. § 3304 (relating to audits of application of veterans' preference).

(2) The Special Advisor for Veterans' Programs may recommend investigations, as authorized under 71 Pa.C.S. § 2202(a)(10) (relating to duties of Office of Administration), of appointments or changes in employment in the classified service not in compliance with 51 Pa.C.S. Chapter 71.

#### § 601.5. Age preference.

(a) In accordance with the act, this subpart and section 2203-A of the Administrative Code of 1929 (71 P.S. § 581-3(b)), the Department of Aging shall give age preference to individuals who are 60 years of age or older.

(b) Notwithstanding individuals qualifying for veterans' preference under 51 Pa.C.S. Chapter 71 (relating to veterans' preference), the Department of Aging may select an individual qualifying for age preference in accordance with the act, this subpart and 71 P.S. § 581-3(b).

(c) Certifications issued to the Department of Aging will indicate those applicants with age preference status.

#### § 601.6. Reasonable accommodations.

(a) *Purpose.* This section establishes the procedures for requesting and providing reasonable accommodations in the application and examination process for an employee or applicant with a disability seeking an appointment or promotion.

(b) *Applications and Examinations.* Reasonable accommodations in the application and examination process will be provided to individuals with a disability.

(c) *Requests for Accommodations.* An applicant or employee seeking appointment or promotion may request an accommodation by submitting an application for accommodation on a form prescribed by the Office of Administration.

**§ 601.7. Service to departments, boards and commissions, agencies and political subdivisions; co-operation with other civil service agencies.**

(a) *Acquisition of services.* The services and facilities of the Office of Administration and its staff will be made available to departments, boards, commissions, or agencies, and political subdivisions of the Commonwealth under the following terms and conditions:

(1) A formal request for extension of the services of the Office of Administration shall be made in writing and shall be signed by the executive head of the requesting department, or by the chair of the board, commission, or agency, accompanied by a resolution adopted by the board, commission, or agency, or by the proper official of the political subdivision, as appropriate.

(2) If less than a complete merit system is desired, a request for extension of the services of the Office of Administration shall state in detail the services requested. If a complete merit system is desired, the request shall specify the desired exceptions to the application of the act.

(3) Granting of the request shall be evidenced by a formal written contract or agreement, consistent with this section, between the department, board, commission, agency, or political subdivision and the Office of Administration.

(4) A request for the extension of services may be granted in whole or in part at the discretion of the Office of Administration.

(b) *Reimbursement for services.* Reimbursement shall be as follows:

(1) An appointing authority shall reimburse the Office of Administration on a semi-annual basis for the actual cost of preparing, administering and rating examinations delivered at test centers.

(2) For all other services and facilities, an appointing authority shall reimburse the Office of Administration for the semi-annual cost of services and facilities made available, in the proportion which the cost of the services and facilities bears to the total cost of these services and facilities of the Office of Administration, based on the ratio of the appointing authority's employees in the classified service to those of all the appointing authorities serviced by the Office of Administration.

(3) At the request of the Office of Administration, the number of employees in the classified service in each appointing authority serviced shall be reported to the Office of Administration.

(c) *Personnel actions by political subdivisions.* A personnel action taken by a political subdivision under contract with the Office of Administration shall conform to the act, this subpart, and the contract executed under subsection (a)(3), unless the action would have an impossible or unreasonable result, in which case the Office of Administration will determine the appropriate action to be taken.

**§ 601.8. Electronic records and signatures.**

The Office of Administration or an appointing authority may, in its discretion, utilize and accept, in the form and manner prescribed by such entity, electronic records and electronic signatures, where written documents, forms, signatures, or other required submissions are required by this subpart, provided that such records and signatures comply with the Uniform Electronic Transactions Act (73 P.S. §§ 2260.303—2260.312), and other laws governing electronic records and signatures.

**CHAPTER 602. SELECTION OF EMPLOYEES FOR ENTRANCE TO, OR PROMOTION IN, THE CLASSIFIED SERVICE**

**Subchap.**

- A. EXAMINATIONS REQUISITE FOR APPOINTMENT AND PROMOTION
- B. NATURE OF EXAMINATIONS
- C. ADMINISTRATION OF EXAMINATIONS
- D. PUBLIC NOTICE OF EXAMINATIONS
- E. RATINGS OF COMPETITORS
- F. ESTABLISHMENT ELIGIBLE LISTS
- G. DURATION OF ELIGIBLE LISTS

**Subchapter A. EXAMINATIONS REQUISITE FOR APPOINTMENT AND PROMOTION**

**Sec.**

- 602.1. Application requirements.
- 602.2. Residence requirements.
- 602.3. Selective certifications.
- 602.4. Promotion procedure.

**§ 602.1. Application requirements.**

(a) *Submission of Applications.* An application for entrance to, or promotion in, the classified service, shall be made in a format prescribed by the Office of Administration. An application shall contain a statement made subject to the penalties of 18 Pa.C.S. § 4904 (relating to unsworn falsification to authorities), verifying the truthfulness of all responses contained thereon.

(1) *Application.* An application for entrance to, or promotion in, the classified service is accessible on the Office of Administration's web site.

(2) *Completeness of application.* The Office of Administration may reject an incomplete application.

(3) *Timeliness of applications.* An application shall be submitted by the date and time if specified in the public notice of examination. An application received prior to midnight of the closing date indicated on the public notice of examination or a vacancy posting will be deemed filed within the time limit.

(b) *Evidence of merit and fitness.*

(1) An applicant shall supply information relevant for determining whether the applicant possesses the minimum requisites for appointment or promotion.

(2) The Office of Administration may require an applicant to supply certificates and other appropriate documents as may be relevant in assessing the applicant's fitness and qualifications for appointment or promotion.

(3) The job specification shall be the primary basis and source of authority for the evaluation of the minimum qualifications of applicants for examinations.

(c) *Limitations on inquiry.* Limitations shall be as follows:

(1) Except as provided in paragraphs (2) and (3), no questions in the application nor in the examination will require the applicant to provide information concerning age, race, color, religious creed, ancestry, national origin, gender, sexual orientation, gender identity or expression, political opinions or affiliations, union membership or affiliations, AIDS or HIV status, or disability nor will the information be required in another manner by an official or employee of the Office of Administration or of an appointing authority in connection with the examination, certification or appointment of an applicant for another purpose.

(2) The Office of Administration may make inquiries of an applicant's age or national origin, or both, as is necessary to comply with Federal and State laws and regulations and this subpart.

(3) The Office of Administration may make inquiries of applicants regarding sex, race, age and similar factors, as are necessary to conduct research required to validate selection procedures or to comply with State and Federal laws and regulations on equal opportunity. Applicants shall be informed that response to questions is not mandatory.

(d) *Rejection of applicants and disqualification of eligibles.* The Office of Administration is not required to examine, nor certify after examination, an applicant who lacks the established or announced requirements for admission to the examination or for appointment from an entrance or promotion list. The Office of Administration may refuse to examine an eligible applicant; or after examination, remove the eligible from an eligible list; or otherwise refuse to certify an eligible applicant who:

(1) Has been convicted of or has pled guilty to a crime, including a plea of nolo contendere, or has engaged in conduct that renders the eligible unfit or unsuitable for the position sought.

(2) Has been terminated from employment for incompetency or misconduct that renders the applicant unfit or unsuitable for the position sought.

(3) Has made a false statement, or omitted a material fact, or engaged in, or attempted to engage in, deception or fraud in application, examination, securing eligibility, or seeking appointment.

(4) Lacks professionalism, honesty, trustworthiness, and dependability.

(5) Does not meet qualifications required by Federal or State law or regulation.

(e) *Discretionary acceptance of applications.* The Office of Administration may extend the deadline for the acceptance of applications if sufficient need exists for additional applicants, and if acceptance is uniformly applied to all applications for the same examination filed on the same date or on an earlier date. The Office of Administration, in its discretion, may accept applications filed after the announced final filing date if it determines extraordinary circumstances warrant acceptance.

(f) *Notice of rejection of applications.* Whenever an application has been rejected prior to the holding of the examination, notice thereof, with the reasons for the rejection, shall be given to the applicant.

#### § 602.2. Residence requirements.

(a) *Resident defined.* A resident is a person who resides, and who has manifested the intent to continue to reside in this Commonwealth, or a former resident who meets the criteria in paragraph (2)(i) or (ii).

(1) Evidence of intent to continue to reside in this Commonwealth includes the following:

(i) Rent, lease or purchase of a property which the applicant has made a primary residence in this Commonwealth.

(ii) Payment of State and local taxes.

(iii) Registration of personal property, such as bank accounts, stocks, bonds and automobiles within this Commonwealth.

(iv) Possession of a current Pennsylvania driver's license.

(v) Current registration to vote in this Commonwealth.

(2) A former resident of this Commonwealth who relocated out-of-State for academic or employment purposes,

shall establish Pennsylvania residency within 6 months of beginning employment in the classified service and shall have done one of the following:

(i) Graduated from a public, private or nonpublic secondary school in this Commonwealth or satisfied the requirements set forth in sections 1327 and 1327.1 of the Public School Code of 1949 (24 P.S. §§ 13-1327 and 13-1327.1), within 5 years of applying for a position in the classified service.

(ii) Attended a public, private or nonpublic school in this Commonwealth at least 80% of the time while enrolled in grades one through twelve within 5 years of applying for a position in the classified service.

(iii) Graduated or attended a public, private or nonpublic secondary school in this Commonwealth and graduated from a postsecondary institution in the Commonwealth within 5 years of applying for a position in the classified service.

(b) *Application.* Application requirements are as follows:

(1) A person appointed, promoted or reinstated to a position in the classified service shall be a resident, as defined in subsection (a), unless residency has been waived under subsection (c). The provisions in this paragraph do not apply to a person who previously held regular civil service status and is returned to employment from an approved leave of absence without pay, through mandatory reemployment, or through contractual recall or placement rights.

(2) The Office of Administration, upon submission by an appointing authority of satisfactory justification, may limit certification for appointment or promotion to eligibles who are residents of a county or other administrative district. The limitations will not be imposed for a job for which residence in this Commonwealth has been waived.

(3) In the absence of, or upon exhaustion of, a county or other administrative district list, the Office of Administration may certify residents of contiguous counties or districts or of the entire Commonwealth as deemed appropriate by the Office of Administration.

(4) If an eligible changes residence from one district or county to another district or county of this Commonwealth, the Office of Administration may, upon request, transfer the person's eligibility to the other existing promotion or employment list.

(c) *Waiver.* When it appears that there is an insufficient number of qualified residents of this Commonwealth, as defined in subsection (a), available for a particular occupation, the Office of Administration, upon request by one or more appointing authorities, may waive the residency requirement for a position, a job or a group of jobs.

#### § 602.3. Selective certifications.

(a) Upon the request of an appointing authority, the Office of Administration may impose special requirements and may restrict application for or selectively certify positions.

(b) A request to impose special requirements shall be submitted in a form prescribed by the Office of Administration.

#### § 602.4. Promotion procedure.

(a) *Methods of promotion.* A vacancy may be filled by promotion in the following ways:



(1) By appointment of a probationary or regular employee of a given appointing authority or between appointing authorities from an appropriate employment list.

(2) By appointment of a probationary or regular employee from an appropriate promotion list resulting from a promotional examination.

(3) By appointment of a Commonwealth employee of a given appointing authority or between appointing authorities, who appear on an appropriate employment list and who meet eligibility criteria as established by the Office of Administration.

(4) By appointment of a probationary or regular employee from the next most appropriate promotion list or employment list, if the official promotion or employment lists have been exhausted.

(5) By appointment of a regular employee without examination, based upon meritorious service and seniority.

