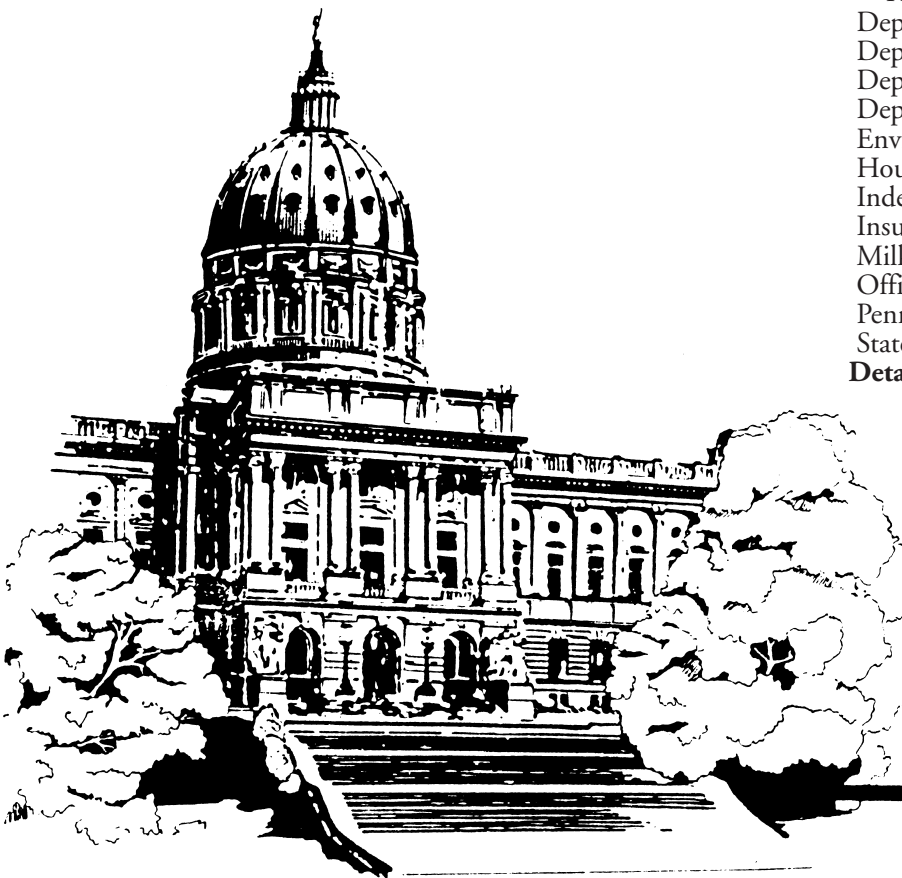


# PENNSYLVANIA BULLETIN

Volume 52  
Saturday, November 12, 2022 • Harrisburg, PA  
Number 46  
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The Courts  
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Department of Banking and Securities  
Department of Community and Economic  
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Resources  
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Independent Regulatory Review Commission  
Insurance Department  
Milk Marketing Board  
Office of Open Records  
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State Athletic Commission  
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**Latest Pennsylvania Code Reporter  
(Master Transmittal Sheet):**

**No. 576, November 2022**

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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.pacodeandbulletin.gov](http://www.pacodeandbulletin.gov).

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.

The *Pennsylvania Bulletin* is available at [www.pacodeandbulletin.gov](http://www.pacodeandbulletin.gov).

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### Printing Format

*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 2022.

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# THE GENERAL ASSEMBLY

## COMMISSION ON SENTENCING

### Public and Virtual Hearings Scheduled

The Commission on Sentencing (Commission) announces the following meetings to be held in Harrisburg, PA and by means of Zoom:

Wednesday, December 7, 2022	1 p.m.	Policy Meeting	523 Irvis Building Capitol Complex Harrisburg, PA Zoom Webinar: <a href="https://bit.ly/PCSPolicyMtgDec72022">https://bit.ly/PCSPolicyMtgDec72022</a>
	6 p.m.	Dinner Meeting	Harrisburg Hilton and Towers Hotel One North Second Street Harrisburg, PA
Thursday, December 8, 2022	9 a.m.	Policy Committee Meeting	523 Irvis Building Capitol Complex Harrisburg, PA Zoom Webinar: <a href="https://bit.ly/PCSDEC82022COMMMTG">https://bit.ly/PCSDEC82022COMMMTG</a>
	11 a.m.	Quarterly Commission Meeting	523 Irvis Building Capitol Complex Harrisburg, PA Zoom Webinar: <a href="https://bit.ly/PCSDEC82022COMMMTG">https://bit.ly/PCSDEC82022COMMMTG</a>

MARK H. BERGSTROM,  
*Executive Director*

[Pa.B. Doc. No. 22-1732. Filed for public inspection November 11, 2022, 9:00 a.m.]

# THE COURTS

## Title 210—APPELLATE PROCEDURE

### PART II. INTERNAL OPERATING PROCEDURES

[ 210 PA. CODE CH. 65 ]

#### Amendments to the Superior Court Operating Procedures

The Superior Court of Pennsylvania has adopted amendments to its published Operating Procedures. These amendments are reflected in the Superior Court Operating Procedures with amendments to Pa. Code §§ 65.38 and 65.39.

These changes were approved on October 26, 2022, effective on that date.

[Additions appear in boldface. Deletions are bracketed and boldface.]

#### Annex A

### TITLE 210. APPELLATE PROCEDURE

#### PART II. INTERNAL OPERATING PROCEDURES

#### CHAPTER 65. OPERATING PROCEDURES OF THE SUPERIOR COURT

#### DECISIONAL PROCEDURES

#### § 65.38. Reconsideration, Reargument, and En Banc Review.

A. All applications, motions, or petitions requesting reconsideration of the final decision of a merits panel, shall be recognized as Applications for Reargument pursuant to Pa.R.A.P. 2541 *et seq.*, and shall be subject to all the rules and limitations otherwise applicable to Applications for Reargument.

B. All such applications described in subsection A shall first be submitted to the merits panel that issued the decision in question, *i.e.*, the original merits panel, for consideration by that panel.

C. The members of the merits panel may vote to grant panel reconsideration, grant en banc reargument, or deny any such application.

1. If the merits panel recommends en banc reargument, Central Legal Staff shall circulate the application, motion, or petition, along with any relevant filings, original decision(s), and/or summaries, to the commissioned judges for votes.

2. If a majority of the merits panel does not vote to grant reconsideration, Central Legal Staff shall forward all relevant reconsideration submissions to the commissioned judges as an Application for Reargument before a court en banc.

3. A party's request that the case be reargued before a court en banc shall not foreclose a merits panel's ability to reconsider the decision that prompted the underlying application.

D. Reargument before a court en banc is not a matter of right, but of sound judicial discretion. An Application for Reargument will be denied unless there are compelling reasons therefor. Such reasons include, but are not limited to, the following:

1. It appears that a decision of a merits panel may be inconsistent with a decision of a different panel of the court;

2. It appears that a merits panel may have overlooked relevant precedent, statute, or rule of court;

3. It appears that a merits panel may have overlooked or misapprehended one or more material facts of record;

4. It appears a merits panel relied upon legal authority relevant to the decision that has been reversed, modified, overruled, discredited, or materially altered during the pendency of the appeal; and

5. It appears the issues have potential for a significant impact upon developing law or public policy.

E. Reargument before a court en banc will be granted only if [ **a majority** ] **at least half** of the **available** commissioned judges of the court vote to grant reargument. **A judge's vote of "Did Not Participate" or "Recuse" shall constitute a reduction in the count of available judges.**

F. The court will not entertain an application, motion, or petition for reconsideration of a decision rendered by a court en banc.

[Amended October 26, 2022, imd. effective]

§ 65.39. [ **Ancillary Orders Following Merits Panel Decisions.** ] **Rescinded, October 26, 2022, imd. Effective.**

[ **A. If a timely Application for Reargument is filed, the merits panel shall retain jurisdiction over the appeal until such time as the application is decided.**

**B. Following a decision by the merits panel, applications, motions, or petitions requesting clarification, award of costs or sanctions, publication pursuant to I.O.P. 444 D, or extension of time to file an application for reargument, will be referred to the merits panel for review and disposition. ]**

[Rescinded October 26, 2022]

[Pa.B. Doc. No. 22-1733. Filed for public inspection November 11, 2022, 9:00 a.m.]

## DISCIPLINARY BOARD OF THE SUPREME COURT

### Notice of Disbarment

Notice is hereby given that by Order of the Supreme Court of Pennsylvania dated October 28, 2022, Erik Benjamin Cherdak is disbarred from the practice of law in this Commonwealth to be effective November 27, 2022.

In accordance with Rule 217(f), Pa.R.D.E., since this formerly admitted attorney resides outside of the Commonwealth of Pennsylvania, this notice is published in the *Pennsylvania Bulletin*.

MARCEE D. SLOAN,  
*Board Prothonotary*

[Pa.B. Doc. No. 22-1734. Filed for public inspection November 11, 2022, 9:00 a.m.]

# RULES AND REGULATIONS

## Title 25—ENVIRONMENTAL PROTECTION

### ENVIRONMENTAL QUALITY BOARD

[ 25 PA. CODE CHS. 121 AND 129 ]

#### Additional RACT Requirements for Major Sources of NO<sub>x</sub> and VOCs for the 2015 Ozone NAAQS

The Environmental Quality Board (Board) amends Chapters 121 and 129 (relating to general provisions; and standards for sources) to read as set forth in Annex A. This final-form rulemaking amends Chapter 129 to establish additional presumptive reasonably available control technology (RACT) requirements and RACT emission limitations for certain major stationary sources of oxides of nitrogen (NO<sub>x</sub>) and volatile organic compound (VOC) emissions in existence on or before August 3, 2018, to address the Federal requirements for the 2015 8-hour ozone National Ambient Air Quality Standards (NAAQS) under the Clean Air Act (CAA) (42 U.S.C.A. §§ 7401—7671q).

This final-form rulemaking amends Chapter 121 to add terms to and amend existing terms in § 121.1 (relating to definitions) to support these final-form amendments to Chapter 129.

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

This final-form rulemaking was adopted by the Board at its meeting on August 9, 2022.

#### A. Effective Date

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

#### B. Contact Persons

For further information, contact Viren 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 Jesse C. Walker, Assistant Counsel, Bureau of Regulatory Counsel, Rachel Carson State Office Building, P.O. Box 8464, Harrisburg, PA 17105-8464, (717) 787-7060. Persons with a disability may use the Pennsylvania Hamilton Relay Service, (800) 654-5984 (TDD users) or (800) 654-5988 (voice users). This final-form rulemaking is available on the Department of Environmental Protection's (Department) web site at [www.dep.pa.gov](http://www.dep.pa.gov) (select "Public Participation," then "Environmental Quality Board" and then navigate to the Board meeting of August 9, 2022).

#### C. Statutory Authority

This final-form 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; and section 5(a)(8) of the APCA, which grants the Board the authority to adopt rules and regulations designed to implement the provisions of the CAA.

#### D. Background and Purpose

This final-form rulemaking establishes §§ 129.111—129.115 (relating to additional RACT requirements for major sources of NO<sub>x</sub> and VOCs for the 2015 ozone NAAQS) to meet CAA requirements for the control of ground-level ozone. Emissions of NO<sub>x</sub> and VOCs are precursors for ground-level ozone formation. Ground-level ozone, a public health and welfare hazard, is not emitted directly to the atmosphere from air contamination sources, but forms from the photochemical reaction between emissions of VOCs and NO<sub>x</sub> in the presence of sunlight.

Ground-level ozone is a highly reactive gas which at sufficient concentrations can produce a wide variety of harmful public health and welfare effects. At elevated concentrations, ground-level ozone can adversely affect human and animal health, vegetation, materials, economic values, and personal comfort and well-being. It can cause damage to important food crops, forests, livestock and wildlife. Repeated exposure to ground-level ozone pollution may cause a variety of adverse health effects for both healthy people and those with existing conditions including difficulty in breathing, chest pains, coughing, nausea, throat irritation and congestion. It can worsen bronchitis, heart disease, emphysema and asthma, reduce lung capacity and lead to increased morbidity. Asthma is a significant and growing threat to children and adults. High levels of ground-level ozone also affect animals including pets, livestock and wildlife in ways similarly to humans.

The EPA is responsible for establishing NAAQS, or maximum allowable concentrations in the ambient air, for six criteria air pollutants considered harmful to public health and welfare, including the environment: ground-level ozone; particulate matter; nitrogen dioxide (NO<sub>2</sub>); carbon monoxide; sulfur dioxide; and lead. Section 109 of the CAA (42 U.S.C.A. § 7409) established two types of NAAQS: primary standards, which are limits set to protect public health; and secondary standards, which are limits set to protect public welfare and the environment, including protection against visibility impairment and from damage to animals, crops, vegetation and buildings. The EPA established primary and secondary ground-level ozone NAAQS to protect public health and welfare.

On April 30, 1971, the EPA promulgated primary and secondary NAAQS for photochemical oxidants, which include ozone, under section 109 of the CAA. See 36 FR 8186 (April 30, 1971). These were set at an hourly average of 0.08 parts per million (ppm) total photochemical oxidants not to be exceeded more than 1 hour per year. On February 8, 1979, the EPA announced a revision to the then-current 1-hour standard. See 44 FR 8202 (February 8, 1979). The final rule revised the level of the primary 1-hour ozone standard from 0.08 ppm to 0.12 ppm and set the secondary standard identical to the primary standard. This revised 1-hour standard was reaffirmed on March 9, 1993. See 58 FR 13008 (March 9, 1993).

Section 110(a) of the CAA (42 U.S.C.A. § 7410(a)) gives states the primary responsibility for achieving the NAAQS. Section 110(a) of the CAA provides that each state shall adopt and submit to the EPA a plan to implement measures (an SIP) to enforce the NAAQS or a revision to the NAAQS promulgated under section 109(b) of the CAA. An SIP includes the regulatory programs,



actions and commitments a state will carry out to implement its responsibilities under the CAA. Once approved by the EPA, an SIP is legally enforceable under both Federal and state law.

Section 172(c)(1) of the CAA (42 U.S.C.A. § 7502(c)(1)) provides that SIPs for nonattainment areas must include “reasonably available control measures,” including RACT, for affected sources of emissions. RACT is defined as the lowest emissions limitation that a particular source is capable of meeting by the application of control technology that is reasonably available considering technological and economic feasibility. See 44 FR 53762 (September 17, 1979). Section 182 of the CAA (42 U.S.C.A. § 7511a) requires that, for areas that exceed the NAAQS for ozone, states shall develop and administer a program that mandates that certain major stationary sources implement RACT. Under sections 182(f)(1) and 184(b)(2) of the CAA (42 U.S.C.A. §§ 7511a(f)(1) and 7511c(b)(2)), these RACT requirements are applicable to all sources in this Commonwealth that emit or have a potential to emit 100 tons per year (TPY) or more of NO<sub>x</sub>. Under sections 182(b)(2) and 184(b)(2) of the CAA, these RACT requirements are applicable to all sources in this Commonwealth that emit or have a potential to emit at least 50 TPY of VOCs. Sources that emit or have the potential to emit equal to or greater than these levels are classified as “Title V” facilities or “major” facilities or sources. The owners and operators of these facilities are subject to the permitting requirements of Title V of the CAA, namely sections 501–507 of the CAA (42 U.S.C.A. §§ 7661–7661f). For more detail, see § 121.1 for the regulatory definitions of the terms “major facility,” “major NO<sub>x</sub> emitting facility,” “major VOC emitting facility” and “Title V facility.”

For RACT implementation purposes, this entire Commonwealth is treated as a “moderate” ozone nonattainment area, because this Commonwealth is included in the Ozone Transport Region (OTR) established by operation of law under sections 176A and 184 of the CAA (42 U.S.C.A. §§ 7506a and 7511c). Section 184(b) of the CAA addresses provisions for the SIP of a state included in the OTR. Section 184(b)(1)(B) of the CAA requires that states in the OTR, including this Commonwealth, submit an SIP revision requiring implementation of RACT for all major stationary sources of NO<sub>x</sub> and VOC emissions in the state and not just for those sources that are located in designated nonattainment areas of the state. The RACT requirements established in this final-form rulemaking apply to the owners and operators of all major facilities or sources in this Commonwealth that emit or have a potential to emit equal to or greater than 100 TPY of NO<sub>x</sub> or 50 TPY of VOCs, as required under section 184 of the CAA for states in the OTR. Consequently, the Commonwealth’s SIP must include RACT regulations applicable Statewide to the owners and operators of affected major stationary sources of NO<sub>x</sub> and VOC emissions. The Commonwealth’s RACT regulations under §§ 129.91–129.95 (relating to stationary sources of NO<sub>x</sub> and VOCs) were implemented Statewide in January 1994 for the 1979 and 1993 1-hour ozone standard. See 24 Pa.B. 467 (January 15, 1994). Additionally, because the five-county Philadelphia area was designated as severe ozone nonattainment for the 1979 1-hour standard, the owners and operators of existing sources of 25 TPY or more of either pollutant in the five-county Philadelphia area were required under section 182(d) of the CAA to implement the RACT requirements in §§ 129.91–129.95. These require-

ments remain applicable to the owners and operators of these sources of 25 TPY or more in the five-county Philadelphia area.

On July 18, 1997, the EPA concluded that revisions to the then-current 1-hour ozone primary standard to provide increased public health protection were appropriate at this time to protect public health with an adequate margin of safety. Further, the EPA determined that it was appropriate to establish a primary standard of 0.08 ppm averaged over 8 hours. At this time, the EPA also established a secondary standard equal to the primary standard. See 62 FR 38856 (July 18, 1997). Because ozone monitoring data is measured out to three decimal places, the standard effectively became 0.084 ppm because of rounding; areas with ozone levels as high as 0.084 ppm were considered as meeting the 0.08 ppm standard. See 73 FR 16436 (March 27, 2008). In 2004, the EPA designated 37 counties in this Commonwealth as 8-hour ozone nonattainment areas for the 1997 8-hour ozone NAAQS. See 69 FR 23858, 23931 (April 30, 2004).

On March 27, 2008, the EPA lowered the primary and secondary 8-hour ozone standards from 0.08 ppm to 0.075 ppm. See 73 FR 16436 (March 27, 2008). The 2008 8-hour ozone standard is expressed to a level of three decimal places rather than two decimal places as in the 1997 standard. See 72 FR 37818 (July 11, 2007); 73 FR 16436. The EPA made designations for the 2008 8-hour ozone standards on April 30, 2012, with an effective date of July 20, 2012. The EPA designated all or portions of Allegheny, Armstrong, Beaver, Berks, Bucks, Butler, Carbon, Chester, Delaware, Fayette, Lancaster, Lehigh, Montgomery, Northampton, Philadelphia, Washington and Westmoreland Counties as “marginal” nonattainment for the 2008 8-hour ozone NAAQS, with the rest of this Commonwealth designated unclassifiable/attainment. See 77 FR 30088, 30143 (May 21, 2012).

The Commonwealth’s RACT regulations under §§ 129.96–129.100 (relating to additional RACT requirements for major sources of NO<sub>x</sub> and VOCs) were implemented in April 2016 for the 1997 and 2008 8-hour ozone standards. See 46 Pa.B. 2036 (April 23, 2016).

On October 26, 2015, the EPA lowered the primary and secondary 8-hour ozone standards from 0.075 ppm to 0.070 ppm. See 80 FR 65292 (October 26, 2015). Like the 2008 8-hour ozone standard, the 2015 8-hour ozone standard is expressed to a level of three decimal places. See 79 FR 75234 (December 17, 2014); 80 FR 65292. The EPA made designations for the 2015 8-hour ozone standards on June 4, 2018, with an effective date of August 3, 2018. On June 4, 2018, the EPA designated Bucks, Chester, Delaware, Montgomery and Philadelphia Counties as “marginal” nonattainment, with the rest of this Commonwealth designated attainment/unclassifiable. See 83 FR 25776, 25828 (June 4, 2018). The Department’s preliminary analysis of the 2021 ambient air ozone season monitoring data shows that all ozone samplers in this Commonwealth are monitoring attainment of the 2015 8-hour ozone NAAQS except these two: the Bristol sampler in Bucks County and the Philadelphia Air Management Services Northeast Airport sampler in Philadelphia County; all ozone samplers in this Commonwealth are projected to monitor attainment of the 1997 and 2008 8-hour ozone NAAQS.

The EPA’s final rules to implement the 2008 and 2015 8-hour ozone NAAQS require states with areas classified as “moderate” nonattainment or higher to submit a demonstration, as a revision to the SIP, that their current regulations fulfill 8-hour ozone RACT requirements for all

control technique guideline (CTG) categories and all major non-CTG sources. See 80 FR 12264 (March 6, 2015) and 83 FR 62998 (December 6, 2018). This requirement applies to this entire Commonwealth due to its Statewide designation of “moderate” ozone nonattainment as a member of the OTR. Therefore, a re-evaluation of what constitutes RACT for affected sources in this Commonwealth must be fulfilled each time the EPA revises a NAAQS. This was the case in 1997 when the EPA replaced the 1993 1-hour ozone standard with the 8-hour ozone standard and was the case in 2008 and again in 2015 when the EPA lowered the 8-hour ozone standard. State regulations to control emissions of NO<sub>x</sub> and VOCs from major stationary sources will be reviewed by the EPA to determine if the provisions meet the RACT requirements of the CAA and its implementing regulations designed to attain and maintain the ozone NAAQS. Therefore, the Commonwealth must submit a SIP revision to demonstrate how it will attain and maintain the 2015 8-hour ozone standard in the nonattainment areas.

The EPA’s past implementation of regulations for revised NAAQS ozone standards have required OTR states to submit RACT SIP revisions based on the time frame provided in section 184 of the CAA as measured from the effective date of designations made for those revised NAAQS, rather than from November 15, 1990. This requirement was first codified in 40 CFR 51.916 (relating to what are the requirements for an Ozone Transport Region under the 8-hour NAAQS?) for the 1997 8-hour ozone NAAQS, later codified for the 2008 8-hour ozone NAAQS in 40 CFR 51.1116 (relating to requirements for an Ozone Transport Region) and most recently codified for the 2015 8-hour ozone NAAQS in 40 CFR 51.1316 (relating to requirements for an Ozone Transport Region). Under these provisions, states in the OTR were required to submit SIP revisions addressing the RACT requirements of section 184 of the CAA for the revised 2015 8-hour ozone NAAQS not later than 2 years after the effective date of August 3, 2018, or by August 3, 2020. See 83 FR 25776. The Commonwealth has missed this deadline, but the Department is working to submit the required SIP revision to the EPA as quickly as possible.

To address the Commonwealth’s RACT obligations under section 184 of the CAA, the Department conducted a generic RACT analysis to determine if additional NO<sub>x</sub> or VOC emissions limitations or controls beyond those established for the 1997 and 2008 8-hour ozone NAAQS under §§ 129.96–129.100 would represent RACT for the 2015 8-hour ozone NAAQS. This generic analysis identified existing affected source categories by size and fuel type; identified available technically and economically feasible control options for NO<sub>x</sub> or VOC emissions, or both, for each type of existing source category; estimated emission reduction potential for each control technology; identified costs for technologies, using appropriate updates; and evaluated cost-effectiveness using the guidance provided in the EPA Air Pollution Control Cost Manual, EPA/452/B-02-001, 6th Edition, January 2002, as amended, and as updated in the 7th Edition beginning in 2019, for both uncontrolled and controlled sources (combinations of technologies). After conducting this analysis, the Department determined what constitutes RACT for each affected source category in this Commonwealth.

Based on this analysis, the Board has determined that additional cost-effective controls represent RACT for the 2015 8-hour ozone NAAQS beyond those established for the 1997 and 2008 8-hour ozone NAAQS. The RACT emission limitations and requirements being implemented for the 2015 ozone NAAQS are at least as stringent as

the RACT emission limitations and requirements for the 1979, 1997 and 2008 ozone NAAQS. To the extent that a prior RACT emission limitation or requirement established for the 1979, 1997 or 2008 ozone NAAQS is more stringent, the owner and operator of the affected source shall comply with the more stringent emission limitation or requirement. There are ten existing source categories that are affected by this final-form rulemaking: combustion units; municipal solid waste landfills; municipal waste combustors; process heaters; turbines; stationary internal combustion engines; cement kilns; glass melting furnaces; lime kilns; and combustion sources including direct-fired heaters, furnaces or ovens; as well as other existing source categories that are not regulated elsewhere under Chapter 129.

The final-form RACT requirements apply to the owners and operators of subject facilities or sources in this Commonwealth that emit or have a potential to emit 100 TPY or more of NO<sub>x</sub> or 50 TPY or more of VOCs, including those located in Bucks, Chester, Delaware, Montgomery and Philadelphia Counties. There are approximately 500 Title V facilities in this Commonwealth under the Department’s jurisdiction whose owners and operators may be subject to this final-form rulemaking. The Department preliminarily determined that the owners and operators of approximately 10–30 affected major facilities or sources under the Department’s jurisdiction meet the definition of “small business” specified in section 3 of the Regulatory Review Act (71 P.S. § 745.3). The owners and operators of the affected facilities or sources are familiar with the existing requirements for emissions control, recordkeeping and reporting for their entity and have the professional and technical skills needed for compliance with these final-form requirements.

The Board has determined that this final-form rulemaking fulfills the requirements for RACT re-evaluation. As more fully discussed in section E of this preamble, the Board is establishing a compliance option hierarchy whereby the owner or operator of a source or facility that is subject to § 129.111 (relating to applicability) that cannot meet the presumptive RACT requirements and RACT emission limitations under § 129.112 (relating to presumptive RACT requirements, RACT emission limitations and petition for alternative compliance schedule) may apply for a facility-wide or system-wide NO<sub>x</sub> emissions averaging plan under § 129.113 (relating to facility-wide or system-wide NO<sub>x</sub> emissions averaging plan general requirements) or an alternative case-by-case RACT determination under § 129.114 (relating to alternative RACT proposal and petition for alternative compliance schedule). The Board provides the owners and operators of certain affected facilities or sources with a less resource intensive demonstration established under § 129.114(i) of this final-form rulemaking as an alternative to performing a complete case-by-case RACT analysis. This less resource intensive demonstration may be used by an owner or operator of a subject source or facility to demonstrate that the previous case-by-case determination made under §§ 129.96–129.100 (RACT II) remains RACT for the 2015 8-hour ozone standard. For the owners and operators of eligible subject sources, this approach will likely reduce the consulting costs that an owner or operator may choose to incur. Additionally, there is no fee due to the Department to submit an analysis under § 129.114(i).

The Department must ensure that the 1997, 2008 and 2015 8-hour ozone NAAQS are attained and maintained by implementing permanent and Federally enforceable control measures. Reductions in ozone precursor emis-



sions that are achieved following the adoption and implementation of RACT emission control measures for source categories covered by this final-form rulemaking will assist the Commonwealth in making substantial progress in attaining and maintaining the 1997, 2008 and 2015 8-hour ozone NAAQS. The Board has determined that the requirements of this final-form rulemaking are reasonably necessary to attain and maintain the health-based and welfare-based 8-hour ozone NAAQS in this Commonwealth and to satisfy related CAA requirements.

The Department presented the draft final-form Annex A to the Air Quality Technical Advisory Committee on April 7, 2022, and to the Small Business Compliance Advisory Committee on April 27, 2022, and briefed the committees on the comments received on the proposed rulemaking. The Department presented the draft final-form Annex A to the Citizens Advisory Council's (CAC) Policy and Regulatory Oversight Committee on April 14, 2022, and to the CAC on April 19, 2022. At its meeting on May 18, 2022, the CAC concurred with the Department's recommendation to present this final-form rulemaking to the Board for consideration. Advisory committee meetings are advertised and open to the public.

*E. Summary of Final-Form Rulemaking and Changes from Proposed to Final-Form Rulemaking*

*§ 121.1. Definitions*

This section contains definitions relating to the air quality regulations. This final-form rulemaking amends § 121.1 to add the terms "combustion source" and "natural gas compression and transmission facility fugitive VOC air contamination source" to support the final-form amendments to Chapter 129.

This final-form rulemaking amends the definition of the proposed term "combustion source." The proposed definition of "combustion source" specified under subparagraph (i) that this is a stationary device that combusts solid, liquid or gaseous fuel used to produce heat or energy for industrial, commercial or institutional use by direct heat transfer. Subparagraph (ii) specified that the term does not include brick kilns, cement kilns or lime kilns. This final-form rulemaking amends the term "combustion source" to specify that it is limited to §§ 129.111—129.115 by adding the words "For purposes of §§ 129.111—129.115 (relating to additional RACT requirements for major sources of NO<sub>x</sub> and VOCs for the 2015 ozone NAAQS):" before subparagraph (i). There are no changes made to subparagraph (i) from the proposed rulemaking to this final-form rulemaking. Subparagraph (ii) is amended from proposed to this final-form rulemaking to exclude three additional source categories: glass melting furnaces; a source listed in § 129.112(g)(2) or (3) (relating to presumptive RACT requirements, RACT emission limitations and petition for alternative compliance schedule); and a source subject to § 129.112(g)(4). These changes are made in response to comments received on the proposed rulemaking.

There are no changes made to the term and definition of "natural gas compression and transmission facility fugitive VOC air contamination source" from the proposed rulemaking to this final-form rulemaking.

This final-form rulemaking amends the definitions of two existing terms in § 121.1. The definition of the term "major NO<sub>x</sub> emitting facility" is amended under subparagraph (v) to add the words "For purposes of §§ 129.91—129.95 (relating to stationary sources of NO<sub>x</sub> and VOCs), twenty-five" before TPY to clarify that for purposes of §§ 129.91—129.95, a major NO<sub>x</sub> emitting facility is a

facility which emits or has the potential to emit NO<sub>x</sub> from the processes located at the site or on contiguous properties under the common control of the same person at a rate greater than 25 TPY for a facility located in Bucks, Chester, Delaware, Montgomery or Philadelphia County. The Commonwealth's RACT regulations under §§ 129.91—129.95 were promulgated on January 15, 1994, and applicable Statewide for the 1979 and 1993 1-hour ozone standard. See 24 Pa.B. 467. The definition of this term is further amended to add subparagraph (vi), which states that "For purposes of §§ 129.96—129.100 and 129.111—129.115 (relating to additional RACT requirements for major sources of NO<sub>x</sub> and VOCs; and additional RACT requirements for major sources of NO<sub>x</sub> and VOCs for the 2015 ozone NAAQS), one hundred TPY Statewide." Subparagraph (vi) clarifies that for purposes of §§ 129.96—129.100 and 129.111—129.115, a major NO<sub>x</sub> emitting facility is a facility which emits or has the potential to emit NO<sub>x</sub> from the processes located at the site or on contiguous properties under the common control of the same person at a rate greater than 100 TPY and this rate is applicable Statewide. The Commonwealth's RACT regulations under §§ 129.96—129.100 were promulgated on April 23, 2016, and applicable Statewide for the 1997 and 2008 8-hour ozone standards. See 46 Pa.B. 2036. These changes are made in response to comments received on the proposed rulemaking.

Likewise, the definition of the term "major VOC emitting facility" is amended under subparagraph (iv) to add the words "For purposes of §§ 129.91—129.95, twenty-five" before TPY to clarify that for purposes of §§ 129.91—129.95, a major VOC emitting facility is a facility which emits or has the potential to emit VOCs from the processes located at the site or on contiguous properties under the common control of the same person at a rate greater than 25 TPY for a facility located in Bucks, Chester, Delaware, Montgomery or Philadelphia County. The definition of this term is further amended to add subparagraph (v), which states that "For purposes of §§ 129.96—129.100 and 129.111—129.115, fifty TPY Statewide." Subparagraph (v) clarifies that for purposes of §§ 129.96—129.100 and 129.111—129.115, a major VOC emitting facility is a facility which emits or has the potential to emit VOCs from the processes located at the site or on contiguous properties under the common control of the same person at a rate greater than 50 TPY and this rate is applicable Statewide. These changes are made in response to comments received on the proposed rulemaking.

There are no other changes made to this section from the proposed rulemaking to this final-form rulemaking.

*§ 129.111. Applicability*

Subsection (a) provides that, except as specified in subsection (c), the NO<sub>x</sub> requirements of this section and §§ 129.112—129.115 apply Statewide to the owner and operator of a major NO<sub>x</sub> emitting facility that commenced operation on or before August 3, 2018, and the VOC requirements of this section and §§ 129.112—129.115 apply Statewide to the owner and operator of a major VOC emitting facility that commenced operation on or before August 3, 2018, for which a requirement or emission limitation, or both, has not been established in §§ 129.51, 129.52(a)—(k) and Table I categories 1—11, 129.52a—129.52e, 129.54—129.63a, 129.64—129.69, 129.71—129.75, 129.77 and 129.101—129.107. The owner or operator shall identify and list the sources and facilities subject to this subsection as specified in paragraphs (1) and (2) in the written notification required under

§ 129.115(a) (relating to written notification, compliance demonstration and recordkeeping and reporting requirements).

Subsection (a) is amended from the proposed rulemaking to this final-form rulemaking to add the words “that commenced operation on or before August 3, 2018,” after “major NO<sub>x</sub> emitting facility,” delete the words “were in existence” after “major VOC emitting facility that” and add the words “commenced operation” to clarify that construction or installation of the affected emissions unit at the major NO<sub>x</sub> emitting facility or at the major VOC emitting facility had been completed and the emissions unit had begun operating on or before August 3, 2018. The date of August 3, 2018, is the effective date of the designations for the 2015 8-hour ozone standards. On June 4, 2018, the EPA designated Bucks, Chester, Delaware, Montgomery and Philadelphia Counties as “marginal” nonattainment, effective August 3, 2018, with the rest of this Commonwealth designated attainment/unclassifiable. See 83 FR 25776, 25828.

Paragraph (1) is amended from the proposed rulemaking to this final-form rulemaking to clarify that the owner or operator shall identify and list in the written notification required under § 129.115(a) the sources and facilities that commenced operation on or before August 3, 2018, for which a requirement or emission limitation has not been established in the specified sections. Proposed paragraph (1) did not include the words “that commenced operation on or before August 3, 2018.” Sources and facilities that commenced operation after August 3, 2018, at a major NO<sub>x</sub> emitting facility or at a major VOC emitting facility are subject to a best available technology (BAT) analysis and do not need to be included in the written notification required under § 129.115(a).

Paragraph (2) is amended from the proposed rulemaking to this final-form rulemaking to clarify that the owner or operator shall identify and list in the written notification required under § 129.115(a) the sources and facilities that commenced operation on or before August 3, 2018, and are subject to the specified sections. The specified sections established RACT emission limitations and RACT requirements consistent with the EPA CTGs for the specified categories of sources. The owner or operator of a source or facility that is subject to one of these specified sections shall comply with the applicable RACT requirements and RACT emission limitations and is not subject to the RACT requirements and RACT emission limitations of §§ 129.111—129.115.

Subsection (a) and paragraphs (1) and (2) are further amended from the proposed rulemaking to this final-form rulemaking to delete the group of sections “129.71—129.73” and “129.75” and add the group of sections “129.71—129.75” inclusive of § 129.74 (relating to control of VOC emissions from fiberglass boat manufacturing materials). These sections establish RACT requirements and RACT emission limitations consistent with the recommendations provided by the EPA in the applicable CTG documents. The owners and operators of sources of emissions or facilities that are subject to the requirements of one or more of §§ 129.71—129.75 are not subject to §§ 129.111—129.115 for these sources of emissions or facilities.

The changes to subsection (a) and paragraphs (1) and (2) are made in response to comments received on the proposed rulemaking.

Subsection (b) provides that, except as specified in subsection (c), the NO<sub>x</sub> requirements of this section and

§§ 129.112—129.115 apply Statewide to the owner and operator of a NO<sub>x</sub> emitting facility that commenced operation on or before August 3, 2018, and the VOC requirements of this section and §§ 129.112—129.115 apply Statewide to the owner and operator of a VOC emitting facility that commenced operation on or before August 3, 2018, when the installation and operation of a new source after August 3, 2018, or a modification or change in operation after August 3, 2018, of a source that commenced operation on or before August 3, 2018, results in the source or facility meeting the definition of a major NO<sub>x</sub> emitting facility or a major VOC emitting facility and for which a requirement or an emission limitation, or both, has not been established in §§ 129.51, 129.52(a)—(k) and Table I categories 1—11, 129.52a—129.52e, 129.54—129.63a, 129.64—129.69, 129.71—129.75, 129.77 and 129.101—129.107. The owner or operator shall identify and list the sources and facilities subject to this subsection as specified in paragraphs (1) and (2) in the written notification required under § 129.115(a).

Subsection (b) is amended from the proposed rulemaking to this final-form rulemaking to add the words “that commenced operation on or before August 3, 2018,” after “NO<sub>x</sub> emitting facility” and after “VOC emitting facility,” add the words “and operation” after “installation,” add the words “after August 3, 2018,” after “of a new source” and “change in operation,” delete the words “an existing” and insert the word “a” before “source” and delete the word “after” following “source,” and add the words “that commenced operation on or before” before the words “August 3, 2018, results in.” These amendments clarify that the owner and operator of a source or a facility that is not major on or before August 3, 2018, becomes subject to §§ 129.111—129.115, as applicable, when the installation and operation of a new source after August 3, 2018, or a modification or change in operation after August 3, 2018, of a source that commenced operation on or before August 3, 2018, results in the source or the facility meeting the definition of a major NO<sub>x</sub> emitting facility or a major VOC emitting facility. These changes are made in response to comments received on the proposed rulemaking.

Subsection (b) and paragraphs (1) and (2) are amended from the proposed rulemaking to this final-form rulemaking to delete sections “129.71—129.73” and “129.75” and add sections “129.71—129.75” inclusive of § 129.74. These sections establish RACT requirements and RACT emission limitations consistent with the recommendations provided by the EPA in the applicable CTG documents. The owners and operators of sources of emissions or facilities that are subject to the requirements of one or more of §§ 129.71—129.75 are not subject to §§ 129.111—129.115 for these sources of emissions or facilities.

The changes to subsection (b) and paragraphs (1) and (2) are made in response to comments received on the proposed rulemaking.

Subsection (c) establishes that §§ 129.112—129.114 do not apply to the owner and operator of a NO<sub>x</sub> air contamination source that has the potential to emit less than 1 TPY of NO<sub>x</sub> located at a major NO<sub>x</sub> emitting facility subject to subsection (a) or (b), or to the owner and operator of a VOC air contamination source that has the potential to emit less than 1 TPY of VOC located at a major VOC emitting facility subject to subsection (a) or (b). The owner or operator shall identify and list these sources in the written notification required under § 129.115(a).

There are no changes made to subsection (c) from the proposed rulemaking to this final-form rulemaking.

Subsection (d) establishes that, except as specified in subsection (e), this section and §§ 129.112–129.115 do not apply to the owner and operator of a facility that is not a major NO<sub>x</sub> emitting facility or a major VOC emitting facility on or before December 31, 2022.

Subsection (d) is amended from the proposed rulemaking to this final-form rulemaking to add the words “except as specified in subsection (e)” and to amend the date of applicability from the date of publication of this final-form rulemaking to the date certain of December 31, 2022.

The amendment of subsection (d) from the proposed rulemaking to this final-form rulemaking with the compliance date certain of December 31, 2022, in place of the proposed compliance date, which was the date of publication of this final-form rulemaking, is made to address the required implementation deadline of January 1, 2023, in the EPA 2015 ozone implementation rule, for states to implement the RACT requirements and RACT emission limitations to address the 2015 8-hour ozone NAAQS. See 40 CFR 51.1312(a)(3)(i) (relating to requirements for reasonably available control technology (RACT) and reasonably available control measures (RACM)); see also 40 CFR 51.1316(b)(3)(1).

Subsection (e) is added to this final-form rulemaking to establish that if the owner and operator of a facility that complied with subsection (d), that is, the facility was not a major NO<sub>x</sub> emitting facility or a major VOC facility on or before December 31, 2022, then meets the definition of a major NO<sub>x</sub> emitting facility or a major VOC emitting facility after December 31, 2022, the affected owner or operator shall comply with subsection (b) once the facility meets the applicable major facility threshold. Likewise, if the owner or operator of a NO<sub>x</sub> emitting facility or a VOC emitting facility that becomes subject to subsection (b) as a result of meeting the definition of a major NO<sub>x</sub> emitting facility or major VOC emitting facility on or before December 31, 2022, then falls below the applicable major facility emission threshold on or before December 31, 2022, and then resumes major facility status after December 31, 2022, that owner or operator shall comply with subsection (b) again once the facility meets the applicable major facility threshold and will be subject again to the applicable RACT requirements and RACT emission limitations of §§ 129.111–129.115.

*§ 129.112. Presumptive RACT requirements, RACT emission limitations and petition for alternative compliance schedule*

Subsection (a) establishes that the owner and operator of a source listed in one or more of subsections (b)–(k) located at a major NO<sub>x</sub> emitting facility or major VOC emitting facility subject to § 129.111 shall comply with the applicable presumptive RACT requirement or RACT emission limitation, or both, beginning with the specified compliance date in paragraph (1) or (2), unless an alternative compliance schedule is submitted and approved under subsections (n)–(p) or under § 129.114. Paragraph (1) specifies the compliance date of January 1, 2023, for a source subject to § 129.111(a). Paragraph (2) specifies the compliance date of January 1, 2023, or 1 year after the date the source meets the definition of a major NO<sub>x</sub> emitting facility or major VOC emitting facility, whichever is later, for a source subject to § 129.111(b). The owner or operator shall meet the applicable standards or regulations within the time frame

required by standards or regulations even if the permit is not revised to incorporate the standards or regulations within the required time frame.

There are no changes made to subsection (a) from the proposed rulemaking to this final-form rulemaking.

Subsection (b) establishes that the owner and operator of a source listed in this subsection that is located at a major NO<sub>x</sub> emitting facility or major VOC emitting facility subject to § 129.111 shall comply with the applicable presumptive RACT requirements in paragraph (1) and the recordkeeping and reporting requirements in paragraph (2).

Paragraph (1) specifies that the owner and operator of one or more of the combustion unit or process heater types listed in paragraph (1)(i) and (ii) shall comply with the applicable presumptive RACT requirements for that source, which include, among other things, inspection and adjustment requirements. Paragraph (1)(i) and (ii) are amended from the proposed rulemaking to this final-form rulemaking to add the words “or process heater” after the words “combustion unit.” These changes are made in response to comments received on the proposed rulemaking. There are no other changes made to paragraph (1) from the proposed rulemaking to this final-form rulemaking.

Paragraph (2) specifies the applicable recordkeeping and reporting requirements. Paragraph (2) is amended from the proposed rulemaking to this final-form rulemaking to delete “§ 129.115(e), (f) or (g)” and add “§ 129.115(f) and (i)” to provide the correct cross reference. There are no other changes made to paragraph (2) from the proposed rulemaking to this final-form rulemaking.

Paragraph (3) specifies that compliance with the applicable presumptive RACT requirements in paragraph (1) and recordkeeping and reporting requirements in paragraph (2) assures compliance with the provisions in §§ 129.93(b)(2)–(5) and 129.97(b)(1)–(3) (relating to presumptive RACT emissions limitations; and presumptive RACT requirements, RACT emission limitations and petition for alternative compliance schedule). There are no changes made to paragraph (3) from the proposed rulemaking to this final-form rulemaking.

Subsection (c) establishes that the owner and operator of a source listed in this subsection located at a major NO<sub>x</sub> emitting facility or major VOC emitting facility subject to § 129.111 shall comply with the applicable presumptive RACT requirement, which is the installation, maintenance and operation of the source in accordance with the manufacturer’s specifications and with good operating practices.

Subsection (c)(8) is amended from the proposed rulemaking to this final-form rulemaking to delete the word “or” and add a comma after the words “thermal oxidizer” and add the words “or flare” after the words “catalytic oxidizer.” These changes are made in response to comments received on the proposed rulemaking. There are no other changes made to subsection (c) from the proposed rulemaking to this final-form rulemaking.

Subsection (d) establishes that, except as specified in subsection (c), the owner and operator of a combustion unit, brick kiln, cement kiln, lime kiln, glass melting furnace or combustion source located at a major VOC emitting facility subject to § 129.111 shall comply with the specified presumptive RACT requirement, which is the installation, maintenance and operation of the source



in accordance with the manufacturer's specifications and with good operating practices for the control of the VOC emissions from the combustion unit, brick kiln, cement kiln, lime kiln, glass melting furnace or combustion source. Subsection (d) is amended from the proposed rulemaking to this final-form rulemaking to add the words "glass melting furnace" after lime kiln, add the words "brick kiln, cement kiln, lime kiln, glass melting furnace" after combustion unit, and delete the word "other" in two places. These changes are made in response to comments received on the proposed rulemaking. There are no other changes made to subsection (d) from the proposed rulemaking to this final-form rulemaking.

Subsection (e) establishes that the owner and operator of a municipal solid waste landfill subject to § 129.111 shall comply with the applicable presumptive RACT requirements specified in paragraph (1) or (2).

Paragraph (1) is amended from the proposed rulemaking to this final-form rulemaking to delete the reference to 40 CFR Part 60, Subpart Cc (relating to emission guidelines and compliance times for municipal solid waste landfills) and add the reference to the Federal Plan for Municipal Solid Waste Landfills in 40 CFR Part 62, Subpart OOO (relating to Federal plan requirements for municipal solid waste landfills that commenced construction on or before July 17, 2014 and have not been modified or reconstructed since July 17, 2014). This change is made in response to comments received that the requirements of 40 CFR Part 60, Subpart Cc are superseded by the requirements of 40 CFR Part 62, Subpart OOO. The EPA issued the Federal Plan in 40 CFR Part 62, Subpart OOO, on May 21, 2021, with an effective date of June 21, 2021. See 86 FR 27756 (May 21, 2021).