(b) *Promotion examinations.* Examinations shall be as follows:

(1) Except as indicated in this subsection, a promotion examination shall be open to a regular or probationary status employee who meets the qualifications and who occupies a position with a lower maximum salary. As determined by the Office of Administration, a promotion examination may be limited to employees occupying positions in specified jobs.

(2) The Office of Administration may, after consultation with the appropriate appointing authorities, establish the length of service required of an employee in the qualifying job or jobs for eligibility to participate in a promotion examination.

(3) As determined by the Office of Administration, a promotion examination may be interdepartmental or intradepartmental.

(c) *Promotion without examination.* Promotion without examination may be accomplished under the following circumstances provided that the promotion does not circumvent merit system principles as set forth in the act:

(1) When a trainee in a lower-level training job has successfully completed the prescribed period of training, the trainee will be promoted, without further examination, to the higher-level job.

(2) When an appointing authority desires to fill a vacant position by promotion without examination, based on meritorious service and seniority, it may follow one of the following alternatives subject to Office of Administration approval:

(i) *Competitive promotion without examination.* The appointing authority shall post the vacancy, consider the eligible employees who express an interest and make the promotion decision based upon an objective review of each employee's meritorious service and seniority. Seniority for this purpose shall be the length of continuous service of an employee in the designated next lower job if there has been no break in service. Eligibility for consideration for the promotion may be limited by the appointing authority to a particular geographic or program area. The posting shall, whenever possible, specify the jobs determined to be next lower. Otherwise, the posting shall state that applications will be reviewed to determine if employees previously held regular status or currently hold regular status in a job for which there is a logical occupational, functional or career development relationship to the posted position or if there is a clear linkage between the

required knowledge, skills and abilities of the previously or currently held job with those needed for the posted position.

(ii) *Noncompetitive promotion without examination.* An appointing authority shall ensure that the employee meets the experience and training requirements of the higher-level job, has regular status, and meets the meritorious service and seniority requirements. The appointing authority shall provide the Office of Administration with justification for using a noncompetitive promotion without examination.

(3) When a classification review reveals that a position should be classified to a higher level, the incumbent of the position will be promoted without examination to the higher level, if the incumbent possesses the established requirements for the higher-level job.

(4) When an unskilled position in the unclassified service exists immediately below a vacancy in a position in the classified service, the incumbent of the unskilled position shall be promoted into the classified service position, if the following occur:

(i) The promotion is into a classified service position immediately above the employee's position.

(ii) The promotion is based on seniority and meritorious service.

(iii) The employee meets all the established requirements for the higher position.

(iv) The employee satisfactorily completes a 6-month probationary period in the classified service position.

(5) When there is a labor agreement covering a position to which an employee is to be promoted, the terms of the agreement as to promotion procedures shall be controlling.

(d) *Eligibility for promotion.* An employee whose last regular or probationary performance evaluation is unsatisfactory or otherwise fails to meet standards, is ineligible for appointment or promotion from any list and promotion without examination.

**Subchapter B. NATURE OF EXAMINATIONS**

Sec.	
602.5.	Frequency of examinations.
602.6.	Cooperation regarding examinations.
602.7.	Tests in examinations.
602.8.	Use of position descriptions in examinations.

**§ 602.5. Frequency of examinations.**

The Office of Administration will administer examinations to establish employment and promotion lists when necessary to meet or anticipate the employment needs of appointing authorities.

**§ 602.6. Cooperation regarding examinations.**

(a) *Review of examination content.* The Office of Administration may collaborate with representatives of appointing authorities, qualified testing organizations and other qualified individuals regarding the content of examination material. The interchange of information shall be made under circumstances and subject to conditions designed to prevent premature disclosure of examination content to prospective applicants.

(b) *Cooperative testing.* The Office of Administration may authorize collaboration with another public testing or placement agency in a program of cooperative testing of applicants, if competitive principles are observed.

**§ 602.7. Tests in examinations.**

(a) *Types of tests.* In addition to written, oral and performance tests, the Office of Administration may administer an evaluation of education and experience and may authorize medical tests, physical strength and physical agility tests, and other types of tests, singly or in combination as the circumstances warrant. For promotional examinations, the Office of Administration may authorize other performance criteria, such as seniority and performance evaluations. Performance evaluations may not be a weighted factor in an interdepartmental promotion examination.

(b) *Weights of tests.* The Office of Administration, after considering the relative value of the tests in assessing the relative capacity and fitness of applicants to perform the duties of the job to which they seek to be appointed or promoted, and after consultation with the appointing authority, will fix the relative weights of the tests. Modifications to the relative weights will be announced to all applicants.

**§ 602.8. Use of position descriptions in examinations.**

(a) *Basis for examinations.* The position description shall be the primary basis and source of authority for the content and level of difficulty of examinations. Supplemental job information, obtained through job analysis, and job specifications may be used as a further basis for examination standards.

(b) *Lines of promotion.* Lines of promotion, when indicated in the job specifications, will not be considered as barring other lines of promotion, unless so specified in the public announcement of examinations.

### Subchapter C. ADMINISTRATION OF EXAMINATIONS

Sec.	
602.9.	Authority.
602.10.	Administration and scoring of examinations.
602.11.	Establishment and maintenance of competitive standards.
602.12.	Examination accommodations.

**§ 602.9. Authority.**

The appointing authority shall select the method of examination that shall be used for the individual position or job for which the employment or promotion list is being established. Except as otherwise authorized in this subpart, or as authorized in writing by the Office of Administration, appointing authorities may not develop and administer their own examinations for employment or promotion in the classified service.

**§ 602.10. Administration and scoring of examinations.**

(a) *Notice of examinations.* An applicant will be notified of admittance or non-admittance to examinations. An applicant shall be given a delayed examination in place of the one for which the applicant failed to appear if the failure to appear was caused by an act or omission of the Office of Administration or another appropriate reason, as determined by the Office of Administration.

(b) The Office of Administration may authorize postponement, cancellation or rescheduling of examinations.

(c) *Cancellation of part of an examination.* Whenever the Office of Administration finds that it is impracticable or unnecessary, for reasons which shall be made part of the examination record, to hold any part of a multipart examination the Office of Administration may cancel that part or parts and reassign the weights, in an equitable manner, to the remaining part or parts.

(d) *Retaking examination.* An applicant may retake an examination provided the job announcement sets a specified date or time for retaking the examination. Standing on an eligible list will be determined by the score received on the most recent examination.

**§ 602.11. Establishment and maintenance of competitive standards.**

(a) *Maintenance of competitive conditions.* An applicant for an examination will be given equal opportunity to demonstrate relative merit and fitness. The Office of Administration reserves the right to cancel tests or appropriate sections thereof, if severable, whenever the conditions under which a test is held have materially impaired its competitive nature or worth in assessing qualifications.

(b) *Cheating on examinations or seeking undue advantage.* An applicant who impersonates another or has another person impersonate the applicant in connection with an examination, or who uses or attempts to use unauthorized aids or assistance, including copying or attempting to copy from or helping or attempting to help another applicant in any part of an examination, or who otherwise seeks to attain undue advantage for himself or others in connection with the examination will be disqualified.

(c) *Examination materials.* An applicant in an examination may not copy, record or transcribe an examination question or answer, or remove from the examination room a question sheet, answer sheet or booklet, scrap papers, notes or other papers or materials related to the content of the examination. An applicant will be notified of these requirements, and no examiner, proctor, monitor or other person charged with the supervision of an applicant or group of applicants will have authority to waive it.

(d) *Violations.* The Office of Administration may disqualify an applicant or refuse to certify an eligible person who violates this section.

**§ 602.12. Examination accommodations.**

The Office of Administration may make reasonable accommodations for an applicant with a disability, as defined by § 601.3 (relating definitions), to ensure the opportunity to fairly compete for and pursue career opportunities. An examination accommodation may include alternative formats, extended time, adjustments to examinations, or after consultation with the appointing authority, an alternate method of examination. An accommodation shall be designed to ensure that an applicant with a disability receives equal and fair participation and consideration in the examination process.

### Subchapter D. PUBLIC NOTICE OF EXAMINATIONS

Sec.	
602.13.	Content and publication of examination announcements.

**§ 602.13. Content and publication of examination announcements.**

The Office of Administration will determine the content, method, and scope of publication for each examination announcement. The publication may be electronic. An examination announcement will be published for a minimum of 2 weeks. The scope of publication will be based on the geographic availability of positions and potentially qualified and available applicants and may be regional or Statewide and may include both in-State and out-of-State locations.

**Subchapter E. RATINGS OF COMPETITORS**

- Sec.
- 602.14. Qualifying points on examinations.
- 602.15. Correction of errors in scoring or eligibility.
- 602.16. Calculation of final earned ratings.
- 602.17. Determination of rank in event of tie.
- 602.18. Examination analysis and alternatives.
- 602.19. Review of eligibility or examination results.

**§ 602.14. Qualifying points on examinations.**

(a) *Basis for determination.* The Office of Administration sets qualifying points for each part or parts of examinations. The determination may take into account both the number and quality of prospective eligibles needed to serve the best interests of the classified service, as well as the validity and reliability of the examination.

(b) *Qualifying points.* When there is a multipart examination, the Office of Administration may require applicants to attain a qualifying score or rating on each test or part of test.

(c) *Effect of failure on part of examination.* An applicant who has failed to achieve a passing score on any part of the examination may be disqualified from participation in any other parts of the examination, whether or not the applicant has participated or has been rated therein, and if so disqualified, shall be deemed to have failed the entire examination.

**§ 602.15. Correction of errors in scoring or eligibility.**

The Office of Administration, upon finding an error in the determination of an applicant's eligibility or examination scores, which has, or may have, a material bearing on certification or appointment from the resulting eligible list, shall correct the error and report the error to the affected applicant.

**§ 602.16. Calculation of final earned ratings.**

(a) When test scores are used to rank applicants, the requirements of this section apply. The final earned ratings of each applicant who passes all parts of an examination shall be calculated prior to the addition of any veterans' preference credit as follows:

- (1) The minimum qualifying score shall be assigned a final earned rating of 60.
- (2) The estimated highest score, the score which the best qualified applicant would be reasonably expected to attain, shall be assigned a final earned rating of 100.
- (3) The intermediate scores shall be assigned ratings between 60 and 100 on the basis of their relationship to the qualifying score, the estimated highest score, and the reliability and accuracy of the examination procedures. Scores above the estimated highest score shall exceed 100, and shall be assigned final earned ratings on the basis of their relationship to the qualifying score and the estimated highest score.

(b) When test scores are used to categorize or group similarly qualified applicants, all applicants in a category shall be assigned the same final earned rating.

**§ 602.17. Determination of rank in event of tie.**

Final earned ratings shall be calculated to whole numbers or categories represented by whole numbers. Ties in final earned ratings may not be broken. All available eligibles with the same final earned rating shall be certified in accordance with the rule of three or an alternate rule selected by the appointing authority. This section provides for issuance of a complete certification of eligibles, as determined by the number of vacancies,

which includes all eligibles with the same final earned rating, as well as to group for consideration those eligibles determined by the examination process to be similarly qualified.

**§ 602.18. Examination analysis and alternatives.**

(a) The Office of Administration will initiate analysis of examinations as necessary to ensure that examinations do not discriminate on the basis of nonmerit factors.

(b) The Office of Administration, after investigation, may invalidate all or part of the examination results and substitute an alternative method of examination. The Office of Administration will notify applicants of the action and the reasons therefore.

**§ 602.19. Review of eligibility or examination results.**

An applicant who wishes to challenge a finding of ineligibility or an examination score shall submit a written request for a review of eligibility or examination results to the Office of Administration, in writing, within 20 calendar days of receipt of notice of the result being challenged. The Office of Administration will review the applicant's qualifications or examination results and provide the applicant with an explanation or revised result.

**Subchapter F. ESTABLISHMENT ELIGIBLE LISTS**

- Sec.
- 602.20. Eligible lists.

**§ 602.20. Eligible lists.**

Eligible lists shall contain the names of individuals who have qualified for and successfully passed examinations. Eligible lists shall be arranged in order of final earned ratings and must include applicable veterans' preference credits.

**Subchapter G. DURATION OF ELIGIBLE LISTS**

- Sec.
- 602.21. Extension and cancellation of eligible lists.
- 602.22. Amendment of an eligible list.

**§ 602.21. Extension and cancellation of eligible lists.**

(a) *Length of eligibility.* The duration of eligible lists will be fixed by the Office of Administration.

(b) *Replacing and integrating lists.* A newly established eligible list may replace an earlier list, appropriate for the same job. The Office of Administration may integrate an eligible list with an equivalent list established later based on final earned ratings and veterans' preference credits, when applicable.

(c) *Notice to eligibles.* When a list is cancelled or an examination is announced which may result in an eligible list which replaces an existing list, the persons whose names remain on the list being cancelled or replaced shall be notified of the cancellation or of their opportunity to participate in a new examination.

**§ 602.22. Amendment of an eligible list.**

(a) *Basis for amendment.* The Office of Administration may amend an eligible list to: correct a clerical error; indicate a change in veteran status; add or remove a name; or suspend or change eligibility for certification or appointment.

(b) *Effect of amendment.* An amendment to an eligible list may not disadvantage a fully qualified eligible already appointed or notified of appointment in good faith, based on a valid certification previously issued.



## CHAPTER 603. APPOINTMENT AND PROMOTION OF EMPLOYEES IN THE CLASSIFIED SERVICE

### Subchap.

- A. CERTIFICATION
- B. SELECTION AND APPOINTMENT OF ELIGIBLES
- C. SUBSTITUTE APPOINTMENTS
- D. PROBATIONARY PERIOD

### Subchapter A. CERTIFICATION

#### Sec.

- 603.1. Multiple lists.
- 603.2. Certification of eligible lists.
- 603.3. Effect of appointment from list.

#### § 603.1. Multiple lists.

An eligible list shall be composed of as many types of lists as necessary to meet employment needs in locations where positions are available.

#### § 603.2. Certification of eligible lists.

(a) *General content of certification.* The Office of Administration will certify from the appropriate lists as many names of eligibles who have applied for the position as necessary to satisfy the employment requirements of the appointing authority.

(1) Certification of eligible lists will include final earned ratings and veterans' preference eligibility.

(2) Upon request of the appointing authority, the Office of Administration will selectively certify the names of individuals eligible for veterans' preference.

(b) *Duration of certification.* A certification of names for appointment shall be valid for 90 business days after the date of certification, unless extended by the Office of Administration, and appointive action may be initiated at any time within that period.

#### § 603.3. Effect of appointment from list.

The name of an eligible who has been appointed may not be certified from the list for a similar or lower-level job, unless otherwise provided by law or this subpart, or by specific request of the eligible. The acceptance of other than permanent, full-time employment will not result in loss of eligibility for permanent appointment. Conversion of a temporary appointment to a permanent appointment shall require regular certification and appointment procedures.

### Subchapter B. SELECTION AND APPOINTMENT OF ELIGIBLES

#### Sec.

- 603.4. Appointment process.
- 603.5. Removal of eligible for certification or appointment.
- 603.6. Prohibition against securing withdrawal from competition.
- 603.7. Consideration of certified eligibles.

#### § 603.4. Appointment process.

(a) *Right of choice in making appointments and promotions when using the rule of three.* Unless an appointing authority elects to use an alternate rule, the rule of three applies when making selections from employment and promotion lists. If the appropriate list contains fewer than three eligibles, the Office of Administration may, upon request of the appointing authority, certify applicants from other appropriate lists to ensure the appointing authority has at least three available eligibles from which to choose. This rule does not prohibit an appointing authority from making an appointment if there are fewer than three available eligibles.

(b) *Right of choice to make appointments and promotions when using an alternate rule.*

(1) When electing to use an alternate rule, the appointing authority shall notify the Office of Administration of election of an alternate rule when requesting a vacancy posting, including the specified alternate number of eligibles.

(2) Appointing authorities electing an alternate rule may not use an alternate rule unless notification has been received by the Office of Administration, as required in paragraph (1), and the Office of Administration has acknowledged the election of an alternate rule, in writing.

(3) In cases in which an examination program is open on a continuous basis, the election of an alternate rule may be initiated at any time; however, no appointment using the new rule can be made before notice of the election is given to and acknowledged in writing by the Office of Administration.

(4) The Office of Administration will certify the names of the highest-ranking individuals on the eligible list, based upon an alternate rule elected by the appointing authority. This rule does not prohibit an appointing authority from making an appointment if there are fewer than the alternate rule elected by the appointing authority.

(5) The Office of Administration reserves the right to reject an appointing authority's election of an alternate rule if it appears the use of the rule is designed to circumvent merit system principles as set forth in the act.

(c) *Right of choice in multiple appointments.* During the process of making the multiple appointments from a certification, the appointing authority shall follow the same procedure, as set forth in subsection (a) and (b), and shall make only appointments, as is permissible when a series of certifications is used in making single appointments. The appointing authority may in its discretion, appoint a certified eligible whose name was previously rejected three times.

#### § 603.5. Removal of eligible for certification or appointment.

(a) *Request for removal of eligible for certification or appointment.* A request for removal of an eligible for certification or appointment is subject to the following:

(1) A request for removal of an eligible for certification or appointment whose name appears on a certification shall be promptly raised by the appointing authority.

(2) An appointing authority requesting removal of an eligible for certification or appointment shall submit a written request for removal to the Office of Administration, which shall include the basis for the request for removal and all supporting documents that were relied upon to determine that the eligible's name should be removed.

(3) A request for removal must be based upon merit-related criteria.

(4) On the same date an appointing authority submits a request for removal to the Office of Administration, the appointing authority shall send a copy of the request for removal, including all supporting documents provided to the Office of Administration, to the eligible. The copy of the request for removal sent to the eligible must include specific instructions on how to respond to the request for removal, as set forth in subsection (b).

(b) *Eligible's opportunity to respond.* An eligible may, within 10 calendar days from the mailing date of the appointing authority's request for removal, submit a written response to the Office of Administration, including any supporting documents. The eligible shall send a copy of the response and supporting documents to the appointing authority on the same date the response is submitted to the Office of Administration.

(c) *Removal.* If a request for removal is granted by the Office of Administration, the eligible's name will be removed from the appropriate list or lists, as determined by the Office of Administration, and the appointing authority will not be required to consider the eligible for appointment.

**§ 603.6. Prohibition against securing withdrawal from competition.**

A person may not influence another person to withdraw from competition for a position in the classified service, nor may a waiver of another person's rights or availability be solicited for the purpose of either improving or impairing the prospects of an applicant for appointment or promotion. The Office of Administration may take action under its authority under the act whenever it finds that a person has violated this section.

**§ 603.7. Consideration of certified eligibles.**

An appointing authority may conduct an interview or otherwise assess relative suitability for appointment of a certified eligible, but the assessment must be based on position-related criteria and be conducted in accordance with subpart.

**Subchapter C. SUBSTITUTE APPOINTMENTS**

- Sec.
- 603.8. Conditions for substitute appointments and promotions.
- 603.9. Rights of substitute employees.

**§ 603.8. Conditions for substitute appointments and promotions.**

(a) A substitute appointment or promotion shall be made to fill a permanent position whenever a probationary or regular status incumbent of the position is granted military leave.

(b) When a probationary or regular status incumbent returns from military leave, a substitute employee without prior service shall be separated from the position.

**§ 603.9. Rights of substitute employees.**

(a) A substitute employee may be granted a right to a permanent appointment because of service as a substitute when the incumbent who was granted military leave fails to return to the position within 90 calendar days after the termination of military duty.

(b) The rights of the employee to certification and appointment from an eligible list or to return to the previous position, if any, in the classified service may not be impaired by the acceptance of an appointment as a substitute.

(c) A regular or probationary employee who accepts a substitute appointment or promotion shall continue to receive the same rights and privileges to which entitled if the employee had continued to serve in a previous position with the same status. The substitute appointment will not prejudice the employee's rights to promotion, transfer, reemployment or retention in service.

**Subchapter D. PROBATIONARY PERIOD**

- Sec.
- 603.10. Duration and extension of probationary periods.
- 603.11. Effects of leaves of absence.
- 603.12. Service in higher-level position.
- 603.13. Service in same level position.
- 603.14. Restoration to eligible list.
- 603.15. Trainee jobs.
- 603.16. Probation following promotion.
- 603.17. Notice about performance.

**§ 603.10. Duration and extension of probationary periods.**

(a) The length of the probationary period required for appointments and promotions for a full-time position, except for a trainee job, shall be a minimum of 6 months, defined as 180 calendar days—6 months at 30 days per month, and will be determined by the Office of Administration for each job. The probationary period for part-time positions shall be prorated according to the number of hours in the work week.

(b) The probationary period, except for a trainee job, may be extended to a maximum of 18 months (defined as 545 calendar days—365 calendar days plus 6 months at 30 days per month), at the discretion of the appointing authority. If the appointing authority extends an employee's probationary period, it shall notify the employee in writing at least 1 work day prior to the effective date of the extension. Upon request by the Office of Administration, a copy of the notice shall be submitted by the appointing authority.

(c) The probationary period must be successfully completed by the employee for all classified service appointments or promotions before regular status is conferred. Appointing authorities must act affirmatively to confer regular status by evaluating employee performance and providing notification to the employee that such performance was satisfactory.

**§ 603.11. Effects of leaves of absence.**

A probationary employee who returns from a leave of absence shall make up the time lost on the leave by completing the unserved portion of the probationary period. When the leave exceeds 30 consecutive work days, except for military leave, the appointing authority may require that a new, full probationary period be served.

**§ 603.12. Service in higher-level position.**

A probationary employee who has served any portion of the probationary period and is given a temporary appointment to a higher-level position in the same or closely related job under the same appointing authority may have the period of the higher-level service credited toward the lower-level probationary period. Written notice of the credited service in the higher-level position shall be given to the employee on or before the date the probationary period expires.

**§ 603.13. Service in same level position.**

(a) A probationary employee who has been reassigned to another position in the same or a similar job by the same appointing authority, shall be credited with time served in the previous position toward the completion of the probationary period required for the present position. The probationary employee shall meet the established requirements for the new job.

(b) When a regular status employee has been returned from furlough or has demoted voluntarily to a lower job and is subsequently promoted to the job previously held, the appointing authority may waive all or part of the probationary period for the higher-level job.

**§ 603.14. Restoration to eligible list.**

If a probationary employee resigns, is removed, is granted a leave of absence, is furloughed or is demoted and requests restoration to the eligible list, the Office of Administration may authorize the restoration to the same list or a similar list to that from which appointed.

**§ 603.15. Trainee jobs.**

The Office of Administration, in cooperation with the appointing authorities and the Executive Board, may designate specific jobs for training purposes.

(1) The trainee job must correspond to a working level job.

(2) The probationary period for the training and working level will be combined and may be set by the Office of Administration at a minimum of 6 months, defined as 180 calendar days—6 months at 30 days per month, and a maximum of 24 months, defined as 730 calendar days—2 years at 365 days per year, to coincide with the length of the designated training period.