Proposed paragraph (2), which referenced 40 CFR Part 60, Subpart WWW (relating to standards of performance for municipal solid waste landfills that commenced construction, reconstruction, or modification on or after May 30, 1991, but before July 18, 2014), is deleted in this final-form rulemaking because the requirements of 40 CFR Part 60, Subpart WWW are superseded by the requirements of 40 CFR Part 60, Subpart XXX (relating to standards of performance for municipal solid waste landfills that commenced construction, reconstruction, or modification after July 17, 2014).

The requirements of 40 CFR Part 60, Subpart XXX, were specified in proposed paragraph (3). Proposed paragraph (3) is renumbered to paragraph (2) in this final-form rulemaking.

Subsection (f) establishes that the owner and operator of a municipal waste combustor subject to § 129.111 shall comply with the presumptive RACT emission limitation of 110 parts per million volume dry (ppmvd)  $\text{NO}_x$  @ 7% oxygen. Proposed subsection (f) specified a presumptive RACT emission limitation of 150 ppmvd  $\text{NO}_x$  @ 7% oxygen. Subsection (f) is amended from the proposed rulemaking to this final-form rulemaking to delete the emission limitation of 150 ppmvd  $\text{NO}_x$  @ 7% oxygen and add the emission limitation of 110 ppmvd  $\text{NO}_x$  @ 7% oxygen. This change is made in response to comments received on the proposed rulemaking and an analysis by the Department showing that the emission limitation of 110 ppmvd  $\text{NO}_x$  @ 7% oxygen is achievable, cost-effective and constitutes RACT for municipal waste combustors.

Subsection (g) establishes that, except as specified in subsection (c), the owner and operator of a  $\text{NO}_x$  air contamination source listed in this subsection that is

located at a major  $\text{NO}_x$  emitting facility or a VOC air contamination source listed in this subsection that is located at a major VOC emitting facility subject to § 129.111 may not cause, allow or permit  $\text{NO}_x$  or VOCs to be emitted from the air contamination source in excess of the applicable presumptive RACT emission limitation specified in paragraphs (1)–(4).

Paragraph (1) is amended from the proposed rulemaking to this final-form rulemaking. Paragraph (1)(vi), which applies to the owner or operator of a circulating fluidized bed combustion unit with a rated heat input equal to or greater than 250 million Btu/hour and firing waste coal products, is amended to add the words "RACT requirements and" after the word "presumptive." Paragraph (1)(vi) is further amended to add clause (C), which specifies that the owner or operator shall control the  $\text{NO}_x$  emissions each operating day by operating the installed air pollution control technology and combustion controls at all times consistent with the technological limitations, manufacturer's specifications, good engineering and maintenance practices and good air pollution control practices for controlling emissions. Clause (C) replaces proposed paragraph (1)(viii), which is deleted in this final-form rulemaking. These changes are made in response to comments received on the proposed rulemaking.

There are no changes made to paragraphs (1)(i)–(v) and (vii) from the proposed rulemaking to this final-form rulemaking.

Paragraph (2) is amended from the proposed rulemaking to this final-form rulemaking to clarify the applicable presumptive RACT emission limitations for combined cycle or combined heat and power combustion turbines and for simple cycle or regenerative cycle combustion turbines based on the Department's review of information provided by commentators during the public comment period as well as the Department's review of available stack test emissions data. Proposed paragraph (2)(i) established the applicable presumptive RACT emission limitations for the owner or operator of a combined cycle or combined heat and power combustion turbine with a rated output equal to or greater than 1,000 brake horsepower (bhp) and less than 180 megawatts (MW). Paragraph (2)(i) is amended in this final-form rulemaking to establish the applicable presumptive RACT emission limitations for the owner or operator of a combined cycle or combined heat and power combustion turbine with a rated output equal to or greater than 1,000 bhp and less than 4,100 bhp rather than less than 180 MW. Paragraph (2)(i)(A) is amended from the proposed rulemaking to this final-form rulemaking to delete the limitation of 42 ppmvd  $\text{NO}_x$  @ 15% oxygen and add the limitation of 120 ppmvd  $\text{NO}_x$  @ 15% oxygen. Paragraph (2)(i)(C) is amended from the proposed rulemaking to this final-form rulemaking to delete the limitation of 96 ppmvd  $\text{NO}_x$  @ 15% oxygen and add the limitation of 150 ppmvd  $\text{NO}_x$  @ 15% oxygen.

Paragraph (2)(ii) is amended from the proposed rulemaking to this final-form rulemaking to establish the applicable presumptive RACT emission limitations for the owner or operator of a combined cycle or combined heat and power combustion turbine with a rated output equal to or greater than 4,100 bhp and less than 180 MW. The applicable presumptive RACT emission limitations are established in paragraph (2)(ii)(A)–(D). Clause (A) establishes the limitation of 42 ppmvd  $\text{NO}_x$  @ 15% oxygen when firing natural gas or a noncommercial gaseous fuel. Clause (B) establishes the limitation of 5 ppmvd VOC (as propane) @ 15% oxygen when firing natural gas or a

noncommercial gaseous fuel. Clause (C) establishes the limitation of 96 ppmvd NO<sub>x</sub> @ 15% oxygen when firing fuel oil. Clause (D) establishes the limitation of 9 ppmvd VOC (as propane) @ 15% oxygen when firing fuel oil.

Proposed paragraph (2)(ii) is renumbered in this final-form rulemaking to paragraph (2)(iii). There are no other changes made to renumbered paragraph (2)(iii) in this final-form rulemaking.

Proposed paragraph (2)(iii) is renumbered in this final-form rulemaking to paragraph (2)(iv). Renumbered paragraph (2)(iv) is further amended in this final-form rulemaking to establish the applicable presumptive RACT emission limitations for the owner or operator of a simple cycle or regenerative cycle combustion turbine with a rated output equal to or greater than 1,000 bhp and less than 4,100 bhp, rather than the proposed rated output of less than 3,000 bhp. Subparagraph (iv)(A) is amended from the proposed rulemaking to this final-form rulemaking to delete the limitation of 85 ppmvd NO<sub>x</sub> @ 15% oxygen when firing natural gas or a noncommercial gaseous fuel and add the limitation of 120 ppmvd NO<sub>x</sub> @ 15% oxygen, based on the Department's review of information provided by commentators during the public comment period and the Department's review of available stack test emissions data.

Proposed paragraph (2)(iv) is renumbered in this final-form rulemaking to paragraph (2)(v). Renumbered paragraph (2)(v) is further amended in this final-form rulemaking to establish the applicable presumptive RACT emission limitations for the owner or operator of a simple cycle or regenerative cycle combustion turbine with a rated output equal to or greater than 4,100 bhp, rather than the proposed rated output of 3,000 bhp, and less than 60,000 bhp.

Proposed paragraph (3) established applicable presumptive RACT emission limitations for the owners or operators of four subcategories of stationary internal combustion engines in subparagraphs (i)—(iv). Subparagraph (iv)(A) is amended from the proposed rulemaking to this final-form rulemaking to establish the applicable presumptive RACT emission limitation for the owner or operator of a rich burn stationary internal combustion engine with a rating equal to or greater than 100 bhp is 2.0 gram NO<sub>x</sub>/brake horsepower-hour (bhp-hr) when firing natural gas or a noncommercial gaseous fuel, rather than the proposed limitation of 0.6 gram NO<sub>x</sub>/bhp-hr. This change is made in response to comments received on the proposed rulemaking.

There are no changes made to paragraph (3)(i)—(iii) or to subparagraph (iv)(B) from the proposed rulemaking to this final-form rulemaking. There are no changes made to paragraph (4) from the proposed rulemaking to this final-form rulemaking.

Subsection (h) establishes that the owner and operator of a Portland cement kiln subject to § 129.111 shall comply with the applicable presumptive RACT emission limitation in paragraphs (1)—(3).

Subsection (i) establishes that the owner and operator of a glass melting furnace subject to § 129.111 shall comply with the applicable presumptive RACT emission limitation in paragraphs (1)—(5).

Subsection (j) establishes that the owner and operator of a lime kiln subject to § 129.111 shall comply with the applicable presumptive RACT emission limitation of 4.6 pounds of NO<sub>x</sub> per ton of lime produced.

There are no changes made to subsections (h)—(j) from the proposed rulemaking to this final-form rulemaking.

Subsection (k) establishes that the owner and operator of a direct-fired heater, furnace, oven or other combustion source with a rated heat input equal to or greater than 20 million Btu/hour subject to § 129.111 shall comply with the applicable presumptive RACT emission limitation of 0.10 lb NO<sub>x</sub>/million Btu heat input. Subsection (k) is amended from the proposed rulemaking to this final-form rulemaking to add the category of other combustion source and to remove the proposed requirement that the limitation be complied with on a daily average basis or that compliance be determined through a stack test. These changes are made in response to comments received on the proposed rulemaking.

Subsection (l) provides that the requirements and emission limitations of this section supersede the requirements and emission limitations of a RACT permit issued to the owner or operator of an air contamination source subject to one or more of subsections (b)—(k) prior to November 12, 2022, under §§ 129.91—129.95 or under §§ 129.96—129.100 to control, reduce or minimize NO<sub>x</sub> emissions or VOC emissions, or both, from the air contamination source unless the RACT permit contains more stringent requirements or emission limitations, or both. There are no changes made to subsection (l) from the proposed rulemaking to this final-form rulemaking.

Subsection (m) provides that the requirements and emission limitations of this section supersede the requirements and emission limitations of §§ 129.201—129.205, 129.301—129.310, 145.111—145.113 and 145.141—145.146 unless the requirements or emission limitations of §§ 129.201—129.205, 129.301—129.310, 145.111—145.113 or 145.141—145.146 are more stringent. Subsection (m) is amended from the proposed rulemaking to this final-form rulemaking to add §§ 129.301—129.310 (relating to control of NO<sub>x</sub> emissions from glass melting furnaces) to the group of regulations whose requirements and emission limitations would be superseded by the requirements and emission limitations of § 129.112 unless the requirements or emission limitations of §§ 129.301—129.310 are more stringent. This change is made in response to comments received on the proposed rulemaking.

Subsection (n) establishes that the owner or operator of a major NO<sub>x</sub> emitting facility or a major VOC emitting facility subject to § 129.111 that includes an air contamination source subject to one or more of subsections (b)—(k) that cannot meet the applicable presumptive RACT requirement or RACT emission limitation without installation of an air cleaning device may submit a petition to the Department or appropriate approved local air pollution control agency, in writing or electronically, requesting an alternative compliance schedule in accordance with paragraphs (1) and (2). Subsection (n) is amended from the proposed rulemaking to this final-form rulemaking to add the word “electronically” after the words “in writing.”

Paragraph (1) is amended from the proposed rulemaking to this final-form rulemaking to delete the word “written.” The changes to subsection (n) and (n)(1) are made to provide flexibility to the subject owner or operator in how the petition may be submitted.

Paragraph (1)(i) is amended from the proposed rulemaking to this final-form rulemaking to establish that the petition shall be submitted to the Department or appropriate approved local air pollution control agency as soon as possible but not later than December 31, 2022, for a

source subject to § 129.111(a). Proposed paragraph (1)(i) established the due date as 6 months after the date of publication of this final-form rulemaking.

Paragraph (1)(ii) is amended from the proposed rulemaking to this final-form rulemaking to establish that the petition shall be submitted to the Department or appropriate approved local air pollution control agency as soon as possible but not later than December 31, 2022, or not later than 6 months after the date that the source meets the definition of a major NO<sub>x</sub> emitting facility or a major VOC emitting facility, whichever is later, for a source subject to § 129.111(b). Proposed paragraph (1)(ii) established the due date as 6 months after the date of publication of this final-form rulemaking or 6 months after the date that the source meets the definition of a major NO<sub>x</sub> emitting facility or a major VOC emitting facility, whichever is later.

The changes to the due dates specified in paragraph (1)(i) and (ii) are made to accommodate the length of time for this final-form rulemaking to move through the regulatory development process and meet the implementation deadline of January 1, 2023, for states to implement the RACT requirements and RACT emission limitations to address the 2015 8-hour ozone NAAQS. This final-form rulemaking is expected to be published in the *Pennsylvania Bulletin* prior to the end of 2022.

Proposed paragraph (2) established that the written petition must include the items specified in subparagraphs (i)—(v). Paragraph (2) is amended from the proposed rulemaking to this final-form rulemaking to delete the word “written.” The petition may be submitted in writing or electronically as specified in subsection (n). This change provides flexibility to the subject owner or operator in how the petition may be submitted. There are no changes made to subparagraphs (i)—(v) from the proposed rulemaking to this final-form rulemaking.

Subsection (o) provides that the Department or appropriate approved local air pollution control agency will review the timely and complete written petition requesting an alternative compliance schedule submitted in accordance with subsection (n) and approve or deny the petition in writing.

Subsection (p) provides that approval or denial under subsection (o) of the timely and complete petition for an alternative compliance schedule submitted under subsection (n) will be effective on the date the letter of approval or denial of the petition is signed by the authorized representative of the Department or appropriate approved local air pollution control agency.

Subsection (q) provides that the Department will submit each petition for an alternative compliance schedule approved under subsection (o) to the Administrator of the EPA for approval as a revision to the Commonwealth's SIP. The owner and operator of the facility shall bear the costs of public hearings and notifications, including newspaper notices, required for the SIP submittal.

There are no changes made to subsections (o)—(q) from the proposed rulemaking to this final-form rulemaking.

*§ 129.113. Facility-wide or system-wide NO<sub>x</sub> emissions averaging plan general requirements*

Subsection (a) provides that the owner or operator of a major NO<sub>x</sub> emitting facility subject to § 129.111 that includes at least one air contamination source subject to a NO<sub>x</sub> RACT emission limitation in § 129.112 that cannot meet the applicable NO<sub>x</sub> RACT emission limitation may elect to meet the applicable NO<sub>x</sub> RACT emission limita-

tion in § 129.112 by averaging NO<sub>x</sub> emissions on either a facility-wide or system-wide basis. System-wide emissions averaging must be among sources under common control of the same owner or operator within the same ozone nonattainment area in this Commonwealth. There is no change made to subsection (a) from the proposed rulemaking to this final-form rulemaking.

Subsection (b) provides that the owner or operator of each facility that elects to comply with subsection (a) shall submit a NO<sub>x</sub> emissions averaging plan in writing or electronically to the Department or appropriate approved local air pollution control agency as part of an application for an operating permit modification or a plan approval, if otherwise required. Subsection (b) is amended from the proposed rulemaking to this final-form rulemaking to delete the word “written” before the phrase “NO<sub>x</sub> emissions averaging plan” and add the words “in writing or electronically” after the phrase “NO<sub>x</sub> emissions averaging plan.” These changes are made to provide flexibility to the subject owner or operator in how the NO<sub>x</sub> emissions averaging plan may be submitted.

The application incorporating the NO<sub>x</sub> emissions averaging plan requirements of this section shall be submitted by the applicable date specified in subsection (b)(1) or (2). Proposed paragraph (1) established the due date as the date 6 months after the date of publication of this final-form rulemaking for a source subject to § 129.111(a). Paragraph (1) is amended from the proposed rulemaking to this final-form rulemaking to establish the due date as December 31, 2022.

Proposed paragraph (2) established the due date as the date 6 months after the date of publication of this final-form rulemaking or 6 months after the date that the source meets the definition of a major NO<sub>x</sub> emitting facility, whichever is later, for a source subject to § 129.111(b). Paragraph (2) is amended from the proposed rulemaking to this final-form rulemaking to establish the due date as December 31, 2022, or 6 months after the date that the source meets the definition of a major NO<sub>x</sub> emitting facility, whichever is later.

The changes to the due dates specified in paragraphs (1) and (2) are made to accommodate the length of time for this final-form rulemaking to move through the regulatory development process and meet the implementation deadline of January 1, 2023, for states to implement the RACT requirements and RACT emission limitations to address the 2015 8-hour ozone NAAQS. This final-form rulemaking is expected to be published in the *Pennsylvania Bulletin* prior to the end of 2022.

Subsection (c) provides that each NO<sub>x</sub> air contamination source included in the application for an operating permit modification or a plan approval, if otherwise required, for averaging NO<sub>x</sub> emissions on either a facility-wide or system-wide basis submitted under subsection (b) must be an air contamination source subject to a NO<sub>x</sub> RACT emission limitation in § 129.112.

Subsection (d) provides that the application for the operating permit modification or the plan approval, if otherwise required, for averaging NO<sub>x</sub> emissions on either a facility-wide or system-wide basis submitted under subsection (b) must demonstrate that the aggregate NO<sub>x</sub> emissions emitted by the air contamination sources included in the facility-wide or system-wide NO<sub>x</sub> emissions averaging plan are not greater than the NO<sub>x</sub> emissions that would be emitted by the group of included sources if



each source complied with the applicable NO<sub>x</sub> RACT emission limitation in § 129.112 on a source-specific basis.

Subsection (e) provides that the application for the operating permit modification or a plan approval, if otherwise required, specified in subsections (b)—(d) may include facility-wide or system-wide NO<sub>x</sub> emissions averaging only for NO<sub>x</sub> emitting sources or NO<sub>x</sub> emitting facilities that are owned or operated by the applicant.

Subsection (f) provides that the application for the operating permit modification or a plan approval, if otherwise required, specified in subsections (b)—(e) must include the information identified in paragraphs (1)—(3). Paragraph (1) specifies that the application must identify each air contamination source included in the NO<sub>x</sub> emissions averaging plan. Paragraph (2) specifies that the application must list each air contamination source's applicable emission limitation in § 129.112. Paragraph (3) specifies that the application must include methods for demonstrating compliance and recordkeeping and reporting requirements in accordance with § 129.115 for each source included in the NO<sub>x</sub> emissions plan submitted under subsection (b).

Subsection (g) provides that an air contamination source or facility included in the facility-wide or system-wide NO<sub>x</sub> emissions averaging plan submitted in accordance with subsections (b)—(f) may be included in only one facility-wide or system-wide NO<sub>x</sub> emissions averaging plan.

There are no changes made to subsections (c)—(g) from the proposed rulemaking to this final-form rulemaking.

Subsection (h) provides in paragraph (1) that the Department or appropriate approved local air pollution control agency will review the timely and complete NO<sub>x</sub> emissions averaging plan submitted in accordance with subsections (b)—(g) and approve, deny or modify the NO<sub>x</sub> emissions averaging plan, in writing, as specified in paragraphs (2) and (3). The Department or appropriate approved local air pollution control agency will approve the NO<sub>x</sub> emissions averaging plan if the approving authority is satisfied that the NO<sub>x</sub> emissions averaging plan complies with the requirements of subsections (b)—(g) and that the proposed NO<sub>x</sub> emissions averaging plan is RACT for the air contamination sources. The approving authority will deny or modify the NO<sub>x</sub> emissions averaging plan if the proposal does not comply with the requirements of subsections (b)—(g). Paragraphs (1)—(3) are amended from the proposed rulemaking to this final-form rulemaking to delete the words “subsection (b)” and add the words “subsections (b)—(g)” for clarity and completeness.

Subsection (i) provides that the proposed NO<sub>x</sub> emissions averaging plan submitted under subsection (b) will be approved, denied or modified under subsection (h) by the Department or appropriate approved local air pollution control agency in accordance with Chapter 127 (relating to construction, modification, reactivation and operation of sources) prior to the owner or operator implementing the NO<sub>x</sub> emissions averaging plan. Subsection (i) as amended from the proposed rulemaking to this final-form rulemaking to delete the words “subsection (h) in writing through the issuance of a plan approval or operating permit modification” and add the words “25 Pa. Code Chapter 127 (relating to construction, modification, reactivation and operation of sources)” to provide clarity in how the proposed NO<sub>x</sub> emissions averaging plan will be approved, denied or modified.

Subsection (j) provides that the owner or operator of an air contamination source or facility included in the facility-wide or system-wide NO<sub>x</sub> emissions averaging plan submitted in accordance with subsections (b)—(g) shall submit the reports and records specified in subsection (f)(3) to the Department or appropriate approved local air pollution control agency to demonstrate compliance with § 129.115.

Subsection (k) provides that the owner or operator of an air contamination source or facility included in a facility-wide or system-wide NO<sub>x</sub> emissions averaging plan submitted in accordance with subsections (b)—(g) that achieves emission reductions in accordance with other emission limitations required under the APCA or the CAA, or regulations adopted under the APCA or the CAA, that are not NO<sub>x</sub> RACT emission limitations may not substitute those emission reductions for the emission reductions required by the facility-wide or system-wide NO<sub>x</sub> emissions averaging plan submitted to the Department or appropriate approved local air pollution control agency under subsection (b).

Subsection (l) provides that the owner or operator of an air contamination source subject to a NO<sub>x</sub> RACT emission limitation in § 129.112 that is not included in a facility-wide or system-wide NO<sub>x</sub> emissions averaging plan submitted under subsection (b) shall operate the source in compliance with the applicable NO<sub>x</sub> RACT emission limitation in § 129.112.

Subsection (m) provides that the owner and operator of the air contamination source included in a facility-wide or system-wide NO<sub>x</sub> emissions averaging plan submitted under subsection (b) shall be liable for a violation of an applicable NO<sub>x</sub> RACT emission limitation at each source included in the NO<sub>x</sub> emissions averaging plan regardless of each individual facility's NO<sub>x</sub> emission rate.

Subsection (n) provides that the Department will submit each NO<sub>x</sub> emissions averaging plan approved under subsection (i) to the Administrator of the EPA for approval as a revision to the SIP. The owner and operator of the facility shall bear the costs of public hearings and notifications, including newspaper notices, required for the SIP submittal.

There are no changes made to subsections (j)—(n) from the proposed rulemaking to this final-form rulemaking.

*§ 129.114. Alternative RACT proposal and petition for alternative compliance schedule*

Subsection (a) provides that the owner or operator of an air contamination source subject to § 129.112 located at a major NO<sub>x</sub> emitting facility or major VOC emitting facility subject to § 129.111 that cannot meet the applicable presumptive RACT requirement or RACT emission limitation of § 129.112 may propose an alternative RACT requirement or RACT emission limitation in accordance with subsection (d).

Subsection (b) provides that the owner or operator of a NO<sub>x</sub> air contamination source with a potential emission rate equal to or greater than 5.0 tons of NO<sub>x</sub> per year that is not subject to § 129.112 or §§ 129.201—129.205 (relating to additional NO<sub>x</sub> requirements) located at a major NO<sub>x</sub> emitting facility subject to § 129.111 shall propose a NO<sub>x</sub> RACT requirement or RACT emission limitation in accordance with subsection (d).

Subsection (c) provides that the owner or operator of a VOC air contamination source with a potential emission rate equal to or greater than 2.7 tons of VOC per year that is not subject to § 129.112 located at a major VOC

emitting facility subject to § 129.111 shall propose a VOC RACT requirement or VOC RACT emission limitation in accordance with subsection (d).

There are no changes made to subsections (a)—(c) from the proposed rulemaking to this final-form rulemaking.

Subsection (d) provides that the owner or operator proposing an alternative RACT requirement or RACT emission limitation under subsection (a), (b) or (c) shall comply with the requirements in paragraphs (1)—(7). Proposed paragraph (1) established that the subject owner or operator shall submit a written RACT proposal in accordance with the procedures in § 129.92(a)(1)—(5), (7)—(10) and (b) (relating to RACT proposal requirements) to the Department or appropriate approved local air pollution control agency as soon as possible but not later than the date specified in subparagraphs (i) and (ii). Proposed subparagraph (i) specified the date 6 months after the date of publication of this final-form rulemaking, for a source subject to § 129.111(a). Proposed subparagraph (ii) specified the submittal is due not later than the date 6 months after the date of publication of this final-form rulemaking, or 6 months after the date that the source meets the definition of a major NO<sub>x</sub> emitting facility or major VOC emitting facility, whichever is later, for a source subject to § 129.111(b).

Paragraph (1) is amended from the proposed rulemaking to this final-form rulemaking to establish that the RACT proposal shall be submitted in writing or electronically. This change provides flexibility to the subject owner or operator in submitting the RACT proposal.

Subparagraph (i) is amended from the proposed rulemaking to this final-form rulemaking to specify December 31, 2022, as the due date for a source subject to § 129.111(a).

Subparagraph (ii) is amended from the proposed rulemaking to this final-form rulemaking to specify the due date is either December 31, 2022, or 6 months after the date that the source meets the definition of a major NO<sub>x</sub> emitting facility or major VOC emitting facility, whichever is later, for a source subject to § 129.111(b).

The changes to the due dates specified in subparagraphs (i) and (ii) are made to accommodate the length of time for this final-form rulemaking to move through the regulatory development process and meet the implementation deadline of January 1, 2023, for states to implement the RACT requirements and RACT emission limitations to address the 2015 8-hour ozone NAAQS. This final-form rulemaking is expected to be published in the *Pennsylvania Bulletin* prior to the end of 2022.

There are no changes made to paragraphs (2)—(7) from the proposed rulemaking to this final-form rulemaking.

Subsection (e) provides that the Department or appropriate approved local air pollution control agency will review the timely and complete alternative RACT proposal submitted in accordance with subsection (d) and approve, modify or deny in writing the application as specified in paragraphs (1)—(3).

There is no change made to subsection (e) from the proposed rulemaking to this final-form rulemaking.

Subsection (f) provides that the proposed alternative RACT requirement or RACT emission limitation and the implementation schedule submitted under subsection (d) will be approved, denied or modified under subsection (e) by the Department or appropriate approved local air pollution control agency in accordance with Chapter 127 prior to the owner or operator implementing the alterna-

tive RACT requirement or RACT emission limitation. Subsection (f) is amended from the proposed rulemaking to this final-form rulemaking to delete the words “subsection (e) in writing through the issuance of a plan approval or operating permit modification” and add the words “25 Pa. Code Chapter 127 (relating to construction, modification, reactivation and operation of sources)” to provide clarity in how the proposed alternative RACT requirement or RACT emission limitation and the implementation schedule will be approved, denied or modified.

Subsection (g) provides that the emission limit and requirements specified in the plan approval or operating permit issued by the Department or appropriate approved local air pollution control agency under subsection (f) supersedes the emission limit and requirements in the existing plan approval or operating permit issued to the owner or operator of the source prior to November 12, 2022, on the date specified in the plan approval or operating permit issued by the Department or appropriate approved local air pollution control agency under subsection (f), except to the extent the existing plan approval or operating permit contains more stringent requirements.

Subsection (h) provides that the Department will submit each alternative RACT requirement or RACT emission limitation approved under subsection (f) to the Administrator of the EPA for approval as a revision to the SIP. The owner and operator of the facility shall bear the costs of public hearings and notifications, including newspaper notices, required for the SIP submittal.

There are no changes made to subsections (g) and (h) from the proposed rulemaking to this final-form rulemaking.

Subsection (i) provides that an owner or operator subject to subsection (a), (b) or (c) and § 129.99 (relating to alternative RACT proposal and petition for alternative compliance schedule) that has not modified or changed a source that commenced operation on or before October 24, 2016, and has not installed and commenced operation of a new source after October 24, 2016, may, in place of the alternative RACT requirement or RACT emission limitation required under subsection (d), submit an analysis, certified by the responsible official, in writing or electronically to the Department or appropriate approved local air pollution control agency on or before December 31, 2022, that demonstrates that compliance with the alternative RACT requirement or RACT emission limitation approved by the Department or appropriate approved local air pollution control agency under § 129.99(e) assures compliance with the provisions in subsections (a)—(c) and (e)—(h), except for sources subject to § 129.112(c)(11) or (i)—(k). Proposed subsection (i) provided that compliance with the requirements in § 129.99(a)—(h) assures compliance with the provisions in subsections (a)—(h), except for sources subject to § 129.112(b)(11), (h)(4) and (5) or (i)—(k). Subsection (i) is amended from the proposed rulemaking to this final-form rulemaking to add the words “subsections (a)—(c) and (e)—(h), except for sources subject to § 129.112(c)(11) or (i)—(k)” after the words “with the provisions in” and deleted the words “subsections (a)—(h), except for sources subject to § 129.112(b)(11), (h)(4) and (5) or (i)—(k).”

Subsection (i) is further amended from the proposed rulemaking to this final-form rulemaking to add paragraphs (1) and (2) to establish the procedures an owner or operator shall follow to submit the analysis required

under subsection (i) if the owner or operator chooses to demonstrate compliance with subsections (a)—(c) and (e)—(h) in accordance with subsection (i). Paragraph (1) establishes cost-effectiveness thresholds of \$7,500 per ton of NO<sub>x</sub> emissions reduced and \$12,000 per ton of VOC emissions reduced as “screening level values” to determine the amount of analysis and due diligence that the owner or operator shall perform if there is no new pollutant specific air cleaning device, air pollution control technology or technique available at the time of submittal of the analysis.

Final-form paragraph (1)(i) specifies that the owner or operator of a subject source or facility that evaluates and determines that there is no new pollutant specific air cleaning device, air pollution control technology or technique available at the time of submittal of the analysis and that each technically feasible air cleaning device, air pollution control technology or technique evaluated for the alternative RACT requirement or RACT emission limitation approved by the Department or appropriate approved local air pollution control agency under § 129.99(e) had a cost effectiveness equal to or greater than \$7,500 per ton of NO<sub>x</sub> emissions reduced or \$12,000 per ton of VOC emissions reduced shall include the information specified in paragraph (1)(i)(A)—(E) in the analysis. Clause (A) specifies a statement that explains how the owner or operator determined that there is no new pollutant specific air cleaning device, air pollution control technology or technique available. Clause (B) specifies a list of the technically feasible air cleaning devices, air pollution control technologies or techniques previously identified and evaluated under § 129.92(b)(1)—(3) included in the written RACT proposal submitted under § 129.99(d) and approved by the Department or appropriate approved local air pollution control agency under § 129.99(e). Clause (C) specifies a summary of the economic feasibility analysis performed for each technically feasible air cleaning device, air pollution control technology or technique listed in clause (B) and the cost effectiveness of each technically feasible air cleaning device, air pollution control technology or technique as submitted previously under § 129.99(d) or as calculated consistent with the EPA Air Pollution Control Cost Manual, 6th Edition, EPA/452/B-02-001, January 2002, as amended. Clause (D) specifies a statement that an evaluation of each economic feasibility analysis summarized in clause (C) demonstrates that the cost effectiveness remains equal to or greater than \$7,500 per ton of NO<sub>x</sub> emissions reduced or \$12,000 per ton of VOC emissions reduced. Clause (E) specifies that the owner or operator shall provide additional information requested by the Department or appropriate approved local air pollution control agency that may be necessary for the evaluation of the analysis.

Final-form paragraph (1)(ii) specifies that the owner or operator of a subject source or facility that evaluates and determines that there is no new pollutant specific air cleaning device, air pollution control technology or technique available at the time of submittal of the analysis and that each technically feasible air cleaning device, air pollution control technology or technique evaluated for the alternative RACT requirement or RACT emission limitation approved by the Department or appropriate approved local air pollution control agency under § 129.99(e) had a cost effectiveness less than \$7,500 per ton of NO<sub>x</sub> emissions reduced or \$12,000 per ton of VOC emissions reduced shall include the information specified in paragraph (1)(ii)(A)—(F) in the analysis. Clauses (A)—(C) are the same as clauses (A)—(C) under paragraph

(1)(i). Clause (D) specifies a statement that an evaluation of each economic feasibility analysis summarized in clause (C) demonstrates that the cost effectiveness remains less than \$7,500 per ton of NO<sub>x</sub> emissions reduced or \$12,000 per ton of VOC emissions reduced. Clause (E) specifies that the owner or operator shall include a new economic feasibility analysis for each technically feasible air cleaning device, air pollution control technology or technique listed in clause (B) in accordance with § 129.92(b)(4). Clause (F) specifies that the owner or operator shall provide additional information requested by the Department or appropriate approved local air pollution control agency that may be necessary for the evaluation of the analysis.

Final-form paragraph (2) establishes procedures in subparagraphs (i)—(iii) that the owner or operator of a subject source or facility that evaluates and determines that there is a new or upgraded pollutant specific air cleaning device, air pollution control technology or technique available at the time of submittal of the analysis shall follow. Subparagraph (i) requires that the owner or operator perform a technical feasibility analysis and an economic feasibility analysis in accordance with § 129.92(b). Subparagraph (ii) requires that the owner or operator submit the analyses performed under subparagraph (i) to the Department or appropriate approved local air pollution control agency for review. Subparagraph (iii) requires that the owner or operator provide additional information requested by the Department or appropriate approved local air pollution control agency that may be necessary for the evaluation of the analysis.

The changes in subsection (i) from the proposed rulemaking to this final-form rulemaking are made in response to concerns and comments submitted by the EPA on the proposed rulemaking. The EPA expressed concerns regarding the need for additional analysis to determine whether the case-by-case determinations made under §§ 129.96—129.100 (RACT II) for the 1997 and 2008 8-hour ozone NAAQS remain RACT for the 2015 8-hour ozone NAAQS under §§ 129.111—129.115 (RACT III).

Subsection (j) is amended from the proposed rulemaking to this final-form rulemaking to provide in paragraphs (1)—(4) that the Department or appropriate approved local air pollution control agency will review the analyses submitted in accordance with subsection (i), solicit public comment on the analyses and the Department’s supporting documentation, prepare a summary of the public comments received on the analyses and responses to the comments, and as appropriate, issue the necessary plan approvals and operating permit modifications in conformance with Chapter 127 for the analyses reviewed under paragraph (1).

Final-form subsection (k) provides that the Department will submit the analyses, supporting documentation and summary of public comments and responses described in subsection (j)(2) and (3) as well as the plan approvals and operating permit modifications issued under subsection (j)(4) to the Administrator of the EPA for approval as a revision to the Commonwealth’s SIP.

Proposed subsection (j) is relettered in this final-form rulemaking as subsection (l) and provides that the owner and operator of a facility proposing to comply with the applicable RACT requirement or RACT emission limitation under subsection (a), (b) or (c) through the installation of an air cleaning device may submit a petition, in writing, requesting an alternative compliance schedule in accordance with paragraphs (1) and (2).



Final-form subsection (l) is further amended to add the words “or electronically” after “in writing.” This change provides flexibility to the subject owner or operator in how the petition may be submitted. Final-form subsection (l)(1) is amended to delete the word “written” to coordinate with the addition of “or electronically” in subsection (l). Final-form paragraph (1)(i) is amended from the proposed rulemaking to this final-form rulemaking to specify that the due date is December 31, 2022, for a source subject to § 129.111(a). Final-form paragraph (1)(ii) is amended from the proposed rulemaking to this final-form rulemaking to specify that the due date is December 31, 2022, or 6 months after the date that the source meets the definition of a major NO<sub>x</sub> emitting facility or major VOC emitting facility, whichever is later, for a source subject to § 129.111(b). The amendment of final-form paragraphs (1)(i) and (ii) with the compliance date certain of December 31, 2022, in place of the proposed compliance date, which was the date of publication of this final-form rulemaking, is made to address the required deadline of January 1, 2023, in the EPA 2015 ozone implementation rule, for states to implement the RACT requirements and RACT emission limitations to address the 2015 8-hour ozone NAAQS. See 40 CFR 51.1312(a)(3)(i); see also 40 CFR 51.1316(b)(3)(1). Final-form paragraph (2) is amended to delete the word “written” to coordinate with the addition of “or electronically” in subsection (l).

Proposed subsection (k) is relettered in this final-form rulemaking as subsection (m) and provides that the Department or appropriate approved local air pollution control agency will review the timely and complete written petition requesting an alternative compliance schedule submitted in accordance with proposed subsection (j) and approve or deny the petition in writing. Final-form subsection (m) is amended to delete the word “written” and to delete subsection “(j)” and add subsection “(l).”

Proposed subsection (l) is relettered in this final-form rulemaking as subsection (n) and provides that the emission limit and requirements specified in the plan approval or operating permit issued by the Department or appropriate approved local air pollution control agency under proposed subsection (k), now final-form subsection (m), which supersedes the emission limit and requirements in the existing plan approval or operating permit issued to the owner or operator of the source prior to November 12, 2022, on the date specified in the plan approval or operating permit issued by the Department or appropriate approved local air pollution control agency under proposed subsection (k), except to the extent the existing plan approval or operating permit contains more stringent requirements. Final-form subsection (n) is amended to delete subsection “(k)” and add subsection “(m).”

Proposed subsection (m) is relettered in this final-form rulemaking as subsection (o) and provides that approval or denial under proposed subsection (k), now final-form subsection (m), of the timely and complete petition for an alternative compliance schedule submitted under proposed subsection (j), now final-form subsection (l), will be effective on the date the letter of approval or denial of the petition is signed by the authorized representative of the Department or appropriate approved local air pollution control agency. Final-form subsection (o) is amended to delete subsection “(k)” and add subsection “(m)” and to delete subsection “(j)” and add subsection “(l).”

Proposed subsection (n) is relettered in this final-form rulemaking as subsection (p) and provides that the Department will submit each petition for an alternative compliance schedule approved under proposed subsection

(k), now final-form subsection (m), to the Administrator of the EPA for approval as a revision to the Commonwealth’s SIP. The owner and operator of the facility shall bear the costs of public hearings and notifications, including newspaper notices, required for the SIP submittal. Final-form subsection (p) is amended to delete subsection “(k)” and add subsection “(m).”

§ 129.115. *Written notification, compliance demonstration and recordkeeping and reporting requirements*

Subsection (a) provides that the owner and operator of an air contamination source subject to this section and § 129.111 shall submit a notification, in writing or electronically, to the appropriate Regional Manager or the appropriate approved local air pollution control agency that proposes how the owner and operator intend to comply with the requirements of this section and §§ 129.111–129.114. Proposed subsection (a) specified that the written notification shall be submitted to the appropriate Regional Manager by the date 6 months after the date of publication of this final-form rulemaking and include the information specified in proposed paragraphs (1)–(6). Subsection (a) is amended from the proposed rulemaking to this final-form rulemaking to delete the word “written” and add a comma and the words “in writing or electronically” after the word “notification.” This change provides flexibility to the subject owner or operator in how the notification may be submitted. Subsection (a) is further amended from the proposed rulemaking to this final-form rulemaking to delete the due date of 6 months after the date of publication of this final-form rulemaking and to add the words “or appropriate approved local air pollution control agency” after the words “Regional Manager.”

Proposed subsection (a) included paragraphs (1)–(6) that specified the information to be included in the written notification. Proposed paragraph (1) specified that the written notification shall include the air contamination sources identified in § 129.111(a) as either subject to a RACT requirement or RACT emission limitation in §§ 129.112–129.114 or exempted from §§ 129.112–129.114. Subsection (a) is amended from the proposed rulemaking to this final-form rulemaking to add new paragraph (1) to establish the due dates for the notification and renumber proposed paragraphs (1)–(6) as final-form paragraphs (2)–(7). Final-form paragraph (1) specifies that the notification shall be submitted to the appropriate Regional Manager or appropriate approved local air pollution control agency as soon as possible but not later than December 31, 2022, for a source subject to § 129.111(a) and not later than December 31, 2022, or 6 months after the date the source meets the definition of a major NO<sub>x</sub> emitting facility or major VOC emitting facility, whichever is later, for a source subject to § 129.111(b).

The due dates specified in final-form paragraph (1) are established to accommodate the length of time for this final-form rulemaking to move through the regulatory development process and meet the implementation deadline of January 1, 2023, for states to implement the RACT requirements and RACT emission limitations to address the 2015 8-hour ozone NAAQS. This final-form rulemaking is expected to be published in the *Pennsylvania Bulletin* prior to the end of 2022.

Proposed subsection (a)(1) is renumbered as paragraph (2) in this final-form rulemaking. Paragraph (2) specifies that the notification shall identify the air contamination

sources in § 129.111(a) as either subject to a RACT requirement or RACT emission limitation in §§ 129.112—129.114 or exempted from §§ 129.112—129.114.

Subsection (a) is further amended from the proposed rulemaking to this final-form rulemaking to renumber proposed paragraph (2) as final-form paragraph (3) and proposed paragraph (3) as final-form paragraph (4). There are no other changes made to final-form paragraphs (3) and (4).

Proposed subsection (a)(4) is renumbered as paragraph (5) in this final-form rulemaking. Final-form paragraph (5) is further amended to delete the reference to paragraph (1) and add the reference to paragraph (2). Subparagraph (ii) is amended from the proposed rulemaking to this final-form rulemaking to delete the reference to paragraph (1)(i) and add the reference to paragraph (2)(i). Subparagraph (iv) is amended from the proposed rulemaking to this final-form rulemaking to delete the reference to paragraph (1)(ii) and add the reference to paragraph (2)(ii). These changes are made to correct the cross references.

Proposed subsection (a)(5) is renumbered as paragraph (6) in this final-form rulemaking. Final-form paragraph (6) is further amended to delete the reference to paragraph (2) and add the reference to paragraph (3). Subparagraph (ii) is amended from proposed to this final-form rulemaking to delete the reference to paragraph (2)(i) and add the reference to paragraph (3)(i). Subparagraph (iv) is amended from the proposed rulemaking to this final-form rulemaking to delete the reference to paragraph (2)(ii) and add the reference to paragraph (3)(ii). These changes are made to correct the cross references.

Proposed subsection (a)(6) is renumbered as paragraph (7) in this final-form rulemaking. Final-form paragraph (7) is further amended to delete the reference to paragraph (3) and add the reference to paragraph (4). This change is made to correct the cross reference.

Subsection (b) provides that, except as specified in subsection (d), the owner and operator of an air contamination source subject to a NO<sub>x</sub> RACT requirement or RACT emission limitation or VOC RACT requirement or RACT emission limitation, or both, listed in § 129.112 shall demonstrate compliance with the applicable RACT requirement or RACT emission limitation by performing the monitoring or testing procedures under paragraphs (1)—(6). Proposed subsection (b) included paragraphs (1)—(5).

Paragraph (1) is amended from the proposed rulemaking to this final-form rulemaking to delete the word “and” after § 129.112(f), add a comma, and add the words “and direct-fired heaters, furnaces, ovens or other combustion sources subject to § 129.112(k)” after § 129.112(g)(1). These changes are made in response to comments received on the proposed rulemaking.

Paragraph (3) is amended from the proposed rulemaking to this final-form rulemaking to delete the word “rolling.” This change is made in response to comments received on the proposed rulemaking.

Proposed paragraph (5) is renumbered as paragraph (6) in this final-form rulemaking. Final-form paragraph (5) specifies that for a direct-fired heater, furnace, oven or other combustion source subject to § 129.112(k) with a continuous emissions monitoring system (CEMS), monitoring and testing shall be performed in accordance with the requirements in Chapter 139, Subchapter C (relating to requirements for source monitoring for stationary

sources), using a daily average. This requirement is added in response to comments received on the proposed rulemaking.

Final-form paragraph (6) is amended to clarify that for an air contamination source without a CEMS, monitoring and testing shall be performed in accordance with an emissions source test approved by the Department or appropriate approved local air pollution control agency that meets the requirements of Chapter 139, Subchapter A. The source test shall be conducted to demonstrate initial compliance and subsequently on a schedule set forth in the applicable permit. Final-form paragraph (6) is amended to delete “a Department approved” and add “approved by the Department or appropriate approved local air pollution control agency.” These changes are made to for clarity.

There are no changes made to paragraphs (2) and (4) from the proposed rulemaking to this final-form rulemaking.

Subsection (c) provides that the owner or operator of a combined cycle combustion turbine may comply with the requirements in § 129.112(g)(2)(iii) on a mass-equivalent basis. The actual emissions during the compliance period must be less than the allowable emissions during the compliance period. The allowable emissions are calculated by multiplying actual heat input in million Btu during the compliance period by the applicable factor listed in paragraphs (1)—(4).

Subsection (c) is amended from the proposed rulemaking to this final-form rulemaking to delete the word “combined-cycle” and add the words “combined cycle” before the word “combustion.” This amendment is made to delete the hyphen in combined cycle. Subsection (c) is further amended from the proposed rulemaking to this final-form rulemaking to correct the cross-reference from § 129.112(g)(2)(ii) to § 129.112(g)(2)(iii). Paragraphs (1)—(4) are amended from the proposed rulemaking to this final-form rulemaking to correct the specified cross references. The cross reference in paragraph (1) is amended from § 129.112(g)(2)(ii)(A) to § 129.112(g)(2)(iii)(A). The cross reference in paragraph (2) is amended from § 129.112(g)(2)(ii)(B) to § 129.112(g)(2)(iii)(B). The cross reference in paragraph (3) is amended from § 129.112(g)(2)(ii)(C) to § 129.112(g)(2)(iii)(C). The cross reference in paragraph (4) is amended from § 129.112(g)(2)(ii)(D) to § 129.112(g)(2)(iii)(D). These changes are made to coordinate with the changes in § 129.112(g)(2) from the proposed rulemaking to this final-form rulemaking.

Subsection (d) provides that, except as specified in §§ 129.112(n) and 129.114(l), the owner and operator of an air contamination source subject to subsection (b) shall demonstrate compliance with the applicable RACT requirement or RACT emission limitation in accordance with the procedures in subsection (a) not later than the applicable date in paragraphs (1) and (2).