(3) The employee appointed into a trainee position may not attain regular status as a trainee but shall be promoted to the working level, with regular status, if the designated training period is successfully completed.

(4) A trainee who is unsuccessful in the training shall be removed from the trainee position promptly.

(5) The appointing authority may extend probationary periods of a trainee up to the maximum of 24 months, if written notice is provided to the trainee at least 1 work day prior to the effective date of the extension. A copy of the notice shall be submitted, upon request, to the Office of Administration.

**§ 603.16. Probation following promotion.**

A regular status employee who is promoted shall serve the duration of the probationary period that is specified for the job to which promoted, subject to the following conditions:

(1) During the first 3 months of the probationary period, the employee has the option to return to the regular status position previously held.

(2) At any time after the first 3 months of the probationary period, the employee may return to the previous regular status position or job with written consent of the appointing authorities.

(3) If the services of the employee are found unsatisfactory by the appointing authority, the employee shall be restored to the previous regular status position or job.

(4) A promoted employee who has never held regular status in the classified service does not have a right to return to a probationary status position previously held.

**§ 603.17. Notice about performance.**

The appointing authority shall notify the employee in writing whether the services of the employee have or have not been satisfactory prior to the expiration of the employee's probationary period. If the employee's performance has been satisfactory, the appointing authority shall confer regular status upon the employee.

**CHAPTER 604. EMPLOYEES IN THE CLASSIFIED SERVICE**

<b>Subchap.</b>	
<b>A.</b>	<b>SERVICE STANDARDS AND RATINGS</b>
<b>B.</b>	<b>REASSIGNMENTS AND TRANSFERS</b>
<b>C.</b>	<b>REDUCTIONS IN PAY OR DEMOTIONS</b>
<b>D.</b>	<b>RECLASSIFICATIONS; STATUS OF INCUMBENTS OF RECLASSIFIED POSITIONS</b>

**Subchapter A. SERVICE STANDARDS AND RATINGS**

<b>Sec.</b>	
604.1.	Establishment of system.
604.2.	Reporting of performance evaluations.
604.3.	Review of performance evaluations.
604.4.	Application of performance evaluations.

**§ 604.1. Establishment of system.**

(a) The Office of Administration, in cooperation with appointing authorities, will establish and maintain a job-related system of performance evaluations for employees in the classified service.

(b) Performance evaluations must be based upon job-related factors appropriate for determining the manner in which the employee performs the duties and carries out the responsibilities of the position occupied. To provide a uniform and equitable basis for rating employees, the Office of Administration, in cooperation with appointing authorities, may establish work performance guides.

(c) Performance evaluation forms and procedures shall be reviewed and approved by the Office of Administration prior to utilization.

**§ 604.2. Reporting of performance evaluations.**

Performance evaluations for probationary status employees shall be completed and provided to the employees prior to the scheduled expiration of the probationary period by the appointing authority. All other performance evaluation reports shall be completed at least once each year, unless a different schedule is approved by the Office of Administration, and copies shall be retained in the employee's official personnel file. Upon request by the Office of Administration, performance evaluation reports shall promptly be made available for audit.

**§ 604.3. Review of performance evaluations.**

Appointing authorities shall provide the employee with the results of performance evaluations as soon as practicable after the evaluation is completed. The employee will be given an opportunity to review the performance evaluation with the rater and the reviewing officer. Appointing authorities shall inform employees of standards used in determining the evaluation.

**§ 604.4. Application of performance evaluations.**

Performance evaluations shall be utilized for purposes of determining eligibility for promotion, to assist in establishing priority for promotion, or for determining order of furlough as provided in this subpart.

**Subchapter B. REASSIGNMENTS AND TRANSFERS**

<b>Sec.</b>	
604.5.	Reassignments and transfers authorized.
604.6.	Initiation of transfers.
604.7.	Limitations on transfer.
604.8.	Effect of transfer on probationary period.
604.9.	Transfer of classified service employees entering the Senior Management Service.

**§ 604.5. Reassignments and transfers authorized.**

(a) An employee may be:

(1) Reassigned within the same appointing authority from one position to another in the same job or in a similar job for which the employee qualifies.

(2) Transferred from one position to another position in the same job or in a similar job within a different appointing authority.



(b) A similar job:

(1) Has the same maximum salary rate in the compensation plan.

(2) Involves essentially the same duties and responsibilities.

(3) Requires essentially the same minimum qualifications.

(4) Calls for essentially the same knowledge, skills, and abilities.

**§ 604.6. Initiation of transfers.**

*Transfers.* A transfer shall be initiated by the appointing authority having jurisdiction over the position to which the transfer is sought and must be approved by the Office of Administration. A transfer requires the written consent of the employee and the present appointing authority.

**§ 604.7. Limitations on transfer.**

The Office of Administration may disapprove a transfer not in compliance with the act and this subpart, including:

(1) When the consent and approvals required by law and this subpart have not been given.

(2) When a departmental reemployment list is in existence, appropriate for filling the position to which transfer is sought.

(3) When the employee sought to be transferred has a disqualification which would bar that person from qualifying for the position sought.

**§ 604.8. Effect of transfer on probationary period.**

The unexpired portion of the probationary period of a transferee shall continue to be served in the position to which transferred, unless the prospective transferee accepted the position after being notified in writing that the appointing authority having jurisdiction over the position requires a full probationary period in the position as a condition of the transfer.

**§ 604.9. Transfer of classified service employees entering the Senior Management Service.**

When a classified service employee accepts a Senior Management Service position, under a different appointing authority, the employee shall be transferred to the agency having the Senior Management Service position. The return right of a Senior Management Service employee shall be to a position in the classified service under the same appointing authority in which the Senior Management Service position is located.

**Subchapter C. REDUCTIONS IN PAY OR DEMOTIONS**

Sec.

- 604.10. Reductions of pay within the same job.
- 604.11. Demotions to a different job.
- 604.12. Effect of demotion on status.

**§ 604.10. Reductions of pay within the same job.**

(a) An appointing authority may reduce the salary of an employee because of unsatisfactory performance of duties or for disciplinary reasons, to a lower salary rate within the salary range prescribed for that job.

(b) Salary reduction under these circumstances will not be deemed a demotion.

**§ 604.11. Demotions to a different job.**

An appointing authority may demote an employee who requests the demotion or who does not satisfactorily perform the duties of the position to which appointed or promoted, to a position in any job in the classified service in which the employee previously had the status of a regular employee or to any position for which the employee is qualified.

**§ 604.12. Effect of demotion on status.**

Employees returned under § 603.16 (relating to probation following promotion) or demoted under § 604.11 (relating to demotions to a different job) shall be assigned status as follows:

(1) *Regular status employee.* An employee who has achieved regular status shall be assigned regular status in the job to which returned or demoted.

(2) *Probationary status employee.* An employee who has never held regular status in a job shall be assigned probationary status in the job to which returned or demoted and shall be required to successfully complete the probationary period begun at a higher level. An employee who held regular status in a lower-level job shall be assigned regular status in the job to which the employee is returned or demoted.

**Subchapter D. RECLASSIFICATIONS; STATUS OF INCUMBENTS OF RECLASSIFIED POSITIONS**

Sec.

- 604.13. Reclassifications.
- 604.14. Effect of reclassification on probationary and regular status.

**§ 604.13. Reclassifications.**

(a) When an employee's job duties change or the Executive Board changes a job and a reallocation of the position becomes necessary, the employee shall be reclassified to the new job if the employee meets the established requirements. If the reclassification is to a lower level, it will not be construed as a demotion and the reclassified employee shall be credited with seniority acquired in the higher-level job.

(b) Appointing authorities shall submit requests for reclassification in writing to the Office of Administration and shall include justification as to why reclassification of the position is necessary.

(c) The Office of Administration reserves the right to deny an appointing authority's request for reclassification if it appears the request is designed to circumvent merit system principles as set forth in the act.

**§ 604.14. Effect of reclassification on probationary and regular status.**

An incumbent reclassified laterally or to a lower-level job shall retain current status.

**Subchapter E. COMPENSATION**

Sec.

- 604.15. Effect of change in compensation schedules.

**§ 604.15. Effect of change in compensation schedules.**

Revision of the established schedule of compensation for a job, with no significant change in job specifications as determined by the Office of Administration, will have no effect upon the status and seniority of employees. Changes in compensation may not be construed as promotions or demotions.

## CHAPTER 605. SEPARATION OF EMPLOYEES FROM CLASSIFIED SERVICE

### Subchap.

- A. FURLOUGH
- B. REMOVAL AND SUSPENSION
- C. RESIGNATION
- D. LEAVE OF ABSENCE
- E. SENIORITY

### Subchapter A. FURLOUGH

#### Sec.

605.1. General provisions.

#### § 605.1. General provisions.

(a) *Reasons.* Furloughs shall occur only because of lack of funds or work.

(b) *Preference in retention.* An appointing authority will not furlough a regular employee while a probationary, provisional, temporary or emergency employee is employed in the same job, in the same furlough unit designated by the appointing authority. An appointing authority will not furlough a probationary employee while a provisional, temporary or emergency employee is employed in the same job and furlough unit.

(c) *Furlough units.* Furloughs will be conducted within approved furlough units. For purposes of this section, a furlough unit shall be defined as all employees in the job within an affected institution, division, bureau or a combination of the institutions, divisions or bureaus within an agency. Each appointing authority will submit recommended furlough units to the Office of Administration. Once approved by the Office of Administration, the furlough units will be used for subsequent furloughs. Changes to approved furlough units shall be submitted to and approved by the Office of Administration prior to use in subsequent furloughs.

(d) *Order of furlough.* When a furlough is necessary, the last annual or probationary performance evaluations, as applicable, of regular employees in the same furlough unit and job shall be converted to categories or relative ranks. The employees will be placed into quarters, and those in the lowest quarter will be furloughed or returned under subsection (e), in the inverse order of classified service seniority. Seniority for this purpose shall be the length of continuous service in the classified service if there has been no break in service.

(e) *Right of return before furlough.* Upon notification of, and until the effective date of furlough, a regular employee to be furloughed shall have a right of return to vacant positions in the appointing authority in any job and status previously held, or to a job and status in the same or lower levels, if the employee meets the minimum qualifications. A probationary employee will be restored to the eligible list from which appointed or to the job previously held if the probationary status resulted from promotion.

(f) *Mandatory reemployment.* A furloughed employee who is unable to exercise their right of return will be given a mandatory 1-year preference for reemployment in the same job and appointing authority from which furloughed. The preference does not apply to vacancies to which an employee on leave of absence have priority of return, or to a filled position which has been reclassified to a higher-level job after the effective date of furlough.

(g) *Optional reemployment.* A furloughed employee who is unable to exercise their right of return also will be placed, for 1 year, on optional reemployment lists for the

job from which furloughed and for equal and lower-level jobs for which qualified, for certification to all appointing authorities.

(h) *Reemployment certification.* Requirements for certification shall be as follows:

(1) A certification from a mandatory reemployment list shall preclude issuance of a certification otherwise applicable to available vacancies except for a certification from a preferred reemployment list which shall take precedence over all other eligible lists. Certification from optional reemployment lists shall be considered equally with all other employment or promotion certifications issued for available vacancies.

(2) A furloughed employee shall be certified from mandatory reemployment lists according to their stated availabilities. The appointing authority will give reemployment preference to those on mandatory reemployment lists with higher overall performance evaluations. In cases of identical performance evaluations, furlougees with greater continuous classified service seniority will have reemployment preference.

(3) A furloughed employee shall be certified from optional reemployment lists according to their stated availabilities. The appointing authority may select any furloughed employee from the optional reemployment list.

(i) *Refusal of mandatory reemployment.* A furloughed employee who refuses reemployment in the same job, location and appointing authority from which furloughed shall forfeit all reemployment preferences and shall be considered as having voluntarily resigned as of the furlough effective date.

(j) *Refusal of optional reemployment.* A furloughed employee who refuses appointment from an optional reemployment list shall forfeit appointment eligibility for that job and lower-level jobs but shall retain mandatory preference and other optional preferences for reemployment. If preferences subsequently are not, or cannot be, exercised, the furlougees shall be considered as having voluntarily resigned as of the furlough effective date.

(k) *Separate reemployment lists.* Separate reemployment lists will be established for State and non-State agencies.

(l) *Furlough under collective bargaining agreement.* If there is a labor agreement covering the employees to be furloughed, the terms of the agreement as to furlough and reemployment procedures shall be controlling.

### Subchapter B. REMOVAL AND SUSPENSION

#### Sec.

605.2. Generally.

#### § 605.2. Generally.

(a) Just cause for removal and good cause for suspension must be based on at least one merit-related reason.

(b) An appointing authority may, for the purpose of ascertaining an employee's fitness for continued employment, suspend an employee pending the outcome of an internal or external investigation.

(1) When an investigation has not revealed cause for disciplinary action, the suspension shall be retracted and expunged from all records, and the employee shall receive back pay for the full period of suspension.

(2) When an investigation has revealed cause for disciplinary action, the suspension shall be converted, either in whole or in part, to a disciplinary action.

(c) A suspension, including during a pending internal investigation, may not exceed 60 working days in 1 calendar year.

(d) A suspension pending investigation by external agencies may be maintained up to 30 working days after conclusion of the external investigation.

(e) A suspension under 71 Pa.C.S. § 2705(f) (relating to political activity) may not exceed 120 working days.

**Subchapter C. RESIGNATION**

Sec.	
605.3.	General.
605.4.	Notice of acceptance or rejection.
605.5.	Reemployment after resignation.
605.6.	Resignation following leave of absence.

**§ 605.3. General.**

(a) A resignation shall consist of a voluntary termination of employment evidenced by an affirmative statement, either written or verbal, of the employee's intent to resign.

(b) Written notices of resignation should include:

- (1) The employee's signature.
- (2) The date of signature and the date the resignation is to take effect.
- (3) An affirmative statement of the employee's intent to resign.

**§ 605.4. Notice of acceptance or rejection.**

(a) Unless the employee is being investigated or removal action is pending, an appointing authority may not reject a resignation which gives at least 2 weeks' notice.

(b) The acceptance of a resignation may not bar an appointing authority from giving notice of removal thereafter for causes which occur or become known during the period between the acceptance and the effective date of the resignation.

(c) A written resignation specifying no effective date shall take effect immediately.

(d) The appointing authority's acceptance of resignation shall be evidenced by written notice to the resigning employee within 15 calendar days after the appointing authority's receipt of the notice of resignation.

(e) A resignation may not be withdrawn without the written consent of the appointing authority once it has been accepted, in writing, by the appointing authority.

(f) A resignation that has not been accepted by the appointing authority may be withdrawn by the employee at any time prior to acceptance or the effective date.

**§ 605.5. Reemployment after resignation.**

(a) *Initiation of action.* An appointing authority may reinstate a former regular status employee who resigned or otherwise voluntarily separated from civil service employment to a position in the same or similar job from which the employee resigned. The appointing authority shall submit a current application of the former employee to the Office of Administration and verify that the former employee is in all respects qualified and able to serve in the job involved.

(b) *Approval.* The Office of Administration will approve the request if:

- (1) The former employee is qualified for the position sought.
- (2) The rights of persons on reemployment or preferred lists would not be violated by the reinstatement.

(c) *Probationary period after reinstatement.* The appointing authority may waive the probationary period if the former employee returns within 2 years after resignation. If more than 2 years have expired, the reinstated employee shall serve the probationary period prescribed for the job to which returned.

**§ 605.6. Resignation following leave of absence.**

A voluntary resignation submitted during or at the termination of a leave of absence shall be effective on the date thereof.

**Subchapter D. LEAVE OF ABSENCE**

Sec.	
605.7.	General.
605.8.	Extension or renewal of leave.
605.9.	Returning employees.

**§ 605.7. General.**

(a) A leave of absence may be granted at the discretion of the appointing authority and shall be granted for a definite period, up to a 2-year increment of time.

(b) A leave of absence for more than 2 years shall be deemed the equivalent of a resignation as of the date of termination of the leave, unless the leave has been extended or renewed as provided in this subchapter.

(c) This section does not apply to military leave of absence, or to a leave of absence granted to a classified service employee to occupy a position in the Senior Management Service.

**§ 605.8. Extension or renewal of leave.**

(a) *For illness or disability.* Leave of absence may be extended beyond the initial period granted by the appointing authority, if the circumstances indicate that illness or disability will render the employee temporarily incapable of efficiently performing the duties of the position at the scheduled termination of the leave.

(b) *For military service.* Leave of absence granted for military purposes shall extend for the period of service.

(c) *For employment in the unclassified service.* Leave of absence granted to an employee for a position in the unclassified service may be renewed for additional periods not exceeding 2 years in each instance, up to a maximum of 12 years after the date the leave commenced.

(d) *For employment in a position in the Senior Management Service.* Leave of absence granted to an employee to take a position in the Senior Management Service shall extend without necessity for renewal, until the employee leaves the Senior Management Service.

**§ 605.9. Returning employees.**

(a) An employee's right of return is not restricted to a vacancy at the geographic location from which leave was granted.

(b) An employee may return to a vacancy whenever available for reemployment during the period of approved leave, if the employee has given written notice to the appointing authority of the employee's availability.

(c) Upon expiration of a leave of absence or after an employee requests return from leave of absence, an employee's refusal of reemployment in the job and at the location from which leave was granted shall result in the employee's removal from the preferred reemployment list.

(d) An employee may return to an appointing authority other than the one from which leave was granted at the discretion of the gaining appointing authority.



**Subchapter E. SENIORITY**

Sec.  
605.10. Break in service.

**§ 605.10. Break in service.**

(a) *Break in Service.* Any of the following shall constitute a break in service:

- (1) Removal for just cause.
  - (2) Resignation.
  - (3) Retirement.
  - (4) Failure to report after notification of appointment through mandatory, preferred or optional reemployment rights.
  - (5) Expiration of mandatory, preferred or optional reemployment rights.
  - (6) Failure to report after leave and acceptance of other permanent employment while on leave of absence without pay.
- (b) If a break in service occurs, the employee shall lose accrued seniority.
- (c) Periods of furlough and approved leave of absence without pay shall be deemed continuous employment for seniority purposes, except that the period of furlough or leave of absence without pay will not be counted toward seniority.
- (d) Demotion for cause shall terminate seniority in the job from which demoted.

**CHAPTER 606. PROHIBITIONS,  
PENALTIES AND ENFORCEMENT****Subchap.**

- A. OFFICE OF ADMINISTRATION REVIEW OF LEGALITY OF EMPLOYMENT**
- B. POLITICAL ACTIVITY**
- C. REMOVAL AND DISQUALIFICATION OF OFFICERS AND EMPLOYEES**

**Subchapter A. OFFICE OF ADMINISTRATION  
REVIEW OF LEGALITY OF EMPLOYMENT**

Sec.  
606.1. Report of personnel change.  
606.2. Action on appointment or personnel change.  
606.3. Effect of out-of-class work.

**§ 606.1. Report of personnel change.**

Each appointing authority shall promptly report to the Office of Administration an appointment or change in position, status or residence of an employee in the classified service under its jurisdiction, or a permanent change in the salary or other basis upon which an employee is paid and the effective date of the change.

**§ 606.2. Action on appointment or personnel change.**

Whenever the Office of Administration determines that an appointment or personnel change is not in accordance with the act and this subpart, the Office of Administration will notify the appointing authority in writing, including the reasons for the determination and the required corrective action.

**§ 606.3. Effect of out-of-class work.**

When it is determined that an employee is filling a position under a job other than that for which examined and certified, or is performing duties or assuming responsibilities which do not properly belong to the position for which examined and certified, except during an emergency period, the Office of Administration may take appropriate action consistent with the act.

**Subchapter B. POLITICAL ACTIVITY**

Sec.  
606.4. Prohibited political activities; exception and applicability.  
606.5. Complaint procedure.  
606.6. Complaint content.

**§ 606.4. Prohibited political activities; exception and applicability.**

(a) Notwithstanding the political activities expressly prohibited by the act, classified service employees are permitted to seek and accept appointment, nomination and election to the office of school board director. This exception applies only to the employee who is the candidate. For other civil service employees, the restrictions on political activity remain in effect for school board director elections.

(b) The provisions of the act which expressly prohibit certain political activities do not apply to the classified service employee who has been furloughed or who is on a regular unpaid leave of absence, a leave of absence to take a noncivil service position, or a leave of absence subject to Chapter 53 of the State Employees' Retirement Code in 71 Pa.C.S. § 5302(b) (relating to credited State service). An employee on any other type of paid leave of absence shall continue to comply with the political activity restrictions while on leave. Upon return to the classified service the employee shall immediately cease the political activities prohibited by the act. An employee elected to public office while on leave, who returns to the classified service, may serve out the remaining portion of the present term of office if the duties of the office are not among those prohibited by the act. The employee may not seek and accept appointment, nomination and election for a new term in office.

**§ 606.5. Complaint procedure.**

A complaint against a classified service employee for engaging in prohibited political activity shall be addressed to the Office of Administration and will be promptly investigated.

**§ 606.6. Complaint content.**

A complaint must contain sufficient details of the alleged prohibited political activity so as to enable proper investigation by the Office of Administration.

**Subchapter C. REMOVAL AND  
DISQUALIFICATION OF OFFICERS AND  
EMPLOYEES**

Sec.  
606.7. Falsification or concealment of material information.  
606.8. Notice of violation of act or regulations.  
606.9. Penalty for violation.

**§ 606.7. Falsification or concealment of material information.**

Whenever the Office of Administration determines that an employee has been appointed or promoted as a result of having furnished false information or concealed material information, the Office of Administration will give written notice of the determination to the appropriate appointing authority. The notice will contain a reference to 71 Pa.C.S. § 2706 (relating to removal and disqualification of officers and employees) and will include instructions as to the remedial actions to be taken by the appointing authority.

**§ 606.8. Notice of violation of act or regulations.**

Whenever the Office of Administration determines that an employee has violated the act or this subpart, the Office of Administration will give written notice to the

appropriate appointing authority of the determination, including appropriate corrective actions.

**§ 606.9. Penalty for violation.**

If after due inquiry, an employee has been found to have violated the act or this subpart and has been penalized by removal from the classified service under 71 Pa.C.S. § 2706 (relating to removal and disqualification of officers and employees), the employee shall be ineligible for reappointment to any position in the classified service for a period of time determined by the Office of Administration. In setting the period of ineligibility, the Office of Administration may, in its discretion, determine that permanent ineligibility is appropriate.

**CHAPTER 607. NOTICE AND HEARINGS**

**Subchap.**

- A. NOTICE**
- B. PRACTICE AND PROCEEDINGS BEFORE THE OFFICE OF ADMINISTRATION**

**Subchapter A. NOTICE**

**Sec.**

- 607.1. Written notice required.
- 607.2. Personnel actions.
- 607.3. Statement of reasons.
- 607.4. Signatory authority.

**§ 607.1. Written notice required.**

(a) Each appointing authority shall provide written notice of personnel actions affecting employees.

(b) When the appointing authority notifies an employee of a furlough or a suspension, it shall simultaneously submit a copy of the notice to the Office of Administration.