Subsection (d) is amended from the proposed rulemaking to this final-form rulemaking to correct the cross reference from § 129.114(j) to § 129.114(l) to coordinate with the changes made in § 129.114 from the proposed rulemaking to this final-form rulemaking. Subsection (d) is further amended from the proposed rulemaking to this final-form rulemaking to correct the cross reference from subsection (a) to subsection (b).

Subsection (e) provides that an owner or operator of an air contamination source subject to this section and §§ 129.111—129.113 may request a waiver from the

requirement to demonstrate compliance with the applicable emission limitation listed in § 129.112 if the requirements in paragraphs (1)—(4) are met. Paragraph (1) is amended from the proposed rulemaking to this final-form rulemaking to add the words “or electronically” after the words “in writing.” This change is made to provide flexibility to the subject owner or operator in how the request for a waiver may be submitted.

The waiver in paragraph (1) shall be submitted by the applicable date in subparagraph (i) or (ii). Proposed subparagraph (i) established the due date as the date 6 months after the date of publication of this final-form rulemaking for a source subject to § 129.111(a). Subparagraph (i) is amended from the proposed rulemaking to this final-form rulemaking to establish the due date as December 31, 2022, for a source subject to § 129.111(a). Proposed subparagraph (ii) established the due date as the date 6 months after the date of publication of this final-form rulemaking or 6 months after the date that the source meets the definition of a major NO<sub>x</sub> emitting facility or major VOC emitting facility, whichever is later, for a source subject to § 129.111(b). Subparagraph (ii) is amended from the proposed rulemaking to this final-form rulemaking to establish the due date as December 31, 2022, or 6 months after the date that the source meets the definition of a major NO<sub>x</sub> emitting facility or major VOC emitting facility, whichever is later, for a source subject to § 129.111(b).

The changes to the due dates specified in subparagraph (i) and (ii) are made to accommodate the length of time for this final-form rulemaking to move through the regulatory development process and meet the implementation deadline of January 1, 2023, for states to implement the RACT requirements and RACT emission limitations to address the 2015 8-hour ozone NAAQS. This final-form rulemaking is expected to be published in the *Pennsylvania Bulletin* prior to the end of 2022.

There are no changes made to paragraphs (2)—(4) from the proposed rulemaking to this final-form rulemaking.

Subsection (f) provides that the owner and operator of an air contamination source subject to this section and §§ 129.111—129.114 shall keep records to demonstrate compliance with §§ 129.111—129.114 and submit reports to the Department in accordance with the applicable regulations in 25 Pa. Code, Part 1, Subpart C, Article III (relating to air resources) and as specified in the operating permit or plan approval for the air contamination source as set forth in paragraphs (1)—(3). Paragraph (3) is amended from the proposed rulemaking to this final-form rulemaking to delete the words “Subpart C, Article III (relating to air resources) regulations” and add the words “applicable regulation” before the words “or as otherwise specified.” This amendment is made in response to *Sierra Club v. EPA*, 972 F.3d 290 (3d Cir. 2020) to clarify that the owners and operators are required to comply with existing recordkeeping and reporting requirements, to which the owners and operators are already subject under existing Commonwealth law and as specified in the applicable operating permit or plan approval for the air contamination source. These recordkeeping and reporting requirements were previously approved as revisions to the Commonwealth’s SIP. There are no changes made to paragraphs (1) and (2) from the proposed rulemaking to this final-form rulemaking.

Subsection (g) provides that, beginning with the compliance date specified in § 129.112(a), the owner or operator of an air contamination source claiming that the air contamination source is exempt from the applicable NO<sub>x</sub>

emission rate threshold specified in § 129.114(b) and the requirements of § 129.112 based on the air contamination source’s potential to emit shall maintain records that demonstrate to the Department or appropriate approved local air pollution control agency that the air contamination source is not subject to the specified emission rate threshold.

Subsection (h) provides that, beginning with the compliance date specified in § 129.112(a), the owner or operator of an air contamination source claiming that the air contamination source is exempt from the applicable VOC emission rate threshold specified in § 129.114(c) and the requirements of § 129.112 based on the air contamination source’s potential to emit shall maintain records that demonstrate to the Department or appropriate approved local air pollution control agency that the air contamination source is not subject to the specified emission rate threshold.

There are no changes made to subsections (g) and (h) from the proposed rulemaking to this final-form rulemaking.

Subsection (i) provides that the owner or operator of a combustion unit or process heater subject to § 129.112(b) shall record each adjustment conducted under the procedures in § 129.112(b). This record must contain, at a minimum, the information specified in paragraphs (1)—(6). Subsection (i) is amended from the proposed rulemaking to this final-form rulemaking to add the words “or process heater” after the word “unit.” This change is made for consistency with the corresponding amendments to § 129.112(b). There are no changes made to paragraphs (1)—(6) from the proposed rulemaking to this final-form rulemaking.

Subsection (j) provides that the owner or operator of a Portland cement kiln subject to § 129.112(h) shall maintain a daily operating log for each Portland cement kiln. The record for each kiln must include the information specified in paragraphs (1)—(4).

Subsection (k) provides that the records shall be retained by the owner or operator for 5 years and made available to the Department or appropriate approved local air pollution control agency upon receipt of a written request from the Department or appropriate approved local air pollution control agency.

There are no changes made to subsections (j) and (k) from the proposed rulemaking to this final-form rulemaking.

#### F. Summary of Comments and Responses on the Proposed Rulemaking

##### General comments

The Board adopted the proposed rulemaking at its meeting on May 19, 2021. The proposed rulemaking was published at 51 Pa.B. 4333 (August 7, 2021). Three public hearings were held by the Department on September 7, 8 and 9, 2021, respectively. A 67-day public comment period closed on October 12, 2021.

Public comments were received from IRRC, the EPA and 25 commentators. Written comments were not received from the Senate or House Environmental Resources and Energy Committees. On November 12, 2021, IRRC submitted comments to the Board. The public comments received by the Board are summarized as follows and are addressed in a comment and response document which is available from the Department.

Public comments received from the EPA, businesses or regulated industries, industry trade associations, a neigh-



boring state and nongovernmental organizations sought further clarification regarding certain provisions of the proposed rulemaking or for the Board to revise provisions of the proposed rulemaking. IRRC and the EPA sought clarification from the Department regarding what additional analysis the Department will require from the owners and operators of subject facilities that seek to rely on previously approved RACT II conditions to meet RACT III for the 2015 8-hour ozone standard and whether this information would be included as part of the regulatory record to ensure compliance with EPA SIP requirements.

In response to comments from IRRC and the EPA, the Board amends § 129.114(i) from the proposed rulemaking to this final-form rulemaking to establish requirements for additional analysis to be included in the RACT III case-by-case evaluations. The Board believes that final-form § 129.114(i) provides the conditions to support those instances where the Department or appropriate approved local air pollution control agency may determine that the previously established RACT II controls and limits remain RACT for the 2015 8-hour ozone NAAQS. Final-form § 129.114(i) addresses the EPA's comment that the source shall not have had any significant changes to operations, emission levels, or other site or source specific factors analyzed during the original determination for that source's RACT II permits. Final-form § 129.114(i) establishes the conditions that an owner or operator subject to final-form § 129.114(a), (b) or (c) and to § 129.99 shall not have modified or changed a source that commenced operation on or before October 24, 2016, and shall not have installed and commenced operation of a new source after October 24, 2016. The date of October 24, 2016, is the date specified in § 129.99(i)(1) by which written RACT proposals to address the 1997 and 2008 8-hour ozone NAAQS were due to the Department or the appropriate approved local air pollution control agency from the owner or operator of an air contamination source located at a major NO<sub>x</sub> emitting facility or a major VOC emitting facility subject to § 129.96(a) or (b) (relating to applicability).

An owner or operator that is subject to final-form § 129.114(a), (b) or (c) and to § 129.99 and meets the conditions stipulated in final-form § 129.114(i), may, in place of proposing an alternative RACT requirement or RACT emission limitation under final-form § 129.114(d), submit an analysis, certified by the responsible official, in writing or electronically to the Department or appropriate approved local air pollution control agency on or before December 31, 2022, that demonstrates that compliance with the alternative RACT requirement or RACT emission limitation approved by the Department or appropriate approved local air pollution control agency under § 129.99(e) for the 1997 and 2008 8-hour ozone NAAQS remains RACT for purposes of the 2015 8-hour ozone NAAQS under final-form § 129.114(a)—(c) and (e)—(h), except for sources subject to final-form § 129.112(c)(11) or (i)—(k). The excepted sources specified in final-form § 129.112(c)(11) and (i)—(k) are electric arc furnaces (EAF), glass melting furnaces, lime kilns and direct-fired heaters, furnaces, ovens or other combustion sources. These source types did not have presumptive RACT requirements or RACT limitations established under §§ 129.96—129.100 (RACT II). The owners and operators of these source types must comply with the applicable presumptive RACT requirement or RACT limitation, or both, established in § 129.112(c)(11) and (i)—(k). If an owner or operator cannot comply with the applicable requirement or limitation established in § 129.112(c)(11)

and (i)—(k), the owner or operator may apply for an alternative RACT requirement or RACT limitation under final-form § 129.114(d).

Final-form § 129.114(i)(1) and (2) address the EPA's comments about "non-controversial sources," that is, sources which were well below the dollar per ton of NO<sub>x</sub> or VOC threshold used for the case-by-case RACT II analysis of economic feasibility, as well as the EPA's comments regarding the need for additional case-specific analysis for certain sources or source categories. Final-form § 129.114(i)(1) and (2) establish the process and information needed for the owners and operators of both categories of sources to document for the record that for each source or generic source category, the relevant control technologies and their costs have not changed significantly enough to change the prior RACT II analysis. The Department established cost-effectiveness thresholds of \$7,500 per ton of NO<sub>x</sub> emissions reduced and \$12,000 per ton of VOC emissions reduced as "screening level values" for determining if the economic feasibility analyses previously submitted under § 129.99(e) for the 1997 and 2008 8-hour ozone NAAQS should be updated for the 2015 8-hour ozone NAAQS. The NO<sub>x</sub> screening level value of \$7,500 is twice the amount of the RACT III cost-effectiveness benchmark for presumptive NO<sub>x</sub> RACT (\$3,750). The RACT III cost-effectiveness benchmark for presumptive VOC RACT, \$7,500, is larger in absolute magnitude than the RACT III cost-effectiveness benchmark of \$3,750 for presumptive NO<sub>x</sub> RACT, therefore the Department set the VOC screening level value at approximately one and one-half times the amount of the VOC RACT III cost-effectiveness benchmark. These screening level values are large enough to ensure that a cost-prohibitive control technology evaluated under § 129.99 with a cost-effectiveness that is equal to or greater than \$7,500 per ton of NO<sub>x</sub> emissions reduced or \$12,000 per ton of VOC emissions reduced is still cost-prohibitive for the purposes of final-form § 129.114 without the need for re-evaluation of economic feasibility. If the cost-prohibitive control technology evaluated under § 129.99 had a cost-effectiveness that is less than \$7,500 per ton of NO<sub>x</sub> emissions reduced or \$12,000 per ton of VOC emissions reduced, then the owner or operator shall re-evaluate the economic feasibility of the control technology to verify that it remains cost-prohibitive for purposes of the 2015 8-hour ozone NAAQS.

Final-form § 129.114(i)(2) provides that the owner or operator of a subject source or facility that evaluates and determines that there is a new or upgraded pollutant specific air cleaning device, air pollution control technology or technique available at the time of the submittal of the analysis to the Department or appropriate approved local air pollution control agency shall do the following: perform a technical feasibility analysis and an economic feasibility analysis in accordance with § 129.92(b); submit the analyses to the Department or appropriate approved local air pollution control agency for review; and provide additional information requested by the Department or appropriate approved local air pollution control agency that may be necessary for the evaluation of the analysis.

An owner or operator subject to final-form § 129.114(a), (b) or (c) and § 129.99 that has modified or changed a source that commenced operation on or before October 24, 2016, or has installed and commenced operation of a new source after October 24, 2016, shall comply with the requirements of final-form § 129.114(d) and propose an alternative RACT requirement or RACT emission limitation. These owners and operators may not use the

analysis option under final-form § 129.114(i). This includes the owner or operator of a major NO<sub>x</sub> emitting facility that is subject to final-form § 129.111 and was subject to §§ 129.96—129.100 (RACT II) and after October 24, 2016, installed a new source with a PTE of equal to or greater than 5 TPY of NO<sub>x</sub> that is not subject to § 129.112 or §§ 129.201—129.205 as well as the owner or operator of a major VOC emitting facility that is subject to final-form § 129.111 and was subject to RACT II and after October 24, 2016, installed a new source with a PTE equal to or greater than 2.7 TPY of VOC that is not subject to final-form § 129.112 or has modified equipment (for example, boiler replacement). In this case, a case-by-case RACT analysis shall be performed on the new source or equipment.

In response to IRRC and EPA comments regarding procedures to comply with SIP requirements relating to public participation, the Board has amended final-form § 129.114(j) to provide that the Department or appropriate approved local air pollution control agency will review the analyses submitted under final-form § 129.114(i), solicit public comment on the analyses and supporting documentation, prepare a summary of the public comments and responses to the public comments, and, as appropriate, issue the necessary plan approvals and operating permit modifications in conformance with Chapter 127. The public comment steps for the analyses specified in final-form § 129.114(j)(2) and (3) are provided to satisfy the public participation requirements under section 110 of the CAA and 40 CFR 51.102 (relating to public hearings) for submitting materials to the Administrator of the EPA for approval as a revision to the Commonwealth's SIP under final-form § 129.114(k). If a plan approval or operating permit modification is issued under final-form § 129.114(j)(4), the plan approval or operating permit modification will undergo public comment as part of the issuing process in conformance with Chapter 127.

IRRC and the EPA similarly asked what procedures the Department will follow to satisfy SIP requirements relating to public participation for instances where an owner and operator's previous RACT II determination remains RACT for the 2015 8-hour ozone standard. Final-form § 129.114(k) provides that the Department will submit the analyses, supporting documentation and summary of public comments and responses described in final-form § 129.114(j)(2) and (3) as well as the plan approvals and operating permit modifications issued under final-form § 129.114(j)(4) to the Administrator of the EPA for approval as a revision to the Commonwealth's SIP. These submissions will include all supporting information necessary for the record to demonstrate that the alternative RACT requirement or RACT emission limitation approved by the Department or appropriate local air pollution control agency under § 129.99(e) (RACT II) assures compliance with the provisions in final-form § 129.114 (a)—(c) and (e)—(h) (RACT III), that there is no further reduction in the emission limitations or tightening of the restrictions that is technically or economically feasible, and that no change has occurred at the source that would call into question whether the emission limitations in the RACT II permit remain RACT for the 2015 8-hour ozone NAAQS. The supporting documentation will include the applicable RACT II determinations, which will be made available to the public during the public comment period described under final-form § 129.114(j) and incorporated as part of the SIP submittal to the EPA.

IRRC and several commentators also raised concerns with the time frame provided for affected owners and

operators to comply with this final-form rulemaking and inquired what authority the Department is relying on to extend the compliance date beyond January 1, 2023.

The Board understands the concerns of IRRC and the commentators relating to the time frame for implementation of this final-form rulemaking. However, the implementation date of January 1, 2023, is required by the EPA's 2015 ozone standard implementation rule. See 83 FR 62998 (December 6, 2018); see also 40 CFR 51.1316(b)(3). In this final-form rulemaking, owners and operators are required to submit alternative compliance schedules, averaging plan proposals and case-by-case proposals for alternative RACT requirements and RACT emission limitations to the Department or appropriate approved local air pollution control agency before the implementation date of January 1, 2023. Sources otherwise subject to the presumptive RACT limit and other RACT requirements for certain source categories in this final-form rulemaking will have to plan to begin complying with RACT III on the implementation date. To this end, the Department will be conducting direct outreach to the regulated community well in advance of the January 1, 2023, implementation date due to the short turnaround time between the expected promulgation date of this final-form rulemaking and the implementation date.

While the implementation date of January 1, 2023, is required by the EPA's 2015 8-hour ozone NAAQS implementation rule (40 CFR 51.1316(b)(3)), there are practical timing considerations for the owners and operators of sources that will need to install and operate control technologies to satisfy their applicable RACT III requirements. This includes submission of a plan approval from the owner or operator to the Department or appropriate approved local air pollution control agency, public participation and comment on the proposal as required by law, and ordering and installing the approved control technology as well as the installation of the new control technology or replacement of the existing control technology. Therefore, the requirements for alternative compliance schedules in this final-form rulemaking remain; owners and operators should plan to implement RACT as soon as possible when proposing an alternative compliance plan schedule subject to approval by the Department. Where an alternative compliance schedule, averaging plan proposal or case-by-case proposal is not submitted by the owner or operator to the Department or appropriate approved local air pollution control agency by December 31, 2022, or the owner or operator of the source is not otherwise complying with presumptive RACT III requirements and emissions limitations established for certain source categories on or after the implementation date, the Department will then consider this to be a compliance matter subject to the Department's authority under the APCA (35 P.S. §§ 4001—4015), to issue notices of violation and conduct enforcement, as appropriate. This approach was previously approved for RACT II by the EPA on May 9, 2019 (84 FR 20274).

IRRC and other commentators had several inquiries regarding the Regulatory Analysis Form (RAF) for the proposed rulemaking. First, IRRC and some commentators contend that the RAF and the Technical Support Document (TSD) submitted with the proposed rulemaking underestimate the number of facilities that will have to install additional RACT controls and fail to account for the cost of new equipment that will be required to meet the new limits imposed by the proposed rulemaking. IRRC requested that the Board provide additional documentation and reasoning to justify the \$25 million number or revise this estimate accordingly and include these



cost estimates in Section F of the preamble to this final-form rulemaking. IRRC and a commentator suggested that the Department's estimated costs incurred by the affected owners and operators to comply with the proposed rulemaking presented in Question # 19 of the RAF are underestimated as the alternative compliance options will entail legal and consulting services, which would exceed the estimated cost of \$4,000–6,000 estimated by the Department. IRRC and some commentators also note that the Department did not account for its costs in having to process additional case-by-case proposals and petitions due to lower presumptive limits proposed for multiple source categories. IRRC also asked for the Department to update Question # 23 of the RAF to accurately account for the actual cost estimates, which are properly calculated under Question # 19 of the RAF.

In response to comments on the RAF from IRRC and others, the Department determined that the owners and operators of approximately 115 engines and turbines would be required to install add-on control technology to meet the presumptive NO<sub>x</sub> RACT III emission limitations. Since the publication of the proposed rulemaking, the Department has updated the estimates to reflect that implementation of the final-form control measures could reduce NO<sub>x</sub> emissions by as much as 9,800 TPY from engines, turbines and municipal waste combustors and reduce VOC emissions by as much as 825 TPY from engines and turbines. The value of \$25 million has been updated to approximately \$36.7 million per year and was derived from multiplying the estimated 9,800 TPY of NO<sub>x</sub> emission reductions by the NO<sub>x</sub> RACT cost-effectiveness threshold of \$3,750. The Department does not anticipate any additional costs to the regulated industry to meet the lower VOC standards contained in this final-form rulemaking. Optimization of existing VOC controls should be sufficient to meet the VOC standards in this final-form rulemaking.

There are no changes made to Question # 19 of the RAF in response to comments from IRRC and other commentators that the Department underestimated the costs of compliance. The Board finds that \$4,000 to \$6,000 is a reasonable estimation of costs that covers public hearings and notifications, including newspaper notices, required for the SIP submittal, as well as application fees. The estimated cost does not include any legal or consultation fees that a company may choose to incur. The cost range provided by the commentator of \$4.4 to \$8.8 million is based on the assumption that 250–500 facilities will require alternative compliance provisions. The Board finds this to be an overestimation as the owners and operators of less than 200 facilities submitted either averaging plans or case-by-case proposals under RACT II. The Department anticipates that the number of facilities for which an averaging plan or case-by-case proposal will be submitted under RACT III will be less than 200. Further, the Department notes that final-form § 129.114(i) provides owners and operators with the opportunity to submit an analysis, where applicable, demonstrating that RACT II conditions remain RACT for the 2015 8-hour ozone standard. For the owners and operators of eligible subject sources, this administratively efficient and less resource intensive approach than conducting a full case-by-case analysis, will likely reduce consulting costs that an owner or operator may choose to incur.

In response to comments from IRRC and others commenting that the Department did not account for its own costs in having to process additional case-by-case proposals and petitions due to lower presumptive limits pro-

posed for multiple source categories, the Board finds that the Department will not incur any significant additional costs from the implementation of this final-form rulemaking. In the RAF, the Department explains that existing Department staff will be working to review and process alternative compliance schedules, NO<sub>x</sub> averaging plans and case-by-case proposals as it did in RACT II; no additional staff will be hired as a result of implementation of this final-form rulemaking. The Board's final-form amendments to § 129.114(i) provide for an administratively efficient and less resource intensive process that it anticipates some affected owners and operators will use to demonstrate that RACT II conditions remain appropriate for RACT III. While this process in final-form § 129.114(i)–(k) is anticipated to save the regulated community costs, the Department will be handling the newspaper publications in these instances, and therefore, incur costs for the required publication of newspaper notices. Accordingly, the Board has revised the RAF based on the Department's estimate of these additional publication and advertising costs.

As previously explained in response to IRRC's request, the total cost to the regulated community in Questions # 19 and # 23 of the RAF have been revised accordingly to approximately \$36.7 million per year.

IRRC and a commentator commented that the presumptive limit for glass melting furnaces in § 129.112 will conflict with industry-specific regulations that glass melting furnaces are subject to under §§ 129.301–129.310 (relating to control of NO<sub>x</sub> emissions from glass melting furnaces) and that the Department did not provide an explanation in the preamble of the proposed rulemaking as to why these facilities are subject to RACT III when they were not previously subject to RACT II for the 2008 8-hour ozone standard. IRRC and the commentator requested that operational flexibility for start-up, shutdown and idling that exists for glass melting furnaces in the current regulations be added to this final-form rulemaking. IRRC and a commentator also noted that the proposed rulemaking was overdue and urged its final adoption as soon as possible. IRRC and other commentators commented that stricter emission limits be adopted for certain source categories such as steel producing facilities, coal-fired power plants and municipal waste combustors.

In response to comments from IRRC and another commentator regarding the conflict between this rulemaking and the existing requirements in §§ 129.301–129.310, the Department explains that each time the EPA revises a NAAQS under section 109 of the CAA, the Commonwealth is required to meet the applicable RACT obligations for covered sources under sections 182 and 184 of the CAA. The Department has determined that certain provisions, including § 129.303(a) relating to emissions requirements during periods of start-up, shutdown or idling, in the existing glass melting furnace regulations preclude §§ 129.301–129.310 from meeting the presumptive standards in § 129.112(i) for the 2015 8-hour ozone NAAQS because these provisions do not include enforceable emissions limits. See the EPA's Reinstatement of its 2015 Startup, Shutdown and Malfunction (SSM) Policy, available at <https://www.epa.gov/air-quality-implementation-plans/emissions-during-periods-startup-shutdown-malfunction-ssm>. The EPA's 2015 SSM Policy precludes the type of flexibility sought by IRRC and the commentator. The EPA also expressed concerns regarding the certification of §§ 129.301–129.310 as RACT for the 1997 and 2008 8-hour ozone NAAQS; §§ 129.301–129.310 were not approved as RACT in the Common-

wealth's SIP by the EPA for the 1997 and 2008 8-hour ozone NAAQS. See 76 FR 52283 (August 22, 2011). In response to these comments, the Board has amended final-form § 129.112(m) to reflect that the requirements and emission limitations for glass melting furnaces in § 129.112(i) would supersede existing requirements under §§ 129.301—129.310 unless the requirements or emission limitations of §§ 129.301—129.310 are more stringent.

Owners and operators of a major NO<sub>x</sub> emitting facility or a major VOC emitting facility as defined in § 121.1 are subject to RACT III as described in final-form § 129.111. If an owner or operator of a glass melting furnace source cannot meet the presumptive RACT limit in final-form § 129.112(i), then the owner or operator may opt to submit a case-by-case proposal under final-form § 129.114. Certification of final-form § 129.112(i) as RACT for glass melting furnaces for the 2015 8-hour ozone NAAQS will be presumed to certify RACT for glass melting furnaces for the 1997 and 2008 8-hour ozone NAAQS. If an owner or operator cannot meet a presumptive RACT emission limit established under § 129.112(i), the owner or operator may submit a case-by-case proposal for an alternative RACT emission limitation.

In response to comments from IRRC and another commentator that the RACT III rulemaking is overdue and needs to be adopted as soon as possible, the Board acknowledges the comments. The Department has worked diligently to finalize this comprehensive rulemaking as quickly as possible. Litigation over certain aspects of the EPA's approval of certain provisions of the RACT II final-form rulemaking (84 FR 20274; May 9, 2019) in *Sierra Club v. EPA*, 972 F.3d 290 (3d Cir. 2020) has, in part, delayed the RACT III rulemaking.

In response to comments from IRRC and another commentator regarding the stringency of emissions limitations for coal-fired power plants, the Board explains that a coal-fired combustion unit with a rated heat input greater than 250 million Btu/hour, including an electric generating unit (EGU) with selective catalytic reduction (SCR), has no presumptive NO<sub>x</sub> RACT requirement or RACT emissions limitation specified in § 129.112. Therefore, § 129.114(a) is not applicable. Owners and operators of these large coal-fired combustion units are required to propose a NO<sub>x</sub> RACT requirement or RACT emission limitation under § 129.114(b).

The owners and operators of large coal-fired combustion units that are EGUs equipped with SCR were required to submit an alternative NO<sub>x</sub> RACT proposal to satisfy the requirement of § 129.99. See *Sierra Club v. EPA*, 972 F.3d 290 (3d Cir. 2020). Therefore, these owners and operators may submit an analysis under final-form § 129.114(i) to demonstrate that their limitations issued under §§ 129.96—129.100 (RACT II) remain RACT for §§ 129.111—129.115. These analyses received under § 129.114(i) along with supporting documentation will be subject to public comment to meet the Commonwealth's SIP public participation obligations under section 110 of the CAA and 40 CFR 51.102.

#### § 129.111. Applicability

IRRC and a commentator commented that the use of "that were in existence on or before August 3, 2018," in proposed subsection (a) is vague and sought clarity. In response to these comments, the Board has amended this final-form rulemaking to provide further clarity. In final-form § 129.111(a) and (b), the words "commenced operation" have replaced "in existence." While "commenced operation" is not defined in § 121.1, the words "com-

menced operation" are used in the definition of the term "new source" and also widely used in plan approvals issued by the Department's Air Quality Program.

The Board finds that the Department does not intend for the RACT III provisions to be continually reapplied to new sources at major facilities. The intent of the applicability date in § 129.111(a) and (b) is that RACT should be determined once for each existing major facility or source in accordance with the requirements for the applicable 8-hour ozone NAAQS as the major facility or source exists on the applicability date. The applicability date in § 129.111(a) and (b), namely, August 3, 2018, is the effective date of the designations of the nonattainment areas in this Commonwealth for the 2015 8-hour ozone NAAQS. See 83 FR 25776, 25828 (June 4, 2018).

In response to the EPA's suggestion that the scope of applicability of § 129.111(a) be narrowed to exclude new sources at existing major facilities, the Board has amended the language of § 129.111(a)(1) and (2) to clarify that the requirements apply to the owner and operator of major sources and facilities subject to § 129.111(a) that commenced operation on or before August 3, 2018. Installation and operation of a new source after August 3, 2018, at a major facility covered by § 129.111(a) is excluded from being identified and listed in accordance with § 129.111(a)(1) and (2) in the notification required under § 129.115(a). A new source installed after August 3, 2018, or the new major facility that commences operation after August 3, 2018, would instead be subject, at a minimum, to a BAT determination which can be no less stringent than RACT established for the 2015 8-hour ozone NAAQS under §§ 129.111—129.115 (RACT III).

The EPA asked the Department to clarify if new facilities that came into existence after July 20, 2012, are not subject to RACT, or alternatively, whether those new facilities would be subject to a newer RACT standard. In response to the EPA's questions regarding the applicability of RACT to the owners and operators of new [major] facilities that came into existence after July 20, 2012, the applicability date of §§ 129.96—129.100 (RACT II), the Department provides that the owner and operator of a major facility or source that commenced operation after July 20, 2012, but on or before August 3, 2018, would not have been subject to, or evaluated for, RACT for the 1997 and 2008 8-hour ozone NAAQS under §§ 129.96—129.100 (RACT II); rather, the owner and operator of the major facility or source would have been subject, at a minimum, to a BAT determination which could be no less stringent than the RACT II requirements for the 1997 and 2008 8-hour ozone NAAQS. The owner or operator of a major facility or source that commenced operation after July 20, 2012, and is in operation on or before August 3, 2018, would be subject to § 129.111(a) and would be evaluated for and issued an operating permit with the applicable RACT III requirements or emissions limitations, or both, for the 2015 8-hour ozone NAAQS for the major facility or source as it existed on or before August 3, 2018. If the owner or operator of this major facility then installs a new source after August 3, 2018, it is not the Department's intent to require an updated RACT III analysis for the 2015 8-hour ozone NAAQS for the facility, as explained above regarding the scope of applicability of § 129.111(a); rather, the new source would be subject to a BAT determination which can be no less stringent than RACT established for the 2015 8-hour ozone NAAQS under §§ 129.111—129.115 (RACT III).

In response to the EPA's suggestion that the language in § 129.111(b) be clarified, the Board provides that the



owner or operator of a non-major facility that commenced operation after July 20, 2012, and is in operation on or before August 3, 2018, would not have been subject to RACT II under §§ 129.96—129.100 nor would they be subject to § 129.111(a), since the facility is not a major facility. If the owner and operator of a non-major facility that commenced operation on or before August 3, 2018, then installs and commences operation of a new source after August 3, 2018, or makes a modification or change in operation after August 3, 2018, of a source that commenced operation on or before August 3, 2018, to the extent that the source or facility now meets the definition of a major NO<sub>x</sub> emitting facility or major VOC emitting facility, this owner and operator is subject to the requirements of § 129.111(b). The owner or operator will be evaluated by the Department for applicable RACT III requirements for the 2015 8-hour ozone NAAQS and be issued an operating permit with the applicable RACT III requirements. Once this source or facility meets major status and has been evaluated for applicable RACT III requirements under §§ 129.111—129.115, installation of a subsequent new source or a subsequent modification or change in operation of an existing source after the date of issuance of the permit would be subject to a BAT analysis which could be no less stringent than the RACT III requirements.

As specified under final-form § 129.111(d), the owner and operator of a facility that commenced operation on or before August 3, 2018, that is not a major NO<sub>x</sub> emitting facility or a major VOC emitting facility on or before December 31, 2022, would not be subject to §§ 129.111—129.115, except as specified in final-form § 129.111(e). Final-form § 129.111(e) specifies that if the owner and operator of a facility that complied with § 129.111(d) becomes major after December 31, 2022, the owner and operator of the now-major facility shall comply with § 129.111(b). This requirement precludes the situation in which an owner or operator of a major facility or source that is subject to § 129.111(a), or an owner or operator of a facility or source that is subject to § 129.111(b) that becomes major after August 3, 2018, then falls below the applicable major facility threshold on or before December 31, 2022, from being exempt from §§ 129.111—129.115 if the source or facility becomes major again after December 31, 2022.

The owner and operator of a source or facility that commences operation after August 3, 2018, would not be subject to §§ 129.111—129.115. These owners and operators would be evaluated according to applicable programs such as BAT or new source review. These owners and operators may become subject to future RACT requirements or RACT emission limitations, or both, that are implemented to address a future ground-level ozone NAAQS or revision to an existing ground-level ozone NAAQS. These owners and operators would be evaluated for RACT applicability at that time.

IRRC and a commentator asked the Board to explain in the preamble of this final-form rulemaking how the exemptions in subsection (c) will be implemented for facilities that have the potential to emit less than a certain amount of NO<sub>x</sub> or VOCs. In response to these comments, the Board explains that the source exemptions listed in § 129.111(c) are based on potential emissions or potential to emit (PTE). A source that qualifies for an exemption under § 129.111(c) either does not have the physical capability to emit 1 TPY or more of NO<sub>x</sub> or VOCs or has a legal restriction that prohibits it from emitting 1 TPY or more of NO<sub>x</sub> or VOCs. A change that would allow the source to emit 1 TPY or more of NO<sub>x</sub> or

VOCs would be a modification subject to BAT requirements. A modification that occurs after December 31, 2022, would not be subject to the RACT requirements and RACT emissions limitations of §§ 129.112—129.115 except as specified in § 129.111(e). The Board notes, however, that this modification may become subject to future RACT requirements or RACT emissions limitations, or both, that are implemented to address a future ground-level ozone NAAQS or revision to an existing ground-level ozone NAAQS. These owners and operators would be evaluated for RACT applicability at that time.

A commentator asked the Board to revise the definitions of “major NO<sub>x</sub> emitting facility” and “major VOC emitting facility” to exclude the 25 TPY thresholds for Bucks, Chester, Delaware, Montgomery and Philadelphia Counties consistent with RACT II. In response to the commentator’s request, the Department has explained that it intends for the major facility applicability thresholds established for Bucks, Chester, Delaware, Montgomery and Philadelphia Counties under RACT II to also apply for RACT III. Therefore, the Board has revised the definitions of major NO<sub>x</sub> emitting facility and major VOC emitting facility in this final-form rulemaking to clarify that the applicability thresholds for Bucks, Chester, Delaware, Montgomery or Philadelphia County for purposes of §§ 129.96—129.100 and 129.111—129.115 are 100 TPY for NO<sub>x</sub> emissions and 50 TPY for VOC emissions.

A commentator asked why sources subject to § 129.74 were not excluded from the proposed rulemaking as they were in RACT II. In response, the Board has revised § 129.111(a) and (b) in this final-form rulemaking to include § 129.74 in the list of excepted sections. Section 129.74 implements RACT requirements and RACT emission limitations consistent with the EPA’s applicable Control Techniques Guidelines (CTG) (EPA 453/R-08-004, 2008/09 Control Techniques Guidelines for Fiberglass Boat Manufacturing Materials) and sources subject to § 129.74 are exempted from the major source RACT requirements in §§ 129.96—129.100 and §§ 129.111—129.115.

*§ 129.112. Presumptive RACT requirements, RACT emission limitations and petition for alternative compliance schedule*

*Subsection (b)*

A commentator commented that proposed § 129.112 did not address the presumptive requirements for process heaters between 20—50 million Btu/hour and asked if it is the Department’s intention that these units be subject to case-by-case RACT under RACT III, similar to RACT II.

The Board amends § 129.112(b)(1)(i) and (ii) to add “or process heater.”

*Subsection (c)*

IRRC and a commentator suggested that “flare” be added to the list of equipment that must be installed, operated and maintained in accordance with manufacturer’s specifications and with good operating practices under § 129.112(c)(8) if the revision would improve clarity.

The Board amends § 129.112(c)(8) in this final-form rulemaking to add the word “flare.”

Some commentators commented that the Board has only adopted “good operating practices” for EAFs and suggested that the Department and the Board should revise the TSD to include an analysis of RACT requirements for EAFs. Another commentator commented that steel producing facilities might improve their air emis-

sions performance through more stringent RACT standards and suggested that the Department consider a meaningful work practices plan to control coke oven emissions from leaking doors, lids, offtake piping and charging of coke oven batteries as well as a leak detection and repair program for VOCs.

In response to comments regarding RACT III requirements for steel producing facilities, the Department explained that it evaluated several EAFs as part of case-by-case determinations for RACT II. The Department determined that no NO<sub>x</sub> or VOC emissions control for EAF is technically feasible. This is because EAF do not use combustion and are batch processes. Since there is no combustion, methods used to alter NO<sub>x</sub> and VOC emissions cannot be employed as they would for a combustion source. Therefore, the Board has determined that a numerical RACT emissions limitation for either NO<sub>x</sub> or VOC emissions from an EAF is not appropriate. The Board finds that the applicable presumptive RACT requirement of “good operating practices” is consistent with previous RACT determinations and is appropriate for EAF in this Commonwealth. Additional information can be found in Section IV(L) of the Department’s TSD for this final-form rulemaking.

Due to the nature and complexity of certain sources, such as steel mills and coke ovens, it is not appropriate to establish presumptive RACT requirements or RACT emissions limitations. See 44 FR 53761, 53762-53763 (September 17, 1979); see also 57 FR 18070, 18073—18074 (April 28, 1992). Owners and operators of sources with no presumptive RACT requirements or RACT emissions limitations are required to submit a case-by-case proposal for an alternative RACT requirement or RACT emissions limitation (alternative RACT proposal). If the facility is in Allegheny County, the alternative RACT proposal is submitted to and reviewed by the Allegheny County Health Department (ACHD).

Case-by-case proposals for alternative RACT requirements or RACT emissions limitations submitted to ACHD must be submitted by the Department to the EPA as a SIP revision. These proposals must meet the same requirements and undergo the same SIP review process as alternative RACT proposals submitted to the Department. Additionally, the Department provides support to ACHD during the review of alternative RACT proposals.

#### *Subsection (e)—Municipal Solid Waste Landfills*

A commentator requested that proposed § 129.112(e) be amended to reflect recent changes in applicable Federal regulations published in the *Federal Register* on May 21, 2021, effective June 21, 2021, pertaining to the adoption of the Federal Plan for municipal solid waste landfills that commenced construction on or before July 17, 2014, and landfills that are constructed, reconstructed or modified on or after July 18, 2014.

The Board believes that the commentator is referring to the EPA final rule published at 86 FR 27756 on May 21, 2021. The Board has revised final-form § 129.112(e) to incorporate the updated Federal regulations at 40 CFR Part 62, Subpart OOO. The Board notes that § 129.113(e)(2) requires a municipal solid waste landfill constructed, reconstructed or modified on or after July 18, 2014, to comply with the New Source Performance Standards in 40 CFR Part 60, Subpart XXX, which are adopted and incorporated by reference in § 122.3 (relating to adoption of standards).

#### *Subsection (f)—Municipal Waste Combustors*

The EPA commented that the prior NO<sub>x</sub> emission standard for municipal waste combustors in § 129.97 is proposed to be reduced from 180 ppmvd to 150 ppmvd. The Department’s analysis determined that additional controls (for example, selective catalytic reduction/selective non-catalytic reduction (SCR/SNCR)) were technically or economically infeasible, or both. However, the EPA commented that the record does not explain what measures will be necessary for the sources to meet the new limits and does not demonstrate that 150 ppmvd is the lowest rate that is technically and economically feasible. Several of the sources appear to be capable of operating at lower emission rates. The EPA asked that the Department explain what analysis was performed to determine that 150 ppmvd is RACT for these units. Several commentators commented that the Department should set a lower limit for this source category.

The limit for municipal waste combustors in § 129.97 is 180 ppmvd. The Board has revised proposed § 129.112(f) from 150 ppmvd NO<sub>x</sub> @ 7% oxygen to a more stringent limit of 110 ppmvd NO<sub>x</sub> @ 7% oxygen in this final-form rulemaking based on the Department’s review of information provided by commentators during the public comment period as well as the Department’s review of available stack test emissions data. The supporting analysis is found in Section IV(E) of the Department’s TSD for this final-form rulemaking.

Another commentator commented that the proposed rulemaking establishes no process for considering whether an individual source can achieve a stronger and more protective limit and weakens the standard by allowing the owner or operator of a municipal waste combustor to meet the presumptive limit through facility or system-wide averaging, which the commentator claimed poses a particular threat to environmental justice areas. The commentator requested the Board correct this.

In response to a commentator’s request, the Board declines to make any revisions to this final-form rulemaking. The Department explained that it is appropriate to set presumptive RACT requirements and RACT emissions limitations for certain source categories, including municipal waste combustors, in this final-form rulemaking. A presumptive limit is set at a level that, when met, assures that the Commonwealth’s RACT obligation under the CAA has been met. See *NRDC v. EPA*, 571 F.3d 1245, 1253—1255 (D.C. Cir. 2009). With respect to the ability for owners and operators to use systemwide NO<sub>x</sub> averaging, the Board finds that the Department has adequately explained the ability and limitations for owners and operators to use systemwide averaging in responses to Comments 99 and 100 of the comment and response document. NO<sub>x</sub> emissions averaging plans or alternative RACT proposals are submitted to the Department for review and approval, denial or modification in accordance with § 129.113(g) and (i). The NO<sub>x</sub> emissions averaging plan or alternative RACT proposal approval or modification and the Department’s proposed actions are subject to public review and comment at the State level before being finalized by the Department. If approved and issued by the Department as an operating permit modification, the NO<sub>x</sub> emissions averaging plan or alternative RACT proposal must be submitted by the Department to the EPA as a revision to the Commonwealth’s SIP. The local county agencies in Allegheny County and Philadelphia County follow a similar process.

Another commentator commented that SNCR control technology cannot be employed at some municipal waste



combustor facilities due to the type of technology employed there and noted that the Department determined that retrofitting with SNCR is economically infeasible. In response, the Board notes that § 129.112(f) has been amended by the Board from the proposed 150 ppmvd NO<sub>x</sub> @ 7% oxygen to 110 ppmvd NO<sub>x</sub> @ 7% oxygen in this final-form rulemaking. The NO<sub>x</sub> emission rate of 110 ppmvd @ 7% oxygen on a 24-hour averaging period for large municipal waste combustors was recommended by the Ozone Transport Commission Stationary Area Sources workgroup in its June 2021 “Municipal Waste Combustor Workgroup Report” and is supported by the Department’s cost-effectiveness analysis. If an owner or operator cannot meet the presumptive emission limit, the owner or operator has the option to submit a case-by-case proposal for an alternative RACT emission limitation under § 129.114.

*Subsection (g)(1)—Combustion Units or Process Heaters*

IRRC and other commentators asked the Board to explain in the preamble of this final-form rulemaking the rationale for using an operating day to measure emission limits for coal-waste plants for an operating day under § 129.112(g)(1)(viii), instead of a 30-day rolling average.

In response, the Board finds that the proposed use of an operating day is appropriate. Based on continuous emissions monitoring data for the years 2018–2020, the Department determined that circulating fluidized bed boilers can meet the presumptive NO<sub>x</sub> RACT emissions limitation on a daily basis including periods of start-up, shutdown and low load operation. The owner or operator has the option to submit a case-by-case proposal for an alternative RACT emission limitation under final-form § 129.114 if they believe that the presumptive RACT limitation cannot be met at all times. See Section IV(F) of the Department’s TSD for this final-form rulemaking.

A commentator commented that start-up and periods of low load operations should be exempted from the presumptive NO<sub>x</sub> RACT requirement for circulating fluidized bed boilers firing primarily coal refuse.

The Board finds that presumptive RACT requirements must be enforceable limits and apply at all times, including periods of start-up, shutdown and low load operation, which is consistent with the EPA’s 2015 SSM Policy, available at <https://www.epa.gov/air-quality-implementation-plans/emissions-during-periods-startup-shutdown-malfunction-ssm>.

Commentators commented that the presumptive NO<sub>x</sub> RACT emissions limit for circulating fluidized bed boilers primarily firing anthracite waste such as culm should be the same rate as those primarily firing bituminous waste such as gob.

The Board agrees with the commentators. The RACT emission limitation for a circulating fluidized bed combustion unit with a rated heat input equal to or greater than 250 million Btu/hour firing waste products of coal mining, physical coal cleaning and coal preparation operations that contain coal, matrix material, clay and other organic and inorganic material is 0.16 lb NO<sub>x</sub>/million Btu heat input when firing primarily bituminous waste such as gob and 0.16 lb NO<sub>x</sub>/million Btu heat input when firing primarily anthracite waste such as culm.

Another commentator commented that the proposed rulemaking should be amended to include a lowered presumptive NO<sub>x</sub> emissions limit for coal-fired EGUs without the problematic inlet-temperature loophole from RACT II; and that the Commonwealth’s “case-by-case approach” for coal plant NO<sub>x</sub> RACT determinations, in-

volving a “top-down analysis,” is inappropriate for several reasons. The commentator recommended that the Commonwealth set a new NO<sub>x</sub> RACT standard for its coal-fired power plants that incorporates a 0.07 lb NO<sub>x</sub>/million Btu emission limit, avoids control inlet temperature-based exemptions, and includes a short term, 24-hour emission limit at least as low as 0.125 lb NO<sub>x</sub>/million Btu.

The commentator’s suggestion that the Board establish a presumptive RACT limit for coal-fired EGUs is outside the scope of this rulemaking. Nothing in the CAA or regulations thereunder mandates that the Commonwealth establish a presumptive RACT limit for coal-fired power plants as suggested by the commentator. The CAA provides States with “broad authority to determine the methods and particular control strategies they will use to achieve the [CAA] statutory requirements.” See *BCCA Appeal Group v. EPA*, 355 F.3d 817, 822 (5th Cir. 2003). The determination of RACT and the corresponding emission rate ensuring the proper application and operation of RACT may vary from source to source due to source configuration, retrofit feasibility, operating procedures, raw materials, and other technical or economic characteristics of a source or group of sources. Memorandum from Roger Strelow, Assistant Administrator for Air and Waste, USEPA, to Regional Administrators I-X, “Guidance for determining Acceptability of SIP Regulations in Non-Attainment Areas” (December 9, 1976) at 2, available at: [https://www3.epa.gov/ttn/naaqs/aqmguide/collection/cp2/19761209\\_strelow\\_ract.pdf](https://www3.epa.gov/ttn/naaqs/aqmguide/collection/cp2/19761209_strelow_ract.pdf); see also *Nat’l Steel Corp., Great Lakes Steel Div. v. Gorsuch*, 700 F.2d 314, 322–323 (6th Cir. 1983).