(c) The notice requirements in this section are mandatory. Failure to adhere to the notice requirements set forth in this section may nullify the personnel action.

(d) A written notice of personnel actions shall be provided to the employee in advance of the effective dates of the personnel actions, except in cases of suspension, acceptance of resignation or reclassification. Advance notice shall be at least 1 work day, except in circumstances of unusually serious employee infractions where continued employment would be detrimental to the appointing authority, its other employees or its clients.

(e) A written notice of a removal, furlough, involuntary demotion or suspension, or when otherwise required by the Office of Administration, shall provide information on the employee's right to appeal the personnel action to the Commission.

**§ 607.2. Personnel actions.**

Written notice shall be required for:

- (1) Appointment.
- (2) Promotion.
- (3) Removal, including the removal of a probationary employee before the expiration of the probationary period.
- (4) Suspension.
- (5) Demotion.
- (6) Furlough.
- (7) Retirement.
- (8) Resignation.
- (9) Transfer.
- (10) Reassignment.
- (11) Leave of absence.

(12) Extension or reduction of probationary period.

(13) Compensation changes, except salary increments, general pay increases, or special pay for such things as overtime or out-of-class work.

(14) Performance evaluation.

(15) Reclassification.

(16) Return to a position or job held prior to promotion.

**§ 607.3. Statement of reasons.**

A notice of removal, involuntary demotion or suspension issued to a regular employee shall include a clear statement of the reason(s) for the personnel action, sufficient to apprise the employee of the grounds upon which the charges are based. A notice determined to be defective may result in the reversal of the personnel action.

**§ 607.4. Signatory authority.**

A personnel action notice shall be signed by the agency head, or a designated subordinate. If this responsibility has been delegated within the appointing authority, the delegation shall be submitted in writing to the Office of Administration and identify the designees by specific work title. A subordinate properly delegated signatory authority by the appointing authority may not further delegate the authority. For performance evaluations, the designated subordinate shall be the employee's immediate supervisor and the appointing authority is not required to submit written notification of work titles to the Office of Administration for this purpose.

**Subchapter B. PRACTICE AND PROCEEDINGS BEFORE THE OFFICE OF ADMINISTRATION**

**Sec.**

- 607.5. Applicability of General Rules of Administrative Practice and Procedure.
- 607.6. Hearings before the Office of Administration.
- 607.7. Representation.
- 607.8. Authority of presiding officer.
- 607.9. Record of proceedings.
- 607.10. Evidence.
- 607.11. Subpoenas.
- 607.12. Post-hearing briefs.
- 607.13. Final disposition.

**§ 607.5. Applicability of General Rules of Administrative Practice and Procedure.**

This subchapter is intended to supersede 1 Pa. Code Part II (relating to General Rules of Administrative Practice and Procedure). The General Rules of Administrative Practice and Procedure are not applicable to activities of and proceedings before the Office of Administration.

**§ 607.6. Hearings before the Office of Administration.**

(a) *Public access.* All hearings scheduled by the Office of Administration under its authority under the act shall be open to the public.

(b) *Presiding officer.* The Secretary of Administration, or a designee authorized by the Secretary of Administration in writing, shall conduct hearings scheduled by the Office of Administration under its authority under the act.

(c) *Discretionary hearings.* Hearings conducted under 71 Pa.C.S. § 2202(a)(10) (relating to duties of Office of Administration) may be convened at the sole discretion of the Office of Administration. The burdens of proof and production shall be determined by the presiding officer, if necessary.

(d) *Eligible list cancellation hearings.* Under 71 Pa.C.S. § 2307(d) (relating to duration of eligible lists), the Office of Administration will hold a hearing before cancelling the whole or a part of an eligible list due to illegality or fraud in connection with the eligible list.

(e) *Notice of hearing.* The Office of Administration shall provide advance notice of a scheduled hearing to interested individuals and appointing authorities. The notice will contain a statement of the matters to be addressed at the hearing, as well as specific instructions regarding the date, time and place of hearing. The Office of Administration shall post all hearing notices on its web site in advance of a hearing.

(f) *Consolidation of proceedings.* The Office of Administration may consolidate two or more proceedings at its discretion where the proceedings involve a common question of law or fact, provided that such consolidation does not prejudice any interested individual or appointing authority.

(g) *Severance of proceedings.* The Office of Administration may sever two or more proceedings at its discretion where the proceedings lack a common question of law or fact, provided that such severance does not prejudice any interested individual or appointing authority.

(h) *Continuances.* The presiding officer may, upon a showing of good cause, grant a request for a continuance of a scheduled hearing. The requests shall be submitted as far in advance of the scheduled hearing date as possible, be made in writing, and must state the specific reason(s) for the continuance request.

(i) *Failure to attend a hearing.* When a properly notified interested individual or appointing authority fails to appear at a hearing, the hearing may be held without the participation of the individual or appointing authority and, thereafter, the presiding officer may take appropriate action in due course.

(j) *Additional hearings and evidence.* After the conclusion of a hearing, but prior to the issuance of a final disposition, the presiding officer may, upon its own motion or upon request of an interested individual or appointing authority, allow one or more additional hearings or the submission of additional evidence.

#### § 607.7. Representation.

An interested individual may appear on their own behalf or be represented by an attorney licensed to practice law in the Commonwealth of Pennsylvania or a legal intern certified by the Supreme Court of Pennsylvania. Appointing authorities shall be represented by an attorney licensed to practice law in the Commonwealth of Pennsylvania or a legal intern certified by the Supreme Court of Pennsylvania. A representative of an interested individual or appointing authority shall file an entry of appearance with the Office of Administration.

#### § 607.8. Authority of presiding officer.

A presiding officer has the discretionary authority to do the following:

- (1) Regulate the conduct of hearings, including the scheduling, recessing, reconvening, and adjournment thereof, and to do acts and take measures necessary or proper for the efficient conduct of hearings.
- (2) Administer oaths and affirmations.
- (3) Receive evidence.
- (4) Rule upon offers of proof and evidentiary objections.

(5) Hold appropriate conferences before or during hearings and order the parties to submit memoranda in advance of the conference.

(6) Dispose of procedural requests, including discovery, or similar matters.

(7) Specify the manner in which pleadings are to be submitted to the presiding officer, including the format and contents of these documents.

(8) Require that an interested individual or an appointing authority, prior to the hearing, file a witness list and/or a list of documents to be presented at the hearing.

(9) Take other actions as necessary and appropriate to discharge the presiding officer's vested duties, consistent with statutory authority, regulations, and applicable Office of Administration directives, policies and guidelines.

#### § 607.9. Record of proceedings.

A complete record of the proceedings shall be made. Interested individuals and appointing authorities shall make arrangements to purchase copies of the record directly with the reporting service. The Office of Administration's copy of records may be reviewed at the Office of Administration's office in Harrisburg. Arrangements for this review service may be made by contacting the Office of Administration.

#### § 607.10. Evidence.

A hearing before the Office of Administration shall be formal but need not adhere to the technical rules of evidence or procedure. In cases involving issues of fact, oral testimony shall be under oath or affirmation.

#### § 607.11. Subpoenas.

##### (a) Procedure for requesting subpoenas.

(1) A subpoena for the attendance of witnesses or for the production of documents will be issued only upon written application to the presiding officer, with a copy to the non-requesting interested individual or appointing authority. Notwithstanding the forgoing, the presiding officer may, by motion, issue a subpoena for the attendance of witnesses or the production of documents.

(2) A written application shall specify the relevance of the testimony or documentary evidence sought. For documentary evidence, the request must specify, to the extent possible, the documents desired and the facts to be proved thereby.

(3) A subpoena for new or additional witnesses will not be issued after a hearing has been commenced and continued unless orally requested on the record at the hearing and approved by the presiding officer; except that subpoenas issued prior to the commencement and continuance of the hearing may be reissued upon written request.

(4) Failure to adhere to the requirements of this subsection may result in the refusal to issue the requested subpoena.

##### (b) Service of subpoenas.

(1) A subpoena for the attendance of a witness must be personally served at least 48 hours prior to the hearing, unless the witness agrees to waive the 48-hour requirement.

(2) A subpoena for the production of documents may be served personally, by mail, by facsimile machine, or by other electronic means upon the individual in possession of the documents, the legal counsel for the appointing authority, or the agency head, who may designate a



knowledgeable alternate as custodian of the documents. A subpoena for the production of documents shall be served no later than 5 business days prior to hearing.

(3) Failure to adhere to the requirements of this subsection may result in a ruling by the presiding officer denying the enforceability of the subpoena.

**§ 607.12. Post-hearing briefs.**

The parties will be notified of the procedure and schedule for the submission of briefs. Parties submitting briefs shall submit the original and an electronic copy to the presiding officer. Briefs filed outside of the time period or sequence specified will be considered only at the discretion of the presiding officer.

**§ 607.13. Final disposition.**

After the closing of the record, the Secretary of Administration will issue a final disposition of the matter. Where the presiding officer is not the Secretary of Administration, the presiding officer will draft a proposed final disposition, which the Secretary of Administration may adopt in whole, or in part, as the final disposition of the matter.

[Pa.B. Doc. No. 19-414. Filed for public inspection March 15, 2019, 9:00 a.m.]

**Title 58—RECREATION**

**FISH AND BOAT COMMISSION**

**[ 58 PA. CODE CH. 75 ]**

**Fishing; Endangered Species**

The Fish and Boat Commission (Commission) amends Chapter 75 (relating to endangered species). The Commission is publishing this final-form rulemaking under the authority of 30 Pa.C.S. (relating to Fish and Boat Code) (code). The amendments update the Commission’s lists of endangered and candidate species.

**A. Effective Date**

This final-form rulemaking will go into effect upon publication in the *Pennsylvania Bulletin*.

**B. Contact Person**

For further information on this final-form rulemaking, contact Wayne Melnick, Esq., P.O. Box 67000, Harrisburg, PA 17106-7000, (717) 705-7810. This final-form rulemaking is available on the Commission’s web site at [www.fishandboat.com](http://www.fishandboat.com).

**C. Statutory Authority**

The amendments to § 75.1 (relating to endangered species) are published under the statutory authority of section 2305 of the code (relating to threatened and endangered species). The amendments to § 75.3 (relating to candidate species) are published under the statutory authority of 2102 of the code (relating to rules and regulations).

**D. Purpose and Background**

The specific purpose and background of the amendments is described in more detail under the summary of changes.

**E. Summary of Changes**

(1) Pugnose Minnow (*Opsopoeodus emiliae*) is a small (40—55 mm), silver and olive colored, slender and com-

pressed minnow with a nearly vertical mouth it uses to feed on microcrustaceans at the water’s surface. It inhabits sluggish streams, lakes, wetlands and oxbows, usually where dense vegetation or coarse woody debris is present. It occurs in waters that are clear or turbid. In this Commonwealth, it occurs in a low gradient, turbid stream sections with limited submerged and emergent vegetation, but with considerable downed, in-stream woody debris.

The Pugnose Minnow occurs from the Atlantic Slope in South Carolina across the Gulf Slope to Texas, and northward in the Mississippi River and Great Lakes systems to southern Wisconsin and Ontario (Page and Burr 2011).