For some categories of sources, the EPA has promulgated CTGs and alternative control techniques documents (ACTs) to assist states in determining what control techniques meet the RACT requirement; states may opt to require alternative controls rather than following the CTGs. See *NRDC v. EPA*, 571 F.3d 1245, 1253-1254 (D.C. Cir. 2009). The ACTs issued under section 183 of the CAA (42 U.S.C.A. § 7511b), such as the EPA’s 1994 Alternative Control Techniques Document for Utility Boilers, do not establish presumptive levels of control. *Id.* Moreover, simply because other states have chosen to establish presumptive RACT limits for their coal-fired EGUs does not mean that the Commonwealth is required to do so or that the limits selected are appropriate. See Memorandum from William T. Harnett, Director, Air Quality Policy Division, USEPA, to Regional Air Division Directors, “RACT Qs & As—Reasonably Available Control Technology (RACT): Questions and Answers” (May 18, 2006), at 1 and 3, available at [https://www.epa.gov/sites/default/files/2016-08/documents/ract\\_and\\_nsps\\_1dec1988.pdf](https://www.epa.gov/sites/default/files/2016-08/documents/ract_and_nsps_1dec1988.pdf) (A State may elect to select to establish “beyond-RACT controls” for policy reasons).

Although the Department is under no obligation to establish presumptive RACT requirements and RACT emissions limitations for a specific source category, the Department may do so when the Department determines that a source category contains emission units that are similar enough in nature that the emission units in the source category can be regulated by a consistent emissions limitation or requirement. However, based on the varying sizes, various operating scenarios and conditions, and other varying factors for coal-fired EGUs in this Commonwealth, the Department determined that it is appropriate for owners and operators of large coal-fired combustion units to obtain case-specific RACT determinations. Through these case-by-case submittals, the Department will be reviewing advances in technology. See *NRDC v. EPA*, 71 F.3d 1245 (D.C. Cir. 2009). This position is



supported by the EPA at 44 FR 53761, 53762-53763 (September 17, 1979), regarding State Implementation Plans, General Preamble for Proposed Rulemaking on Approval of Plan Revisions for Nonattainment Areas-Supplement (on Control Techniques Guidelines) and at 57 FR 18070, 18073-18074 (April 28, 1992), regarding State Implementation Plans; General Preamble for the Implementation of Title I of the Clean Air Act Amendments of 1990; Supplemental. See also 57 FR 55620 (November 25, 1992), regarding State Implementation Plans; Nitrogen Oxides Supplement to the General Preamble for the Implementation of Title I of the Clean Air Act Amendments of 1990, at page 55624, paragraph 3.4, "VOC and NO<sub>x</sub> Emissions."

The Department previously submitted case-by-case submittals under §§ 129.91—129.95 (RACT I) to the EPA to meet the Commonwealth's RACT obligations under the CAA for the 1979 and 1993 1-hour ozone NAAQS. The Department is currently conducting case-by-case determinations under §§ 129.96—129.100 (RACT II) for existing coal-fired combustion units with SCR systems as a result of the United States Court of Appeals for the Third Circuit's decision in *Sierra Club v. EPA*, 972 F.3d 290 (3d Cir 2020). (*Sierra Club*). In *Sierra Club*, the Third Circuit noted that older coal plants may elect to submit source-specific RACT proposals under § 129.99. *Id.* at 296.

The Department determined that the best method to comply with the Third Circuit's decision in *Sierra Club* is through requiring the owner or operator of each coal-fired combustion unit affected by the Court's decision to submit case-by-case RACT determinations in accordance with the procedures in § 129.92(a)(1)—(5) and (b), which includes a top-down analysis due to variability in operation and control device configuration. A top-down RACT analysis ranks the technically feasible air pollution control technologies from most effective control to least effective control. Each technically feasible air pollution control technology is then analyzed for economic feasibility (cost analysis). The highest ranking technically feasible air pollution control technology that is economically feasible is the air pollution control technology that is selected for installation and operation on the source.

#### *Subsection (g)(2)—Combustion Turbines*

IRRC and a commentator asked the Board to explain in the preamble to this final-form rulemaking the rationale for establishing 85 ppmvd NO<sub>x</sub> as a presumptive RACT emission limitation under proposed § 129.112(g)(2)(iii)(A) and whether existing technology allows for that level of compliance.

In response to IRRC and the commentator's comment, the Board has amended the source categories for turbines by separating and adding an additional group for turbines in the 1,000 bhp—4,100 bhp size range in this final-form rulemaking. The emission limit of concern is now in final-form § 129.112(g)(2)(iv)(A). The Department explained that in its review of the comments on the proposed rulemaking, it analyzed additional information provided by a turbine manufacturer as well as additional stack test data, and determined that existing technology does not allow for installation of additional control technology and, therefore, does not provide for the level of control proposed by the Board. The Board has revised the presumptive standard in the final-form rulemaking to 120 ppmvd NO<sub>x</sub> @ 15% oxygen.

A commentator requested modifying the bhp size range for simple cycle or regenerative cycle combustion turbines in § 129.112(g)(2)(iii) and (iv) from 3,000 bhp to 4,100

bhp to alleviate alternative RACT submittals for the Centaur® 40 4000 rating, which does not have a dry low NO<sub>x</sub> combustion control technology option and, therefore, is unable to meet the proposed 42 ppmvd NO<sub>x</sub> level.

The Department reviewed the information provided by the commentator regarding the available turbines located in this Commonwealth. The information demonstrated that turbines with a rating less than 4,100 bhp cannot consistently meet the proposed 42 ppmvd NO<sub>x</sub> standard. Therefore, the Board has revised proposed § 129.112(g)(2)(iii) in this final-form rulemaking to revise the size ranges for simple cycle or regenerative cycle combustion turbines. The size threshold of 3,000 bhp in proposed § 129.112(g)(2)(iii) for simple cycle or regenerative cycle combustion turbines are amended in this final-form rulemaking to 4,100 bhp. Further, the Board notes that proposed § 129.112(g)(2)(iii) is renumbered as final-form § 129.112(g)(2)(iv).

The Board has renumbered proposed § 129.112(g)(2)(iv) in this final-form rulemaking to § 129.112(g)(2)(v). Renumbered § 129.112(g)(2)(v) is further amended in this final-form rulemaking to establish the applicable presumptive RACT emissions limitations for the owner or operator of a simple cycle or regenerative cycle combustion turbine with a rated output equal to or greater than 4,100 bhp (rather than the proposed rated output of 3,000 bhp) and less than 60,000 bhp. No changes are made to the applicable presumptive RACT emission limitations from proposed § 129.112(g)(2)(iv)(A)—(D) to final-form § 129.112(g)(2)(v)(A)—(D).

A commentator suggested splitting the source category for § 129.112(g)(2)(i) to add a source category for combined cycle and combined heat and power turbines for equal to and greater than 1,000 bhp to less than 4,100 bhp and modify the current source category to range from greater than 4,100 bhp to less than or equal to 180 MW.

Proposed § 129.112(g)(2)(i) established the applicable presumptive RACT emissions limitations for the owner or operator of a combined cycle or combined heat and power combustion turbine with a rated output equal to or greater than 1,000 bhp and less than 180 MW. The Board has amended § 129.112(g)(2)(i) in this final-form rulemaking to establish the applicable presumptive RACT emissions limitations for the owner or operator of a combined cycle or combined heat and power combustion turbine with a rated output equal to or greater than 1,000 bhp and less than 4,100 bhp (rather than less than 180 MW). Section 129.112(g)(2)(i)(A) is amended from the proposed rulemaking to this final-form rulemaking to delete the proposed limitation of 42 ppmvd NO<sub>x</sub> @ 15% oxygen and add the limitation of 120 ppmvd NO<sub>x</sub> @ 15% oxygen. Section 129.112(g)(2)(i)(C) is amended from the proposed rulemaking to this final-form rulemaking to delete the limitation of 96 ppmvd NO<sub>x</sub> @ 15% oxygen and add the limitation of 150 ppmvd NO<sub>x</sub> @ 15% oxygen. These limits are consistent with the presumptive NO<sub>x</sub> RACT emission limitations for the simple cycle or regenerative cycle combustion turbines in final-form § 129.112(g)(2)(iv).

The commentator also requested the NO<sub>x</sub> emissions level for the newly created category match the level requested for simple cycle turbines in § 129.112(g)(2)(iii) at 150 ppmvd NO<sub>x</sub>.

Proposed § 129.112(g)(2)(iii)(A) is amended in this final-form rulemaking to revise the applicable presumptive RACT emission limitation for simple cycle or regenerative cycle combustion turbines when firing natural gas

or a noncommercial gaseous fuel. Based on the Department's review of the information provided by the commentator as well as the Department's review of available stack test emissions data, the Board has revised the presumptive NO<sub>x</sub> RACT emissions limitation of 85 ppmvd @ 15% oxygen to 120 ppmvd @ 15% oxygen. Please also see Section IV(G) of the Department's TSD for this final-form rulemaking.

Further, the Board has renumbered proposed § 129.112(g)(2)(iii)(A) in this final-form rulemaking as § 129.112(g)(2)(iv)(A).

*Subsection (g)(3)—Stationary Internal Combustion Engines*

IRRC and some commentators commented that the proposed rulemaking included a typographical error where it states a lower NO<sub>x</sub> limit for rich burn engines of 0.6 gram/bhp-hr (for all engine sizes); the TSD indicates 2.0 gram/bhp-hr for all units regardless of horsepower.

The Board has revised the final-form rulemaking to correct this typographical error. The proposed limit of 0.6 gram NO<sub>x</sub>/bhp-hr in § 129.112(g)(3)(iv)(A) has been revised to a limit of 2.0 gram NO<sub>x</sub>/bhp-hr.

*Subsection (g)(4)—Combustion Unit or Process Heater Firing Multiple Fuels*

IRRC and a commentator questioned how the owner or operator of a unit firing multiple fuels can comply with the requirements of § 129.112(g)(4) if beneficially reused process gases are used as fuels. IRRC asked the Board to explain in the preamble to this final-form rulemaking how this provision will be implemented.

In response to IRRC and the commentator's comment, the Department did not have sufficient data for other fuels to determine a presumptive NO<sub>x</sub> RACT emission limitation for this source category. Therefore, the owner or operator of a source firing a fuel not covered under the presumptive RACT emission limitations is required to submit a case-by-case proposal for an alternative RACT emissions limitation in accordance with final-form § 129.114(b) or § 129.114(c). The owner or operator may propose a method of compliance similar to the calculation in final-form § 129.112(g)(4)(i) as part of the case-by-case RACT proposal.

*Subsection (e)—Glass Melting Furnaces*

A commentator stated that RACT III would indirectly revoke important components of the existing glass melting furnace regulations regarding allowable emissions during start-up, shutdown and idling, and the provisions for alternative limits, claiming that the provisions of this final-form rulemaking would effectively impose a zero emissions limit for NO<sub>x</sub> during these periods. The commentator commented that the proposed RACT III rulemaking should not override and essentially rescind other currently applicable regulations without recognition and notice of the effect of the proposed rulemaking and without any explanation by the Board as to the rationale and basis for doing so.

Each time the EPA revises a NAAQS under section 109 of the CAA, the Commonwealth is required to meet the applicable RACT requirements for covered sources under sections 182 and 184 of the CAA. These duties are charged to the Department and the Board, respectively, under the APCA. See for example, 35 P.S. §§ 4004, 4004.2 and 4005. The Department determined that certain provisions, including § 129.303(a), in the existing glass melting furnace regulations preclude §§ 129.301—129.310 from meeting the presumptive standards in § 129.112(i)

for the 2015 8-hour ozone NAAQS. The EPA also expressed concerns regarding the certification of §§ 129.301—129.310 as RACT for the 1997 and 2008 8-hour ozone NAAQS; §§ 129.301—129.310 were not approved as RACT in the Commonwealth's SIP by the EPA for the 1997 and 2008 8-hour ozone NAAQS. See 76 FR 52283 (August 22, 2011). Under the final-form rulemaking, the owner or operator of a glass melting furnace source that cannot meet the presumptive limit in § 129.112(i) may opt to submit a case-by-case proposal under § 129.114. Certification of § 129.112(i) as RACT for glass melting furnaces for the 2015 8-hour ozone NAAQS will be presumed to certify RACT for glass melting furnaces for the 1997 and 2008 8-hour ozone NAAQS.

RACT requirements and RACT emissions limitations are applicable at all times, including start-up, shutdown and idling. The presumptive NO<sub>x</sub> RACT limits for glass melting furnaces are in units of pounds of NO<sub>x</sub> per ton of glass pulled. The Board disagrees with the commentator that the presumptive NO<sub>x</sub> RACT emissions limitation effectively imposes a zero emissions limit for NO<sub>x</sub> during start-up, shutdown and idling. During times when glass is not being pulled, the emissions in terms of pounds of NO<sub>x</sub> per ton of glass pulled is undefined, not zero. The RACT limit is therefore only practically applicable at times when glass is being pulled. If an owner or operator cannot meet a presumptive RACT emission limit, the owner or operator may submit a case-by-case proposal for an alternative RACT emission limitation.

RACT emission limitations must be enforceable to be approvable by the EPA as a SIP revision. Exemptions from emission limitations during periods of start-up, shutdown and malfunction (SSM) existed in a number of other States' regulations, some of which exemptions were adopted and approved into those States' SIPs by the EPA many years ago. Court decisions have previously held that under the CAA, these exemptions are not allowed in SIPs. See, for example, *Sierra Club et al. v. Jackson*, No. 3:10-cv-04060—CRB (N.D. Cal.). In response to these court decisions, on June 12, 2015, the EPA published a final rule to restate and update the EPA's SSM Policy applicable to SIPs and to ensure States have plans in place that are fully consistent with the CAA and court decisions concerning emissions during periods of SSM operations. See 80 FR 33840 (June 12, 2015) (2015 SSM Policy final action). The 2015 SSM Policy final action embodies the EPA's updated 2015 SSM Policy as it applies to SIP provisions. The SSM Policy provides guidance to states for compliance with CAA requirements for SIP provisions applicable to excess emissions during SSM events. On October 9, 2020, the EPA issued a memorandum of guidance providing that exemption provisions for SSM may be permissible in SIPs under certain circumstances. On September 30, 2021, the EPA issued a memorandum withdrawing the previous October 9, 2020, guidance and reinstated the agency's prior policy in the 2015 SSM Policy final action that SSM exemptions in SIPs are inconsistent with the CAA.

A commentator also commented that the TSD provided by the Department inaccurately relied on the EPA's Control Cost Manual to estimate the cost of NO<sub>x</sub> controls for glass melting furnaces and that the RACT III proposal is essentially silent on the rationale behind the imposition of presumptive RACT for glass melting furnaces.

In response, the Board finds based on explanation from the Department that the EPA Control Cost Manual is an accepted source for the determination of economic feasi-

bility for NO<sub>x</sub> control technologies. These determinations of economic feasibility are not dependent on the source type. In this case, presumptive RACT is established as a NO<sub>x</sub> emissions limitation and does not mandate an emissions control strategy. For example, oxy-firing can be used to meet presumptive NO<sub>x</sub> RACT emissions limitations without the necessity to install particulate emission control technology.

The Department evaluated cost information provided by the commentator, which in part, also relied on the EPA Control Cost Manual. The Department also reviewed the analysis for various emission control scenarios submitted by the commentator for the regional haze four-factor analysis, which is a separate requirement under section 169A of the CAA (42 U.S.C.A. § 7491) and implementing regulations. The Department determined that based on the information provided, the control devices included in the analysis are cost-effective as RACT for the control of NO<sub>x</sub> emissions from glass melting furnaces. If an owner or operator cannot meet the presumptive RACT emission limit, the owner or operator may submit a case-by-case proposal for an alternative RACT emission limitation under final-form § 129.114.

*Subsection (j)—Lime Kilns*

A commentator requested that the Board revise the proposed rulemaking to once again include the specific lb NO<sub>x</sub>/hr 30-operating day rolling average numerical limits associated with Graymont's Kiln 6, Kiln 7 and Kiln 8. The commentator noted that substantial system changes would have to occur to incorporate live production data into the well-established CEMS data management system with no environmental benefit.

The Board declines to revise this final-form rulemaking as requested by the commentator and disagrees that substantial changes would be needed to demonstrate compliance with the proposed standard. The amount of lime produced is a known quantity and can be added to the CEMS data management system. According to the Department, the calculation of a lb NO<sub>x</sub> per ton of lime produced value is not unnecessarily burdensome.

*Subsection (k)—Direct-Fired Heaters, Furnaces and Ovens*

A commentator inquired why the new definition "combustion source" was not used in proposed § 129.112(k). The Board agrees with the commentator that the term "combustion source" can be included in § 129.112(k). The term "combustion source" specifically includes sources that produce heat or energy by direct heat transfer. Direct-fired heaters, furnaces and ovens produce heat or energy by direct heat transfer and are combustion sources. In contrast, a "combustion unit" is defined as a stationary equipment used to burn fuel primarily for the purpose of producing power or heat by indirect heat transfer. The Board has amended final-form § 129.112(k) to include the words "or other combustion source" after the words "direct-fired heater, furnace, oven."

IRRC and a commentator commented that the proposed rulemaking applies the same NO<sub>x</sub> limit for a direct-fired heater, furnace or oven as the limit for indirect-fired furnaces established under RACT II. The commentator asked for clarification on the basis for this decision. IRRC asked the Board to include the rationale for this standard in the supporting documents and preamble submitted with this final-form rulemaking. The commentator requested that the Department provide additional information to support the proposed presumptive RACT requirement for direct-fired units and suggested that the

Department should not require sources to redo case-by-case RACT determinations that were evaluated and approved in RACT II.

In response to the comment, the Board notes that presumptive RACT emissions limitations were not established in RACT II for direct-fired units. Under RACT II, owners and operators of direct-fired units were required to submit a case-by-case proposal for an alternative RACT emission limitation under § 129.99. The addition of presumptive NO<sub>x</sub> RACT limitations for direct-fired units in the RACT III rulemaking gives owners and operators more flexibility to comply with RACT requirements and RACT emission limitations. If an owner or operator cannot meet the applicable presumptive RACT emissions limitation under RACT III, the owner or operator may submit a case-by-case proposal under § 129.114(d) for an alternative RACT emission limitation.

The owner or operator may also be able to submit an analysis under § 129.114(i) to the Department or appropriate approved local air pollution control agency to demonstrate that the RACT emission limitation approved under § 129.99(e) (RACT II) remains RACT for RACT III. The process provided under § 129.114(i) for eligible facilities is less resource intensive than preparing a case-by-case proposal under § 129.114(d) for an alternative RACT emission limitation.

*§ 129.113. Facility-wide or system-wide NO<sub>x</sub> emissions averaging plan general requirements*

IRRC and a commentator asked the Board to explain in the preamble of this final-form rulemaking why the ability of an owner or operator to file for an averaging plan under § 129.113 is contingent on one unit not being able to meet the NO<sub>x</sub> RACT limit. The commentator noted that facility-wide and system-wide averaging plans should be able to be submitted at the discretion of the owner or operator to provide greater flexibility and still be protective of public health, safety and the environment. IRRC also asked the Board to explain in the preamble of this final-form rulemaking why the ability of an owner or operator to use system-wide averaging is limited to sources located in the same ozone nonattainment area.

The Board disagrees with the commentator that the owner and operator of an affected source may choose the emissions averaging compliance option without requiring the owner or operator to first demonstrate that the applicable presumptive RACT emissions limitation established for a certain source category cannot be met by the individual affected units. The averaging plan is provided as an alternative compliance option to meeting applicable source-specific presumptive RACT NO<sub>x</sub> emissions limitations if one or more of the individual affected units cannot meet the applicable presumptive RACT NO<sub>x</sub> emissions limitation. If all affected units can individually meet the applicable presumptive RACT NO<sub>x</sub> emissions limitations, then no averaging plan is warranted.

System-wide averaging is required to be among sources under common control of the same owner or operator within the same ozone nonattainment area to conform to the CAA and the D.C. Circuit Court of Appeals ruling in *NRDC v. EPA*, 571 F.3d 1245 (D.C. Cir. 2009). See 83 FR 62998, 63007 (December 6, 2018); see also *South Coast Air Quality Management Dist. v. EPA*, 882 F.3d 1138, 1154 (D.C. Cir. 2018). All areas located in unclassifiable/attainment areas in an OTR state are considered to be the same ozone nonattainment area. Allowing system-wide averaging to include units from different ozone



nonattainment areas would have the potential to increase or keep emissions higher in separate maintenance areas for the ozone NAAQS. This would conflict with the anti-backsliding provisions of the CAA. Furthermore, compliance with the applicable presumptive RACT NO<sub>x</sub> emissions limitations is the most cost-effective compliance method available to the owner and operator of an affected source. Submission of an averaging plan entails costs for developing the plan and submitting it to the Department.

The EPA commented that proposed § 129.113(n) would add new language that specifies that averaging plans will be submitted to the EPA for approval. The EPA commented that proposed § 129.113(n) appears to be new language added by the Commonwealth to alert source owners and operators using an averaging plan that the averaging plan will be submitted to the EPA for approval. The EPA asked how the Department will determine whether the emissions from the two sources in the averaging plan are less than if both sources complied with presumptive RACT as would be required under proposed § 129.113(d) and also asked whether the demonstration of compliance with this method would be part of a permit and enforceable.

While the EPA references in its comment two sources included in the averaging plan, the Board notes that the averaging plan could include more than two sources.

The final-form rulemaking requires that the aggregate NO<sub>x</sub> emissions emitted by the air contamination sources included in the facility-wide or system-wide NO<sub>x</sub> emissions averaging plan be less than or equal to the amount of NO<sub>x</sub> emissions that would be emitted by the group of included sources if each source complied with the applicable NO<sub>x</sub> RACT emissions limitation in § 129.112 on a source-specific basis. This demonstration is done on a mass basis consistent with the appropriate averaging period for each presumptive NO<sub>x</sub> emissions limitation. The exact calculations may vary somewhat among the averaging plans, so the final-form rulemaking does not specify the precise details to preserve flexibility in differing circumstances. Each averaging plan will be reviewed by the Department on a case-by-case basis. The provisions of each averaging plan, including terms and conditions regarding compliance, will be included in a plan approval or operating permit. Those terms and conditions will be submitted to the EPA as a SIP revision.

*§ 129.114. Alternative RACT proposal and petition for alternative compliance schedule*

The EPA commented that proposed § 129.114(a) seems to not allow coal-fired EGUs to request case-by-case determinations under RACT III because there is no presumptive RACT for this source category in proposed § 129.112. The EPA commented that the Department should clearly notify the public when publicly noticing proposed case-by-case RACT II permits for coal-fired EGUs with SCRs that it intends to use the same limits to satisfy RACT for the 2015 ozone NAAQS and that the RACT II comment period will be the last opportunity to comment on whether the RACT II limits also meet the RACT III requirements.

In response, the Board notes that a coal-fired combustion unit with a rated heat input greater than 250 million Btu/hour, including an EGU with SCR, has no presumptive NO<sub>x</sub> RACT requirement or emission limitation specified in § 129.112. Therefore, § 129.114(a) is not applicable. Owners and operators of these large coal-fired combustion units are required to propose a NO<sub>x</sub> RACT requirement or RACT emissions limitation under § 129.114(b).

The owners and operators of large coal-fired combustion units that are EGUs equipped with SCR were required to submit an alternative NO<sub>x</sub> RACT proposal to satisfy the requirement of § 129.99. Therefore, these owners and operators will also submit an analysis under § 129.114(i) to demonstrate that their limitations issued under §§ 129.96—129.100 (RACT II) remain RACT for §§ 129.111—129.115. These analyses received under § 129.114(i) will be subject to public comment to meet the SIP public participation requirements under section 110 of the CAA and 40 CFR 51.102.

Another commentator commented that any technically feasible reductions would be nominal with high cost-effectiveness values and, as a result, the Department would create a need to process a significant number of alternative RACT petitions and will require significant resources.

The Board notes that presumptive RACT requirements and emission limitations were determined based on the technical and economic feasibility of emission control measures. The Department has developed an accompanying TSD for the source categories included in this final-form rulemaking. The Department expects that many owners and operators will benefit by complying with the presumptive RACT requirements and RACT emission limitations. If an owner or operator cannot meet a presumptive RACT requirement or RACT emissions limitation, the owner or operator may submit a case-by-case proposal for an alternative RACT emission limitation under § 129.114.

A commentator commented that cost-effectiveness values (dollar per ton of pollutant removed) arrived at in the Department's TSD evaluation for presumptive RACT are reasonable and should be used as a standard for case-by-case evaluations of alternative limitations.

The Board concludes it is not appropriate to use the cost-effectiveness dollars as the standard for case-by-case evaluations of alternative limits as recommended by the commentator. The Department explains that compliance costs may vary for each source or facility depending on the source size, type, operational limitations and which control option is selected by the owner and operator of the affected source or facility. The cost-effectiveness benchmarks used in the analysis of presumptive RACT requirements and RACT emissions limitations are not to be taken as absolute cost-effectiveness threshold limits to be applied to case-by-case analyses. The Department believes that it is not appropriate to apply the same cost-effectiveness benchmarks used to determine the presumptive RACT requirements and RACT emissions limitations across all sources undergoing a case-by-case analysis due to these varying factors.

*§ 129.115. Written notification, compliance demonstration and recordkeeping and reporting requirements*

IRRC and other commentators commented that proposed § 129.115(b)(4) requires owners and operators of combustion units and process heaters to demonstrate compliance on a daily averaging period, which is a significant tightening of the presumptive limits for combustion units and process heaters when compared to the 30-operating day averaging period under § 129.97(g)(1) (RACT II). IRRC noted that commentators commented that presumptive limits cannot be met using a daily average under certain operating conditions, such as the start-up of a unit. A different commentator requested that the Commonwealth implement more stringent standards and require CEMS on existing emission sources.

The Department evaluated available and relevant continuous emissions monitoring data and determined that certain source categories using a CEMS, including combustion units and process heaters, are capable of meeting the presumptive NO<sub>x</sub> RACT emissions limitations on a daily averaging basis. If an owner or operator of a subject source with a CEMS cannot meet the applicable presumptive RACT emissions limitation using a daily averaging basis, the owner or operator has the option to submit a case-by-case proposal for an alternative RACT emissions limitation.

Further, the Department notes that the regulations in §§ 129.96—129.100 (RACT II) established RACT requirements and RACT emission limitations to meet the Commonwealth's RACT obligations under the CAA for the 1997 and 2008 8-hour ozone NAAQS. The 1997 8-hour ozone standard was set at 0.08 ppm and the 2008 8-hour ozone standard was set at 0.075 ppm. The regulations in §§ 129.111—129.115 are designed to achieve and maintain the more stringent 2015 8-hour ozone standard of 0.070 ppm. To meet the Commonwealth's RACT obligations under the CAA for the 2015 8-hour ozone NAAQS, the Department determined that certain source categories should demonstrate compliance with the applicable RACT emissions limitations using a daily averaging period.

RACT implementation regulations and guidance issued by the EPA dictate that the standards and other requirements implemented be both technically and economically feasible. The Department believes that the monitoring, recordkeeping and reporting requirements included in this final-form rulemaking are sufficient to show compliance with the RACT III emissions standards and other requirements. The Board has amended § 129.115(f) from proposed rulemaking to this final-form rulemaking to further clarify that the existing monitoring and recordkeeping and reporting provisions of 25 Pa. Code Part 1, Subpart C, Article III (relating to air resources), apply as well as those provisions specified in the applicable plan approval or operating permit for the source or facility.

The Department explains that the preliminary analysis of the 2021 ambient air ozone season monitoring data shows that all ozone samplers in this Commonwealth are monitoring attainment of the 2015 8-hour ozone NAAQS except the Bristol sampler in Bucks County and the Philadelphia Air Management Services Northeast Airport sampler in Philadelphia County; all ozone samplers in this Commonwealth are projected to monitor attainment of the 2008 and 1997 8-hour ozone NAAQS. Implementing the daily averaging period is therefore appropriate to assist the Commonwealth in achieving and maintaining the 2015 8-hour ozone NAAQS.

The EPA commented that the RACT III proposed regulations have added language requiring the submission of information by every source subject to RACT that appears to address some of the missing information that caused difficulties for both the Department and the EPA in evaluating RACT II permits. For example, proposed § 129.115, entitled "Written notification, compliance demonstration and recordkeeping and reporting requirements," requires that every source subject to RACT notify the state within 6 months of how it is going to comply with the RACT III requirements, and requires these sources to identify those air contamination sources that are [proposed § 129.115(a)(1)(i)] and those air contamination sources that are not [proposed § 129.115(a)(1)(ii)] subject to §§ 129.112—129.114. Proposed § 129.115(a)(4) also requires information on source description and how

the owner or operator shall comply with RACT III or the reason a source is exempted from RACT III requirements.

In response to the EPA's comment, the Board notes that the purpose of this notification provision in § 129.115(a) is for the Department to determine which facilities and sources are subject to RACT III requirements, which sources are exempt from RACT III requirements and if the owners and operators are complying with presumptive or case-by-case requirements. This notification is not meant to be a full RACT analysis.

Before an owner or operator of a facility can begin to construct, modify or operate a source, emissions unit or equipment emitting air contaminants in this Commonwealth, the owner or operator is required to obtain prior written approval from the Department's Air Quality Program as specified in § 127.11 (relating to plan approval requirements). Thus, the Department is already aware of new and modified sources that have occurred since the implementation of RACT II due to this requirement for the owner and operator of the facility to obtain prior written approval from the Air Quality Program. Therefore, it is not necessary that the owner or operator submit this specific information as part of the written notification required by § 129.115(a).

#### *G. Benefits, Costs and Compliance*

##### *Benefits*

The Department estimates that implementation of the final-form control measures could reduce NO<sub>x</sub> emissions by as much as 9,800 TPY from engines, turbines and municipal waste combustors and VOC emissions by as much as 825 TPY from engines and turbines. These reductions in NO<sub>x</sub> and VOC emissions will benefit the health and welfare of the approximately 12.8 million residents and numerous animals, crops, vegetation and natural areas of this Commonwealth by reducing the amount of ground-level ozone air pollution. Reduced ambient concentrations of ground-level ozone reduce the incidences of hospital admissions for respiratory ailments, including asthma, and improve the quality of life for citizens overall. While children, the elderly and those with respiratory problems are most at risk, even healthy individuals may experience increased respiratory ailments and other symptoms when they are exposed to high levels of ambient ground-level ozone while engaged in activities that involve physical exertion.

Implementation of and compliance with the presumptive RACT limitations, RACT control measures and RACT requirements in this final-form rulemaking will allow this Commonwealth to make substantial progress in achieving and maintaining the 1997, 2008 and 2015 8-hour ozone NAAQS Statewide by reducing the levels of NO<sub>x</sub> and VOC ozone precursor emissions that contribute to potential nonattainment of the 2015 8-hour ozone NAAQS. As a result, the final-form RACT control measures are reasonably necessary to attain and maintain the health-based and welfare-based 8-hour ozone NAAQS in this Commonwealth and to satisfy related CAA requirements.

The EPA estimated that the monetized health benefits of attaining the 2008 8-hour ozone NAAQS of 0.075 ppm range from \$8.3 billion to \$18 billion on a National basis by 2020. See Regulatory Impact Analysis; Final National Ambient Air Quality Standard for Ozone (EPA, July 2011). Prorating that benefit to this Commonwealth, based on population, results in a public health benefit of \$337 million to \$732 million. Similarly, the EPA estimated that the monetized health benefits of attaining the 2015 8-hour ozone NAAQS of 0.070 ppm range from \$1.5

billion to \$4.5 billion on a National basis by 2025. See Regulatory Impact Analysis of the Final Revisions to the National Ambient Air Quality Standards for Ground-Level Ozone (EPA-452/R-15-007, September 2015). Prorating that benefit to this Commonwealth, based on population, results in a public health benefit of \$63 million to \$189 million. The Department is not stating that these estimated monetized health benefits would all be the result of implementing the final-form RACT control measures, but the EPA estimates are indicative of the benefits to Commonwealth residents of attaining and maintaining the 1997, 2008 and 2015 8-hour ozone NAAQS through the implementation of control measures to reduce ozone precursor emissions in the aggregate from different source categories.

This final-form rulemaking may create economic opportunities for NO<sub>x</sub> and VOC emission control technology innovators, manufacturers and distributors through an increased demand for new or improved air pollution control equipment. In addition, the owners and operators of regulated facilities may be required to install and operate an emissions monitoring system or equipment necessary for an emissions monitoring method to comply with this final-form rulemaking, thereby creating an economic opportunity for the emissions monitoring industry.

#### *Compliance costs*

Compliance costs will vary for each facility depending on which compliance option is chosen by the owners and operators of a facility. This final-form rulemaking includes two alternative compliance options: a provision allowing the owner and operator of an affected facility that cannot meet the applicable NO<sub>x</sub> RACT or VOC RACT emission limitation to elect to meet the applicable NO<sub>x</sub> RACT requirement or NO<sub>x</sub> RACT emission limitation in § 129.112 by averaging NO<sub>x</sub> emissions on either a facility-wide or system-wide basis as specified in final-form § 129.113; and a provision allowing the affected owner and operator to submit a case-specific RACT proposal for an alternative RACT requirement or RACT emission limitation to the Department for approval as specified in final-form § 129.114.

Under final-form § 129.113, the owner or operator of an affected major NO<sub>x</sub> emitting facility that includes an air contamination source subject to a NO<sub>x</sub> RACT requirement or emission limitation in § 129.112 that cannot meet the applicable presumptive NO<sub>x</sub> RACT requirement or NO<sub>x</sub> RACT emission limitation may elect to meet the requirement or emission limitation by averaging NO<sub>x</sub> emissions on either a facility-wide or system-wide basis. System-wide emissions averaging must be among sources under common control of the same owner or operator in this Commonwealth and within the same nonattainment area.

Under final-form § 129.114, the owner or operator of an air contamination source that cannot meet the applicable presumptive RACT requirement or RACT emission limitation of § 129.112 may submit an alternative NO<sub>x</sub> RACT requirement, NO<sub>x</sub> RACT emission limitation, VOC RACT requirement or VOC RACT emission limitation to the Department or approved local air pollution control agency for review.

Further, the Department notes that final-form § 129.114(i) provides owners and operators with the opportunity to submit an analysis, where applicable, demonstrating that RACT II conditions remain RACT for the 2015 8-hour ozone standard. This is an administratively efficient and less resource intensive approach than

conducting a full case-by-case analysis for an alternative RACT proposal. For the owners and operators of eligible subject sources, this approach will likely reduce the consulting costs that an owner or operator may choose to incur. Additionally, there is no fee due to the Department to submit an analysis under final-form § 129.114(i).

Under these alternative compliance provisions, the owner or operator is required to demonstrate to the Department's or approved local air pollution control agency's satisfaction that it is economically or technically infeasible to meet the applicable final-form NO<sub>x</sub> RACT or VOC RACT emission limitation. The flexibility provided by these alternative compliance provisions may minimize compliance costs to the owner or operator of an affected facility.

The RACT emission limitations and RACT requirements established in this final-form rulemaking do not require the owner or operator of an affected facility to submit an application for amendments to an existing operating permit. These requirements will be incorporated when the permit is renewed if less than 3 years remain in the permit term, as specified under § 127.463(c) (relating to operating permit revisions to incorporate applicable standards). If 3 years or more remain in the permit term, the requirements will be incorporated as applicable requirements in the permit within 18 months of the date of promulgation of this final-form rulemaking, as required under § 127.463(b). Most importantly, § 127.463(e) specifies that "[r]egardless of whether a revision is required under this section, the permittee shall meet the applicable standards or regulations promulgated under the Clean Air Act within the time frame required by standards or regulations." Consequently, upon promulgation as a final-form regulation, §§ 129.111–129.115 will apply to affected owners and operators irrespective of a modification to the operating permit. Therefore, the owner or operator shall comply with the applicable standards or regulations within the time frame specified by the final-form regulation even if the permit is not revised to incorporate the standard or regulation within the specified compliance time frame.

#### *Compliance assistance plan*

The Department will continue to educate and assist the public and the regulated community in understanding the requirements and how to comply with them after promulgation of this final-form rulemaking. The Department will also continue to work with the Department's provider of the Small Business Stationary Source Technical and Environmental Compliance Assistance services. These services are currently provided by the Environmental Management Assistance Program (EMAP) of the Pennsylvania Small Business Development Centers. The Department has partnered with EMAP to fulfill the Department's obligation to provide confidential technical and compliance assistance to small businesses as required by the APCA, section 507 of the CAA (42 U.S.C.A. § 7661f) and as authorized by the Small Business and Household Pollution Prevention Program Act (35 P.S. §§ 6029.201–6029.209).

In addition to providing one-on-one consulting assistance and onsite assessments, EMAP also operates a toll-free phone line to field questions from small businesses, as well as businesses wishing to start up in, or relocate to, this Commonwealth. EMAP operates and maintains a resource-rich environmental assistance web site and distributes an electronic newsletter to educate and inform small businesses about a variety of environmental compliance issues.



Due to the implementation date of January 1, 2023, required by the EPA's 2015 ozone standard implementation rule (see 83 FR 62998 (December 6, 2018); see also 40 CFR 51.1316(b)(3)), the Department will be conducting direct outreach to the regulated community well in advance of the January 1, 2023, implementation date due to the short turnaround time between the expected promulgation date of this final-form rulemaking and the implementation date.

#### *Paperwork requirements*

The recordkeeping and reporting requirements for owners and operators of subject sources under this final-form rulemaking are minimal because the records required align with the records already required to be kept for emission inventory purposes and for other Federal and State requirements. To minimize the burden of these requirements, the Department allows electronic submission of most planning, reporting and recordkeeping forms required by this final-form rulemaking.

#### *H. Pollution Prevention*

The Pollution Prevention Act of 1990 (42 U.S.C.A. §§ 13101—13109) established a National policy that promotes pollution prevention as the preferred means for achieving state environmental protection goals. The Department encourages pollution prevention, which is the reduction or elimination of pollution at its source, through the installation and operation of add-on air pollution controls, 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. Implementation of the final-form RACT requirements will allow the Department and approved local air pollution control agencies to maintain or further reduce the amounts of NO<sub>x</sub> and VOC emissions from the regulated sources in this Commonwealth, sustain the gains made in healthful air quality by reducing the ambient concentrations of ground-level ozone air pollution formed from the emissions of NO<sub>x</sub> and VOC and ensure continued protection of the environment and the public health and welfare of the citizens of this Commonwealth.

#### *I. Sunset Review*

This Board is not establishing a sunset date for this final-form rulemaking because it is needed for the Department to carry out its statutory authority. The Department will closely monitor the effectiveness of this final-form rulemaking and recommend updates to the Board as necessary.

#### *J. Regulatory Review*

Under section 5(a) of the Regulatory Review Act (71 P.S. § 745.5(a)), on July 14, 2021, the Department submitted a copy of the notice of proposed rulemaking, published at 51 Pa.B. 4333, to IRRC and the Chairpersons of the House and Senate Environmental Resources and Energy Committees.

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

Under section 5.1(j.2) of the Regulatory Review Act (71 P.S. § 745.5a(j.2)), on September 14, 2022, this final-form rulemaking was deemed approved by the House and Senate Committees. Under section 5.1(e) of the Regulatory Review Act, IRRC met on September 15, 2022, and approved this final-form rulemaking.

#### *K. Findings of the Board*

The Board finds that:

(1) Public notice of proposed rulemaking was given under sections 201 and 202 of the act of July 31, 1968 (P.L. 769, No. 240) (45 P.S. §§ 1201 and 1202), known as the Commonwealth Documents Law, and regulations promulgated thereunder at 1 Pa. Code §§ 7.1 and 7.2 (relating to notice of proposed rulemaking required; and adoption of regulations).

(2) At least a 60-day public comment period was provided as required by law and all comments were considered.

(3) This final-form rulemaking does not enlarge the purpose of the proposed rulemaking published at 51 Pa.B. 4333.

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

(5) These regulations are reasonably necessary to attain and maintain the ozone NAAQS and to satisfy related CAA requirements.

#### *L. Order of the Board*

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

(a) The regulations of the Department, 25 Pa. Code Chapters 121 and 129, are amended by amending § 121.1 and adding §§ 129.111—129.115 to read as set forth in Annex A, with ellipses referring to the existing text of the regulations.

(b) The Chairperson of the Board shall submit this final-form rulemaking to the Office of General Counsel and the Office of Attorney General for review and approval as to legality and form, as required by law.

(c) The Chairperson of the Board shall submit this final-form rulemaking to IRRC and the House and Senate Committees as required by the Regulatory Review Act (71 P.S. §§ 745.1—745.14).

(d) The Chairperson of the Board shall certify this final-form rulemaking and deposit it with the Legislative Reference Bureau as required by law.

(e) This final-form rulemaking will be submitted to the EPA as a revision to the Commonwealth's SIP.

(f) This final-form rulemaking shall take effect immediately upon publication in the *Pennsylvania Bulletin*.

RAMEZ ZIADEH, P.E.,  
Acting Chairperson

(*Editor's Note:* See 52 Pa.B. 6282 (October 1, 2022) for IRRC's approval order.)

**Fiscal Note:** Fiscal Note 7-561 remains valid for the final adoption of the subject regulations.

Annex A

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

Subpart C. PROTECTION OF NATURAL RESOURCES

ARTICLE III. AIR RESOURCES

CHAPTER 121. GENERAL PROVISIONS

§ 121.1. Definitions.

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

\* \* \* \* \*

*Combustion efficiency*—A measure of the extent of a combustion reaction, abbreviated C. E. and computed as follows:

$$C.E. = \frac{[CO_2]}{[CO_2] + [CO]} \times 100\%$$

where: [CO<sub>2</sub>] = concentration of carbon dioxide and [CO] = concentration of carbon monoxide

*Combustion source*—For purposes of §§ 129.111—129.115 (relating to additional RACT requirements for major sources of NO<sub>x</sub> and VOCs for the 2015 ozone NAAQS):

(i) A stationary device that combusts solid, liquid or gaseous fuel used to produce heat or energy for industrial, commercial or institutional use by direct heat transfer.

(ii) The term does not include:

- (A) Brick kilns.
- (B) Cement kilns.
- (C) Lime kilns.
- (D) Glass melting furnaces.

(E) A source listed in § 129.112(g)(2) or (3) (relating to presumptive RACT requirements, RACT emission limitations and petition for alternative compliance schedule).

(F) A source subject to § 129.112(g)(4).

*Combustion unit*—A stationary equipment used to burn fuel primarily for the purpose of producing power or heat by indirect heat transfer.

\* \* \* \* \*

*Major NO<sub>x</sub> emitting facility*—A facility which emits or has the potential to emit NO<sub>x</sub> from the processes located at the site or on contiguous properties under the common control of the same person at a rate greater than one of the following:

(i) Ten TPY in an ozone nonattainment area designated as extreme under section 182(e) and (f) of the Clean Air Act (42 U.S.C.A. § 7511a(e) and (f)).

(ii) Twenty-five TPY in an ozone nonattainment area designated as severe under section 182(d) and (f) of the Clean Air Act.

(iii) Fifty TPY in an area designated as serious under section 182(c) and (f) of the Clean Air Act.

(iv) One hundred TPY in an area included in an ozone transport region established under section 184 of the Clean Air Act (42 U.S.C.A. § 7511c).

(v) For purposes of §§ 129.91—129.95 (relating to stationary sources of NO<sub>x</sub> and VOCs), twenty-five TPY and is located in Bucks, Chester, Delaware, Montgomery or Philadelphia County.

(vi) For purposes of §§ 129.96—129.100 and 129.111—129.115 (relating to additional RACT requirements for major sources of NO<sub>x</sub> and VOCs, one hundred TPY statewide.

*Major VOC emitting facility*—A facility which emits or has the potential to emit VOCs from the processes located at the site or on contiguous properties under the common control of the same person at a rate greater than one of the following:

(i) Ten TPY in an ozone nonattainment area designated as extreme under section 182(e) of the Clean Air Act.

(ii) Twenty-five TPY in an ozone nonattainment area designated as severe under section 182(d) of the Clean Air Act.

(iii) Fifty TPY in an area included in an ozone transport region established under section 184 of the Clean Air Act.

(iv) For purposes of §§ 129.91—129.95, twenty-five TPY and is located in Bucks, Chester, Delaware, Montgomery or Philadelphia County.

(v) For purposes of §§ 129.96—129.100 and 129.111—129.115, fifty TPY statewide.

\* \* \* \* \*

*Natural-finish hardwood plywood panel*—A panel on which the original grain pattern is enhanced by an essentially transparent finish frequently supplemented by filler and toner.

*Natural gas compression and transmission facility fugitive VOC air contamination source*—The group of fugitive-VOC-emitting components associated with an individual stationary source. Both of the following apply:

(i) The group of fugitive-VOC-emitting components is considered an individual VOC-emitting source.

(ii) Fugitive VOC emissions from the group of fugitive-VOC-emitting components are not aggregated with the VOC emissions from the associated individual stationary source.

*Necessary preconstruction approvals or permits*—Those permits or approvals required under the Clean Air Act or the act and regulations adopted under the acts, which are part of the applicable SIP.

\* \* \* \* \*

CHAPTER 129. STANDARDS FOR SOURCES  
ADDITIONAL RACT REQUIREMENTS FOR MAJOR SOURCES OF NO<sub>x</sub> AND VOCs FOR THE 2015 OZONE NAAQS

§ 129.111. Applicability.

(a) Except as specified in subsection (c), the NO<sub>x</sub> requirements of this section and §§ 129.112—129.115 apply Statewide to the owner and operator of a major NO<sub>x</sub> emitting facility that commenced operation on or before August 3, 2018, and the VOC requirements of this section and §§ 129.112—129.115 apply Statewide to the owner and operator of a major VOC emitting facility that commenced operation on or before August 3, 2018, for which a requirement or emission limitation, or both, has not been established in §§ 129.51, 129.52(a)—(k) and Table I categories 1—11, 129.52a—129.52e, 129.54—129.63a, 129.64—129.69, 129.71—129.75, 129.77 and

129.101—129.107. The owner or operator shall identify and list the sources and facilities subject to this subsection in the written notification required under § 129.115(a) (relating to written notification, compliance demonstration and recordkeeping and reporting requirements) as follows:

(1) The sources and facilities that commenced operation on or before August 3, 2018, for which a requirement or emission limitation has not been established in §§ 129.51, 129.52(a)—(k) and Table I categories 1—11, 129.52a—129.52e, 129.54—129.63a, 129.64—129.69, 129.71—129.75, 129.77 and 129.101—129.107.

(2) The sources and facilities that commenced operation on or before August 3, 2018, and are subject to §§ 129.51, 129.52(a)—(k) and Table I categories 1—11, 129.52a—129.52e, 129.54—129.63a, 129.64—129.69, 129.71—129.75, 129.77 and 129.101—129.107.

(b) Except as specified in subsection (c), the NO<sub>x</sub> requirements of this section and §§ 129.112—129.115 apply Statewide to the owner and operator of a NO<sub>x</sub> emitting facility that commenced operation on or before August 3, 2018, and the VOC requirements of this section and §§ 129.112—129.115 apply Statewide to the owner and operator of a VOC emitting facility that commenced operation on or before August 3, 2018, when the installation and operation of a new source after August 3, 2018, or a modification or change in operation after August 3, 2018, of a source that commenced operation on or before August 3, 2018, results in the source or facility meeting the definition of a major NO<sub>x</sub> emitting facility or a major VOC emitting facility and for which a requirement or an emission limitation, or both, has not been established in §§ 129.51, 129.52(a)—(k) and Table I categories 1—11, 129.52a—129.52e, 129.54—129.63a, 129.64—129.69, 129.71—129.75, 129.77 and 129.101—129.107. The owner or operator shall identify and list the sources and facilities subject to this subsection in the written notification required under § 129.115(a) as follows:

(1) The sources and facilities for which a requirement or emission limitation has not been established in §§ 129.51, 129.52(a)—(k) and Table I categories 1—11, 129.52a—129.52e, 129.54—129.63a, 129.64—129.69, 129.71—129.75, 129.77 and 129.101—129.107.

(2) The sources and facilities subject to §§ 129.51, 129.52(a)—(k) and Table I categories 1—11, 129.52a—129.52e, 129.54—129.63a, 129.64—129.69, 129.71—129.75, 129.77 and 129.101—129.107.

(c) Sections 129.112—129.114 do not apply to the owner and operator of a NO<sub>x</sub> air contamination source that has the potential to emit less than 1 TPY of NO<sub>x</sub> located at a major NO<sub>x</sub> emitting facility subject to subsection (a) or (b) or a VOC air contamination source that has the potential to emit less than 1 TPY of VOC located at a major VOC emitting facility subject to subsection (a) or (b). The owner or operator shall identify and list these sources in the written notification required under § 129.115(a).

(d) Except as specified in subsection (e), this section and §§ 129.112—129.115 do not apply to the owner and operator of a facility that commenced operation on or before August 3, 2018, that is not a major NO<sub>x</sub> emitting facility or a major VOC emitting facility on or before December 31, 2022.

(e) If the owner and operator of a facility that complied with subsection (d) meets the definition of a major NO<sub>x</sub> emitting facility or a major VOC emitting facility after December 31, 2022, then the owner and operator shall comply with subsection (b).

**§ 129.112. Presumptive RACT requirements, RACT emission limitations and petition for alternative compliance schedule.**

(a) The owner and operator of a source listed in one or more of subsections (b)—(k) located at a major NO<sub>x</sub> emitting facility or major VOC emitting facility subject to § 129.111 (relating to applicability) shall comply with the applicable presumptive RACT requirement or RACT emission limitation, or both, beginning with the specified compliance date as follows, unless an alternative compliance schedule is submitted and approved under subsections (n)—(p) or § 129.114 (relating to alternative RACT proposal and petition for alternative compliance schedule):

(1) January 1, 2023, for a source subject to § 129.111(a).

(2) January 1, 2023, or 1 year after the date the source meets the definition of a major NO<sub>x</sub> emitting facility or major VOC emitting facility, whichever is later, for a source subject to § 129.111(b).

(b) The owner and operator of a source listed in this subsection that is located at a major NO<sub>x</sub> emitting facility or major VOC emitting facility subject to § 129.111 shall comply with the applicable presumptive RACT requirements in paragraph (1) and recordkeeping and reporting requirements in paragraph (2).

(1) The owner or operator of a:

(i) Combustion unit or process heater with a rated heat input equal to or greater than 20 million Btu/hour and less than 50 million Btu/hour shall conduct a biennial tune-up in accordance with the procedures in 40 CFR 63.11223 (relating to how do I demonstrate continuous compliance with the work practice and management practice standards?).

(A) Each biennial tune-up shall occur not less than 3 months and not more than 24 months after the date of the previous tune-up.

(B) The biennial tune-up must include, at a minimum, the following:

(I) Inspection and cleaning or replacement of fuel-burning equipment, including the burners and components, as necessary, for proper operation as specified by the manufacturer.

(II) Inspection of the flame pattern and adjustment of the burner, as necessary, to optimize the flame pattern to minimize total emissions of NO<sub>x</sub> and, to the extent possible, emissions of CO.

(III) Inspection and adjustment, as necessary, of the air-to-fuel ratio control system to ensure proper calibration and operation as specified by the manufacturer.

(ii) Combustion unit or process heater with an oxygen trim system that maintains an optimum air-to-fuel ratio that would otherwise be subject to a biennial tune-up shall conduct a tune-up of the boiler one time in each 5-year calendar period in accordance with the following:

(A) Each tune-up shall occur not less than 3 months and not more than 60 months after the date of the previous tune-up.

(B) The tune-up must include, at a minimum, the following:

(I) Inspection and cleaning or replacement of fuel-burning equipment, including the burners and components, as necessary, for proper operation as specified by the manufacturer.



(II) Inspection of the flame pattern and adjustment of the burner, as necessary, to optimize the flame pattern to minimize total emissions of NO<sub>x</sub> and, to the extent possible, emissions of CO.

(III) Inspection and adjustment, as necessary, of the air-to-fuel ratio control system to ensure proper calibration and operation as specified by the manufacturer.

(2) The applicable recordkeeping and reporting requirements of § 129.115(f) and (i) (relating to written notification, compliance demonstration and recordkeeping and reporting requirements).

(3) Compliance with the applicable presumptive RACT requirements in paragraph (1) and recordkeeping and reporting requirements in paragraph (2) assures compliance with the provisions in §§ 129.93(b)(2), (3), (4) and (5) and 129.97(b)(1), (2) and (3) (relating to presumptive RACT emissions limitations; and presumptive RACT requirements, RACT emission limitations and petition for alternative compliance schedule).

(c) The owner and operator of a source listed in this subsection that is located at a major NO<sub>x</sub> emitting facility or major VOC emitting facility subject to § 129.111 shall install, maintain and operate the source in accordance with the manufacturer's specifications and with good operating practices:

(1) A NO<sub>x</sub> air contamination source that has the potential to emit less than 5 TPY of NO<sub>x</sub>.

(2) A VOC air contamination source that has the potential to emit less than 2.7 TPY of VOC.

(3) A natural gas compression and transmission facility fugitive VOC air contamination source that has the potential to emit less than 2.7 TPY of VOC.

(4) A boiler or other combustion source with an individual rated gross heat input less than 20 million Btu/hour.

(5) A combustion turbine with a rated output less than 1,000 bhp.

(6) A lean burn stationary internal combustion engine rated at less than 500 bhp (gross).

(7) A rich burn stationary internal combustion engine rated at less than 100 bhp (gross).

(8) An incinerator, thermal oxidizer, catalytic oxidizer or flare used primarily for air pollution control.

(9) A fuel-burning unit with an annual capacity factor of less than 5%.

(i) For a combustion unit, the annual capacity factor is the ratio of the unit's heat input (in million Btu or equivalent units of measure) to the unit's maximum rated hourly heat input rate (in million Btu/hour or equivalent units of measure) multiplied by 8,760 hours during a period of 12 consecutive calendar months.

(ii) For an electric generating unit, the annual capacity factor is the ratio of the unit's actual electric output (expressed in MWe/hr) to the unit's nameplate capacity (or maximum observed hourly gross load (in MWe/hr) if greater than the nameplate capacity) multiplied by 8,760 hours during a period of 12 consecutive calendar months.

(iii) For any other unit, the annual capacity factor is the ratio of the unit's actual operating level to the unit's potential operating level during a period of 12 consecutive calendar months.

(10) An emergency standby engine operating less than 500 hours in a 12-month rolling period.

(11) An electric arc furnace.

(d) Except as specified in subsection (c), the owner and operator of a combustion unit, brick kiln, cement kiln, lime kiln, glass melting furnace or combustion source located at a major VOC emitting facility subject to § 129.111 shall install, maintain and operate the source in accordance with the manufacturer's specifications and with good operating practices for the control of the VOC emissions from the combustion unit, brick kiln, cement kiln, lime kiln, glass melting furnace or combustion source.

(e) The owner and operator of a municipal solid waste landfill subject to § 129.111 shall comply with the following applicable presumptive RACT requirements. The owner or operator of a:

(1) Municipal solid waste landfill constructed, reconstructed or modified on or before July 17, 2014, that has not been modified or reconstructed since July 17, 2014, shall comply with the Federal plan for municipal solid waste landfills in 40 CFR Part 62, Subpart OOO (relating to federal plan requirements for municipal solid waste landfills that commenced construction on or before July 17, 2014 and have not been modified or reconstructed since July 17, 2014).

(2) Municipal solid waste landfill constructed, reconstructed or modified on or after July 18, 2014, shall comply with the New Source Performance Standards in 40 CFR Part 60, Subpart XXX (relating to standards of performance for municipal solid waste landfills that commenced construction, reconstruction, or modification after July 17, 2014), which are adopted and incorporated by reference in § 122.3 (relating to adoption of standards).

(f) The owner and operator of a municipal waste combustor subject to § 129.111 shall comply with the presumptive RACT emission limitation of 110 ppmvd NO<sub>x</sub> @ 7% oxygen.

(g) Except as specified in subsection (c), the owner and operator of a NO<sub>x</sub> air contamination source listed in this subsection that is located at a major NO<sub>x</sub> emitting facility or a VOC air contamination source listed in this subsection that is located at a major VOC emitting facility subject to § 129.111 may not cause, allow or permit NO<sub>x</sub> or VOCs to be emitted from the air contamination source in excess of the applicable presumptive RACT emission limitation specified in the following paragraphs:

(1) The owner or operator of:

(i) A natural gas-fired, propane-fired or liquid petroleum gas-fired combustion unit or process heater with a rated heat input equal to or greater than 50 million Btu/hour shall comply with 0.10 lb NO<sub>x</sub>/million Btu heat input.

(ii) A distillate oil-fired combustion unit or process heater with a rated heat input equal to or greater than 50 million Btu/hour shall comply with 0.12 lb NO<sub>x</sub>/million Btu heat input.

(iii) A residual oil-fired or other liquid fuel-fired combustion unit or process heater with a rated heat input equal to or greater than 50 million Btu/hour shall comply with 0.20 lb NO<sub>x</sub>/million Btu heat input.

(iv) A refinery gas-fired combustion unit or process heater with a rated heat input equal to or greater than 50 million Btu/hour shall comply with 0.25 lb NO<sub>x</sub>/million Btu heat input.

(v) A coal-fired combustion unit with a rated heat input equal to or greater than 50 million Btu/hour and less than 250 million Btu/hour shall comply with 0.45 lb NO<sub>x</sub>/million Btu heat input.

(vi) A circulating fluidized bed combustion unit firing waste products of coal mining, physical coal cleaning and coal preparation operations that contain coal, matrix material, clay and other organic and inorganic material with a rated heat input equal to or greater than 250 million Btu/hour shall comply with the following presumptive RACT requirements and RACT emission limitations as applicable:

(A) 0.16 lb NO<sub>x</sub>/million Btu heat input when firing primarily bituminous waste such as gob.

(B) 0.16 lb NO<sub>x</sub>/million Btu heat input when firing primarily anthracite waste such as culm.

(C) Control the NO<sub>x</sub> emissions each operating day by operating the installed air pollution control technology and combustion controls at all times consistent with the technological limitations, manufacturer's specifications, good engineering and maintenance practices and good air pollution control practices for controlling emissions.

(vii) A solid fuel-fired combustion unit that is not a coal-fired combustion unit with a rated heat input equal to or greater than 50 million Btu/hour shall comply with 0.25 lb NO<sub>x</sub>/million Btu heat input.

(2) The owner or operator of a:

(i) Combined cycle or combined heat and power combustion turbine with a rated output equal to or greater than 1,000 bhp and less than 4,100 bhp shall comply with the following presumptive RACT emission limitations as applicable:

(A) 120 ppmvd NO<sub>x</sub> @ 15% oxygen when firing natural gas or a noncommercial gaseous fuel.

(B) 5 ppmvd VOC (as propane) @ 15% oxygen when firing natural gas or a noncommercial gaseous fuel.

(C) 150 ppmvd NO<sub>x</sub> @ 15% oxygen when firing fuel oil.

(D) 9 ppmvd VOC (as propane) @ 15% oxygen when firing fuel oil.

(ii) Combined cycle or combined heat and power combustion turbine with a rated output equal to or greater than 4,100 bhp and less than 180 MW shall comply with the following presumptive RACT emission limitations as applicable:

(A) 42 ppmvd NO<sub>x</sub> @ 15% oxygen when firing natural gas or a noncommercial gaseous fuel.

(B) 5 ppmvd VOC (as propane) @ 15% oxygen when firing natural gas or a noncommercial gaseous fuel.

(C) 96 ppmvd NO<sub>x</sub> @ 15% oxygen when firing fuel oil.

(D) 9 ppmvd VOC (as propane) @ 15% oxygen when firing fuel oil.

(iii) Combined cycle or combined heat and power combustion turbine with a rated output equal to or greater than 180 MW shall comply with the following presumptive RACT emission limitations as applicable:

(A) 4 ppmvd NO<sub>x</sub> @ 15% oxygen when firing natural gas or a noncommercial gaseous fuel.

(B) 2 ppmvd VOC (as propane) @ 15% oxygen when firing natural gas or a noncommercial gaseous fuel.

(C) 8 ppmvd NO<sub>x</sub> @ 15% oxygen when firing fuel oil.

(D) 2 ppmvd VOC (as propane) @ 15% oxygen when firing fuel oil.

(iv) Simple cycle or regenerative cycle combustion turbine with a rated output equal to or greater than 1,000 bhp and less than 4,100 bhp shall comply with the following presumptive RACT emission limitations as applicable:

(A) 120 ppmvd NO<sub>x</sub> @ 15% oxygen when firing natural gas or a noncommercial gaseous fuel.

(B) 9 ppmvd VOC (as propane) @ 15% oxygen when firing natural gas or a noncommercial gaseous fuel.

(C) 150 ppmvd NO<sub>x</sub> @ 15% oxygen when firing fuel oil.

(D) 9 ppmvd VOC (as propane) @ 15% oxygen when firing fuel oil.

(v) Simple cycle or regenerative cycle combustion turbine with a rated output equal to or greater than 4,100 bhp and less than 60,000 bhp shall comply with the following presumptive RACT emission limitations as applicable:

(A) 42 ppmvd NO<sub>x</sub> @ 15% oxygen when firing natural gas or a noncommercial gaseous fuel.

(B) 9 ppmvd VOC (as propane) @ 15% oxygen when firing natural gas or a noncommercial gaseous fuel.

(C) 96 ppmvd NO<sub>x</sub> @ 15% oxygen when firing fuel oil.

(D) 9 ppmvd VOC (as propane) @ 15% oxygen when firing fuel oil.

(3) The owner or operator of a:

(i) Lean burn stationary internal combustion engine with a rating equal to or greater than 500 bhp and less than 3,500 bhp shall comply with the following presumptive RACT emission limitations as applicable:

(A) 3.0 grams NO<sub>x</sub>/bhp-hr when firing natural gas or a noncommercial gaseous fuel.

(B) 0.5 gram VOC/bhp-hr excluding formaldehyde when firing natural gas or a noncommercial gaseous fuel, liquid fuel or dual-fuel.

(ii) Lean burn stationary internal combustion engine with a rating equal to or greater than 3,500 bhp shall comply with the following presumptive RACT emission limitations as applicable:

(A) 0.6 gram NO<sub>x</sub>/bhp-hr when firing natural gas or a noncommercial gaseous fuel.

(B) 0.5 gram VOC/bhp-hr excluding formaldehyde when firing natural gas or a noncommercial gaseous fuel, liquid fuel or dual-fuel.

(iii) Stationary internal combustion engine with a rating equal to or greater than 500 bhp shall comply with 1.6 grams NO<sub>x</sub>/bhp-hr when firing liquid fuel or dual-fuel.

(iv) Rich burn stationary internal combustion engine with a rating equal to or greater than 100 bhp shall comply with the following presumptive RACT emission limitations as applicable:

(A) 2.0 gram NO<sub>x</sub>/bhp-hr when firing natural gas or a noncommercial gaseous fuel.

(B) 0.5 gram VOC/bhp-hr when firing natural gas or a noncommercial gaseous fuel.

(4) Except as specified in subparagraph (ii), the owner or operator of a unit firing multiple fuels shall comply with:

(i) The applicable RACT multiple fuel emission limit determined on a total heat input fuel weighted basis in accordance with the following:

(A) Using the following equation:

$$E_{HI\text{weighted}} = \frac{\sum_{i=1}^n E_i HI_i}{\sum_{i=1}^n HI_i}$$

Where:

$E_{HI\text{weighted}}$  = The heat input fuel weighted multiple fuel emission rate or emission limitation for the compliance period, expressed in units of measure consistent with the units of measure for the emission limitation.

$E_i$  = The emission rate or emission limit for fuel  $i$  during the compliance period, expressed in units of measure consistent with the units of measure for the emission limitation.

$HI_i$  = The total heat input for fuel  $i$  during the compliance period.

$n$  = The number of different fuels used during the compliance period.

(B) Excluding a fuel representing less than 2% of the unit's annual fuel consumption on a heat input basis when determining the applicable RACT multiple fuel emission limit calculated in accordance with clause (A).

(ii) The determination in subparagraph (i) does not apply to a stationary internal combustion engine that is subject to the RACT emission limits in paragraph (3).

(h) The owner and operator of a Portland cement kiln subject to § 129.111 shall comply with the following presumptive RACT emission limitations as applicable:

(1) 3.88 pounds of NO<sub>x</sub> per ton of clinker produced for a long wet-process cement kiln as defined in § 145.142 (relating to definitions).

(2) 3.0 pounds of NO<sub>x</sub> per ton of clinker produced for a long dry-process cement kiln as defined in § 145.142.

(3) 2.30 pounds of NO<sub>x</sub> per ton of clinker produced for:

(i) A preheater cement kiln as defined in § 145.142.

(ii) A precalciner cement kiln as defined in § 145.142.

(i) The owner and operator of a glass melting furnace subject to § 129.111 shall comply with the following presumptive RACT emission limitations as applicable:

(1) 4.0 pounds of NO<sub>x</sub> per ton of glass pulled for container glass furnaces.

(2) 7.0 pounds of NO<sub>x</sub> per ton of glass pulled for pressed or blown glass furnaces.

(3) 4.0 pounds of NO<sub>x</sub> per ton of glass pulled for fiberglass furnaces.

(4) 7.0 pounds of NO<sub>x</sub> per ton of glass pulled for flat glass furnaces.

(5) 6.0 pounds of NO<sub>x</sub> per ton of glass pulled for all other glass melting furnaces.

(j) The owner and operator of a lime kiln subject to § 129.111 shall comply with the presumptive RACT emission limitation of 4.6 pounds of NO<sub>x</sub> per ton of lime produced.

(k) The owner and operator of a direct-fired heater, furnace, oven or other combustion source with a rated heat input equal to or greater than 20 million Btu/hour subject to § 129.111 shall comply with the presumptive RACT emission limitation of 0.10 lb NO<sub>x</sub>/million Btu heat input.

(l) The requirements and emission limitations of this section supersede the requirements and emission limitations of a RACT permit issued to the owner or operator of an air contamination source subject to one or more of subsections (b)–(k) prior to November 12, 2022, under §§ 129.91–129.95 (relating to stationary sources of NO<sub>x</sub> and VOCs) or under §§ 129.96–129.100 (relating to additional RACT requirements for major sources of NO<sub>x</sub> and VOCs) to control, reduce or minimize NO<sub>x</sub> emissions or VOC emissions, or both, from the air contamination source unless the permit contains more stringent requirements or emission limitations, or both.

(m) The requirements and emission limitations of this section supersede the requirements and emission limitations of §§ 129.201–129.205, 129.301–129.310, 145.111–145.113 and 145.141–145.146 unless the requirements or emission limitations of §§ 129.201–129.205, §§ 129.301–129.310, §§ 145.111–145.113 or §§ 145.141–145.146 are more stringent.

(n) The owner or operator of a major NO<sub>x</sub> emitting facility or a major VOC emitting facility subject to § 129.111 that includes an air contamination source subject to one or more of subsections (b)–(k) that cannot meet the applicable presumptive RACT requirement or RACT emission limitation without installation of an air cleaning device may submit a petition, in writing or electronically, requesting an alternative compliance schedule in accordance with the following:

(1) The petition shall be submitted to the Department or appropriate approved local air pollution control agency as soon as possible but not later than:

(i) December 31, 2022, for a source subject to § 129.111(a).

(ii) December 31, 2022, or 6 months after the date that the source meets the definition of a major NO<sub>x</sub> emitting facility or a major VOC emitting facility, whichever is later, for a source subject to § 129.111(b).

(2) The petition must include:

(i) A description, including make, model and location, of each affected source subject to a RACT requirement or a RACT emission limitation in one or more of subsections (b)–(k).

(ii) A description of the proposed air cleaning device to be installed.

(iii) A schedule containing proposed interim dates for completing each phase of the required work to install the air cleaning device described in subparagraph (ii).

(iv) A proposed interim emission limitation that will be imposed on the affected source until compliance is achieved with the applicable RACT requirement or RACT emission limitation.

(v) A proposed final compliance date that is as soon as possible but not later than 3 years after the written



approval of the petition by the Department or the appropriate approved local air pollution control agency. The approved petition shall be incorporated in an applicable operating permit or plan approval.

(o) The Department or appropriate approved local air pollution control agency will review the timely and complete written petition requesting an alternative compliance schedule submitted in accordance with subsection (n) and approve or deny the petition in writing.

(p) Approval or denial under subsection (o) of the timely and complete petition for an alternative compliance schedule submitted under subsection (n) will be effective on the date the letter of approval or denial of the petition is signed by the authorized representative of the Department or appropriate approved local air pollution control agency.

(q) The Department will submit each petition for an alternative compliance schedule approved under subsection (o) to the Administrator of the EPA for approval as a revision to the Commonwealth's SIP. The owner and operator of the facility shall bear the costs of public hearings and notifications, including newspaper notices, required for the SIP submittal.

**§ 129.113. Facility-wide or system-wide NO<sub>x</sub> emissions averaging plan general requirements.**

(a) The owner or operator of a major NO<sub>x</sub> emitting facility subject to § 129.111 (relating to applicability) that includes at least one air contamination source subject to a NO<sub>x</sub> RACT emission limitation in § 129.112 (relating to presumptive RACT requirements, RACT emission limitations and petition for alternative compliance schedule) that cannot meet the applicable NO<sub>x</sub> RACT emission limitation may elect to meet the applicable NO<sub>x</sub> RACT emission limitation in § 129.112 by averaging NO<sub>x</sub> emissions on either a facility-wide or system-wide basis. System-wide emissions averaging must be among sources under common control of the same owner or operator within the same ozone nonattainment area in this Commonwealth.

(b) The owner or operator of each facility that elects to comply with subsection (a) shall submit a NO<sub>x</sub> emissions averaging plan in writing or electronically to the Department or appropriate approved local air pollution control agency as part of an application for an operating permit modification or a plan approval, if otherwise required. The application incorporating the requirements of this section shall be submitted by the applicable date as follows:

(1) December 31, 2022, for a source subject to § 129.111(a).

(2) December 31, 2022, or 6 months after the date that the source meets the definition of a major NO<sub>x</sub> emitting facility, whichever is later, for a source subject to § 129.111(b).

(c) Each NO<sub>x</sub> air contamination source included in the application for an operating permit modification or a plan approval, if otherwise required, for averaging NO<sub>x</sub> emissions on either a facility-wide or system-wide basis submitted under subsection (b) must be an air contamination source subject to a NO<sub>x</sub> RACT emission limitation in § 129.112.

(d) The application for the operating permit modification or the plan approval, if otherwise required, for averaging NO<sub>x</sub> emissions on either a facility-wide or system-wide basis submitted under subsection (b) must demonstrate that the aggregate NO<sub>x</sub> emissions emitted by

the air contamination sources included in the facility-wide or system-wide NO<sub>x</sub> emissions averaging plan are not greater than the NO<sub>x</sub> emissions that would be emitted by the group of included sources if each source complied with the applicable NO<sub>x</sub> RACT emission limitation in § 129.112 on a source-specific basis.

(e) The application for the operating permit modification or a plan approval, if otherwise required, specified in subsections (b)—(d) may include facility-wide or system-wide NO<sub>x</sub> emissions averaging only for NO<sub>x</sub> emitting sources or NO<sub>x</sub> emitting facilities that are owned or operated by the applicant.

(f) The application for the operating permit modification or a plan approval, if otherwise required, specified in subsections (b)—(e) must include the following information:

(1) Identification of each air contamination source included in the NO<sub>x</sub> emissions averaging plan.

(2) Each air contamination source's applicable emission limitation in § 129.112.

(3) Methods for demonstrating compliance and recordkeeping and reporting requirements in accordance with § 129.115 (relating to written notification, compliance demonstration and recordkeeping and reporting requirements) for each source included in the NO<sub>x</sub> emissions averaging plan submitted under subsection (b).

(g) An air contamination source or facility included in the facility-wide or system-wide NO<sub>x</sub> emissions averaging plan submitted in accordance with subsections (b)—(f) may be included in only one facility-wide or system-wide NO<sub>x</sub> emissions averaging plan.

(h) The Department or appropriate approved local air pollution control agency will:

(1) Review the timely and complete NO<sub>x</sub> emissions averaging plan submitted in accordance with subsections (b)—(g).

(2) Approve the NO<sub>x</sub> emissions averaging plan submitted under subsection (b), in writing, if the Department or appropriate approved local air pollution control agency is satisfied that the NO<sub>x</sub> emissions averaging plan complies with the requirements of subsections (b)—(g) and that the proposed NO<sub>x</sub> emissions averaging plan is RACT for the air contamination sources.

(3) Deny or modify the NO<sub>x</sub> emissions averaging plan submitted under subsection (b), in writing, if the proposal does not comply with the requirements of subsections (b)—(g).

(i) The proposed NO<sub>x</sub> emissions averaging plan submitted under subsection (b) will be approved, denied or modified under subsection (h) by the Department or appropriate approved local air pollution control agency in accordance with Chapter 127 (relating to construction, modification, reactivation and operation of sources) prior to the owner or operator implementing the NO<sub>x</sub> emissions averaging plan.

(j) The owner or operator of an air contamination source or facility included in the facility-wide or system-wide NO<sub>x</sub> emissions averaging plan submitted in accordance with subsections (b)—(g) shall submit the reports and records specified in subsection (f)(3) to the Department or appropriate approved local air pollution control agency to demonstrate compliance with § 129.115.

(k) The owner or operator of an air contamination source or facility included in a facility-wide or system-wide NO<sub>x</sub> emissions averaging plan submitted in accord-

ance with subsections (b)—(g) that achieves emission reductions in accordance with other emission limitations required under the act or the Clean Air Act, or regulations adopted under the act or the Clean Air Act, that are not NO<sub>x</sub> RACT emission limitations may not substitute those emission reductions for the emission reductions required by the facility-wide or system-wide NO<sub>x</sub> emissions averaging plan submitted to the Department or appropriate approved local air pollution control agency under subsection (b).

(l) The owner or operator of an air contamination source subject to a NO<sub>x</sub> RACT emission limitation in § 129.112 that is not included in a facility-wide or system-wide NO<sub>x</sub> emissions averaging plan submitted under subsection (b) shall operate the source in compliance with the applicable NO<sub>x</sub> RACT emission limitation in § 129.112.

(m) The owner and operator of the air contamination sources included in a facility-wide or system-wide NO<sub>x</sub> emissions averaging plan submitted under subsection (b) shall be liable for a violation of an applicable NO<sub>x</sub> RACT emission limitation at each source included in the NO<sub>x</sub> emissions averaging plan regardless of each individual facility's NO<sub>x</sub> emission rate.

(n) The Department will submit each NO<sub>x</sub> emissions averaging plan approved under subsection (i) to the Administrator of the EPA for approval as a revision to the SIP. The owner and operator of the facility shall bear the costs of public hearings and notifications, including newspaper notices, required for the SIP submittal.

**§ 129.114. Alternative RACT proposal and petition for alternative compliance schedule.**

(a) The owner or operator of an air contamination source subject to § 129.112 (relating to presumptive RACT requirements, RACT emission limitations and petition for alternative compliance schedule) located at a major NO<sub>x</sub> emitting facility or major VOC emitting facility subject to § 129.111 (relating to applicability) that cannot meet the applicable presumptive RACT requirement or RACT emission limitation of § 129.112 may propose an alternative RACT requirement or RACT emission limitation in accordance with subsection (d).

(b) The owner or operator of a NO<sub>x</sub> air contamination source with a potential emission rate equal to or greater than 5.0 tons of NO<sub>x</sub> per year that is not subject to § 129.112 or §§ 129.201—129.205 (relating to additional NO<sub>x</sub> requirements) located at a major NO<sub>x</sub> emitting facility subject to § 129.111 shall propose a NO<sub>x</sub> RACT requirement or RACT emission limitation in accordance with subsection (d).

(c) The owner or operator of a VOC air contamination source with a potential emission rate equal to or greater than 2.7 tons of VOC per year that is not subject to § 129.112 located at a major VOC emitting facility subject to § 129.111 shall propose a VOC RACT requirement or RACT emission limitation in accordance with subsection (d).

(d) The owner or operator proposing an alternative RACT requirement or RACT emission limitation under subsection (a), (b) or (c) shall:

(1) Submit a RACT proposal in writing or electronically in accordance with the procedures in § 129.92(a)(1)—(5), (7)—(10) and (b) (relating to RACT proposal requirements) to the Department or appropriate approved local air pollution control agency as soon as possible but not later than:

(i) December 31, 2022, for a source subject to § 129.111(a).

(ii) December 31, 2022, or 6 months after the date that the source meets the definition of a major NO<sub>x</sub> emitting facility or major VOC emitting facility, whichever is later, for a source subject to § 129.111(b).

(2) Be in receipt of an approval issued by the Department or appropriate approved local air pollution control agency in writing through a plan approval or operating permit modification for a RACT proposal submitted under paragraph (1)(ii) prior to the installation, modification or change in the operation of the existing air contamination source that will result in the source or facility meeting the definition of a major NO<sub>x</sub> emitting facility or major VOC emitting facility.

(3) Include in the RACT proposal the proposed alternative NO<sub>x</sub> RACT requirement or RACT emission limitation or VOC RACT requirement or RACT emission limitation developed in accordance with the procedures in § 129.92(a)(1)—(5) and (b).

(4) Include in the RACT proposal a schedule for completing implementation of the RACT requirement or RACT emission limitation as soon as possible but not later than:

(i) November 12, 2023, for a source subject to § 129.111(a).

(ii) November 12, 2023, or 1 year after the date that the source meets the definition of a major NO<sub>x</sub> emitting facility or major VOC emitting facility, whichever is later, for a source subject to § 129.111(b).

(5) Include interim dates in the schedule required under paragraph (4) for the:

(i) Issuance of purchase orders.

(ii) Start and completion of process, technology and control technology changes.

(iii) Completion of compliance testing.

(6) Include in the RACT proposal methods for demonstrating compliance and recordkeeping and reporting requirements in accordance with § 129.115 (relating to written notification, compliance demonstration and recordkeeping and reporting requirements) for each air contamination source included in the RACT proposal.

(7) Demonstrate to the satisfaction of the Department or the appropriate approved local air pollution control agency that the proposed requirement or RACT emission limitation is RACT for the air contamination source.

(e) The Department or appropriate approved local air pollution control agency will:

(1) Review the timely and complete alternative RACT proposal submitted in accordance with subsection (d).

(2) Approve the alternative RACT proposal submitted under subsection (d), in writing, if the Department or appropriate approved local air pollution control agency is satisfied that the alternative RACT proposal complies with the requirements of subsection (d) and that the proposed alternative requirement or RACT emission limitation is RACT for the air contamination source.

(3) Deny or modify the alternative RACT proposal submitted under subsection (d), in writing, if the proposal does not comply with the requirements of subsection (d).

(f) The proposed alternative RACT requirement or RACT emission limitation and the implementation schedule submitted under subsection (d) will be approved,

denied or modified under subsection (e) by the Department or appropriate approved local air pollution control agency in accordance with Chapter 127 (relating to construction, modification, reactivation and operation of sources) prior to the owner or operator implementing the alternative RACT requirement or RACT emission limitation.

(g) The emission limit and requirements specified in the plan approval or operating permit issued by the Department or appropriate approved local air pollution control agency under subsection (f) supersede the emission limit and requirements in the existing plan approval or operating permit issued to the owner or operator of the source prior to November 12, 2022, on the date specified in the plan approval or operating permit issued by the Department or appropriate approved local air pollution control agency under subsection (f), except to the extent the existing plan approval or operating permit contains more stringent requirements.

(h) The Department will submit each alternative RACT requirement or RACT emission limitation approved under subsection (f) to the Administrator of the EPA for approval as a revision to the SIP. The owner and operator of the facility shall bear the costs of public hearings and notifications, including newspaper notices, required for the SIP submittal.

(i) An owner or operator subject to subsection (a), (b) or (c) and § 129.99 that has not modified or changed a source that commenced operation on or before October 24, 2016, and has not installed and commenced operation of a new source after October 24, 2016, may, in place of the alternative RACT requirement or RACT emission limitation required under subsection (d), submit an analysis, certified by the responsible official, in writing or electronically to the Department or appropriate approved local air pollution control agency on or before December 31, 2022, that demonstrates that compliance with the alternative RACT requirement or RACT emission limitation approved by the Department or appropriate approved local air pollution control agency under § 129.99(e) (relating to alternative RACT proposal and petition for alternative compliance schedule) assures compliance with the provisions in subsections (a)—(c) and (e)—(h), except for sources subject to § 129.112(c)(11) or (i)—(k).

(1) The owner or operator of a subject source or facility that evaluates and determines that there is no new pollutant specific air cleaning device, air pollution control technology or technique available at the time of submittal of the analysis and that each technically feasible air cleaning device, air pollution control technology or technique evaluated for the alternative RACT requirement or RACT emission limitation approved by the Department or appropriate approved local air pollution control agency under § 129.99(e) had a cost effectiveness:

(i) Equal to or greater than \$7,500 per ton of NO<sub>x</sub> emissions reduced or \$12,000 per ton of VOC emissions reduced shall include the following information in the analysis:

(A) A statement that explains how the owner or operator determined that there is no new pollutant specific air cleaning device, air pollution control technology or technique available.

(B) A list of the technically feasible air cleaning devices, air pollution control technologies or techniques previously identified and evaluated under § 129.92(b)(1)—(3) included in the written RACT proposal submitted under § 129.99(d) and approved by the Department or appropriate approved local air pollution control agency under § 129.99(e).

(C) A summary of the economic feasibility analysis performed for each technically feasible air cleaning device, air pollution control technology or technique listed in clause (B) and the cost effectiveness of each technically feasible air cleaning device, air pollution control technology or technique as submitted previously under § 129.99(d) or as calculated consistent with the “EPA Air Pollution Control Cost Manual” (6th Edition), EPA/452/B-02-001, January 2002, as amended.

(D) A statement that an evaluation of each economic feasibility analysis summarized in clause (C) demonstrates that the cost effectiveness remains equal to or greater than \$7,500 per ton of NO<sub>x</sub> emissions reduced or \$12,000 per ton of VOC emissions reduced.

(E) Additional information requested by the Department or appropriate approved local air pollution control agency that may be necessary for the evaluation of the analysis.

(ii) Less than \$7,500 per ton of NO<sub>x</sub> emissions reduced or \$12,000 per ton of VOC emissions reduced shall include the following information in the analysis:

(A) A statement that explains how the owner or operator determined that there is no new pollutant specific air cleaning device, air pollution control technology or technique available.

(B) A list of the technically feasible air cleaning devices, air pollution control technologies or techniques previously identified and evaluated under § 129.92(b)(1)—(3) in the written RACT proposal submitted under § 129.99(d) and approved by the Department or appropriate approved local air pollution control agency under § 129.99(e).

(C) A summary of the economic feasibility analysis performed for each technically feasible air cleaning device, air pollution control technology or technique listed in clause (B) and the cost effectiveness of each technically feasible air cleaning device, air pollution control technology or technique as submitted previously under § 129.99(d) or as calculated consistent with the “EPA Air Pollution Control Cost Manual” (6th Edition), EPA/452/B-02-001, January 2002, as amended.

(D) A statement that an evaluation of each economic feasibility analysis summarized in clause (C) demonstrates that the cost effectiveness remains less than \$7,500 per ton of NO<sub>x</sub> emissions reduced or \$12,000 per ton of VOC emissions reduced.

(E) A new economic feasibility analysis for each technically feasible air cleaning device, air pollution control technology or technique listed in clause (B) in accordance with § 129.92(b)(4).

(F) Additional information requested by the Department or appropriate approved local air pollution control agency that may be necessary for the evaluation of the analysis.

(2) The owner or operator of a subject source or facility that evaluates and determines that there is a new or upgraded pollutant specific air cleaning device, air pollution control technology or technique available at the time of submittal of the analysis shall:

(i) Perform a technical feasibility analysis and an economic feasibility analysis in accordance with § 129.92(b).

(ii) Submit the analyses performed under subparagraph (i) to the Department or appropriate approved local air pollution control agency for review.



(iii) Provide additional information requested by the Department or appropriate approved local air pollution control agency that may be necessary for the evaluation of the analysis.

(j) The Department or appropriate approved local air pollution control agency will:

(1) Review the analyses submitted in accordance with subsection (i).

(2) Publish notice in the *Pennsylvania Bulletin* and newspapers of general circulation for a minimum 30-day public comment period and an opportunity for a public hearing for the analyses submitted under subsection (i) and supporting documentation.

(3) Prepare a summary of the public comments received on the analyses and responses to the comments.

(4) As appropriate, issue the necessary plan approvals and operating permit modifications in conformance with Chapter 127 for the analyses reviewed under paragraph (1).

(k) The Department will submit the following information to the Administrator of the EPA for approval as a revision to the Commonwealth's SIP.

(1) The analyses, supporting documentation and summary of public comments and responses described in subsection (j)(2) and (3).

(2) The plan approvals and operating permit modifications issued under subsection (j)(4).

(l) The owner and operator of a facility proposing to comply with the applicable RACT requirement or RACT emission limitation under subsection (a), (b) or (c) through the installation of an air cleaning device may submit a petition, in writing or electronically, requesting an alternative compliance schedule in accordance with the following:

(1) The petition requesting an alternative compliance schedule shall be submitted to the Department or appropriate approved local air pollution control agency as soon as possible but not later than:

(i) December 31, 2022, for a source subject to § 129.111(a).

(ii) December 31, 2022, or 6 months after the date that the source meets the definition of a major NO<sub>x</sub> emitting facility or major VOC emitting facility, whichever is later, for a source subject to § 129.111(b).

(2) The petition must include:

(i) A description, including make, model and location, of each air contamination source subject to a RACT requirement or RACT emission limitation in one or more of subsections (a)—(c).

(ii) A description of the proposed air cleaning device to be installed.

(iii) A schedule containing proposed interim dates for completing each phase of the required work to install the air cleaning device described in subparagraph (ii).

(iv) A proposed interim emission limitation that will be imposed on the affected air contamination source until compliance is achieved with the applicable RACT requirement or RACT emission limitation.

(v) A proposed final compliance date that is as soon as possible but not later than 3 years after the approval of the petition by the Department or the appropriate approved local air pollution control agency. If the petition is for the replacement of an existing source, the final compliance date will be determined on a case-by-case basis. The approved petition shall be incorporated in an applicable operating permit or plan approval.

(m) The Department or appropriate approved local air pollution control agency will review the timely and complete petition requesting an alternative compliance schedule submitted in accordance with subsection (l) and approve or deny the petition in writing.

(n) The emission limit and requirements specified in the plan approval or operating permit issued by the Department or appropriate approved local air pollution control agency under subsection (m) supersede the emission limit and requirements in the existing plan approval or operating permit issued to the owner or operator of the source prior to November 12, 2022, on the date specified in the plan approval or operating permit issued by the Department or appropriate approved local air pollution control agency under subsection (m), except to the extent the existing plan approval or operating permit contains more stringent requirements.

(o) Approval or denial under subsection (m) of the timely and complete petition for an alternative compliance schedule submitted under subsection (l) will be effective on the date the letter of approval or denial of the petition is signed by the authorized representative of the Department or appropriate approved local air pollution control agency.

(p) The Department will submit each petition for an alternative compliance schedule approved under subsection (m) to the Administrator of the EPA for approval as a revision to the Commonwealth's SIP. The owner and operator of the facility shall bear the costs of public hearings and notifications, including newspaper notices, required for the SIP submittal.

**§ 129.115. Written notification, compliance demonstration and recordkeeping and reporting requirements.**

(a) The owner and operator of an air contamination source subject to this section and § 129.111 (relating to applicability) shall submit a notification, in writing or electronically, to the appropriate Regional Manager or the appropriate approved local air pollution control agency that proposes how the owner and operator intend to comply with the requirements of this section and §§ 129.111—129.114.

(1) The notification shall be submitted to the appropriate Regional Manager or appropriate approved local air pollution control agency as soon as possible but not later than:

(i) December 31, 2022, for a source subject to § 129.111(a).

(ii) December 31, 2022, or 6 months after the date that the source meets the definition of a major NO<sub>x</sub> emitting facility or major VOC emitting facility, whichever is later, for a source subject to § 129.111(b).

(2) This notification shall identify the air contamination sources in § 129.111(a) as one of the following:

(i) Subject to a RACT requirement or RACT emission limitation in §§ 129.112—129.114.

(ii) Exempted from §§ 129.112—129.114.

(3) The air contamination sources identified in § 129.111(b) as one of the following:

(i) Subject to a RACT requirement or RACT emission limitation in §§ 129.112—129.114.

(ii) Exempted from §§ 129.112—129.114.

(4) The air contamination sources identified in § 129.111(c) that have a potential to emit less than 1 TPY of NO<sub>x</sub> located at a major NO<sub>x</sub> emitting facility subject to § 129.111(a) or (b) or a VOC air contamination source that has the potential to emit less than 1 TPY of VOC located at a major VOC emitting facility subject to § 129.111(a) or (b).

(5) The following information for each air contamination source listed in paragraph (2):

(i) A description, including make, model and location, of each source.

(ii) The applicable RACT requirement or RACT emission limitation, or both, in §§ 129.112—129.114 for each source listed in accordance with paragraph (2)(i).

(iii) How the owner or operator shall comply with subparagraph (ii) for each source listed in subparagraph (i).

(iv) The reason why the source is exempt from the RACT requirements and RACT emission limitations in §§ 129.112—129.114 for each source listed in accordance with paragraph (2)(ii).

(6) The following information for each air contamination source listed in paragraph (3):

(i) A description, including make, model and location, of each source.

(ii) The applicable RACT requirement or RACT emission limitation, or both, in §§ 129.112—129.114 for each source listed in paragraph (3)(i).

(iii) How the owner or operator shall comply with subparagraph (ii) for each source listed in subparagraph (i).

(iv) The reason why the source is exempt from the RACT requirements and RACT emission limitations in §§ 129.112—129.114 for each source listed in accordance with paragraph (3)(ii).

(7) The following information for each air contamination source listed in paragraph (4):

(i) A description, including make, model and location, of each source.

(ii) Information sufficient to demonstrate that the source has a potential to emit less than 1 TPY of NO<sub>x</sub> or 1 TPY of VOC, as applicable.