The Pugnose Minnow was first collected in this Commonwealth in 2000 (Argent and Spear 2001) and was subsequently collected in 2001 (Criswell and Fischer). In 2016, R. Criswell, D. Fischer and J. Brancato (PADEP) collected 10 individuals of this species, confirming an established population. All collections are from a short section of lower Cussewago Creek, Crawford County, totaling no more than 2 kilometers (km) in length. Although there are no older records for this species, experts consider it native here. Cussewago Creek, particularly the lowermost section where this species was collected, is difficult to sample, and the microhabitat occupied by the Pugnose Minnow is very limited. It could have very easily been overlooked, and historic sampling effort there, particularly for nongame fishes, has been very limited. In addition, this species occurred historically in northeast Ohio (Trautman 1981) and is represented elsewhere in its range by several disjunct populations (Page and Burr 2011). This species appears to be subject to population fluctuations in this Commonwealth. Five surveys were focused on this species in the occupied section of Cussewago Creek between 2006 and 2016 without success.

The level of turbidity that this population of Pugnose Minnows will tolerate is unknown, but any significant increases could be problematic. The State-endangered Hornyhead Chub, *Nocomis biguttatus*, formerly occurred in this waterway, but is now extirpated. The Commission suspects that increased turbidity during the post-1930 period is responsible for this extirpation. Increases in silt loading must be considered the greatest threat to the Pugnose Minnow.

A dam currently impounds a portion of Cussewago Creek 1.5 km below the area occupied by the Pugnose Minnow. There have been discussions concerning the removal of this dam (B. Lorson, Commission, pers. comm.). It is unclear if the removal of this dam would impact the water level or habitat in the vicinity of the Pugnose Minnow population. It is also unclear if the Pugnose Minnow occupies the impounded area.

The current status of this species was reviewed using the Commission’s documentation and objective listing/delisting process. Endangered species criteria were met in four categories: A1 (Population Reduction), B3 (Extent of Occupancy in streams is less than 10 miles), B4 (Sum of Proportion of Watersheds Occupied value < 0.2), and B5 (Severely fragmented < 6 locations). In addition, it was evaluated with NatureServe’s Conservation Status Assessments Rank Calculator and received a State Conservation Rank of S1 meaning it is critically imperiled in the Commonwealth with a high to very high risk of extirpation due to its limited range or few populations, or both, or occurrences. The Fishes Technical Committee of the Pennsylvania Biological Survey (PABS) reviewed this

documentation and rank assignment and recommended that the Pugnose Minnow be listed as endangered. Enough information is available to make the determination that it is endangered in this Commonwealth at present and to justify its addition to the Commonwealth's list of endangered fishes.

Therefore, the Commission orders the Pugnose Minnow be added to the list of endangered species under § 75.1.

(2) Blacknose Shiner (*Notropis heterolepis*) is a small olive to pale yellow minnow (40–65 mm) found in clear lakes and streams, where it is often associated with aquatic vegetation. In this Commonwealth, this species has been collected in pools, with rubble, gravel, and sand substrates, and completely lacks submerged vegetation.

The Blacknose Shiner is distributed from the Hudson Bay drainage east to Nova Scotia in Canada, and from Maine west to Nebraska, with extinct glacial relict populations in southern Kansas and Missouri (Gilbert 1980, Page and Burr 2011). This species is common in the north of its range but disappearing from the southern region (Page and Burr 2011).

In the glaciated northwestern portion of this Commonwealth, there are historic records from the Lake Erie drainage, Shenango River drainage and the upper Allegheny River drainage. The only recent records are from two tributaries to the Allegheny River in Erie and McKean Counties.

The Blacknose Shiner was thought to be extirpated from this Commonwealth until recently, with no collection reports from the late 1930s through 2009. It was formerly known from Erie and Crawford Counties. Following collections in 2009, the status was updated to “undetermined” and the historically occupied waterways were intensively surveyed. Populations were found in a single, small drainage in Erie County within its historically known distribution. Another population is found in a tributary to the upper Allegheny River outside of the known native range in this Commonwealth and is considered to be introduced, but it could possibly be native. The known lineal occupied distance within the native range is only 2 km and justifies a change in status from undetermined to endangered.

The current status of this species was reviewed using the Commission's documentation and objective listing/delisting process. Endangered species criteria were met in four categories: A1 (Population Reduction), B3 (Extent of Occupancy in streams < 10 miles), B4 (Sum of Proportion of Watersheds Occupied < 0.2), and B5 (Severely fragmented < 6 locations). In addition, it was evaluated with NatureServe's Conservation Status Assessments Rank Calculator and received a State Conservation Rank of S1—meaning it is critically imperiled in this Commonwealth with a high to very high risk of extirpation due to its limited range or few populations, or both, or occurrences. The Fishes Technical Committee of the PABS reviewed this documentation and rank assignment and recommended that the Blacknose Shiner be listed as endangered. Enough information is available to make the determination that it is endangered in this Commonwealth at present and to justify its addition to the Commonwealth's list of endangered fishes.

Therefore, the Commission orders the Blacknose Shiner be added to the list of endangered species under § 75.1.

(3) Banded Sunfish (*Enneacanthus obesus*) are small sunfish (50–90 mm) with an olive colored body having 5–8 dark vertical bars extending to its ventral side. It occupies sluggish, calm sections of streams and rivers, as

well as bogs, marshes, swamps, ponds and lakes. It is closely associated with dense stands of rooted and suspended aquatic vegetation over substrates of silt, sand, mud and detritus.

It is native to the coastal lowlands from southern New Hampshire to central Florida in both the Atlantic and Gulf drainages (Lee 1980). In this Commonwealth, it occurred historically in the tidal portion of Delaware River drainage in Bucks, Delaware and Philadelphia Counties (Fowler 1940, Cooper 1983).

Two circa 1850 collections include 4 specimens (UMMZ 86801) and 8 specimens (ANSP 12876). Three records from 1907–1914 each contain 1 or 2 specimens (ANSP 41855, 41859 and 41874). It is obvious, given these numbers and the very limited extent of suitable Coastal Plain habitat on this Commonwealth side of the Delaware River/Estuary, that the Banded Sunfish was never particularly common or widely distributed in this Commonwealth. The 1977 collection included 3 specimens and likely represented waifs and not a population given the paucity of records before and after.

The Banded Sunfish is currently listed as an endangered species. It has not been collected or verified in this Commonwealth since 1977, when 3 specimens were taken from an impingement screen at a power plant on the Delaware River near Philadelphia in Delaware County (Cooper 1983). All earlier records are from the Coastal Plain in Bucks and Philadelphia Counties, and predate 1915 (Stauffer et al. 2016). Despite targeted sampling by multiple researchers (R. Criswell, Academy of Natural Sciences in Philadelphia and Philadelphia Water Department), no specimens have been collected and most suitable historic habitat has been altered or destroyed (Criswell 1998, Horwitz et al. 2006, unpublished data). Based on this information, it can be surmised that this species no longer occurs in this Commonwealth and should be removed from the Commonwealth's endangered species list.

The current status of this species was reviewed using the Commission's documentation and objective listing/delisting process. Because there are currently no extant records of the Banded Sunfish, no threatened and endangered species listing criterion were met. The Fishes Technical Committee of the PABS reviewed this documentation and rank assignment and recommended that the Banded Sunfish be delisted. Enough information is available to make the determination that it no longer occurs within this Commonwealth at present and to justify its removal from the Commonwealth's list of endangered fishes.

Therefore, the Commission orders that the Banded Sunfish be removed from the Commonwealth's list of endangered species under § 75.1.

(4) Gravel Chub (*Erimystax x-punctatus*) is a slender, medium-sized (65–95 mm) yellow to olive green chub that inhabits large creeks and rivers with clear to somewhat turbid water, over substrate that includes significant amounts of clean sand, gravel and rock. It is essentially a benthic fish that occurs in riffles and runs, in both shallow and deeper water.

The Gravel Chub is native from southern Ontario and western New York west to Minnesota and south to Arkansas. It was known to inhabit the Ohio River basin of western Pennsylvania (and New York) with most of the verified occurrences associated with the Allegheny River.

The historic distribution of the Gravel Chub is somewhat obscured by its taxonomic past. The Gravel Chub

was recognized as distinct relatively recently and wasn't formally described as a species until 1956 (Hubbs and Crowe), well after the collection record had begun. It is likely that early reports of the generically similar Streamline Chub, *Erimystax dissimilis* included the Gravel Chub. Cope (1881) reported the Streamline Chub to be "especially numerous in the creeks of Western Pennsylvania."

The Commission is aware of 13 collections of the Gravel Chub from this Commonwealth. Collections made before the species description (Hubbs and Crowe 1956) were re-identified from museum specimens. The earliest was made by Edward D. Cope in the late 1800s from the Youghiogheny River (later identified by Robert E. Jenkins, ANSP1824). This collection indicates that the Gravel Chub was likely much more widely distributed initially in the upper Ohio River basin than indicated by later collections. The subsequent 12 collections were all made during the period 1935–1985 from the Allegheny River or from the lower reaches of tributaries to the Allegheny River. Similarly, Carlson et al. (2016) reported on collections known from the Allegheny River in New York during this same period with no occurrences reported after 1979.

There are no recent verified reports of Gravel Chubs from the Allegheny River drainage. From approximately 2000 to present, the rivers of the Ohio River drainage in western Pennsylvania have been intensively surveyed with electrofishing and trawling gears at hundreds of sites (Koryak et al. 2009, Freedman et al. 2009, Lorson 2009, Koryak et al. 2011, Stauffer et al. 2016, Commission unpublished data). Efforts by R. Criswell and D. Fischer have also specifically targeted the Gravel Chub at historic collection localities and areas containing seemingly optimum habitat. Despite the collective ability of these efforts to detect changes in the status of species requiring similar environmental conditions (for example, Streamline Chub, Mountain Madtom, Northern Madtom, Channel Darter, Longhead Darter, River Darter, Gilt Darter, Bluebreast Darter, Tippecanoe Darter, Spotted Darter), no verified specimens of Gravel Chubs have been collected. The lack of collections of the Gravel Chub in western Pennsylvania and New York indicate that it is now likely extirpated from the "Three Rivers" drainage area.

This species is of moderate concern globally. Although locally common in some areas, populations are declining over much of its range (Page and Burr 2011). The Ontario and Kentucky populations have been extirpated. Trautman (1981) suggested that increased siltation was responsible for a contraction of its range in Ohio. Impoundments are likely a contributing factor in reducing suitable habitat by altering flow and promoting the deposition of silt. Carlson et al. (2016) reported that one historic locality in New York is now inundated by the Allegheny Reservoir. On the Monongahela River and lower Allegheny River, a series of navigational locks and dams and urban development have extensively altered natural habitats. The dredging industry has utilized the impounded sections of the upper Ohio River and Allegheny River to mine glacial sand and gravel, further altering the river bottoms.

The disappearance of the Gravel Chub from this Commonwealth and New York remains somewhat of a mystery. The Gravel Chub was apparently able to survive in the Allegheny River drainage throughout most of the 1900s as indicated by collections during 1935–1985. Environmental quality generally improved in the Alle-

gheny River drainage in the 1970s and 1980s largely due to the implementation of the Clean Water Act (Koryak et al. 2009). During this period, many lithophilic fishes reinvaded portions of the Allegheny River drainage where pollution had been problematic, and in some areas, these fishes have become abundant (Ortmann 1909, Stauffer et al. 2016; Commission unpublished data). Apparently, the Gravel Chub did not benefit similarly.

Trautman (1981) observed that competition between the Gravel Chub and its congener, the Streamline Chub, appeared to be rather keen, especially while feeding. The Streamline Chub is presently well distributed and common to abundant in the Allegheny River and its larger tributaries (Stauffer et al. 2016, Commission unpublished data). It is also present in the upper Ohio River. In the state of Ohio, where Gravel Chubs and Streamline Chubs are still found together, these species appear to segregate into different habitats. Brian Zimmerman (Ohio State University Museum of Biodiversity) provided the following personal communication discussing his observations in Ohio.