(b) Except as specified in subsection (d), the owner and operator of an air contamination source subject to a NO<sub>x</sub> RACT requirement or RACT emission limitation or VOC RACT requirement or RACT emission limitation, or both, listed in § 129.112 (relating to presumptive RACT requirements, RACT emission limitations and petition for alternative compliance schedule) shall demonstrate compliance with the applicable RACT requirement or RACT emission limitation by performing the following monitoring or testing procedures:

(1) For an air contamination source with a CEMS, monitoring and testing in accordance with the requirements of Chapter 139, Subchapter C (relating to requirements for source monitoring for stationary sources) using a 30-operating day rolling average, except for municipal waste combustors subject to § 129.112(f), combustion units or process heaters subject to § 129.112(g)(1) and direct-fired heaters, furnaces, ovens or other combustion sources subject to § 129.112(k).

(i) A 30-operating day rolling average emission rate for each applicable RACT emission limitation shall be calculated for an affected air contamination source for each consecutive operating day.

(ii) Each 30-operating day rolling average emission rate for an affected air contamination source must include the emissions that occur during the entire operating day, including emissions from start-ups, shutdowns and malfunctions.

(2) For a Portland cement kiln with a CEMS, monitoring of clinker production rates in accordance with 40 CFR 63.1350(d) (relating to monitoring requirements).

(3) For a municipal waste combustor with a CEMS, monitoring and testing in accordance with the requirements in Chapter 139, Subchapter C, using a daily average. The daily average will be considered valid if it contains at least 18 valid hourly averages reported at any time during the calendar day as required in the quality assurance section of the continuous source monitoring manual.

(4) For a combustion unit or process heater subject to § 129.112(g)(1) with a CEMS, monitoring and testing in accordance with the requirements in Chapter 139, Subchapter C, using a daily average.

(i) The daily average shall be calculated by summing the total pounds of pollutant emitted for the calendar day and dividing that value by the total heat input to the source for the same calendar day.

(ii) The daily average for the source shall include all emissions that occur during the entire day.

(5) For a direct-fired heater, furnace, oven or other combustion source subject to § 129.112(k) with a CEMS, monitoring and testing in accordance with the requirements in Chapter 139, Subchapter C, using a daily average.

(6) For an air contamination source without a CEMS, monitoring and testing in accordance with an emissions source test approved by the Department or appropriate approved local air pollution control agency that meets the requirements of Chapter 139, Subchapter A (relating to sampling and testing methods and procedures). The source test shall be conducted to demonstrate initial compliance and subsequently on a schedule set forth in the applicable permit.

(c) The owner or operator of a combined cycle combustion turbine may comply with the requirements in § 129.112(g)(2)(iii) on a mass-equivalent basis. The actual emissions during the compliance period must be less than the allowable emissions during the compliance period. The allowable emissions are calculated by multiplying actual heat input in million Btu during the compliance period by the following:

(1) 0.015 lb NO<sub>x</sub>/million Btu for sources subject to § 129.112(g)(2)(iii)(A).

(2) 0.031 lb NO<sub>x</sub>/million Btu for sources subject to § 129.112(g)(2)(iii)(B).

(3) 0.014 lb VOC/million Btu for sources subject to § 129.112(g)(2)(iii)(C).

(4) 0.030 lb VOC/million Btu for sources subject to § 129.112(g)(2)(iii)(D).

(d) Except as specified in § 129.112(n) and § 129.114(l) (relating to alternative RACT proposal and petition for alternative compliance schedule), the owner and operator of an air contamination source subject to subsection (b) shall demonstrate compliance with the applicable RACT requirement or RACT emission limitation in accordance with the procedures in subsection (a) not later than:

(1) January 1, 2023, for a source subject to § 129.111(a) (relating to applicability).

(2) January 1, 2023, or 1 year after the date that the source meets the definition of a major NO<sub>x</sub> emitting facility or major VOC emitting facility, whichever is later, for a source subject to § 129.111(b).

(e) An owner or operator of an air contamination source subject to this section and §§ 129.111, 129.112 and 129.113 (relating to facility-wide or system-wide NO<sub>x</sub> emissions averaging plan general requirements) may request a waiver from the requirement to demonstrate compliance with the applicable emission limitation listed in § 129.112 if the following requirements are met:

(1) The request for a waiver is submitted, in writing or electronically, to the Department or appropriate approved local air pollution control agency not later than:

(i) December 31, 2022, for a source subject to § 129.111(a).

(ii) December 31, 2022, or 6 months after the date that the source meets the definition of a major NO<sub>x</sub> emitting facility or major VOC emitting facility, whichever is later, for a source subject to § 129.111(b).

(2) The request for a waiver demonstrates that a Department-approved emissions source test was performed in accordance with the requirements of Chapter 139, Subchapter A on or after:

(i) November 12, 2021, for a source subject to § 129.111(a).

(ii) November 12, 2021, or within 12 months prior to the date that the source meets the definition of a major NO<sub>x</sub> emitting facility or major VOC emitting facility, whichever is later, for a source subject to § 129.111(b).

(3) The request for a waiver demonstrates to the satisfaction of the Department or appropriate approved local air pollution control agency that the test results show that the source's rate of emissions is in compliance with the source's applicable NO<sub>x</sub> emission limitation or VOC emission limitation.

(4) The Department or appropriate approved local air pollution control agency approves, in writing, the request for a waiver.

(f) The owner and operator of an air contamination source subject to this section and §§ 129.111—129.114 shall keep records to demonstrate compliance with §§ 129.111—129.114 and submit reports to the Department or appropriate approved local air pollution control agency in accordance with the applicable regulations in 25 Pa. Code, Part I, Subpart C, Article III (relating to air resources) and as specified in the operating permit or plan approval for the air contamination source as follows:

(1) The records shall include sufficient data and calculations to demonstrate that the requirements of §§ 129.111—129.114 are met.

(2) Data or information required to determine compliance shall be recorded and maintained in a time frame consistent with the averaging period of the requirement.

(3) The records necessary to determine compliance shall be reported to the Department or appropriate approved local air pollution control agency on a schedule specified in the applicable regulation or as otherwise specified in the operating permit or plan approval for the air contamination source.

(g) Beginning with the compliance date specified in § 129.112(a), the owner or operator of an air contamination source claiming that the air contamination source is exempt from the applicable NO<sub>x</sub> emission rate threshold specified in § 129.114(b) and the requirements of § 129.112 based on the air contamination source's potential to emit shall maintain records that demonstrate to the Department or appropriate approved local air pollution control agency that the air contamination source is not subject to the specified emission rate threshold.

(h) Beginning with the compliance date specified in § 129.112(a), the owner or operator of an air contamination source claiming that the air contamination source is exempt from the applicable VOC emission rate threshold specified in § 129.114(c) and the requirements of § 129.112 based on the air contamination source's potential to emit shall maintain records that demonstrate to the Department or appropriate approved local air pollution control agency that the air contamination source is not subject to the specified emission rate threshold.

(i) The owner or operator of a combustion unit or process heater subject to § 129.112(b) shall record each adjustment conducted under the procedures in § 129.112(b). This record must contain, at a minimum:

- (1) The date of the tuning procedure.
- (2) The name of the service company and the technician performing the procedure.
- (3) The final operating rate or load.
- (4) The final NO<sub>x</sub> and CO emission rates.
- (5) The final excess oxygen rate.
- (6) Other information required by the applicable operating permit.

(j) The owner or operator of a Portland cement kiln subject to § 129.112(h) shall maintain a daily operating log for each Portland cement kiln. The record for each kiln must include:

- (1) The total hours of operation.
- (2) The type and quantity of fuel used.
- (3) The quantity of clinker produced.
- (4) The date, time and duration of a start-up, shutdown or malfunction of a Portland cement kiln or emissions monitoring system.

(k) The records shall be retained by the owner or operator for 5 years and made available to the Department or appropriate approved local air pollution control agency upon receipt of a written request from the Department or appropriate approved local air pollution control agency.

[Pa.B. Doc. No. 22-1735. Filed for public inspection November 11, 2022, 9:00 a.m.]



# NOTICES

## DEPARTMENT OF AGRICULTURE

### Action of Controlled Plant and Noxious Weed Committee; Addition of Noxious Weeds to Controlled Plants and Noxious Weed List

A meeting of the Controlled Plant and Noxious Weed Committee (Committee) was held virtually on October 20, 2022. A Sunshine Notice of the meeting was published at 52 Pa.B. 6195 (October 1, 2022).

The purpose of the meeting was to consider the addition of five plants to the noxious weed list as authorized under 3 Pa.C.S. § 1511(b)(3)(ii) (relating to designation of noxious weeds and controlled plants).

A quorum of the Committee was present at the meeting. After a presentation by the Department of Conservation and Natural Resources and the Department of Agriculture (Department), the acknowledgement of written public comments received and a discussion of the Committee, the Committee voted to approve the following weeds for addition to the noxious weed list.

- Burning bush (*Euonymus alatus*) as a Class B noxious weed

- Chinese privet (*Ligustrum alatus*) as a Class B noxious weed

- European privet (*Ligustrum vulgare*) as a Class B noxious weed

- Border privet (*Ligustrum obtusifolium*) as a Class B noxious weed

- Japanese privet (*Ligustrum japonicum*) as a Class A noxious weed

Under the authority and requirements of 3 Pa.C.S. § 1511(b)(3)(iv), the Department hereby publishes the addition of Burning bush, Chinese privet, European privet, Border privet and Japanese privet to the noxious weed list.

The addition of the previously listed plants to the controlled plants and noxious weeds list will become effective 60 days from publication of this notice.

RUSSELL C. REDDING,  
*Secretary*

[Pa.B. Doc. No. 22-1736. Filed for public inspection November 11, 2022, 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 November 1, 2022.

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, Bank Supervision or Credit Union and Trust Supervision (as applicable), 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, for banks (717) 783-8240 and for credit unions and trust companies (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>
10-26-2022	1st Summit Bank Johnstown Cambria County	5150 Route 30 Greensburg Westmoreland County	Filed
10-27-2022	First Citizens Community Bank Mansfield Tioga County	1820 East 3rd Street Williamsport Lycoming County	Filed

#### Branch Relocations

<i>Date</i>	<i>Name and Location of Applicant</i>	<i>Location of Branch</i>	<i>Action</i>
11-01-2022	First Keystone Community Bank Berwick Columbia County	<i>To:</i> 55 Briar Creek Plaza Berwick Columbia County  <i>From:</i> 50 Briar Creek Plaza Berwick Columbia County	Effective

<i>Date</i>	<i>Name and Location of Applicant</i>	<i>Location of Branch</i>	<i>Action</i>
11-01-2022	Peoples Security Bank and Trust Co. York York County	<i>To:</i> 600 DeKalb Pike King of Prussia Montgomery County  <i>From:</i> 610 Freedom Business Center Drive King of Prussia Montgomery County	Filed

**Branch Discontinuances**

<i>Date</i>	<i>Name and Location of Applicant</i>	<i>Location of Branch</i>	<i>Action</i>
10-26-2022	Customers Bank Malvern Chester County	1 Hearsthstone Court Reading Berks County	Closed
10-28-2022	Customers Bank Malvern Chester County	350 East Bellevue Avenue Reading Berks County	Closed

**CREDIT UNIONS**

**Consolidations, Mergers and Absorptions**

<i>Date</i>	<i>Name and Location of Applicant</i>	<i>Action</i>
11-01-2022	Clearview Federal Credit Union Moon Township Allegheny County  Merger of PA Healthcare Credit Union, Sewickley, with and into Clearview Federal Credit Union, Moon Township.	Effective

The Department's web site at [www.dobs.pa.gov](http://www.dobs.pa.gov) includes public notices for more recently filed applications.

RICHARD VAGUE,  
*Secretary*

[Pa.B. Doc. No. 22-1737. Filed for public inspection November 11, 2022, 9:00 a.m.]

**DEPARTMENT OF COMMUNITY AND ECONOMIC DEVELOPMENT**

**Community Development Block Grant-Disaster Recovery; Draft Action Plan for Addressing Unmet Needs of Hurricane Ida**

*Draft Action Plan (Plan) for Addressing Unmet Needs of Hurricane Ida*

On September 11, 2021, President Joseph Biden declared a major disaster for this Commonwealth because of the effects of Hurricane Ida from August 31, 2021, to September 5, 2021. Because of the declaration, funding was made available through the United States Department of Housing and Urban Development (HUD), through Pub.L. 117-43, known as the Extending Government Funding and Delivering Emergency Assistance Act, to provide disaster relief, long-term recovery, restoration of infrastructure and housing, economic revitalization and mitigation in the most impacted and distressed areas resulting from a qualifying disaster in 2020 or 2021.

Under Pub.L. 117-43, the Commonwealth was allocated a total of \$23.152 million and is required to expend at least \$18,521,600 in Delaware and Montgomery Counties, which have been identified by HUD as the most impacted and distressed areas.

The Commonwealth is required to develop a Plan which details how the funds will be used. The Plan must include the criteria for eligibility, and how the use of the funds will address long-term recovery and restoration of infrastructure and housing, economic revitalization and mitigation in the most impacted and distressed areas.

The Commonwealth's Plan is available for public review and comment.

*Public Review and Comment Period*

The Plan will be available for a 30-day public comment period, in accordance with the *Federal Register* notice. The Plan may be viewed on the Department's web site at <https://dced.pa.gov/housing-and-development/community-services/disaster-recovery/>. The period for public comment will be November 12, 2022, until Monday, January 9, 2023.

There will be three public hearings held on the Plan. The first hearing will be held on November 15, 2022, at 2 p.m., the second hearing on November 17, 2022, at 7 p.m. and the third hearing will be held on November 29, 2022, at 10 a.m. through Microsoft Teams. Individuals can join the public hearings by dialing as follows:

*November 15, 2022, public hearing*  
Conference phone number: (347) 378-5582  
Conference ID number: 140 372 15#

November 17, 2022, public hearing  
 Conference phone number: (347) 378-5582  
 Conference ID number: 978 213 708#

November 29, 2022, public hearing  
 Conference phone number: (267) 332-8737  
 Conference ID number: 756 868 544#

The hearings will be shortened if there is no one to testify or there is minimal response.

Persons with disability or limited English proficiency who wish to participate in the public hearing should contact Megan L. Sieber at (717) 787-5327 or TDD at (717) 346-0308 to discuss how the Department can accommodate their requests.

Comments on the Plan may be electronically submitted to the Department at RA-DCCDBG-DR@pa.gov. Comments will also be accepted by telephone by calling (717) 787-5327. Written comments may be submitted to David Grey, Center for Community and Housing Development, Department of Community and Economic Development, 400 North Street, 4th Floor, Commonwealth Keystone Building, Harrisburg, PA 17120-0225. Comments must be received by 4 p.m. on January 9, 2023, to be included as testimony in the Plan that will be submitted to HUD.

NEIL WEAVER,  
*Acting Secretary*

[Pa.B. Doc. No. 22-1738. Filed for public inspection November 11, 2022, 9:00 a.m.]

## DEPARTMENT OF CONSERVATION AND NATURAL RESOURCES

### Conservation and Natural Resources Advisory Council Public Meeting

The Conservation and Natural Resources Advisory Council (Council) to the Department of Conservation and Natural Resources (Department) will hold a public meeting on November 16, 2022, at 10 a.m. in Room 105, Rachel Carson State Office Building, 400 Market Street, Harrisburg, PA. The public meeting may be attended by means of WebEx through a link found on the Council's web site prior to the public meeting at [www.dcnr.pa.gov/cnrac](http://www.dcnr.pa.gov/cnrac).

Questions concerning this public meeting or agenda items can be directed to Gretchen Leslie at (717) 772-9084. For public comment to be considered at the public meeting, follow the instructions on the Council's web site.

Persons in need of accommodations as provided for in the Americans with Disabilities Act of 1990 should contact Aara Vinsh directly at (717) 787-9306 or through the Pennsylvania Hamilton Relay Service at (800) 654-5984 (TDD) to discuss how the Department may accommodate their needs.

CINDY ADAMS DUNN,  
*Secretary*

[Pa.B. Doc. No. 22-1739. Filed for public inspection November 11, 2022, 9:00 a.m.]

## DEPARTMENT OF ENVIRONMENTAL PROTECTION

### Applications, Actions and Special Notices

#### APPLICATIONS

### THE PENNSYLVANIA CLEAN STREAMS LAW AND THE FEDERAL CLEAN WATER ACT

#### APPLICATIONS FOR NATIONAL POLLUTANT DISCHARGE ELIMINATION SYSTEM (NPDES) PERMITS AND WATER QUALITY MANAGEMENT (WQM) PERMITS UNDER THE CLEAN STREAMS LAW AND FEDERAL CLEAN WATER ACT

This notice provides information about persons who have applied to the Department of Environmental Protection (DEP) for a new, renewed, or amended NPDES or WQM permit, or a permit waiver for certain stormwater discharges, or have submitted a Notice of Intent (NOI) for coverage under a General Permit. The applications and NOIs concern, but are not limited to, effluent discharges from sewage treatment facilities and industrial facilities to surface waters or groundwater; stormwater discharges associated with industrial activity (industrial stormwater), construction activity (construction stormwater), and municipal separate storm sewer systems (MS4s); the application of pesticides; the operation of Concentrated Animal Feeding Operations (CAFOs); and the construction of sewage, industrial waste, and manure storage, collection and treatment facilities. 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). More information on the types of NPDES and WQM permits that are available can be found on DEP's website (visit [www.dep.pa.gov](http://www.dep.pa.gov) and select Businesses, Water, Bureau of Clean Water, Wastewater Management, and NPDES and WQM Permitting Programs).

<i>Section</i>	<i>Category</i>
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- |     |  |
|-----|--|
| I   | Individual and General WQM Permit Applications/NOIs Received, General NPDES Permit NOIs Received, and All Transfer and Minor Amendment Applications/NOIs Received                                |
| II  | Individual NPDES Permits—New, Renewal, and Major Amendment Applications and Draft Permits for Discharges Relating to Sewage, Industrial Waste, Industrial Stormwater, MS4s, Pesticides and CAFOs |
| III | Individual NPDES Permit Applications for Discharges of Stormwater Associated with Construction Activity  |



Section I identifies the following applications and NOIs that have been received by DEP:

- Individual and General WQM Permit Applications Received—DEP provides a 15-day public comment period for Individual WQM Permit Applications for new and reissued permits. There is no public comment period for General WQM Permit NOIs.
- General Chapter 92a NPDES Permit NOIs Received—There is no public comment period for General NPDES NOIs received.
- All Transfer and Minor Amendment Applications/NOIs Received—Transfer and Minor Amendment Applications/NOIs received for Individual and General WQM Permits and Individual and General NPDES Permits, excluding PAG-01 and PAG-02, are identified but do not have public comment periods. DEP provides a 15-day public comment period for Individual WQM Permit Applications for amendments.

Additional information on these applications and NOIs may be reviewed by generating the “Applications and NOIs without Comment Periods Report” or, for Individual WQM Permit Applications, the “Applications Received with Comment Periods Report” on DEP’s website at [www.dep.pa.gov/CWPublicNotice](http://www.dep.pa.gov/CWPublicNotice).

Section II identifies individual NPDES permit applications received and draft permits indicating DEP’s tentative determination relating to sewage, industrial waste, industrial stormwater, MS4s, pesticides and CAFOs. A 30-day public comment period applies to these applications and draft permits, except when a site-specific water quality criterion is used to establish effluent limitations, in which case a 45-day public comment period applies. The period for comment may be extended at the discretion of DEP for one additional 15-day period. Additional information, including links to draft permits and fact sheets that explain the basis for DEP’s tentative determinations may be reviewed by generating the “Applications Received with Comment Periods Report” on DEP’s website at [www.dep.pa.gov/CWPublicNotice](http://www.dep.pa.gov/CWPublicNotice). Notification of 15-day extensions for comment will be provided in the “Applications Received with Comment Periods Report” (Comments column).

Section III provides notice of applications and draft individual permits for stormwater discharges associated with construction activities. Where indicated, DEP has made tentative determinations, based on preliminary review, to issue permits subject to proposed effluent limitations consisting of best management practices identified in the erosion and sediment control (E&S) plans and post-construction stormwater management (PCSM) plans submitted with the applications, as well as other terms and conditions based on the permit applications. A 30-day public comment period applies to these applications.

Applications, NOIs and draft permits, where applicable, may be reviewed at the DEP office that received the application or NOI. Members of the public are encouraged to use DEP’s website to obtain additional information as discussed previously.

Comments received within the appropriate comment periods for WQM and NPDES permit applications will be retained by DEP and 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 DEP of the exact basis of a comment and the relevant facts upon which it is based.

DEP office contact information to review applications and NOIs and to submit comments for those applications, when applicable, is as follows:

*DEP Southeast Regional Office (SERO)—2 E. Main Street, Norristown, PA 19401-4915. File Review Coordinator: 484-250-5910. Email: RA-EPNPDES\_SERO@pa.gov for permits in Sections I & II; RA-EPWW-SERO@pa.gov for permits in Section III.*

*DEP Northeast Regional Office (NERO)—2 Public Square, Wilkes-Barre, PA 18701-1915. File Review Coordinator: 570-826-5472. Email: RA-EPNPDES\_NERO@pa.gov for permits in Sections I & II; RA-EPWW-NERO@pa.gov for permits in Section III.*

*DEP Southcentral Regional Office (SCRO)—909 Elmerton Avenue, Harrisburg, PA 17110. File Review Coordinator: 717-705-4732. Email: RA-EPNPDES\_SCRO@pa.gov for permits in Sections I & II; RA-EPWW-SCRO@pa.gov for permits in Section III.*

*DEP Northcentral Regional Office (NCRO)—208 W. Third Street, Suite 101, Williamsport, PA 17701. File Review Coordinator: 570-327-3693. Email: RA-EPNPDES\_NCRO@pa.gov for permits in Sections I & II; RA-EPWW-NCRO@pa.gov for permits in Section III.*

*DEP Southwest Regional Office (SWRO)—400 Waterfront Drive, Pittsburgh, PA 15222. File Review Coordinator: 412-442-4286. Email: RA-EPNPDES\_SWRO@pa.gov for permits in Sections I & II; RA-EPWW-SWRO@pa.gov for permits in Section III.*

*DEP Northwest Regional Office (NWRO)—230 Chestnut Street, Meadville, PA 16335. File Review Coordinator: 814-332-6078. Email: RA-EPNPDES\_NWRO@pa.gov for permits in Sections I & II; RA-EPWW-NWRO@pa.gov for permits in Section III.*

*DEP Bureau of Clean Water (BCW)—400 Market Street, Harrisburg, PA 17105. File Review Coordinator: 717-787-5017. Email: RA-EPNPDES\_Permits@pa.gov.*

*DEP Regional Permit Coordination Office (RPCO)—400 Market Street, Harrisburg, PA 17105. File Review Coordinator: 717-772-5987. Email: RA-EPREGIONALPERMIT@pa.gov.*

DEP will also accept requests or petitions for public hearings on applications. The request or petition must indicate the interest of the party filing and the reasons why a hearing is warranted. A hearing will be held if DEP determines that

there is a significant public interest. 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. DEP will postpone its final determination until after a public hearing is held.

Individuals in need of accommodations should contact DEP through the Pennsylvania Hamilton Relay Service at (800) 654-5984 (TDD users) or (800) 654-5988 (voice users).

**I. Individual and General WQM Permit Applications/NOIs Received, General NPDES Permit NOIs Received, and All Transfer and Minor Amendment Applications/NOIs Received.**

<i>Application Number</i>	<i>Permit Type</i>	<i>Application Type</i>	<i>Applicant Name &amp; Address</i>	<i>Municipality, County</i>	<i>DEP Office</i>
WQG02392201	WQG-02	New	South Whitehall Township Authority 444 Walbert Avenue Allentown, PA 1804	South Whitehall Township Lehigh County	NERO
4822401	Individual	New	Palmer Township 3 Weller Place Palmer, PA 18045	Palmer Township Wilson Borough Northampton County	NERO
0118802	Joint DEP/PFBC Pesticides Permit	Renewal	Carroll Valley Borough Adams County 5658 Fairfield Road Fairfield, PA 17320	Carroll Valley Borough Adams County	SCRO
0118804	Joint DEP/PFBC Pesticides Permit	Renewal	Hughes Laramie 55 Sherry Lane New Oxford, PA 17350	Oxford Township Adams County	SCRO
0122808	Joint DEP/PFBC Pesticides Permit	New	Black Tim 1587 Shrivvers Corner Road Gettysburg, PA 17325-7576	Straban Township Adams County	SCRO
2213804	Joint DEP/PFBC Pesticides Permit	Renewal	Black Timothy 959 Bower Lane Harrisburg, PA 17112-9089	West Hanover Township Dauphin County	SCRO
2813829	Joint DEP/PFBC Pesticides Permit	Renewal	Capital Camps and Retreat Center 12750 Buchanan Trail E Waynesboro, PA 17268-9327	Washington Township Franklin County	SCRO
2913801	Joint DEP/PFBC Pesticides Permit	Renewal	Chambers Reid 315 Little Falls Road Falls Church, VA 22046	Union Township Fulton County	SCRO
3613835	Joint DEP/PFBC Pesticides Permit	Renewal	Abel David 1000 N Market Street Elizabethtown, PA 17022-1213	West Donegal Township Lancaster County	SCRO
3613837	Joint DEP/PFBC Pesticides Permit	Renewal	Hernley Duane 2095 S Market Street Elizabethtown, PA 17022-9209	Mount Joy Township Lancaster County	SCRO
3613867	Joint DEP/PFBC Pesticides Permit	Renewal	Burkholder Gloria 181 Loghes Drive Manheim, PA 17545-9016	Rapho Township Lancaster County	SCRO
3615806	Joint DEP/PFBC Pesticides Permit	Renewal	Cocalico Sportsmen's Assoc. 585 Sportsman Road Denver, PA 17517-9692	West Cocalico Township Lancaster County	SCRO
3813806	Joint DEP/PFBC Pesticides Permit	Renewal	Countryside Christian Community 200 Bellann Court Annville, PA 17003-9012	North Annville Township Lebanon County	SCRO
3822801	Joint DEP/PFBC Pesticides Permit	New	Alden Place 100 Freeman Drive Lebanon, PA 17042-9005	Cornwall Borough Lebanon County	SCRO
5614801	Joint DEP/PFBC Pesticides Permit	Renewal	Anglers Club of Clairton P.O. Box 235 Normalville, PA 15469	Lower Turkeyfoot Township Somerset County	SWRO
6713803	Joint DEP/PFBC Pesticides Permit	Renewal	Jacobs Rosie 15 Pine Street Dillsburg, PA 17019-9445	Carroll Township York County	SCRO

## NOTICES

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<i>Application Number</i>	<i>Permit Type</i>	<i>Application Type</i>	<i>Applicant Name &amp; Address</i>	<i>Municipality, County</i>	<i>DEP Office</i>
6713814	Joint DEP/PFBC Pesticides Permit	Renewal	Garvick Steven 82 Walnut Lane Thomasville, PA 17364-9297	Jackson Township York County	SCRO
6713815	Joint DEP/PFBC Pesticides Permit	Renewal	Coxon Skip P.O. Box 180 East Berlin, PA 17316-0180	Washington Township York County	SCRO
6715801	Joint DEP/PFBC Pesticides Permit	Renewal	Bower Mandy 492 Saint Bartholomew Road Hanover, PA 17331-9724	West Manheim Township York County	SCRO
6718821	Joint DEP/PFBC Pesticides Permit	Renewal	Forest Lakes Water Association 541 Lakeside Drive New Freedom, PA 17349-9074	Hopewell Township York County	SCRO
0911402	Land Application and Reuse of Sewage Individual WQM Permit	Renewal	Buckingham Township Bucks County P.O. Box 413 Buckingham, PA 18912-0413	Buckingham Township Bucks County	SERO
0374402	Major Sewage Treatment Facility Individual WQM Permit	Amendment	Ford City Borough Municipal Sewer Disposal Authority P.O. Box 66 Ford City, PA 16226-0066	Ford City Borough Armstrong County	NWRO
4322408	Major Sewage Treatment Facility Individual WQM Permit	New	Greenville Borough Sanitary Authority Mercer County P.O. Box 604 125 Main Street Greenville, PA 16125-0604	Greenville Borough Mercer County	NWRO
09646-S	Major Sewage Treatment Facility Individual WQM Permit	Transfer	Allegheny County Sanitary Authority (ALCOSAN) 3300 Preble Avenue Pittsburgh, PA 15233-1025	Monroeville Borough Allegheny County	SWRO
0464595	Minor and Non-NPDES Sewage Treatment Facility Individual WQM Permit	Amendment	Pennsbury Village Borough Allegheny County 1043 Pennsbury Boulevard Pittsburgh, PA 15205-1643	Pennsbury Village Borough Allegheny County	SWRO
NOEXSW230	No Exposure Certification	New	Bloom Engineering Co., Inc. 100 Vista Drive Charleroi, PA 15022-3486	Fallowfield Township Washington County	SWRO
PAG036286	PAG-03 NPDES General Permit for Industrial Stormwater	Amendment	Michael Bros Adamsburg, LLC P.O. Box 157 Bethel Park, PA 15102-0157	Hempfield Township Westmoreland County	SWRO
PAR228338	PAG-03 NPDES General Permit for Industrial Stormwater	Transfer	Quanex Bldg Products Corp. 62 Brush Run Road Greenville, PA 16125-8310	Pymatuning Township Mercer County	NWRO
PAG133524	PAG-13 NPDES General Permit for MS4s	Renewal	Richmond Township Berks County 11 Kehl Drive Fleetwood, PA 19522-9285	Richmond Township Berks County	SCRO
4200405	Pump Stations Individual WQM Permit	Amendment	PA American Water Co. 852 Wesley Drive Mechanicsburg, PA 17055-4436	Kane Borough McKean County	NWRO
2522435	Single Residence Sewage Treatment Plant Individual WQM Permit	New	Belinda & Scott Dentler 5831 Harboregreene Road Erie, PA 16510-5268	Greene Township Erie County	NWRO



<i>Application Number</i>	<i>Permit Type</i>	<i>Application Type</i>	<i>Applicant Name &amp; Address</i>	<i>Municipality, County</i>	<i>DEP Office</i>
PA0264008	Small Flow Treatment Facility Individual NPDES Permit	Transfer	Buckleys, Inc. 1185 Vernon Road Greenville, PA 16125-8645	West Salem Township Mercer County	NWRO
WQG018857	WQG-01 WQM General Permit	Transfer	Buckleys, Inc. 1185 Vernon Road Greenville, PA 16125-8645	West Salem Township Mercer County	NWRO

## II. Individual NPDES Permits—New, Renewal, and Major Amendment Applications and Draft Permits for Discharges Relating to Sewage, Industrial Waste, Industrial Stormwater, MS4s, Pesticides and CAFOs.

### *Northeast Regional Office*

**PA0276588**, Storm Water, SIC Code 3443, **Gardner Cryogenics a Division of Air Products & Chemicals, Inc.**, 7662 Church Street, Alburtis, PA 18011-9502. Facility Name: Gardener Cryogenics Alburtis. This proposed facility is located in Lower Macungie Township, **Lehigh County**.

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

The receiving stream(s), Swabia Creek (HQ-CWF, MF), is located in State Water Plan watershed 2-C 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 0 MGD.—Limits.

<i>Parameters</i>	<i>Mass Units (lbs/day)</i>		<i>Minimum</i>	<i>Concentrations (mg/L)</i>		<i>IMAX</i>
	<i>Average Monthly</i>	<i>Average Weekly</i>		<i>Average Monthly</i>	<i>Daily Maximum</i>	
pH (S.U.)	XXX	XXX	XXX	XXX	XXX	Report
Total Suspended Solids	XXX	XXX	XXX	XXX	XXX	Report
Nitrate-Nitrite as N	XXX	XXX	XXX	XXX	XXX	Report
Aluminum, Total	XXX	XXX	XXX	XXX	XXX	Report
Iron, Total	XXX	XXX	XXX	XXX	XXX	Report
Zinc, Total	XXX	XXX	XXX	XXX	XXX	Report

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

- Stormwater Outfalls and Authorized Non-Stormwater Outfalls
- Best Management Practices
- Routine Inspections
- Preparedness, Prevention, and Contingency Plans
- Stormwater Monitoring Requirements
- Other Requirements

You may make an appointment to review the DEP files on this case by calling the File Review Coordinator at 570-826-5472.

The EPA Waiver is in effect.

### *Southcentral Regional Office*

**PA0088242**, Concentrated Animal Feeding Operation (CAFO), **Country View Family Farms, LLC (Huston Hollow Farm CAFO)**, 1301 Fulling Mill Road, Middletown, PA 17057-5975.

Country View Family Farms LLC has submitted an application for an Individual NPDES permit for a renewal of an CAFO known as Huston Hollow Farm CAFO, located in Taylor Township, **Fulton County**.

The CAFO is situated near Wooden Bridge Creek (HQ-CWF, MF) in Watershed 12-C, which is classified for High Quality Waters—Cold Water Fishes and Migratory Fishes. The CAFO is designed to maintain an animal population of approximately 3,277.35 animal equivalent units (AEUs) consisting of 5,390 Gestating Sow, 2,360 Swine Grow Finish, 960 Sow and Litter, and 25 Boar. Liquid Swine manure is collected in two underbarn deep pit storages. A release or discharge to waters of the Commonwealth under normal operating conditions is not expected. Normal operating conditions are defined as conditions below a 100-year, 24-hour storm event.

The Department has conducted administrative and technical reviews of the application. Based on the preliminary review and application of lawful standards and regulations, the Department has made a tentative determination to issue an NPDES permit for the operation subject to the terms and conditions and monitoring and reporting requirements specified in the permit.

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

The Environmental Protection Agency (EPA) permit waiver provision under 40 CFR 123.24(e) does not apply to this NPDES permit.

*Southwest Regional Office*

**PA0216151**, Sewage, SIC Code 4952, **Michael Apple**, 1183 Executive Drive, Glasgow, PA 16644-0130. Facility Name: Coal Country Campground STP. This existing facility is located in Reade 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), Unnamed Tributary to Clearfield Creek (CWF, MF), is located in State Water Plan watershed 8-C and is classified for Cold Water Fishes and Migratory Fishes, aquatic life, water supply and recreation. The discharge is not expected to affect public water supplies.

The proposed effluent limits for Outfall 001 are based on a design flow of 0.00425 MGD.—Limits.

Parameters	Mass Units (lbs/day)		Minimum	Concentrations (mg/L)		Instant. Maximum
	Average Monthly	Average Weekly		Average Monthly	Maximum	
Flow (MGD)	Report	XXX	XXX	XXX	XXX	XXX
pH (S.U.)	XXX	XXX	6.0	XXX	9.0	XXX
Dissolved Oxygen	XXX	XXX	4.0	XXX	XXX	XXX
Total Residual Chlorine (TRC)	XXX	XXX	XXX	0.4	XXX	1.5
Carbonaceous Biochemical Oxygen Demand (CBOD <sub>5</sub> )	XXX	XXX	XXX	25.0	XXX	50.0
Total Suspended Solids	XXX	XXX	XXX	30.0	XXX	60.0
Fecal Coliform (No./100 ml)						
Oct 1 - Apr 30	XXX	XXX	XXX	2,000	XXX	10,000
May 1 - Sep 30	XXX	XXX	XXX	Geo Mean 200	XXX	1,000
Geo Mean						
Ammonia-Nitrogen						
Nov 1 - Apr 30	XXX	XXX	XXX	23.0	XXX	46.0
May 1 - Oct 31	XXX	XXX	XXX	10.0	XXX	20.0
E Coli (No./100ml)	XXX	XXX	XXX	XXX	XXX	Report
Total Nitrogen	XXX	XXX	XXX	XXX	Report	XXX
Total Phosphorus	XXX	XXX	XXX	XXX	Daily Max Report Daily Max	XXX

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

- N/A

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 in effect.

**III. Individual NPDES Permit Applications for Discharges of Stormwater Associated with Construction Activity.**

Application Number	Application Type	Applicant Name & Address	Municipality, County	Office
PAD060070	New	NorthPoint Development, LLC (No physical address at this time): 40° 15' 31." N; 75° 43' 12.4" W Douglassville, PA 19518	Amity Township Berks County	SCRO
PAD210012	Renewal	LeTort Estates, LLC Northwest of the Intersection of Harmony Hall Drive and Claremont Road Carlisle, PA 17015	Middlesex Township Cumberland County	SCRO
PAD520020	Major Amendment	Aqua Pennsylvania, Inc. 1 Aqua Way White Haven, PA 17872	Lackawaxen Township Pike County	NERO
PA110001C	New	First Energy Corp. 76 South Akron Street Akron, OH 44308	Black Lick Township Cambria County	SWRO
PAD150279	New	Wallace Township 120 Park Lane Glenmoore, PA 19343	Wallace Township Chester County	SERO

<i>Application Number</i>	<i>Application Type</i>	<i>Applicant Name &amp; Address</i>	<i>Municipality, County</i>	<i>Office</i>
PAD230067	New	The Woods at Rose Tree, LLC 355 Kirk Lane Media, PA 19063	Upper Providence Township Delaware County	SERO
PAD520003	Renewal	Lehman Township 193 Municipal Drive Bushkill, PA 18324	Lehigh Township Pike County	NERO
PAD390255	New	Grist Mill Development Company, LLC 1013 Brookside Road Suite 202 Wescosville, PA 18106	Lower Macungie Township Lehigh County	NERO
PAD300001	Renewal	Southwestern Pennsylvania Water Authority 1442 Jefferson Road P.O. Box 187 Jefferson, PA 15344	Center Township Greene County	SWRO
PAD480037	Renewal	J.G. Petrucci Co., Inc. 171 Route 173 Suite 201 Asbury, NJ 08802-1039	Forks Township Northampton County	NERO
PAD400007	Renewal	Goodleigh Manor Homeowners Association Drew Grosso P.O. Box 155 Dallas, PA 18612	Dallas Township Luzerne County	NERO
PAD390250	New	Maplewood Residential, L.P. 1030 W. Germantown Pike E. Norriton, PA 19403	Lower Milford Township Lehigh County	NERO
PAD380020	New	Inch's Properties, LLC 2225 East Cumberland Street Lebanon, PA 17042-2521	North Lebanon Township Lebanon County	SCRO
PAC560072	New	New Enterprise Stone & Lime Co, Inc. P.O. Box 77 New Enterprise, PA 16664	Allegheny Township Somerset County	SWRO
PAC650324	New	Behrens & Associates, Inc. 13806 Inglewood Avenue Hawthorne, CA 90250	South Huntingdon Township Westmoreland County	SWRO
PAC650142A-3	Major Amendment	GM Federal Acquisitions, LP 199 Lee Avenue Suite 185 Brooklyn, NY 11211	Hempfield Township Westmoreland County	SWRO
PAC650005	New	R.A. Snoznik Construction, Inc. 4455 Old William Penn Highway Murrysville, PA 15668	Penn Township Westmoreland County	SWRO
PAD140071 A-1	Major Amendment	Scott Burk Buffalo Run Road Port Matilda, PA 16870	Patton Township Centre County	NCRO

## PUBLIC WATER SUPPLY PERMITS

Under the Pennsylvania Safe Drinking Water Act (35 P.S. §§ 721.1—721.17), the following parties have applied for Public Water Supply (PWS) permits to construct or substantially modify public water systems.

Individuals 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 Environmental Protection (DEP) 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, DEP 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.

Individuals in need of accommodations should contact DEP through the Pennsylvania Hamilton Relay Service at (800) 654-5984 (TDD users) or (800) 654-5988 (voice users).

### SAFE DRINKING WATER

#### Application(s) Received Under the Pennsylvania Safe Drinking Water Act (35 P.S. §§ 721.1—721.17).

*Northcentral Region: Safe Drinking Water Program, 208 W. 3rd Street, Suite 101, Williamsport, PA 17701-6448, 570-327-3636.*

*Contact: Nicole Mechtly, Clerical Supervisor 2, 570-327-3490.*

**Application No. 5922505**, Construction, Public Water Supply.

Applicant	<b>USAOE Cowanesque Lake South Shore Rec Area</b>
Address	710 Ives Run Lane Tioga, PA 16229
Municipality	Lawrence Township
County	<b>Tioga County</b>
Responsible Official	Robert Schnell 710 Ives Run Lane Tioga, PA 16946
Consulting Engineer	Josephe E. Lichty 687 Berkshire Drive State College, PA 16803
Application Received	October 27, 2022
Description	Cowanesque Lake South Shore Recreation Area upgrade to public water treatment plant.

*Northwest Region: Safe Drinking Water Program, 230 Chestnut Street, Meadville, PA 16335-3481, 814-332-6945.*

*Contact: Pam Yoder, Clerical Assistant, 814-332-6899.*

**Application No. 2516501**, Amendment, Public Water Supply.

Applicant	<b>Borough of Edinboro Water Authority</b>
Address	124 Meadville Street Edinboro, PA 16412
Municipality	Edinboro Borough
County	<b>Erie County</b>
Responsible Official	Jason Spangenberg Borough Manager Borough of Edinboro 124 Meadville Street Edinboro, PA 16412
Consulting Engineer	Timothy P. Wells P.E. Greenman-Pedersen, Inc. 8 Gibson Street North East, PA 16428
Application Received	October 25, 2022
Description	Discontinue and Removal of Fluoride Treatment.

*Southcentral Region: Safe Drinking Water Program, 909 Elmerton Avenue, Harrisburg, PA 17110-8200, 717-705-4700.*

*Contact: Joseph M. Mattucci, Program Manager, 717.705.4708.*

**Application No. 0722507 MA**, Construction, Public Water Supply.

Applicant	<b>Altoona Water Authority</b>
Address	900 Chestnut Avenue Altoona, PA 16601
Municipality	Logan Township
County	<b>Blair County</b>
Responsible Official	Mark A Perry General Manager 900 Chestnut Avenue Altoona, PA 16601
Consulting Engineer	Mike Sinisi, PE Altoona Water Authority 900 Chestnut Avenue Altoona, PA 16601
Application Received	October 17, 2022
Description	Rehabilitation of the existing 0.35 MG Super High Water Storage Tank.

**Application No. 0722508 MA**, Construction, Public Water Supply.

Applicant	<b>Altoona Water Authority</b>
Address	900 Chestnut Avenue Altoona, PA 16601
Municipality	Logan Township
County	<b>Blair County</b>
Responsible Official	Mark A Perry General Manager 900 Chestnut Avenue Altoona, PA 16601
Consulting Engineer	Mike Sinisi, PE Altoona Water Authority 900 Chestnut Avenue Altoona, PA 16601
Application Received	October 17, 2022
Description	Rehabilitation of the existing 3.0 MG Duncansville Water Storage Tank.

*Southwest Region: Safe Drinking Water Program, 400 Waterfront Drive, Pittsburgh, PA 15222-4745, 412-442-4000.*

*Contact: Renee Diehl, Program Manager, ra-epswwd@pa.gov.*

**Application No. 5656494**, Construction/Operation, Public Water Supply.

Applicant	<b>Water On Wheels, LLC</b>
Address	5005 Pioneer Court Murrysville, PA 15668
Municipality	New Stanton Borough
County	<b>Westmoreland County</b>
Responsible Official	Max Leassner 5005 Pioneer Court Murrysville, PA 15668

Consulting Engineer	Streamline Engineering, Inc. 110 Allan Street Lower Burrell, PA 15068
Application Received	October 24, 2022
Description	Water On Wheels bulk water hauling system including one truck and one fill station.
<b>Application No. 0422516</b> , Construction, Public Water Supply.	
Applicant	<b>New Sewickley Township Municipal Authority</b>
Address	233 Miller Road Rochester, PA 15074
Municipality	New Sewickley Township
County	<b>Beaver County</b>
Responsible Official	Todd Bonzo Authority Chairman 233 Miller Road Rochester, PA 15074
Consulting Engineer	Lennon, Smith Souleret Engineering, Inc. 846 Fourth Avenue Coraopolis, PA 15108
Application Received	October 27, 2022
Description	Construction of a new interconnect with the West View Water Authority.

**MINOR AMENDMENT****Application(s) Received Under the Pennsylvania Safe Drinking Water Act (35 P.S. §§ 721.1—721.17).**

*Central Office: Safe Drinking Water Program, Rachel Carson State Office Building, 400 Market Street, Harrisburg, PA 17101, 717-772-4477.*

**Application No. 9996558**, Amendment, Minor Amendment, Public Water Supply.

Applicant	<b>Blue Triton Stanwood</b>
Address	19275 Eight Mile Road Stanwood, MI 49346
Municipality	Out of State Municipality Borough
County	Out of State
Responsible Official	Hih Song Kim 19275 Eight Mile Road Stanwood, MI 49346
Application Received	October 10, 2022
Description	Amend the existing PADEP permit to add a new fluoridated water product to their existing license, as well as new product labels. Pure Baby Life Purified Water Enhanced with Minerals for Taste and Added Fluoride is produced using water from their existing plant wells. The only changes to be made includes the addition of fluoride and a fluoride ion monitoring sensor.

**WATER ALLOCATIONS****Application(s) Received Under the Act of June 24, 1939 (P.L. 842, No. 365) (35 P.S. §§ 631—641) Relating to the Acquisition of Rights to Divert Waters of the Commonwealth.**

*Northcentral Region: Safe Drinking Water Program, 208 W. 3rd Street, Suite 101, Williamsport, PA 17701-6448, 570-327-3636.*

*Contact: Nicole Mechtly, Clerical Supervisor, 570-327-3490.*

**WA 55C**, Water Allocations. **Danville Municipal Authority**, 463 Mill Street, Danville, PA 17821, Danville Borough, **Montour County**. Water Allocation renewal permit of Danville WTP's permit WA 55-B from December 4, 1972. Application received: October 28, 2022.

**LAND RECYCLING AND ENVIRONMENTAL REMEDIATION****UNDER ACT 2, 1995  
PREAMBLE 1****Acknowledgment of Notice(s) of Intent to Remediate Submitted Under the Land Recycling and Environmental Remediation Standards Act (35 P.S. §§ 6026.101—6026.908).**

Sections 302—305 of the Land Recycling and Environmental Remediation Standards Act (Act) require the Department of Environmental Protection (DEP) to publish in the *Pennsylvania Bulletin* an acknowledgment noting receipt of any Notices of Intent (NOI) to Remediate. An acknowledgment of the receipt of a NOI to Remediate is used to identify a site where an individual proposes to, or has been required to, respond to a release of a regulated substance at a site. Individuals intending to use the background standard, Statewide health standard, the site-specific standard, or who intend to remediate a site as a special industrial area, must file a NOI to Remediate with DEP. A NOI to Remediate filed with DEP 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. An individual who demonstrates attainment of one, or a combination of the cleanup standards, or who receives approval of a special industrial area remediation identified under the Act, will be relieved of further liability for the remediation of the site for any contamination identified in reports submitted to and approved by DEP. Furthermore, an individual shall not be subject to citizen suits or other contribution actions brought by responsible individuals 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 NOI to Remediate is published in a newspaper of general circulation in the area of the site. For the following identified site(s), 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 following specified date. During this comment period the municipality may request that the following identified individual, 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 plans or reports, please contact the Regional Office Program Manager previously listed in the notice.

Individuals in need of accommodations should contact DEP through the Pennsylvania Hamilton Relay Service at (800) 654-5984 (TDD users) or (800) 654-5988 (voice users).

The DEP has received the following Notice(s) of Intent to Remediate.

*Southeast Region: Environmental Cleanup & Brownfields Program, 2 East Main Street, Norristown, PA 19401, 484-250-5900.*

*Contact: Charline Bass, Administrative Assistant, 484-250-5787.*

**Ewing Oil Company-Accidental Tanker Spill**, Primary Facility ID # **861556**, Shoulder of westbound Route 3 onramp to southbound I-476, Broomall, PA 19008, Marple Township, **Delaware County**. Gil Marshall, PG, Marshall Geoscience, Inc., 170 1st Avenue, Colledgeville, PA 19426 on behalf of Robert Shelley, Ewing Oil Company, Inc., 11949 Robinwood Drive, Hagerstown, MD 21742, submitted a Notice of Intent to Remediate. The site has been found to be contaminated with unleaded gasoline in soil. The proposed future use of the property will continue to be nonresidential. The Notice of Intent to Remediate was published in *Delaware County Daily Times* on October 10, 2022. Application received: October 14, 2022.

#### HAZARDOUS WASTE TRANSPORTER LICENSE

**Application(s) Received Under the Solid Waste Management Act of July 7, 1980 (P.L. 380, No. 97) (35 P.S. §§ 6018.101—6018.1003); and Hazardous Waste Regulations to Transport Hazardous Waste.**

##### *New Applications Received*

*Central Office: Waste Management Program, Rachel Carson State Office Building, 400 Market Street, Harrisburg, PA 17101, 717-787-7561.*

*Contact: Jonathan Adams.*

**ARM NE LLC**, 1675 Old Trail Road, Etters, PA 17319. **License No. PA-AH 0927**. Accepted: August 19, 2022.

##### *Renewal Applications Received*

*Central Office: Waste Management Program, Rachel Carson State Office Building, 400 Market Street, Harrisburg, PA 17101, 717-787-7561.*

*Contact: Jonathan Adams.*

**Ferrick Construction Company, Inc.**, 811 Ivy Hill Road, Philadelphia, PA 19150. **License No. PA-AH 0473**. Accepted: October 25, 2022.

**HPC Industrial Services, LLC**, 900 Georgia Avenue, Deer Park, TX 77536. **License No. PA-AH 0694**. Accepted: October 25, 2022.

**Munoz Trucking Corp.**, 40 Porete Avenue, North Arlington, NJ 07031. **License No. PA-AH 0850**. Accepted: October 19, 2022.

**RSB Logistic Inc.**, 219 Cardinal Crescent, Saskatoon, SK S7L 7K8. **License No. PA-AH 0854**. Accepted: October 20, 2022.

**Environmental Protection & Improvement Co. LLC**, 319 Ave P, Newark, NJ 07105. **License No. PA-AH 0907**. Accepted: October 11, 2022.

## AIR QUALITY PLAN APPROVAL AND OPERATING PERMIT APPLICATIONS

The Department of Environmental Protection (DEP) 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 DEP, 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 DEP received applications for Plan Approvals or Operating Permits from the following facilities. Copies of the application, DEP'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 DEP Regional Office. Appointments for scheduling a review must be made by calling the appropriate DEP Regional Office. The address and telephone number of the Regional Office is listed before the application notices.

Individuals 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 DEP'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.

Any individual wishing to request a hearing may do so during the 30-day comment period. A public hearing may be held, if DEP, 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 DEP determines this type of notification is sufficient. Requests for a public hearing and any relevant information should be directed to the appropriate DEP 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.



Individuals in need of accommodations should contact DEP through the Pennsylvania Hamilton Relay Service at (800) 654-5984 (TDD users) or (800) 654-5988 (voice users).

### PLAN APPROVALS

**Notice of Intent to Issue Plan Approval(s) and Notice of Intent to Issue or Amend Operating Permit(s) 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.**

*Southcentral Region: Air Quality Program, 909 Elmerston Avenue, Harrisburg, PA 17110-8200, 717-705-4700.*

*Contact: Thomas Hanlon, PE, East Permit Section Chief, 717-705-4862.*

**06-05079H: United Corrstack LLC dba DS Smith, 720 Laurel Street, Reading, PA 19602, City of Reading, Berks County.** Application received: May 9, 2022.

For the construction of a new gas-fired 99.0 MMBtu/hr boiler and the removal of an hourly operational limit for the existing Source ID # 101 boiler at the Smith Paper Mill. The potential to emit for the facility is 84.6 tpy of NO<sub>x</sub>, 78.0 tpy of CO, 14.9 tpy of PM<sub>10</sub>, 4.7 tpy of VOCs, 2.6 tpy of SO<sub>2</sub>, and 1.9 tpy of HAPs. The facility is a State Only facility. DEP's review of the information submitted by the applicant indicates that the air contamination sources as constructed or modified will comply with all regulatory requirements pertaining to air contamination sources and the emission of air contaminants including the best available technology (BAT) requirements of 25 Pa. Code §§ 127.1 and 127.12, and Standards of Performance under 40 CFR Part 60, Subpart Dc for Small Industrial-Commercial-Institutional Steam Generating Units. Based on these findings, the Department proposes to issue a plan approval for the proposed construction. If, after the project has been implemented, the Department determines that the sources are constructed and operated in compliance with the plan approval conditions and the specification of the application for plan approval, the requirements established in the plan approval may be incorporated into an Operating Permit pursuant to 25 Pa. Code Chapter 127.

*Southwest Region: Air Quality Program, 400 Waterfront Drive, Pittsburgh, PA 15222-4745, 412-442-4000.*

*Contact: Thomas Joseph, PE, Facilities Permitting Chief, 412-442-4336.*

**65-00713E: Greenridge Reclamation LLC, 234 Landfill Road, Scottdale, PA 15683, East Huntingdon Township, Westmoreland County.** Application received: December 7, 2020.

Notice is hereby given in accordance with 25 Pa. Code §§ 127.44—127.46 that the Pennsylvania Department of Environmental Protection intends to issue Air Quality Plan Approval PA-65-00713E for a planned 15.88 million cubic yard expansion of the Greenridge Reclamation Landfill. There is no proposed change in waste acceptance rates due to expansion. Waste acceptance is based on 2,500 tons per day for 286 days per year or 715,000 tons per year.

Potential to emit from the facility after the expansion has been calculated to be 19.87 tons VOC, 104.58 tons CO, 35.06 tons NO<sub>x</sub>, 94.23 tons SO<sub>x</sub>, 161.58 tons PM, 59.24 tons PM<sub>10</sub>, 5.49 tons PM<sub>2.5</sub>, 4.15 tons HCl, 3.47 tons toluene, and 13.78 tons total HAPs per year.

This authorization is subject to best available technology requirements of 25 Pa. Code §§ 127.1 and 127.12, 40 CFR 60, Subpart XXX—Standards of Performance for Municipal Solid Waste Landfills That Commenced Construction, Reconstruction, or Modification after July 17, 2014, and 40 CFR 63, Subpart AAAAA—National Emission Standards for Hazardous Air Pollutants: Municipal Solid Waste Landfills. The Plan Approval has been conditioned to ensure compliance with all applicable rules including emission restrictions, operational restrictions, testing, monitoring, recordkeeping, reporting, and work practice requirements. Once compliance with the Plan Approval is demonstrated, the applicant will be required to incorporate the conditions into the Title V Operating Permit.

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-65-00713E) 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.

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 is sufficient. Written comments or requests for a public hearing should be directed Alexander Sandy, Pennsylvania Department of Environmental Protection, 400 Waterfront Drive, Pittsburgh, PA 15222 or by email to [asandy@pa.gov](mailto:asandy@pa.gov). All comments must be received prior to the close of business 30 days after the date of this publication.

### OPERATING PERMITS

**Notice of Intent to Issue Title V Operating Permit(s) Under the Air Pollution Control Act (35 P.S. §§ 4001—4015) and 25 Pa. Code Chapter 127, Subchapter G.**

*Northeast Region: Air Quality Program, 2 Public Square, Wilkes-Barre, PA 18701-1915, 570-826-2511.*

*Contact: Norm Frederick, 570-826-2409.*

**48-00032, Grand Central Sanitary Landfill, Inc./Plainfield, 910 W. Pennsylvania Avenue, Pen Argyl, PA 18072-9646, Plainfield Township, Northampton County.**

Application received: August 20, 2021. The Department intends to issue a renewal of the Title V Operating Permit for landfill operations in Plainfield Township, Northampton County. As a major source, the facility is subject to the Title V permitting requirements of the Clean Air Act Amendments as adopted by the Commonwealth under 25 Pa. Code Chapter 127, Subchapter G. The main sources at this facility consist of landfill and gas collection systems and diesel generators. The sources are controlled by flares. The proposed Title V Operating Permit contains applicable requirements for emission limitations, work practice standards, testing, monitoring, recordkeeping, and reporting standards used to verify facility compliance with Federal and State air pollution regulations.

**48-00037, Chrin Brothers, Inc., Chrin Sanitary Landfill**, 1225 Industrial Drive, Easton, PA 18042, Williams Township, **Northampton County**. Application received: November 4, 2021. The Department intends to issue a renewal Title V Operating Permit for the landfill operations in Williams Township, Northampton County. As a major source, the facility is subject to the Title V permitting requirements of the Clean Air Act Amendments as adopted by the Commonwealth under 25 Pa. Code Chapter 127, Subchapter G. The main sources at this facility consist of landfill and gas collection systems and diesel generators. The sources are controlled by flares and a water spray dust suppression system. The proposed Title V Operating Permit contains applicable requirements for emission limitations, work practice standards, testing, monitoring, recordkeeping, and reporting standards used to verify facility compliance with Federal and State air pollution regulations.

**39-00011, Holcim (US), Inc./Whitehall Plant**, 5160 Main Street, Whitehall, PA 18052-1827, Whitehall Township, **Lehigh County**. Application received: July 22, 2021. The Department intends to issue a renewal of the Title V Operating Permit for the operation of the Portland Cement manufacturing facility in Whitehall Township, Lehigh County. As a major source, the facility is subject to the Title V permitting requirements of the Clean Air Act Amendments as adopted by the Commonwealth under 25 Pa. Code Chapter 127, Subchapter G. The main sources at this facility consist of two (2) kiln systems, clinker cooler systems, and finishing mills. The sources are controlled by baghouses. The proposed Title V Operating Permit contains applicable requirements for emission limitations, work practice standards, testing, monitoring, recordkeeping, and reporting standards used to verify facility compliance with Federal and State air pollution regulations.

**48-00011, MC Project Co LLC/Martins Creek**, 6605 Foul Rift Road, Bangor, PA 18013-4857, Lower Mount Bethel Township, **Northampton County**. Application received: November 17, 2020. The Department intends to issue a renewal of the Title V Operating Permit for the electrical power generation facility in Lower Mount Bethel Township, Northampton County. As a major source, the facility is subject to the Title V permitting requirements of the Clean Air Act Amendments as adopted by the Commonwealth under 25 Pa. Code Chapter 127, Subchapter G. The main sources at this facility consist of combustion turbines. The proposed Title V Operating Permit contains applicable requirements for emission limitations, work practice standards, testing, monitoring, recordkeeping, and reporting standards used to verify facility compliance with Federal and State air pollution regulations.

**48-00091, Lower Mount Bethel Energy Ses/Bangor**, 6079 Depues Ferry Road, Bangor, PA 18013, Lower Mount Bethel Township, **Northampton County**. Application received: November 16, 2020. The Department intends to issue a renewal of the Title V Operating Permit for the electrical power generation facility in Lower Mount Bethel Township, Northampton County. As a major source, the facility is subject to the Title V permitting requirements of the Clean Air Act Amendments as adopted by the Commonwealth under 25 Pa. Code Chapter 127, Subchapter G. The main sources at this facility consist of CCC Turbines w/Low NO<sub>x</sub> burners and a cooling tower. The sources are controlled by SCR's. The proposed Title V Operating Permit contains applicable requirements for emission limitations, work practice standards, testing, monitoring, recordkeeping, and reporting standards used to verify facility compliance with Federal and State air pollution regulations.

**Notice of Intent to Issue Operating Permit(s) Under the Air Pollution Control Act (35 P.S. §§ 4001—4015) and 25 Pa. Code Chapter 127, Subchapter F.**

*Northcentral Region: Air Quality Program, 208 W. 3rd Street, Suite 101, Williamsport, PA 17701-6448, 570-327-3636.*

*Contact: Muhammad Q. Zaman, Program Manager, 570-327-3648.*

**14-00036, Gensimore Trucking, Inc.**, P.O. Box 5210, Pleasant Gap, PA 16823-5210, Spring Township, **Centre County**. Application received: August 31, 2022. The sources associated with the above are comprised of the following: Source IDs 032 and P100 including small space heaters and furnaces fired on various fuels, Source IDs P101 and P102 including various cement blending equipment, Lines 1 & 2, respectively, as well as other raw material and/or product handling equipment associated with Source IDs P103 and P104. The type and quantity of pollutants emitted on a facility-wide potential emissions basis are provided, as follows: 11.6 tpy of PM/PM<sub>10</sub>; 0.77 tpy of SO<sub>2</sub>; 0.38 tpy of NO<sub>x</sub>; 0.11 tpy of CO; 0.01 tpy of VOC; and 0.01 TPY of HAP. There are new source operations added to the renewal permit authorization, including the addition of a 75-ton silo, with a bin vent, and three (3) bin vents onto existing silos in accordance with the previous RFD approval obtained from the Department by the facility. The renewal permit incorporates all applicable requirements to the new and existing sources at facility, including the appropriate testing, monitoring, recordkeeping, reporting, work practice and any other conditions necessary to verify compliance. The conditions are established pursuant to the applicable air quality regulatory provisions under 25 Pa. Code Article III, Chapters 121 and 145, relating to Air Resources. All pertinent documents used in the evaluation of the application are available for public review during normal business hours at the PA DEP's Northcentral Regional Office, 208 West Third Street, Suite 101, Williamsport, PA 17701. Appointments for scheduling a review must be made by calling 570-327-3636.

*Northwest Region: Air Quality Program, 230 Chestnut Street, Meadville, PA 16335-3481, 814-332-6945.*

*Contact: Matthew Williams, Facilities Permitting Chief, 814-332-6940.*

**43-00385, Cronimet Specialty Metals USA, Inc.**, 209 Reynolds Industrial Park Road, Greenville, PA 16125, Pymatuning Township, **Mercer County**. Application received: December 18, 2020. The Department intends to



issue a State Only Operating Permit for the metal reclaimer and recycler specifically of Nickel, Cobalt, and Tungsten facility. Cronimet consists of three natural gas burn-off ovens, mix room, shot blast unit, silver extraction, parts washer, and various miscellaneous sources that vent indoors. Potential emissions (TPY) are determined to be: 2.42 NO<sub>x</sub>; 1.314 CO; 0.048 SO<sub>x</sub>; 1.677 PM; 0.459 VOC; and 0.66 HAPs. The facility is a natural minor and is subject to State regulations. The permit includes additional operation requirements, monitoring requirements, and recordkeeping requirements to ensure compliance with the Clean Air Act and the Air Pollution Control Act.

**43-00252, Grove City College**, 100 Campus Drive, Grove City, PA 16127-2104, Grove City Borough, **Mercer County**. Application received: December 8, 2021. The Department intends to renew the State Only Operating Permit. The significant sources are four boilers, miscellaneous natural gas combustion, and a degreaser. Boiler 031 will burn natural gas and coal as a backup. Boiler 032 and 034 will burn natural gas and oil as backup. Boiler 032 is natural gas only. If coal is burned in Boiler 031, demonstration of compliance with 40 CFR 63, Subpart JJJJJJ pertaining to NESHAPs for ICI boilers at area sources is required. The facility has taken a restriction of 1,408 tons of coal on a consecutive 12-month basis. The quantity of No. 2 fuel oil is limited to 210,000 gallons per year based on a consecutive 12-month basis. The facility is required to keep records of the fuel usages and sulfur content. The potential emissions from the facility are as follows: 4.3 TPY PM<sub>10</sub>; 49.8 TPY NO<sub>x</sub>; 24.6 TPY SO<sub>2</sub>; 35.25 TPY CO; 4.18 TPY VOC, and 55,000 TPY CO<sub>2e</sub>.

**33-00137, Kullagruppen USA Holding Company**, 568 Tomato Drive, Punxsutawney, PA 15767, Ringgold Township, **Jefferson County**. Application received: August 1, 2022. The Department is providing notice that they intend to renew a State Only Operating Permit for the facility. The primary sources at the facility include two (2) dual-fuel natural gas/diesel auxiliary boilers and an emergency diesel generator. Potential emissions are as follows: 21.42 TPY NO<sub>x</sub>, 16.10 TPY CO, 1.06 TPY VOC, 0.42 TPY filterable PM, and 0.31 TPY SO<sub>x</sub>; thus, the facility is a natural minor. The boilers may operate diesel fuel during emergency situations. The emergency generator is subject to 40 CFR Part 63 Subpart ZZZZ, the NESHAP for Stationary Reciprocating Internal Combustion Engines. The renewal permit contains emission restrictions, recordkeeping, work practices, and additional requirements to ensure compliance with the Clean Air Act and the Air Pollution Control Act.

*Southcentral Region: Air Quality Program, 909 Elmerston Avenue, Harrisburg, PA 17110-8200, 717-705-4700.*

*Contact: Thomas Hanlon, PE, East Permit Section Chief, 717-705-4862.*

**38-05004, Kountry Kraft, Inc.**, 291 S. Sheridan Rd., Newmanstown, PA 17073, Millcreek Township, **Lebanon County**. Application received: July 20, 2022. For operation of a wood kitchen cabinet and countertop manufacturing facility. The facility actual emissions for 2021 are 0.156 ton of CO, 0.181 ton of NO<sub>x</sub>, 0.254 ton of PM, 0.001 SO<sub>x</sub>, 17.400 tons of VOC, 4.984 tons of combined HAP's. The Operating Permit will include emission limits and work practice standards along with monitoring, recordkeeping and reporting requirements to ensure the facility complies with the applicable air quality regulations. Among other items, the conditions include 40 CFR Part 63, Subpart JJJJJJ—National Emissions Standards

for Hazardous Air Pollutants for Industrial, Commercial, and Institutional Boilers Area Sources and 25 Pa. Code §§ 129.101—129.106 Wood Furniture Manufacturing Operations.

**36-05087, Morgan Truck Body LLC**, 485 Wenger Drive, Ephrata, PA 17522, Ephrata Borough, **Lancaster County**. Application received: July 19, 2022. To issue a State-Only Operating Permit for their truck body manufacturing plant. The potential emissions from the facility are estimated at 0.32 tpy of PM, 33.56 tpy of VOC and 4.98 tpy of HAPs. The Operating Permit will include emission limits and work practice standards along with monitoring, recordkeeping and reporting requirements to ensure the facility complies with the applicable air quality regulations. Among other items, the conditions include provisions derived from 25 Pa. Code § 129.52e—Control of VOC emissions from automobile and light-duty truck assembly coating operations and heavier vehicle coating operations.

*Southeast Region: Air Quality Program, 2 East Main Street, Norristown, PA 19401, 484-250-5900.*

*Contact: Janine Tulloch-Reid, Facilities Permitting Chief, 484-250-5920.*

**46-00251, Anders Detwiler Funeral Home**, 130 East Broad Street, Souderton, PA 18964-1209, Souderton Borough, **Montgomery County**. Application received: February 4, 2022. For the renewal of a State Only (Natural Minor) Operating Permit No. 46-00251. Anders-Detweiler Funeral Home operates a dual chamber human crematory unit, manufactured by Matthews Cremation Division, at its current facility. The Crematory contains the best available technology, to include maximum operating temperatures, retention times, and using natural gas as a fuel. The operating permit also contains work practice standards, monitoring and recordkeeping requirements, and operating restrictions designed to keep the crematory operating within all applicable air quality requirements. Anyone wishing to request information regarding this action can do so by contacting the Southeast Regional Office through the contact person listed in the previously listed header. Comments on the draft permit can be submitted through the Air Quality resource account at RA-EPSEROAQPUBCOM@pa.gov.

**46-00076, Greene, Tweed & Company, Inc.**, 2075 Detwiler Road, Kulpsville, PA 19443, Towamencin Township, **Montgomery County**. Application received: July 29, 2021. This action is for the renewal of a State Only (Natural Minor) Operating Permit. The facility manufactures gaskets and sealing devices for use in aerospace, energy, and other industries. The facility's main sources of air contaminant emissions are a rubber compounding area and the following natural gas-fired sources: three boilers, two emergency generator sets, and two ovens. Particulate matter emissions from the rubber compounding area are controlled by three associated dust collectors. Nitrogen oxide (NO<sub>x</sub>) emissions from the ovens and the engine of one of the emergency generator sets are restricted to 0.52 and 0.31 ton/yr, respectively, calculated monthly as a 12-month rolling sum. In addition, the NO<sub>x</sub> emissions from the exempted engine are restricted to 100 lbs/hr, 1,000 lbs/day, 2.75 tons/ozone season (i.e., the period from May 1—September 30 of each year), and 6.6 tons/yr, calculated monthly as a 12-month rolling sum. Since DEP last renewed the State Only Operating Permit (SOOP) in April 2017, Greene, Tweed & Company, Inc.,



has not added or removed any significant sources of air contaminant emissions. The boilers remain subject to the provisions of 40 CFR Part 60, Subpart Dc, for small industrial/commercial/institutional steam generating units, and the engines of the emergency generator sets remain subject to the provisions of 40 CFR Part 63, Subpart ZZZZ, for stationary reciprocating internal combustion engines. The renewal SOOP will continue to include monitoring, recordkeeping, reporting, and work practice requirements designed to keep the facility operating within all applicable air quality requirements. Anyone wishing to request information regarding this action can do so by contacting the Southeast Regional Office through the contact person listed in the previously listed header. Comments on the draft permit can be submitted through the Air Quality resource account at RA-EPSEROAQPUBCOM@pa.gov.

*Southwest Region: Air Quality Program, 400 Waterfront Drive, Pittsburgh, PA 15222-4745, 412-442-4000.*

*Contact: Thomas Joseph, PE, Facilities Permitting Chief, 412-442-4336.*

**11-00497, Gautier Steel Ltd.**, 80 Clinton Street, Johnstown, PA 15901, City of Johnstown, **Cambria County**. Application received: June 6, 2022.

The Department is providing notice of intent to issue a renewal synthetic minor State Only Operating Permit for a hot-rolled steel plant.

Gautier Steel is a manufacturer of specialty steel bar products, which include flats, squares, and special sections, operating five furnaces, six parts washers, and numerous small combustion units. This facility has a potential to emit 100.5 tons/12-consecutive month period (12-cmp) of NO<sub>x</sub>, 94.5 tons/12-cmp CO, 0.7 ton/12-cmp SO<sub>x</sub>, 8.8 tons/12-cmp VOCs, and 8.5 tons/12-cmp of PM<sub>10</sub>.

The application, DEP's Review Memorandum, and the proposed permit are available for public review during normal business hours at DEP's Southwest Regional Office, 400 Waterfront Drive, Pittsburgh, PA 15222. A file review can be scheduled through the DEP's website at <https://www.dep.pa.gov/Citizens/PublicRecords/Pages/Informal-File-Review.aspx> or by contacting Tom Joseph, Facilities Permitting Chief, directly.

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 Tom Joseph, Facilities Permit Chief, Department of Environmental Protection, Southwest Regional Office, 400 Waterfront Drive, Pittsburgh, PA 15222. Each written comment must contain the name, address and telephone number of the person submitting the comments, identification of the proposed Operating Permit (11-00497) and concise statements regarding the relevancy of the information or objections to issuance of the Operating Permit.

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 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 Department is not required to hold a conference or hearing. 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 or requests for a public hearing should be directed to Tom Joseph, Facilities Permit Chief, at the previously listed address.

## COAL & NONCOAL MINING ACTIVITY APPLICATIONS

Applications under the Surface Mining Conservation and Reclamation Act (52 P.S. §§ 1396.1—1396.31); 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); the Bituminous Mine Subsidence and Land Conservation Act (52 P.S. §§ 1406.1—1406.21).

Mining activity permits issued in response to such applications are also subject to applicable permitting requirements of the following statutes: the Air Pollution Control Act (35 P.S. §§ 4001—4015); the Dam Safety and Encroachments Act (32 P.S. §§ 693.1—693.27); and the Solid Waste Management Act (35 P.S. §§ 6018.101—6018.1003).

The following permit applications to conduct mining activities have been received by the Department of Environmental Protection (DEP). A copy of the application is available for inspection at the District Mining Office indicated above each application. Requests for 401 Water Quality Certifications are included in individual application only if noted.

Written comments or objections, or requests for an informal conference, or a public hearing, as applicable, on a mining permit application may be submitted by any person or any officer or head of any Federal, State or Local Government Agency or Authority to DEP at the address of the District Mining Office indicated above each application within 30-days of this publication, or within 30-days after the last publication of the applicant's newspaper advertisement, as provided by 25 Pa. Code §§ 77.121—77.123 and 86.31—86.34 (relating to public notices of filing of permit applications, opportunity for comment, and informal conferences). Such comments or objections should contain the name, address and phone number of persons submitting comments or objections; application number; and a statement of sufficient detail to inform DEP on the basis of comment or objection and relevant facts upon which it is based.

In addition, requests for an informal conference, or a public hearing, as applicable, on a mining permit application, as provided by 25 Pa. Code § 77.123 (relating to public hearing-informal conferences) or § 86.34 (relating to informal conferences), must also contain a brief summary of the issues to be raised by the requestor at the conference and a statement whether the requestor desires to have the conference conducted in the locality of the proposed mining activities.

Where a National Pollutant Discharge Elimination System (NPDES) number is listed, the mining activity

permit application is associated with an application for an NPDES permit. A separate notice will be provided for the draft NPDES permit.

Individuals in need of accommodations should contact DEP through the Pennsylvania Hamilton Relay Service at (800) 654-5984 (TDD users) or (800) 654-5988 (voice users).

### Coal Applications

*Effluent Limits*—The following range of effluent limits (Table 1) will apply to NPDES permits issued in conjunction with the associated coal mining activity permit. Additional effluent limits will be listed as part of the publication of the draft NPDES permit.

Table 1

Parameter	30-Day Average	Daily Maximum	Instantaneous Maximum
Iron (total)	1.5 to 3.0 mg/l	3.0 to 6.0 mg/l	3.5 to 7.0 mg/l
Manganese (total)	1.0 to 2.0 mg/l	2.0 to 4.0 mg/l	2.5 to 5.0 mg/l
Suspended solids	10 to 35 mg/l	20 to 70 mg/l	25 to 90 mg/l
Aluminum (Total)	0.75 to 2.0 mg/l	1.5 to 4.0 mg/l	2.0 to 5.0 mg/l

pH must always be greater than 6.0; less than 9.0.

Alkalinity must always be greater than acidity.

*California District Mining Office: 25 Technology Drive, Coal Center, PA 15423, 724-769-1100.*

*Contact: Bonnie Herbert, Clerical Assistant 3, 724.769.1100.*

**Mining Permit No. 32971302. NPDES No. PA0215040. Rosebud Mining Company**, 301 Market Street, Kittanning, PA 16201, Washington Township, **Indiana County**. To renew the permit and the related NPDES permit. Application received: July 15, 2022. Accepted: September 12, 2022.

**Mining Permit No. 65221301. NPDES No. PA0236586. GP12-65221301. Unity Mines, LLC**, Box 11, 198 West Main Street, New Alexandria, PA 15670, Derry Township, **Westmoreland County**. To operate a new coal mine permit and related NPDES permit that was previously known as C&D Coal Company, Inc., Kingston-West Mine (CMAF No. 56091301). Includes authorization request for an air quality GPA/GP12 general permit. Affecting 10.0 proposed surface acres, 999.0 proposed underground acres, and 971.4 proposed subsidence control plan acres. Receiving stream(s): Unnamed Tributaries to Loyalhanna Creek, classified for the following use: WWF. Application received: August 26, 2022. Accepted: October 19, 2022.

*Cambria District Mining Office: 286 Industrial Park Road, Ebensburg, PA 15931-4119, 814-472-1800.*

*Contact: Melanie Ford-Wigfield, 814.472.1900, ra-epcambria@pa.gov.*

**Mining Permit No. 56200102. NPDES No. PA0279749. Mountaineer Mining Corporation**, 1010 Garrett Shortcut Road, Berlin, PA 15530, Brothersvalley Township, **Somerset County**. Road variance to conduct surface coal mining activities within 100 feet of SR 3010 (East Mud Pike). The variance begins at the intersection of Township Road T-525 (Beachdale Road) and continues on the south side of SR 3010 east for approximately 960 feet. On the north side of SR 3010 the variance begins 250 feet from the intersection of T-525 and continues east for approximately 720 feet. Receiving streams: unnamed tributaries to/and Tubs Run and to Buffalo Creek classified for the following uses: CWF. Application received: October 17, 2022.

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

*Contact: Cayleigh Boniger, Clerical Supervisor 2, 814-797-0824.*

**Mining Permit No. 33110105. Strishock, LLC**, P.O. Box 1006, DuBois, PA 15801, Pine Creek Township, **Jefferson County**. Renewal of an existing bituminous surface mine for reclamation only. Application received: October 28, 2022.

*New Stanton District Mining Office: 131 Broadview Road, New Stanton, PA 15672, 724-925-5500.*

*Contact: Tracy Norbert or RA-EPNEWSTANTON@pa.gov.*

**Mining Permit No. 65110101. NPDES No. PA0252140. Gary Gioia Coal Company**, 319 Karen Drive, Elizabeth, PA 15067, South Huntingdon Township, **Westmoreland County**. Renewal application for continued mining to an existing bituminous mine site, affecting 188.2 acres. Receiving streams: Unnamed tributary to Youghiogheny River, classified for the following use: WWF. Application received: October 27, 2022.

*Pottsville District Mining Office: 5 West Laurel Boulevard, Pottsville, PA 17901, 570-621-3118.*

*Contact: RA-EPPottsvilleDMO@pa.gov.*

**Mining Permit No. 35910102. Summit Anthracite, Inc.**, 175 Drift Road, Tinton Falls, NJ 07724, Archbald Borough, **Lackawanna County**. Renewal and correction to update the post-mining land use contours of an anthracite surface mine and coal refuse disposal operation affecting 1,000.3 acres. Receiving streams: unnamed tributary to White Oak Run and Indian Cave Creek, classified for the following uses: CWF, MF. Application received: October 25, 2022.

### Noncoal Applications

*Effluent Limits*—The following Table 2 effluent limits apply to NPDES permits issued in conjunction with a noncoal mining permit. Additional effluent limits will be listed as part of the publication of the draft NPDES permit.

Table 2

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 must always exceed acidity.			
pH must always be greater than 6.0; less than 9.0.			

*Cambria District Mining Office: 286 Industrial Park Road, Ebensburg, PA 15931-4119, 814-472-1800.*

*Contact: Melanie Ford-Wigfield, 814.472.1900, ra-epcambria@pa.gov.*

**Mining Permit No. 11220803. Slovikosky Landscaping, LLC**, 3780 Colonel Drake Highway, Patton, PA 16668, Allegheny Township, **Cambria County**. Commencement, operation, and restoration of a small noncoal (industrial minerals) operation along with PAM422006-GP104 coverage under the General NPDES Permit for Stormwater Discharges Associated with Mining Activities (BMP GP-104). Receiving streams: unnamed tributary to Beaverdam Run to Clearfield Creek classified for the following use: CWF. Affecting 5.0 acres. Application received: October 17, 2022.

**Mining Permit No. 5074SM4. NPDES No. PA0595888. New Enterprise Stone & Lime Co., Inc.**, P.O. Box 77, New Enterprise, PA 16664, Fannett Township, **Franklin County**. NPDES renewal of an existing large noncoal surface mine. Receiving streams: unnamed tributary to Dry Run classified for the following use: CWF. Application received: October 27, 2022.

### MINING ACTIVITY NPDES DRAFT PERMITS

This notice provides information about applications for a new, amended or renewed National Pollutant Discharge Elimination System (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 (DEP) 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:

Parameter	30-Day Average	Daily Maximum	Instantaneous Maximum
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 must always be greater than 6.0; less than 9.0.			
Alkalinity must always be greater than acidity.			

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 § 77.522 are pH 6 to 9 and other parameters DEP 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.

#### *Noncoal NPDES Draft Permits*

*New Stanton District Mining Office: 131 Broadview Road, New Stanton, PA 15672, 724-925-5500.*

*Contact: Tracy Norbert or RA-EPNEWSTANTON@pa.gov.*

**NPDES No. PA0278467. Mining Permit No. 03200401. Brady's Bend Limestone Company, LLC**, Box 217, 10900 South Avenue, North Lima, OH 44452, Bradys Bend Township, **Beaver County**. Application received: July 8, 2020.



New NPDES permit at a proposed underground noncoal mine with surface activity area in Brady's Bend Township, Armstrong County, affecting 657 acres. A stream variance is requested to affect within 100 feet of the west side of Pine Run, but no closer than 70 feet for construction of portion of proposed access road and sediment trap. Variance is to start approximately 100 feet northwest of intersection of Pine Run with SR 68, and extend upstream approximately 700 feet. A small portion of the variance area extends to the west side of Pine Run-Bratkovich Road (T329). Receiving stream(s): Sugar Creek (via an unnamed tributary (UNT)), classified for the following use: WWF. The first downstream potable water supply intake from the point of discharge is PA American Water Co. Butler (PWS 5100012) on the Allegheny River. The Department has made a tentative determination to impose effluent limitations, within the ranges specified.

The following treatment facility outfall will discharge to UNT 2 Sugar Creek:

<i>Outfall Nos.</i>	<i>New Outfall (Y/N)</i>	<i>Type</i>
002	Y	Treatment Facility Outfall

The proposed effluent limits for the previously listed outfall are as follows:

<i>(All Weather Conditions) Parameter</i>	<i>30-Day Average</i>	<i>Daily Maximum</i>	<i>Instant. Maximum</i>
Total Iron (mg/l)	3.0	6.0	7.0
Total Manganese (mg/l)	2.0	4.0	5.0
Total Aluminum (mg/l)	2.0	4.0	5.0
Total Suspended Solids (mg/l)	35.0	70.0	90.0
Specific Conductance (umhos/cm)		Monitor and Report	
Sulfate (mg/l)		Monitor and Report	

pH (S.U.): Must be between 6.0 and 9.0 at all times.  
Alkalinity must exceed acidity at all times.

The following stormwater outfall will discharge to UNT 2 Sugar Creek:

<i>Outfall Nos.</i>	<i>New Outfall (Y/N)</i>	<i>Type</i>
001	Y	Stormwater Outfall

The proposed effluent limits for the previously listed outfall for all weather conditions are as follows:

<i>(All Weather Conditions) Parameter</i>	<i>30-Day Average</i>	<i>Daily Maximum</i>	<i>Instant. Maximum</i>
Total Iron (mg/l)	3.0	6.0	7.0
Total Manganese (mg/l)	2.0	4.0	5.0
Total Aluminum (mg/l)	2.0	4.0	5.0
Total Suspended Solids (mg/l)	35.0	70.0	90.0
Specific Conductance (umhos/cm)		Monitor and Report	
Sulfate (mg/l)		Monitor and Report	

pH (S.U.): Must be between 6.0 and 9.0 at all times.  
Alkalinity must exceed acidity at all times.

*Pottsville District Mining Office: 5 West Laurel Boulevard, Pottsville, PA 17901, 570-621-3118.*

*Contact: RA-EPPottsvilleDMO@pa.gov.*

**NPDES Permit No. PA0224511. Mining Permit No. 52060301. Springbrook Enterprises, Inc.,** 504 Well Road, Lords Valley, PA 18423, Blooming Grove Township, **Pike County.** Application received: April 22, 2022.

Revision to an NPDES permit affecting 35.5 acres. Receiving stream: unnamed tributary to Billings Creek, classified for the following use: HQ-CWF. Application received: April 2, 2022. Unless otherwise noted, the proposed effluent limits for all outfalls in this permit are the BAT limits described previously for noncoal mining activities.

The following treated wastewater outfalls discharge to unnamed tributary to Billings Creek:

<i>Outfall number</i>	<i>New or Existing</i>	<i>Type</i>
SB01	Existing	E&S

The proposed effluent limits for the previously listed outfall are as follows:

The following limits apply to dry weather discharges from the following stormwater outfalls:

<i>Parameter (unit)</i>	<i>Minimum</i>	<i>30-Day Average</i>	<i>Daily Maximum</i>	<i>Instan Maximum</i>
pH <sup>1</sup> (S.U.)	6.0			9.0
Total Alkalinity (as CaCO <sub>3</sub> ) (mg/L)			Monitor and Report	
Total Acidity (as CaCO <sub>3</sub> ) (mg/L)			Monitor and Report	
Net Alkalinity (mg/L)	0.0			
Total Suspended Solids (mg/L)		35.0	70.0	90.0
Oil and Grease (mg/L)			Monitor and Report	

<sup>1</sup>This Parameter is applicable at all times.

**NPDES Permit No. PA0226319. Mining Permit No. GP105 No. 58222517. MM Quarries, Inc.,** 631 SR 1039, Montrose, PA 18801, Jackson Township, **Susquehanna County.** New NPDES Permit on a quarry operation affecting 12.0 acres. Receiving stream: unnamed tributary to Salt Lick Creek, classified for the following uses: HQ-CWF, MF. Application received: August 11, 2022.

**NPDES Permit No. PA0225584. Mining Permit No. 58150301. Pennsy Supply, Inc.,** 2400 Thea Drive, Suite 3A, Harrisburg, PA 17110, Middletown Township, **Susquehanna County.** Application received: July 8, 2022.

Renew NPDES permit on a quarry operation affecting 254.5 acres. Receiving stream: unnamed tributary to Middle Branch Wyalusing Creek, classified for the following use: CWF. Application received: July 8, 2022.

Unless otherwise noted, the proposed effluent limits for all outfalls in this permit are the BAT limits described previously for noncoal mining activities.

The following treated wastewater outfalls discharge to unnamed tributary to Middle Branch Wyalusing Creek:

<i>Outfall Number</i>	<i>New or Existing</i>	<i>Type</i>	<i>Discharge Rate:</i>
002	Existing	Treatment Facility Outfall	0.53 MGD

The proposed effluent limits for the previously listed outfall are as follows:

<i>Parameter (unit)</i>	<i>Minimum</i>	<i>30-Day Average</i>	<i>Daily Maximum</i>	<i>Instant Maximum</i>
pH <sup>1</sup> (S.U.)	6.0			9.0
Total Alkalinity (as CaCO <sub>3</sub> ) (mg/L)			Monitor and Report	
Total Acidity (as CaCO <sub>3</sub> ) (mg/L)			Monitor and Report	
Net Alkalinity (mg/L)	0.0			
Total Suspended Solids (mg/L)		35.0	70.0	90.0
Discharge (MGD)		0.53	1.0	
Oil and Grease (mg/L)			Monitor and Report	

The following proposed effluent limits for the outfalls are as follows:

<i>Outfall Number</i>	<i>New or Existing</i>	<i>Type</i>	<i>Discharge Rate:</i>
001	Existing	Stormwater Outfall	Report
003	Existing	Stormwater Outfall	Report
004	Existing	Stormwater Outfall	Report

The following limits apply to dry weather discharges from the following stormwater outfalls:

<i>Parameter (unit)</i>	<i>Minimum</i>	<i>30-Day Average</i>	<i>Daily Maximum</i>	<i>Instant Maximum</i>
pH <sup>1</sup> (S.U.)	6.0			9.0
Total Alkalinity (as CaCO <sub>3</sub> ) (mg/L)			Monitor and Report	
Total Acidity (as CaCO <sub>3</sub> ) (mg/L)			Monitor and Report	
Net Alkalinity (mg/L)	0.0			
Total Suspended Solids (mg/L)		35.0	70.0	90.0
Oil and Grease (mg/L)			Monitor and Report	

The following alternate discharge limitations apply to discharges from the following stormwater outfalls resulting from precipitation events less than or equal to the 10-year/24-hour precipitation event:

<i>Parameter (unit)</i>	<i>Minimum</i>	<i>30-Day Average</i>	<i>Daily Maximum</i>	<i>Instant Maximum</i>
pH <sup>1</sup> (S.U.)	6.0			9.0
Total Alkalinity (as CaCO <sub>3</sub> ) (mg/L)			Monitor and Report	
Total Acidity (as CaCO <sub>3</sub> ) (mg/L)			Monitor and Report	
Net Alkalinity (mg/L)	0.0			
Total Settleable Solids (ml/L)				0.5

<sup>1</sup>This Parameter is applicable at all times.

## FEDERAL WATER POLLUTION CONTROL ACT SECTION 401

The following permit applications, requests for Environmental Assessment approval and requests for 401 Water Quality Certification have been received by the Department of Environmental Protection (DEP). Section 401 of the Federal Water Pollution Control Act (FWPCA) (33 U.S.C.A. § 1341), requires the State to certify that the involved projects will not violate the applicable provisions of Sections 301—303, 306 and 307 of the

FWPCA (33 U.S.C.A. §§ 1311—1313, 1316 and 1317), as well as relevant State requirements. Individuals objecting to approval of a request for certification under Section 401 or to the issuance of a Dam Permit or Water Obstruction and Encroachment Permit, or the approval of an Environmental Assessment must submit any comments, suggestions or objections within 30-days of the date of this notice, as well as any questions to the office noted above the application. Comments should contain the name, address and telephone number of the person commenting, identification of the certification request to

which the comments or objections are addressed, and a concise statement of comments, objections or suggestions including the relevant facts upon which they are based.

The DEP may schedule a fact-finding hearing or an informal conference in response to comments if deemed necessary. Maps, drawings and other data pertinent to the certification request are available for inspection between the hours of 8:00 a.m. and 4:00 p.m. on each working day at the office noted above the application.

Individuals in need of accommodations should contact DEP through the Pennsylvania Hamilton Relay Service at (800) 654-5984 (TDD users) or (800) 654-5988 (voice users).

#### WATER OBSTRUCTIONS AND ENCROACHMENTS

##### 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 of the Federal Water Pollution Control Act (33 U.S.C.A. § 1341(a)).

*Northcentral Region: Waterways & Wetlands Program, 208 W. 3rd Street, Suite 101, Williamsport, PA 17701-6448, 570-327-3636.*

*Contact: Jay Maneval, Water Pollution Biologist 2, 570-327-3765.*

**E18-501. Renovo Energy Center LLC**, 12011 Sunset Hills Road, Suite 110, Reston, VA 20190, Noyes Township, Chapman Township, and Leidy Township, **Clinton County**. U.S. Army Corps of Engineers Baltimore District. Application received: October 25, 2022.

To extend the previously issued Water Obstruction and Encroachment Permit expiring December 31, 2022. The previous permit authorized 17,070 square feet (0.39 acre) of temporary stream impacts, 16,393 square feet (0.38 acre) of permanent stream impacts, 4,252 square feet (0.10 acre) of temporary wetland impacts, and 4,016 square feet (0.09 acre) of permanent conversion wetland impacts all for the purpose of installing natural gas gathering lines, associated access roadways, meter and pressure reducing valve pads, aerial transmission lines, switchyards, intake/discharge line, and power plant facility. Perennial streams (with Aquatic Life Use Designation) found within the study area include: Dry Run (High-Quality—Cold Water Fishery), Shintown Run (High-Quality—Cold Water Fishery), Drury Run (Cold Water Fishery), Brewery Run (High-Quality—Cold Water Fishery), Twomile Run (Trout Stock Fishery), and West Branch Susquehanna River (Warm Water Fishery). This permit also authorized 401 Water Quality Certification. Latitude: 41.333744°, Longitude: -77.804875°.