"In Ohio the Streamline Chub *Erimystax dissimilis* and Gravel Chub *E. x-punctatus* both have greatly increased in abundance and distribution over the past 20–30 years. They do seem to differ in habitat in that the Streamline Chub is found in smaller and clearer streams than the Gravel Chub. In our two large river systems that have large populations of both (Muskingum and Scioto rivers) the Gravel Chub stays almost entirely in the main stem and the largest of tributaries where the turbidity of the water is often greater. Streamline Chubs in these two systems are found significantly further upstream and in smaller tributaries to these systems. The water clarity may just be a factor of stream size. These two also differ in habitat preference in that Streamline Chub are more often in deeper water in more "run-like" habitat and Gravel Chub are often found shallower on large gravel riffles of the large rivers they inhabit in Ohio. Clarity and or depth may be playing a role in why Streamline Chub have expanded into the upper Ohio River and a few tributaries on the eastern edge of Ohio. This presumably is a downstream extension of the very large population in PA in the Allegheny and upper Ohio Rivers. Gravel Chub on the other hand have not been found in this area."

Experts speculate that historic habitat modification in the upper Ohio River basin and possibly interspecific competition have contributed to the extirpation of the Gravel Chub from the Allegheny River drainage. It appears that turbidity presently plays a role in the distribution of Gravel Chub populations as they recolonize waters in Ohio. As polluted waters in western Pennsylvania have recovered throughout the late 1900s, they have become clearer. It is possible that this has played an additional role in further reducing optimal conditions for the Gravel Chub or by providing a competitive edge for the Streamline Chub.

The Gravel Chub is currently listed as endangered in this Commonwealth. The Gravel Chub persisted in this Commonwealth and New York in the Allegheny River basin throughout the worst period of pollution during the early and mid-1900s. Despite this, it hasn't been observed in this Commonwealth since 1985. Many intensive fisheries survey efforts have been conducted recently throughout its range here, including specific efforts targeted at the Gravel Chub. Based on this information, it appears that this species no longer occurs in this Commonwealth and should be delisted from the endangered species list.



The current status of this species was reviewed using the Commission's documentation and objective listing/delisting process. Because there are currently no extant records of the Gravel Chub in this Commonwealth, no threatened and endangered species listing criterion were met. The Fishes Technical Committee of the PABS reviewed this documentation and rank assignment and recommended that the Gravel Chub be delisted. Enough information is available to make the determination that it no longer occurs within this Commonwealth at present and to justify its removal from the Commonwealth's list of endangered fishes.

Therefore, the Commission orders that the Gravel Chub be removed from the Commonwealth's list of endangered species under § 75.1.

(5) Central Mudminnow (*Umbra limi*) is a relatively small (54 mm), elongated fish that occurs in marshes, swamps, springs, ditches, lake margins and the pools of smaller streams. It is usually found in the presence of dense vegetation and soft substrates, but they have been collected in shaded, stagnant, swampy areas that lack vegetation. Suitable substrates include thick organic material, gravel, sand and silt (Stauffer et al. 2016). Becker (1983) noted a preference for clear water that may be stained light or dark brown, and it is found less frequently in turbid conditions.

Central Mudminnows are known from the St. Lawrence River drainage west through the Great Lakes to southern Manitoba, and south through the Mississippi River Basin to western Tennessee (Gilbert 1980). In this Commonwealth, they occur in the Shenango and upper Allegheny river systems, and Lake Erie drainages (Stauffer et al. 2016).

Historically, the Central Mudminnow was found to be rather widely distributed in northwestern Pennsylvania during the period 1990—present, and is known to occur in Crawford, Mercer, Erie, Venango and Warren Counties at present (Stauffer et al. 2016). A lack of recent records from Beaver and Lawrence Counties is most likely an artifact of inadequate targeted surveys there. A number of post-1990 collections include 10 or more individuals, and 150 individuals were counted at one Erie County site in 2009. The Central Mudminnow is common to abundant in the Conneaut Marsh and wetlands in the Pymatuning region; these rather extensive wetlands are the largest in this Commonwealth.

There are no recent records from the extreme southernmost portion of its range in this Commonwealth. However, given its preference for vegetated wetlands and other waterways that are difficult to survey or are not typically sampled by fishery managers and ichthyologists, it is likely that a significant number of populations exist that have not yet been detected. Although wetlands acreage has declined significantly in this Commonwealth, and the Central Mudminnow was probably more abundant prior to those losses, it is still rather widespread and locally common.

The Central Mudminnow was listed as a candidate species of this Commonwealth in 1991. It occurs in the Shenango and upper Allegheny river systems, and Lake Erie drainages. Since its listing, a significant amount of field work has been performed in this species' native drainage, and many additional populations have been documented in five counties. At some sites the Central Mudminnow was found to be common or abundant. Experts believe that many undetected populations remain, due to this species' specialized habitat and occupa-

tion of wetlands that are not typically surveyed by fishery managers or ichthyologists. Based on this information, we believe that removal of this species from the list of candidate species is appropriate.

The current status of this species was reviewed using the Commission's documentation and objective listing/delisting process. It exceeds Criterion B.3 (Extent of Occupancy) because it occupies more than 150 river miles of waterway. Additionally, Criterion B.5 for candidate status is exceeded: no extreme fragmentation and no fluctuation or decline of populations has been documented or suspected and more than 20 occurrences have been documented or suspected. In addition, it was evaluated with NatureServe's Conservation Status Assessments Rank Calculator and received a State Conservation Rank of S4—meaning it is secure in this Commonwealth with a very low risk of extirpation due to its extensive range or many populations, or both, or occurrences. The Fishes Technical Committee of the PABS reviewed this documentation and rank assignment and recommended that the Central Mudminnow be delisted. Enough information is available to make the determination that it is secure in this Commonwealth at present and to justify its removal from the Commonwealth's list of candidate fishes.

Therefore, the Commission orders that the Central Mudminnow be removed from the Commonwealth's list of candidate species under § 75.3.

(6) Eastern Mudminnow (*Umbra pygmaea*) is a larger mudminnow (107 mm) that inhabits backwaters, braided creek mouths, wetlands, vegetated and soft-bottom lake margins, and sluggish or still sections of streams. It occurs in clear to somewhat turbid water, usually where dense aquatic vegetation or decaying organic material provides adequate cover. Mudminnows can withstand low dissolved oxygen concentrations (utilizing the gas bladder as a lung), low pH and temperature extremes, making them tolerant of harsh conditions (Jenkins and Burkhead 1994, Kuhne and Olden 2014). They have been collected in slightly tannin-stained Pocono Mountains lakes and Hastings (1984) reported it from pH as low as 4.0.

The Eastern Mudminnow occurs from south-eastern New York south to the St. Johns River, Florida and west along the Gulf Slope to the Aucilla River (Gilbert 1980). In this Commonwealth, it is native to the Delaware River drainage (Stauffer et al. 2016). It has recently been reported from the Susquehanna River basin at multiple sites, where the Commission considers it to be introduced (D. Fischer, unpublished data).

The Commission is aware of 23 pre-1920 records for this species, all from the Philadelphia region (Bucks and Philadelphia Counties); between 1920 and 1990 approximately 20 collections were made, which included documentation in Carbon, Chester, Delaware, Monroe and Pike Counties (Stauffer et al. 2016; Criswell and Fischer). Most pre-1990 records document 1—9 individuals per station, but one pre-1920 collection from Bucks County (ANSP 23850) consisted of 23 individuals. There is little doubt, however, that the Eastern Mudminnow was more common than these records reflect, given its preference for debris-laden habitats and the fact that early surveyors were limited to nets and seines. Abundance data for the period 1920—1990 is lacking.

Within the last 25 years, the Eastern Mudminnow was found to be somewhat common in the Bucks, Chester, Delaware and Philadelphia Counties area and some of the Pocono Mountains region during the period 1990—present (Stauffer et al. 2016). Occurrences have been documented

by the Academy of Natural Sciences in Philadelphia in Bucks, Philadelphia, Delaware, Lackawanna, Monroe, Philadelphia, Pike and Wayne Counties (R. Horwitz, personal communication). Since 1990, extralimital collections have occurred in Bradford, Dauphin, Lackawanna and Luzerne Counties within the Susquehanna River drainage (Stauffer et al. 2016; D. Fischer and M. Bilger, unpublished data). It is unclear if the collections from the Susquehanna River drainage are indicative of bait releases or established populations. A significant amount of suitable habitat in northeastern Pennsylvania remains unsurveyed due to access issues.

The Eastern Mudminnow was listed as a candidate species of this Commonwealth in 1991. It occurs in the Delaware River drainage. Since its listing, a significant amount of field work has been performed in this species' native drainage. A number of additional populations have been documented and this species continues to exist at sites where it was documented prior to 1991. Experts believe that many undetected populations remain, due to this species' specialized habitat and occupation of wetlands that are not typically surveyed by fishery managers or ichthyologists; and given the vast amount of private land containing natural ponds and wetlands in northeastern Pennsylvania where access by surveyors is not available. Based on this information, the removal of this species from the list of candidate species is warranted.

The current status of this species was reviewed using the Commission's documentation and objective listing/delisting process. It exceeds Criterion B.3 (Extent of Occupancy), because it occupies more than 150 river miles of waterway. Additionally, Criterion B.5 for candidate status is exceeded: no extreme fragmentation and no fluctuation or decline of populations has been documented or suspected and more than 20 occurrences have been documented or suspected. In addition, it was evaluated with NatureServe's Conservation Status Assessments Rank Calculator and received a State Conservation Rank of S4—meaning it is secure in this Commonwealth with a very low risk of extirpation due to its extensive range or many populations, or both, or occurrences. The Fishes Technical Committee of the PABS reviewed this documentation and rank assignment and recommended that the Eastern Mudminnow be delisted. Enough information is available to make the determination that it is secure in this Commonwealth at present and to justify its removal from the Commonwealth's list of candidate fishes.

Therefore, the Commission orders that the Eastern Mudminnow be removed from the Commonwealth's list of candidate species under § 75.3.

The Commission therefore amends §§ 75.1 and 75.3 to read as set forth in 48 Pa.B. 7532 (December 8, 2018).

*F. Paperwork*

This final-form rulemaking will not increase paperwork and will not create new paperwork requirements.

*G. Fiscal Impact*

This final-form rulemaking will not have adverse fiscal impact on the Commonwealth or its political subdivisions. This final-form rulemaking will not impose new costs on the private sector or the general public.

*H. Public Involvement*

A notice of proposed rulemaking was published at 48 Pa.B. 7532. The Commission received one public comment opposing the amendment. Commissioners were provided with copies of the public comment.

*Findings*

The Commission finds that:

(1) Public notice of intention to adopt the 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 promulgated thereunder, 1 Pa. Code §§ 7.1 and 7.2.

(2) A public comment period was provided, and no public comments were received.

(3) The adoption of the amendments of the Commission in the manner provided in this order is necessary and appropriate for administration and enforcement of the authorizing statutes.

*Order*

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

(A) The regulations of the Commission, 58 Pa. Code Chapter 75, are amended by amending §§ 75.1 and 75.3 to read as set forth at 48 Pa.B. 7532.

(B) The Executive Director will submit this order and 48 Pa.B. 7532 to the Office of Attorney General for approval as to legality and form as required by law.

(C) The Executive Director shall certify this order and 48 Pa.B. 7532 and deposit them with the Legislative Reference Bureau as required by law.

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

TIMOTHY D. SCHAEFFER,  
*Executive Director*

**Fiscal Note:** Fiscal Note 48A-282 remains valid for the final adoption of the subject regulations.

[Pa.B. Doc. No. 19-415. Filed for public inspection March 15, 2019, 9:00 a.m.]