*Northeast Region: Waterways & Wetlands Program, 2 Public Square, Wilkes-Barre, PA 18701-1915, 570-826-2511.*

*Contact: RA-EPWW-NERO@pa.gov.*

**E3902222-008. Upper Saucon Township**, 5500 Camp Meeting Road, Center Valley, PA 18034, Upper Saucon Township, **Lehigh County**. U.S. Army Corps of Engineers Philadelphia District. Application received: October 14, 2022.

To replace 1,628 feet of 8-inch ductile iron pipe water main, including 2 tapping sleeves to existing water mains and a new 6-inch diameter fire hydrant line, which will cross UNT to Saucon Creek (HQ-CWF, MF) and 2 PEM

riparian wetlands. The project is located in the Upper Saucon Township, Lehigh County. Latitude: 40° 33' 17.5", Longitude: -75° 26' 39.2".

*Northwest Region: Waterways & Wetlands Program, 230 Chestnut Street, Meadville, PA 16335-3481, 814-332-6945.*

*Contact: RA-EPWW-NWRO@pa.gov.*

**E2506222-016. Seefried Industrial Properties**, 3333 Riverwood Parkway, Suite 200, Atlanta, GA 30339, McKean Township, **Erie County**. U.S. Army Corps of Engineers Pittsburgh District. Application received: October 14, 2022.

The applicant proposes to construct a large commercial warehouse, associated parking areas, utilities, and stormwater management facility at 6450 Sterretania Road just south of Interstate 90. The project will have approximately 4.11 acres of permanent wetland impacts. The applicant is proposing to mitigate for wetland impacts by purchase of bank credits from Resource Environmental Services (RES) at an approved mitigation bank in the Ohio River Basin equivalent to 0.46 acre of permanent impact to Federally jurisdictional wetlands and a payment to Pennsylvania's PIESCES Fund equivalent to 3.65 acres of permanent impact to other wetlands. Latitude: 42.013650°, Longitude: -80.197640°.

*Southeast Region: Waterways & Wetlands Program, 2 East Main Street, Norristown, PA 19401, 484-250-5900.*

*Contact: Elaine Henderson, Clerical Assistant 3, 484-250-5157.*

**E2301220-027. MCBH Drexeline Plaza, LP, c/o MCB Real Estate, LLC**, 2701 North Charles Street, Suite 404, Baltimore, MD 21218, Upper Darby Township, **Delaware County**. U.S. Army Corps of Engineers Philadelphia District. Application received: October 20, 2022. Latitude: 39.945014°, Longitude: -75.325956°.

To amend the existing permit associated with the redevelopment of Drexeline Shopping Center, to include work in and around the last 35 feet of the enclosed stream (box culvert) of Collen Brook (WWF, MF). The amended impacts include regrading, in-kind replacement of the last 35 feet of the box culvert, and riprap protect at the outlet, two (2) 4-inch buried waterlines, four (4) fire service 8-inch waterlines, ten (10) new or relocated utilities, one (1) 3-inch underground electric and telephone conduit, and two (2) overhead electric lines. Temporary and permanent impacts are amended to the following: 553 linear feet and 5,383 square feet of temporary stream impacts and 144 linear feet and 1,151 square feet of permanent stream impacts, temporary floodway impacts of 19,721 square feet and 27,325 square feet of permanent floodway impacts, and 1,710 temporary floodplain impacts and 175,208 permanent floodplain impacts.

The site is approximately at 5100 State Road, Drexel Hill, PA (Lansdowne, PA Lat. 39° 56' 43"; Long. -75° 19' 25") in Upper Darby Township, Delaware County.

*Southwest Region: Waterways & Wetlands Program, 400 Waterfront Drive, Pittsburgh, PA 15222-4745, 412-442-4000.*

*Contact: Dana Drake, Program Manager.*

**E0205222-023. North Fayette Township**, 400 North Branch Road, Oakdale, PA 15071, North Fayette Township, **Allegheny County**. U.S. Army Corps of Engineers Pittsburgh District. Application received: July 29, 2022.

The applicant proposes to: Construct, operate, and maintain a 14-foot wide by 98-foot-long box culvert



replacement of a 30-foot-long bridge along an unnamed tributary to Montour Run (TSF). Permanent impacts are to 98 linear feet of watercourse and 0.1 acre of floodway. Temporary impacts are to 170 linear feet of watercourse and 0.03 acre of floodway. For the purpose of replacing an existing bridge and prevention of future streambank scour. The project site is located at 297 Mahoney Road, Coraopolis PA 15108. Latitude: 40° 27' 5.3", Longitude: -80° 12' 21.53".

**E1105222-001. Cambria County Commissioners**, 200 South Center Street, Ebensburg, PA 15931, Ebensburg Borough, **Cambria County**. U.S. Army Corps of Engineers Pittsburgh District. Application received: September 28, 2022.

The applicant proposes to: Construct and maintain a two lane, single span, prestressed concrete PA bulb tee beam bridge and abutments across the North Branch Blacklick Creek (CWF) along with associated fill in the floodway of North Branch Blacklick Creek (CWF) and Carney Run (CWF) for the purpose of replacing a previous structure that was removed under an emergency permit (DEP File No. EP1105221-002) due to severe deterioration. The new bridge will be constructed approximately 25' upstream of the structure that was previously removed. Additional activities include minor approach roadway and drainage work and stream bank stabilization along the stream bank. Impacts to North Branch Blacklick Creek are 0.617 acre permanent stream impacts, 1.260 acres of permanent floodway impacts, 0.688 temporary stream impacts, and 1.404 acres of temporary floodway impacts. Impacts to Carney Run are 0.003 acre permanent stream impacts, 0.030 acre of temporary stream impacts. The project site is located along and over North Branch of Blacklick Creek, on Red Mill Road (T459), southeast of the intersection of Duncan Road and Red Mill Road. Latitude: 40° 30' 56.83", Longitude: -78° 54' 11.38".

#### **EROSION AND SEDIMENT CONTROL**

The following parties have applied for an Erosion and Sediment Control Permit (ESCP) for an earth disturbance activity associated with either a road maintenance or timber harvesting operation.

Unless otherwise indicated, on the basis of preliminary review and application of lawful standards and regulations, the Department of Environmental Protection (DEP) proposes to issue a permit to discharge, subject to certain limitations set forth in the permit conditions. These proposed determinations are tentative. Limitations are

provided as erosion and sediment control best management practices (BMPs) which restrict the rate and quantity of sediment discharged.

Individuals wishing to comment on the proposed permit are invited to submit a statement to the appropriate DEP Regional Office listed above 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 DEP 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 DEP Regional Office during the 30-day public comment period.

Following the 30-day comment period, the appropriate Regional Office Program Manager 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 the Environmental Hearing Board.

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 office identified in this notice.

Individuals in need of accommodations should contact DEP through the Pennsylvania Hamilton Relay Service at (800) 654-5984 (TDD users) or (800) 654-5988 (voice users).

#### **Applications Received Under Sections 5 and 402 of the Clean Streams Law (35 P.S. §§ 691.5 and 691.402).**

*Southwest Region: Oil and Gas Management Program, 400 Waterfront Drive, Pittsburgh, PA 15222-4745, 412-442-4000.*

*Contact: Kate Hogue, Clerical Supervisor II, 814-332-6860.*

ESCGP-3 # ESCGP # 3

Applicant Name Geopetro LLC

Contact Person Paul Archer

Address 7100 N High Street, Suite 303

City, State, Zip Worthington, OH 43085

Township(s) Industry Borough

County Beaver County

Receiving Stream(s) and Classification(s) UNT to Sixmile Run WWF

Application received: October 28, 2022

## **ACTIONS**

### **THE PENNSYLVANIA CLEAN STREAMS LAW AND THE FEDERAL CLEAN WATER ACT**

#### **FINAL ACTIONS TAKEN FOR NPDES PERMITS AND WQM PERMITS**

The Department of Environmental Protection (DEP) has taken the following actions on previously received applications for new, amended, and renewed National Pollutant Discharge Elimination System (NPDES) and Water Quality Management (WQM) permits, applications for permit waivers, and Notice of Intent (NOIs) for coverage under General Permits, as listed in the following tables. This notice of final action is published in accordance with 25 Pa. Code Chapters 91, 92a, and 102 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 official file for each listed action can be reviewed at the DEP or delegated County Conservation District (CCD) office identified in the table for the action. DEP/CCD office contact information is listed as follows for Section I and is contained within the table for Section II. Additional information for permits issued under 25 Pa. Code Chapters 91 and 92a and Individual permits under 25 Pa. Code Chapter 102, including links to Individual Chapter 92a NPDES and WQM Permits, may be reviewed by generating the "Final Actions Report" on DEP's website at [www.dep.pa.gov/CWPublicNotice](http://www.dep.pa.gov/CWPublicNotice).

DEP office contact information to review official files relating to the final actions in Section I is as follows:

*DEP Southeast Regional Office (SERO)—2 E. Main Street, Norristown, PA 19401-4915. File Review Coordinator: 484-250-5910. Email: RA-EPNPDES\_SERO@pa.gov for Chapter 91 & 92a permits; RA-EPWW-SERO@pa.gov for Chapter 102 permits.*

*DEP Northeast Regional Office (NERO)—2 Public Square, Wilkes-Barre, PA 18701-1915. File Review Coordinator: 570-826-5472. Email: RA-EPNPDES\_NERO@pa.gov for Chapter 91 & 92a permits; RA-EPWW-NERO@pa.gov for Chapter 102 permits.*

*DEP Southcentral Regional Office (SCRO)—909 Elmerton Avenue, Harrisburg, PA 17110. File Review Coordinator: 717-705-4732. Email: RA-EPNPDES\_SCRO@pa.gov for Chapter 91 & 92a permits; RA-EPWW-SCRO@pa.gov for Chapter 102 permits.*

*DEP Northcentral Regional Office (NCRO)—208 W. Third Street, Suite 101, Williamsport, PA 17701. File Review Coordinator: 570-327-3693. Email: RA-EPNPDES\_NCRO@pa.gov for Chapter 91 & 92a permits; RA-EPWW-NCRO@pa.gov for Chapter 102 permits.*

*DEP Southwest Regional Office (SWRO)—400 Waterfront Drive, Pittsburgh, PA 15222. File Review Coordinator: 412-442-4286. Email: RA-EPNPDES\_SWRO@pa.gov for Chapter 91 & 92a permits; RA-EPWW-SWRO@pa.gov for Chapter 102 permits.*

*DEP Northwest Regional Office (NWRO)—230 Chestnut Street, Meadville, PA 16335. File Review Coordinator: 814-332-6078. Email: RA-EPNPDES\_NWRO@pa.gov for Chapter 91 & 92a permits; RA-EPWW-NWRO@pa.gov for Chapter 102 permits.*

*DEP Bureau of Clean Water (BCW)—400 Market Street, Harrisburg, PA 17105. File Review Coordinator: 717-787-5017. Email: RA-EPNPDES\_Permits@pa.gov.*

*DEP Regional Permit Coordination Office (RPCO)—400 Market Street, Harrisburg, PA 17105. File Review Coordinator: 717-772-5987. Email: RA-EPREGIONALPERMIT@pa.gov.*

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. 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. 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. Individuals 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. 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. Important legal rights are at stake, however, so individuals should contact a lawyer at once.

Individuals in need of accommodations should contact DEP through the Pennsylvania Hamilton Relay Service at (800) 654-5984 (TDD users) or (800) 654-5988 (voice users).

For actions taken on applications for pipelines that are regulated by the Federal Energy Regulatory Commission (FERC).

Any person aggrieved by this action may challenge it in an appropriate legal forum. The State and Federal courts are currently split on whether the proper forum to challenge a Department permit, authorization or approval for a facility or activity subject to the Federal Natural Gas Act, 15 U.S.C.A. §§ 717 et seq., is the United States Court of Appeals for the Third Circuit or the Pennsylvania Environmental Hearing Board. *See Delaware Riverkeeper Network v. Sec'y, Dep't of Env'tl. Prot.*, 833 F.3d 360 (3d Cir. 2016); *Delaware Riverkeeper Network v. Sec'y, Dep't of Env'tl. Prot.*, 903 F.3d 65 (3d Cir. 2018), cert. denied, 139 S. Ct. 1648, 203 L. Ed. 899 (2019) and *Cole v. Dep't. of Env'tl. Prot.*, 1577 C.D. 2019 WL 2420667 (Pa. Cmwlth Ct. June 15, 2021) (Pet. for Allowance of Appeal pending); *West Rockhill Twp. v. Dep't of Env'tl. Prot.*, No. 1595 C.D. 2019 WL 2426014 (Pa. Cmwlth. June 15, 2021) (Pet. for Allowance of Appeal pending).

#### **I. Final Action(s) on NPDES and WQM Permit Application(s) and NOIs for Sewage, Industrial Waste, Industrial Stormwater, MS4s, Pesticides, CAFOs and Individual Construction Stormwater.**

<i>Application Number</i>	<i>Permit Type</i>	<i>Action Taken</i>	<i>Permittee Name &amp; Address</i>	<i>Municipality, County</i>	<i>DEP Office</i>
PA0088404	CAFO Individual NPDES Permit	Issued	Kulp Family Dairy, LLC 1691 Millerstown Road Martinsburg, PA 16662-8020	North Woodbury Township Blair County	SCRO
PAD070028	Chapter 102 Individual NPDES Permit	Issued	Dreams Go On, Inc. 1301 Maple Avenue Hollidaysburg, PA 16648-1123	Frankstown Township Blair County	SCRO
PAD090013	Chapter 102 Individual NPDES Permit	Issued	Toll PA XIV LP 250 Gibraltar Road Horsham, PA 19044-2323	Warrington Township Bucks County	SERO

## NOTICES

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<i>Application Number</i>	<i>Permit Type</i>	<i>Action Taken</i>	<i>Permittee Name &amp; Address</i>	<i>Municipality, County</i>	<i>DEP Office</i>
PAD090082	Chapter 102 Individual NPDES Permit	Issued	NP Falls Township Ind, LLC 4805 Montgomery Road Suite 310 Cincinnati, OH 45212-2198	Falls Township Bucks County	SERO
PAD150068	Chapter 102 Individual NPDES Permit	Issued	Oxford Commons LP 120 W Germantown Pike Plymouth Meeting, PA 19462-1420	Lower Oxford Township Chester County	SERO
PAD150069	Chapter 102 Individual NPDES Permit	Issued	Bentley Systems, Inc. 685 Stockton Drive Exton, PA 19341-1151	Upper Uwchlan Township Chester County	SERO
PAD220010	Chapter 102 Individual NPDES Permit	Issued	PA DOT Engineering District 80 2140 Herr Street Harrisburg, PA 17103-1625	Harrisburg City Dauphin County	SCRO
PAD230057	Chapter 102 Individual NPDES Permit	Issued	DELCORA 100 East Fifth Street P.O. Box 999 Chester, PA 19016-0999	Chester City Delaware County	SERO
PAD360086	Chapter 102 Individual NPDES Permit	Issued	Custom Home Group, Inc. 1302 Lancaster Pike Quarryville, PA 17566-9749	East Drumore Township Lancaster County	SCRO
PAD400060	Chapter 102 Individual NPDES Permit	Issued	Piast Home Bldr Co. 12 Jaskiewicz Way White Haven, PA 18661-9701	Rice Township Luzerne County	NERO
PAD480167	Chapter 102 Individual NPDES Permit	Issued	Gic Lehigh Valley, LLC 18201 Von Karman Avenue Irvine, CA 92612-1000	Forks Township Northampton County	NERO
PAD520038	Chapter 102 Individual NPDES Permit	Issued	Pike County Light & Power Corp 105 Schneider Lane Milford, PA 18337-7845	Matamoras Borough Pike County	NERO
PAD670005	Chapter 102 Individual NPDES Permit	Issued	Terra Nova at Eitzert Farms, LLC 5515 Lynch Lane Baldwin, MD 21013	Shrewsbury Borough York County	SCRO
PAD670062	Chapter 102 Individual NPDES Permit	Issued	Two Farms, Inc. 3611 Rowland Avenue Baltimore, MD 21211	Shrewsbury Township York County	SCRO
PA0091588	Minor Sewage Facility < 0.05 MGD Individual NPDES Permit	Issued	Yough School District 915 Lowber Road Herminie, PA 15637-1226	South Huntingdon Township Westmoreland County	SWRO
PA0046868	Minor Sewage Facility >= 0.05 MGD and < 1 MGD Individual NPDES Permit	Issued	Lower Moreland Township Municipal Authority Montgomery County 640 Red Lion Road Huntingdon Valley, PA 19006	Lower Moreland Township Montgomery County	SERO
PA0252999	Minor Sewage Facility >= 0.05 MGD and < 1 MGD Individual NPDES Permit	Issued	Unity Township Municipal Authority Westmoreland County P.O. Box 506 Pleasant Unity, PA 15676-0506	Unity Township Westmoreland County	SWRO
NOEXSE337	No Exposure Certification	Issued	Harleysville Materials Holding Co., LLC 427 South White Horse Pike P.O. Box 619 Berlin, NJ 08009	Falls Township Bucks County	SERO



<i>Application Number</i>	<i>Permit Type</i>	<i>Action Taken</i>	<i>Permittee Name &amp; Address</i>	<i>Municipality, County</i>	<i>DEP Office</i>
PAG040224	PAG-04 NPDES General Permit for Small Flow Treatment Facilities	Issued	Douglas and Nicole Cassel 614 Mock Road Pottstown, PA 19464	Upper Pottsgrove Township Montgomery County	SERO
PAG123792	PAG-12 NPDES General Permit for CAFOs	Issued	Yippee! Farms, LLC 880 Pinkerton Road Mount Joy, PA 17552-9241	Rapho Township Lancaster County	SCRO
PAG124875	PAG-12 NPDES General Permit for CAFOs	Issued	Aurand Poultry, LLC 513 Century Road Danville, PA 17821-8137	Madison Township Columbia County	SCRO
PAG133604	PAG-13 NPDES General Permit for MS4s	Waived	Newry Borough Blair County P.O. Box 245 Newry, PA 16665-0245	Newry Borough Blair County	SCRO
PAG136315	PAG-13 NPDES General Permit for MS4s	Waived	Sutersville Borough Westmoreland County 320 Municipal Avenue Sutersville, PA 15083-1144	Sutersville Borough Westmoreland County	SWRO
PAG136336	PAG-13 NPDES General Permit for MS4s	Waived	Glenfield Borough Allegheny County 265 Dawson Avenue Sewickley, PA 15143-2225	Glenfield Borough Allegheny County	SWRO
PAG136371	PAG-13 NPDES General Permit for MS4s	Waived	Penn State Beaver Campus 100 University Drive Monaca, PA 15061-2764	Monaca Borough Beaver County	SWRO
PAG136382	PAG-13 NPDES General Permit for MS4s	Waived	East Vandergrift Borough Westmoreland County 254 Kennedy Avenue P.O. Box 460 East Vandergrift, PA 15629	East Vandergrift Borough Westmoreland County	SWRO
PAG136383	PAG-13 NPDES General Permit for MS4s	Waived	West Brownsville Borough Washington County 100 Courson Hill Road Washington, PA 15301	West Brownsville Borough Washington County	SWRO
463S103	Pump Stations Individual WQM Permit	Issued	Westmoreland County Municipal Authority 124 Park and Pool Road New Stanton, PA 15672	Mount Pleasant Borough Westmoreland County	SWRO
0465S11	Pump Stations Individual WQM Permit	Issued	Westmoreland County Municipal Authority 124 Park and Pool Road New Stanton, PA 15672	Mount Pleasant Borough Westmoreland County	SWRO
6506401	Pump Stations Individual WQM Permit	Issued	Westmoreland County Municipal Authority 124 Park and Pool Road New Stanton, PA 15672	Mount Pleasant Borough Westmoreland County	SWRO
6578421	Pump Stations Individual WQM Permit	Issued	Westmoreland County Municipal Authority 124 Park and Pool Road New Stanton, PA 15672	Mount Pleasant Borough Westmoreland County	SWRO
5370	Sewer Extensions Individual WQM Permit	Issued	Westmoreland County Municipal Authority 124 Park and Pool Road New Stanton, PA 15672	Mount Pleasant Borough Westmoreland County	SWRO
6517403	Sewer Extensions Individual WQM Permit	Issued	Westmoreland County Municipal Authority 124 Park and Pool Road New Stanton, PA 15672	Mount Pleasant Borough Westmoreland County	SWRO
6573433	Sewer Extensions Individual WQM Permit	Issued	Westmoreland County Municipal Authority 124 Park and Pool Road New Stanton, PA 15672	Mount Pleasant Borough Westmoreland County	SWRO

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<i>Application Number</i>	<i>Permit Type</i>	<i>Action Taken</i>	<i>Permittee Name &amp; Address</i>	<i>Municipality, County</i>	<i>DEP Office</i>
6578423	Sewer Extensions Individual WQM Permit	Issued	Westmoreland County Municipal Authority 124 Park and Pool Road New Stanton, PA 15672	Mount Pleasant Borough Westmoreland County	SWRO
6578437	Sewer Extensions Individual WQM Permit	Issued	Westmoreland County Municipal Authority 124 Park and Pool Road New Stanton, PA 15672	Mount Pleasant Borough Westmoreland County	SWRO
6578439	Sewer Extensions Individual WQM Permit	Issued	Westmoreland County Municipal Authority 124 Park and Pool Road New Stanton, PA 15672	Mount Pleasant Borough Westmoreland County	SWRO
6836	Sewer Extensions Individual WQM Permit	Issued	Westmoreland County Municipal Authority 124 Park and Pool Road New Stanton, PA 15672	Mount Pleasant Borough Westmoreland County	SWRO
08405-S	Sewer Extensions Individual WQM Permit	Issued	Westmoreland County Municipal Authority 124 Park and Pool Road New Stanton, PA 15672	Mount Pleasant Borough Westmoreland County	SWRO
08762-S	Sewer Extensions Individual WQM Permit	Issued	Westmoreland County Municipal Authority 124 Park and Pool Road New Stanton, PA 15672	Mount Pleasant Borough Westmoreland County	SWRO
08810-S	Sewer Extensions Individual WQM Permit	Issued	Westmoreland County Municipal Authority 124 Park and Pool Road New Stanton, PA 15672	Mount Pleasant Borough Westmoreland County	SWRO
09439-S	Sewer Extensions Individual WQM Permit	Issued	Westmoreland County Municipal Authority 124 Park and Pool Road New Stanton, PA 15672	Mount Pleasant Borough Westmoreland County	SWRO
09535-S	Sewer Extensions Individual WQM Permit	Issued	Westmoreland County Municipal Authority 124 Park and Pool Road New Stanton, PA 15672	Mount Pleasant Borough Westmoreland County	SWRO
PA0290971	Single Residence STP Individual NPDES Permit	Issued	Snyder Monica 7209 Country Club Road Butler, PA 16001-8576	Franklin Township Butler County	NWRO
PA0291099	Single Residence STP Individual NPDES Permit	Issued	Hatcher Claire 120 Old Colony Drive New Castle, PA 16105-4502	Neshannock Township Lawrence County	NWRO
PA0291111	Single Residence STP Individual NPDES Permit	Issued	Schwartz Ronald A 1093 Saxonburg Boulevard Saxonburg, PA 16056-9133	Horton Township Elk County	NWRO
1022411	Single Residence Sewage Treatment Plant Individual WQM Permit	Issued	Snyder Monica 7209 Country Club Road Butler, PA 16001-8576	Franklin Township Butler County	NWRO
2392409	Single Residence Sewage Treatment Plant Individual WQM Permit	Issued	Strauch Lisa 30 Ponds View Road Glen Mills, PA 19342-1437	Concord Township Delaware County	SERO
2422401	Single Residence Sewage Treatment Plant Individual WQM Permit	Issued	Schwartz Ronald A 1093 Saxonburg Boulevard Saxonburg, PA 16056-9133	Horton Township Elk County	NWRO

<i>Application Number</i>	<i>Permit Type</i>	<i>Action Taken</i>	<i>Permittee Name &amp; Address</i>	<i>Municipality, County</i>	<i>DEP Office</i>
3722406	Single Residence Sewage Treatment Plant Individual WQM Permit	Issued	Hatcher Claire 120 Old Colony Drive New Castle, PA 16105-4502	Neshannock Township Lawrence County	NWRO
PA0232947	Small Flow Treatment Facility Individual NPDES Permit	Issued	Middlebury Center DPP, LLC 9010 Overlook Boulevard Brentwood, TN 37027-5242	Middlebury Township Tioga County	NCRO
WQG010068	WQG-01 WQM General Permit	Issued	Douglas and Nicole Cassel 614 Mock Road Pottstown, PA 19464	Upper Pottsgrove Township Montgomery County	SERO
WQG02632202	WQG-02 WQM General Permit	Issued	Peters Township Sanitary Authority Washington County 3300 Preble Avenue Pittsburgh, PA 15233-1025	Pittsburgh City Allegheny County	SWRO

## II. Final Action(s) on PAG-01 and PAG-02 General NPDES Permit NOIs.

<i>Permit Number</i>	<i>Permit Type</i>	<i>Action Taken</i>	<i>Applicant Name &amp; Address</i>	<i>Municipality, County</i>	<i>Office</i>
PAC400145A-1	PAG-02 General Permit	Issued	Elegant Homes, LLC Marek Kopczynski 106 Sara Drive Shavertown, PA 18708	Hanover Township Luzerne County	Luzerne Conservation District 325 Smiths Pond Road Shavertown, PA 18708 570-674-7991 RA-EPWW-NERO@PA.GOV
PAC400230	PAG-02 General Permit	Issued	Dallas (118) DPP, LLC Jacob Carter 9010 Overlook Boulevard Brentwood, TN 37027	Lehman Township Luzerne County	Luzerne Conservation District 325 Smiths Pond Road Shavertown, PA 18708 570-674-7991 RA-EPWW-NERO@PA.GOV
PAC090574	PAG-02 General Permit	Issued	Bucks County Water & Sewer Authority 1275 Almshouse Road Warrington, PA 18976-1209	Bensalem Township Bucks County	Bucks County Conservation District 1456 Ferry Road Doylestown, PA 18901-5550 215-345-7577 x110 RA-EPNPDES_SERO@pa.gov
PAC090553 A-1	PAG-02 General Permit	Issued	Alliance Two Geoffrey Drive, LLC 40 Morris Avenue Suite 230 Bryn Mawr, PA 19010-3300	Falls Township Bucks County	Bucks County Conservation District 1456 Ferry Road Doylestown, PA 18901-5550 215-345-7577 x110 RA-EPNPDES_SERO@pa.gov
PAC480143 PAG-02 Gen	PAG-02 General Permit	Issued	TSV—CEVN Bethlehem, LLC 992 Old Eagle School Road Suite 915 Wayne, PA 19087	Bethlehem Township Northampton County	Northampton County Conservation District 14 Gracedale Avenue Greystone Building Nazareth, PA 18064 610-829-6276 RA-EPWW-NERO@PA.GOV



## NOTICES

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<i>Permit Number</i>	<i>Permit Type</i>	<i>Action Taken</i>	<i>Applicant Name &amp; Address</i>	<i>Municipality, County</i>	<i>Office</i>
PAC510267	PAG-02 General Permit	Issued	Island Kingdom Properties, LLC 1 Kimberly Road Suite 105 East Brunswick, NJ 08816	City of Philadelphia Philadelphia County	DEP, SERO 2 E. Main Street Norristown, PA 19401 484-250-5821 RA-EPNPDES_SERO@ pa.gov
PAC390179	PAG-02 General Permit	Issued	Mount Trexler Manor, Inc. 5201 St. Joseph's Rd. Limeport, PA 18060	Upper Saucon Township Lehigh County	Lehigh County Conservation District 4184 Dorney Park Road Suite 105 Allentown, PA 18101 610-391-9583 RA-EPWW-NERO@ PA.GOV
PAC480145	PAG-02 General Permit	Issued	First Industrial Pennsylvania, LP c/o James Knopka 2780 Commerce Drive Suite 100 Middletown, PA 17057-3245	Lower Nazareth Township Northampton County	Northampton County Conservation District 14 Gracedale Avenue Greystone Building Nazareth, PA 18064-9211 610-829-6276 RA-EPWW-NERO@ PA.GOV
PAC230233	PAG-02 General Permit	Issued	500 Wanamaker Avenue Partners, LLC 416 Bethlehem Pike Fort Washington, PA 19034-3418	Tinicum Township Delaware County	Delaware County Conservation District 1521 N. Providence Road Media, PA 19063 610-892-9484 RA-EPNPDES_SERO@ pa.gov
PAC350136	PAG-02 General Permit	Issued	Brookside Land Corporation, Inc. 5 Brookside Road Carbondale, PA 18407-2805	Carbondale Township City of Carbondale Lackawanna County	Lackawanna County Conservation District 1038 Montdale Road Room 109 Scott Township, PA 18447-9773 570-382-3086 RA-EPWW-NERO@ PA.GOV
PAC370065	PAG-02 General Permit	Issued	PTV 1237 LLC 400 Penn Center Boulevard Building 4 Suite 1000 Pittsburgh, PA 15235	Pulaski Township Lawrence County	Lawrence County Conservation District 430 Court Street New Castle, PA 16101 724-652-4512
PAC430073	PAG-02 General Permit	Issued	1300 East State Street Realty LLC 258 Pittsburgh Road Butler, PA 16002	City of Sharon Mercer County	Mercer County Conservation District 24 Avalon Court Suite 300 Mercer, PA 16137 724-662-2242
PAC360634 A-1	PAG-02 General Permit	Issued	Carolyn Hildebrand P.O. Box 95 156B W. Main Street Reinholds, PA 17569	West Cocalico Township Lancaster County	Lancaster County Conservation District 1383 Arcadia Road Room 200 Lancaster, PA 17601 717-299-5361 ext. 5 RA-EPSCWWPABULL@ pa.gov

<i>Permit Number</i>	<i>Permit Type</i>	<i>Action Taken</i>	<i>Applicant Name &amp; Address</i>	<i>Municipality, County</i>	<i>Office</i>
PAC360169 A-1	PAG-02 General Permit	Issued	Luke Ulrich 150 Netzley Drive Denver, PA 17517	Brecknock Township Lancaster County	Lancaster County Conservation District 1383 Arcadia Road Room 200 Lancaster, PA 17601 717-299-5361 ext. 5 RA-EPSCWWPABULL@ pa.gov
PAC360659	PAG-02 General Permit	Issued	Clinic for Special Children 535 Bunker Hill Road Strasburg, PA 17579	Leacock Township Lancaster County	Lancaster County Conservation District 1383 Arcadia Road Room 200 Lancaster, PA 17601 717-299-5361 ext. 5 RA-EPSCWWPABULL@ pa.gov
PAC360601 A-1	PAG-02 General Permit	Issued	The Lancaster General Hospital 549 North Lime Street Lancaster, PA 17602	Strasburg Borough Lancaster County	Lancaster County Conservation District 1383 Arcadia Road Room 200 Lancaster, PA 17601 717-299-5361 ext. 5 RA-EPSCWWPABULL@ pa.gov
PAC360752	PAG-02 General Permit	Issued	Frank Nolt 5260 Main Street East Petersburg, PA 17520	East Hempfield Township Lancaster County	Lancaster County Conservation District 1383 Arcadia Road Room 200 Lancaster, PA 17601 717-299-5361 ext. 5 RA-EPSCWWPABULL@ pa.gov
PAC360164 A-1	PAG-02 General Permit	Issued	425 S Muddy Creek Road Assoc. 100 Front Street Suite 560 West Conshohocken, PA 17603	East Cocalico Township Lancaster County	Lancaster County Conservation District 1383 Arcadia Road Room 200 Lancaster, PA 17601 717-299-5361 ext. 5 RA-EPSCWWPABULL@ pa.gov
PAC360095 A-1	PAG-02 General Permit	Issued	Joseph Nadu Jr. 2760 Charlestown Road Lancaster, PA 17603	Providence Township Lancaster County	Lancaster County Conservation District 1383 Arcadia Road Room 200 Lancaster, PA 17601 717-299-5361 ext. 5 RA-EPSCWWPABULL@ pa.gov
PAC670219 A-1	PAG-02 General Permit	Issued	Red Lion Salvage LLC Steve Olkowski 350 Craley Road Red Lion, PA 17356	Windsor Township York County	York County Conservation District 2401 Pleasant Valley Road Suite 101 Room 139 York, PA 17402 717-840-7430 RA-EPSCWWPABULL@ pa.gov

<i>Permit Number</i>	<i>Permit Type</i>	<i>Action Taken</i>	<i>Applicant Name &amp; Address</i>	<i>Municipality, County</i>	<i>Office</i>
PAC670102	PAG-02 General Permit	Issued	Kinsley/FT-LLP Partnership Timothy Kinsley 6259 Reynolds Mill Road Seven Valleys, PA 17360	Conewago Township York County	York County Conservation District 2401 Pleasant Valley Road Suite 101 Room 139 York, PA 17402 717-840-7430 RA-EPSCWWPABULL@pa.gov
PAC250151	PAG-02 General Permit	Issued	Gold Shield Realty LLC 1500 Wilmington Road New Castle, PA 16105	Summit Township Erie County	Erie County Conservation District 1927 Wager Road Erie, PA 16509 814-825-6403
PAD550060 A-1	PAG-02 General Permit	Issued	Benjamin Syput PTV1216, LLC 400 Penn Center Blvd Building 4 Pittsburgh, PA 15235	Perry Township Snyder County	Snyder County Conservation District 10541 Route 522 Middleburg, PA 17842 570-837-3000

**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. 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.

Individuals in need of accommodations should contact DEP through the Pennsylvania Hamilton Relay Service at (800) 654-5984 (TDD users) or (800) 654-5988 (voice users).

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  
CAFO PUBLIC NOTICE SPREADSHEET—ACTIONS**

<i>Agricultural Operation Name and Address</i>	<i>County</i>	<i>Total Acres</i>	<i>Animal Equivalent Units</i>	<i>Animal Type</i>	<i>Special Protection Waters (HQ or EV or NA)</i>	<i>Approved or Disapproved</i>
Greenfield Farms Mervin King Mgr. 16551 Rte 35 South Port Royal, PA 17082	Juniata County	918	442.12	Poultry, Sheep, and Goats	HQ	Approved
Mount Rock Dairy 473 Mount Rock Road Newville, PA 17241	Cumberland County	379	2,080.3	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. 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.

Individuals in need of accommodations should contact the Environmental Hearing Board through the Pennsylvania Hamilton Relay Service at (800) 654-5984 (TDD users) or (800) 654-5988 (voice users).

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, 2 Public Square, Wilkes-Barre, PA 18701-1915, 570-826-2511.*

*Contact: Terri Yench, Clerical Assistant 2, 570-830-3048.*

**Construction Permit No. 4822508MA**, Minor Amendment, Public Water Supply.

Applicant	<b>East Bangor Municipal Authority</b>
Address	555 West Central Avenue East Bangor, PA 18013
Municipality	East Bangor Borough
County	<b>Northampton County</b>
Consulting Engineer	Mr. John Barbaz, P.E. Van Cleef Engineering Associates 1685 Valley Center Parkway Suite 100 Bethlehem, PA 18017
Application Received	October 4, 2022
Permit Issued	October 18, 2022

Description	The applicant proposed replacing the cover and replacing or repairing the liner (if found necessary during a visual inspection) on the South Broad Street Reservoir used for finished water storage (not contact time (CT)) with a new flexible membrane floating cover system including all necessary accessories, testing and disinfection as the existing cover (and liner) have reached the end of their useful life.
<b>Operation Permit No. 3130044</b> , Public Water Supply.	
Applicant	<b>Jim Thorpe Borough</b>
Address	101 East Tenth Street Jim Thorpe, PA 18229
Municipality	Jim Thorpe Borough
County	<b>Carbon County</b>
Consulting Engineer	Mr. Jason Saylor, P.E. Utility Service Company, Inc. 1230 Peachtree Street NE Suite 1100 Atlanta, GA 30309
Application Received	September 8, 2022
Permit Issued	October 10, 2022
Description	Operations permit for the Cherry Street Tank Rehabilitation Project.
<b>Construction Permit No. 5422506MA</b> , Minor Amendment, Public Water Supply.	
Applicant	<b>Schuylkill County Municipal Authority</b>
Address	221 South Centre Street Pottsville, PA 17901
Municipality	New Castle Township
County	<b>Schuylkill County</b>
Consulting Engineer	Ms Trisha Graves PE Project Design Engineer Water Practice Gannett Fleming, Inc. 207 Senate Avenue Camp Hill, PA 17011-2316
Application Received	June 28, 2022
Permit Issued	October 3, 2022
Description	SCMA has proposed modifications to their existing Broad Mountain and Mount Laurel Water Treatment Plant (WTP) system facilities (PWS system (PWS I.D. No. 3540038) located in New Castle Township, Schuylkill County. The applicant proposes a new Allen-Bradley based Programmable Logic Controller (PLC) Supervisory Control and Data Acquisition (SCADA) Upgrade and Miscellaneous Equipment Replacement Project at both WTPs. As well as proposing at the Mount Laurel WTP, CFE Turbidity Recording Modifications.

**Operation Permit No. 3540014**, Public Water Supply.

Applicant **Kline Township  
Municipal Authority**  
Address 8 East Market Street  
McAdoo, PA 18237  
Municipality Kline Township  
County **Schuylkill County**  
Consulting Engineer Ms. Karen C. Pollock, P.E.  
Systems Design  
Engineering, Inc.  
1032 James Drive  
Leesport, PA 19533  
Application Received July 14, 2022  
Permit Issued September 1, 2022  
Description Operations permit for the  
Chlorine Analyzer Replacement  
Project.

*Southcentral Region: Safe Drinking Water Program,  
909 Elmerton Avenue, Harrisburg, PA 17110-8200, 717-  
705-4700.*

*Contact: Joseph M. Mattucci, Program Manager,  
717.705.4708.*

**Operation Permit No. 4070408**, Public Water Supply.

Applicant **Dollar General Corporation—  
Duncansville Dollar General**  
Address 110 Mission Ridge  
Goodlettsville, TN 37072  
Municipality Allegheny Township  
County **Blair County**  
Consulting Engineer Joseph J. Hunt, P.E.—  
JHA Companies  
466 South Main Street  
Montrose, PA 18801  
Application Received October 12, 2022  
Permit Issued October 28, 2022  
Description Comprehensive Operation  
Permit for the transfer of  
PWSID 4070408 from PVT 1023,  
LLC to Dollar General  
Corporation. This permit also  
approves the use of the  
modifications made to the  
storage volumes used for 4-log  
treatment of viruses contact time  
and finished water storage.

*Southeast Region: Safe Drinking Water Program,  
2 East Main Street, Norristown, PA 19401, 484-250-5900.*

*Contact: Kimberleigh Rivers, Clerical Assistant 2, 484-  
250-5887.*

**Construction Permit No. 0922520**, Minor Amend-  
ment, Public Water Supply.

Applicant **Top Star Express # 18**  
Address 515 Dublin Pike  
Perkasie, PA 18944  
Municipality Bedminster Township  
County **Bucks County**

Consulting Engineer Synergy Environmental, Inc.  
155 Railroad Plaza  
First Floor  
Royersford, PA 19468

Application Received August 11, 2022  
Permit Issued October 11, 2022  
Description Adding a water softener and a  
Nitrogen treatment to the  
existing water system.

**Construction Permit No. 1522505**, Major Amend-  
ment, Public Water Supply.

Applicant **Old Paths Baptist Church**  
Address 682 Gap Newport Pike  
Atglen, PA 19310  
Municipality West Sadsbury Township  
County **Chester County**  
Consulting Engineer CSC Technology, Inc.  
170 Netherwood Drive  
West Brandywine, PA 19320  
Application Received April 21, 2022  
Permit Issued October 21, 2022  
Description New church built, new water  
system and contaminant  
treatment.

**Construction Permit No. 1522504**, Public Water  
Supply.

Applicant **Octorara Area School District**  
Address 228 Highland Road  
Reading, PA 19603-1603  
Municipality West Fallowfield Township  
County **Chester County**  
Consulting Engineer Entech Engineering, Inc.  
201 Penn Street  
Reading, PA 19603  
Application Received April 7, 2022  
Permit Issued October 25, 2022  
Description Corrosion control chemical  
addition treatment for lead and  
copper mitigation.

**Construction Permit No. 4622521**, Major Amend-  
ment, Public Water Supply.

Applicant **Butler Valley Golf Port**  
Address 32343 Gehman Road  
Upper Hanover, PA 19504  
Municipality Upper Hanover Township  
County **Montgomery County**  
Consulting Engineer J.S. Madaras Consulting, LLC  
250 Indian Lane  
Boyertown, PA 19512  
Application Received August 17, 2022  
Permit Issued August 31, 2022  
Description Proposed Nitrate reduction.

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**Actions Taken Under the Pennsylvania Safe Drink-  
ing Water Act (35 P.S. §§ 721.1—721.17).**

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*Northcentral Region: Safe Drinking Water Program, 208 W. 3rd Street, Suite 101, Williamsport, PA 17701-6448, 570-327-3636.*

*Contact: Nicole Mechtly, Clerical Supervisor II, 570-327-3490.*

**Operation Permit 1422508MA.** PWSID No. **4140111.** **Madisonburg Water Works,** 260 Madisonburg Pike, Madisonburg, PA 16852, Miles Township, **Centre County.** Application received: October 19, 2022. Permit Issued: October 25, 2022. This permit authorizes operation of the recently rehabilitated clearwell.

*Southcentral Region: Safe Drinking Water Program, 909 Elmerton Avenue, Harrisburg, PA 17110-8200, 717-705-4700.*

*Contact: Thomas Filip, Environmental Engineer, 717-705-4708.*

**Operation Permit 2221520 MA.** PWSID No. **7220037.** **Williamstown Borough Authority,** 200 South West Street, Williamstown, PA 17098, Williams Township, **Dauphin County.** Application received: October 17, 2022. Permit Issued: October 26, 2022. Partial operation permit for the replacement of filter media in Filter No. 1.

**Emergency Permit 0122513 E.** PWSID No. **7010965.** **Weis Market, Inc.,** 1000 South Second Street, Sunbury, PA 17801, Hamilton Township, **Adams County.** Application received: October 27, 2022. Permit Issued: October 27, 2022. Emergency permit for bulk water hauling to Weis Markets Store # 200—East Berlin.

*Contact: Wade Cope, P.E., Environmental Engineer, 717-705-4708.*

**Transfer Permit 4440018.** PWSID No. **4440018.** **Mifflin County Municipal Authority,** 70 Chestnut Street, Lewistown, PA 17004, Granville Township, **Mifflin County.** Application received: October 5, 2022. Permit Issued: October 26, 2022. Transferred Comprehensive Operation Permit—change of ownership from Granville Township Supervisors to Mifflin County Municipal Authority.

## LAND RECYCLING AND ENVIRONMENTAL REMEDIATION

### UNDER ACT 2, 1995 PREAMBLE 2

**The Following Plans and Reports Were Submitted Under the Land Recycling and Environmental Remediation Standards Act (35 P.S. §§ 6026.101—6026.908).**

Provisions of Sections 301—308 of the Land Recycling and Environmental Remediation Standards Act (act) (35 P.S. §§ 6026.301—6026.308) require the Department of Environmental Protection (DEP) 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 Bul-*

*letin.* 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, please contact the Regional Office Program Manager previously listed in the notice.

Individuals in need of accommodations should contact DEP through the Pennsylvania Hamilton Relay Service at (800) 654-5984 (TDD users) or (800) 654-5988 (voice users).

The Department has received the following plans and reports.

*Northeast Region: Environmental Cleanup & Brownfields Program, 2 Public Square, Wilkes-Barre, PA 18701-1915, 570-826-2511.*

*Contact: Eric Supey, Environmental Program Manager.*

**Lower Mount Bethel Steam Electric Station,** Primary Facility ID # **859843,** 6079 Depues Ferry Road, Bangor, PA 18013, Lower Mount Bethel Township, **Northampton County.** VF Britton Group, 326 Conestoga Road, Wayne, PA 19087, on behalf of Talen Energy, 6079 Depues Ferry Road, Bangor, PA 18013, submitted a Final Report concerning remediation of soil contaminated with sodium hypochlorite. The Final Report is intended to document remediation of the site to meet the Statewide health standards.

*Northwest Region: Environmental Cleanup & Brownfields Program, 230 Chestnut Street, Meadville, PA 16335-3481, 814-332-6945.*

*Contact: Lee Nageotte, Licensed Professional Geologist, 814-332-6127.*

**Federal Laboratories—Area 15A,** Primary Facility ID # **624873,** Treece Road, Saltsburg, PA 15681, Conemaugh Township, **Indiana County.** Patrick Peterson, P.G., 4885 McKnight Road, Pittsburgh, PA 15217, on behalf of Nancy Piperato, 35 Melanie Lane, Whippany, NJ 07981, submitted a combined Remedial Investigation Report/Cleanup Plan/Final Report concerning remediation of soil and groundwater contaminated with Benzene, 2-Chloroacetophenone (CN), Chloroform, Chloropicrin, Carbon tetrachloride, Methylene chloride. The combined Remedial Investigation Report/Cleanup Plan/Final Report is intended to document remediation of the site to meet the site-specific standards.

*Southeast Region: Environmental Cleanup & Brownfields Program, 2 East Main Street, Norristown, PA 19401, 484-250-5900.*

*Contact: Charline Bass, Administrative Assistant, 484-250-5787.*

**Signature Cleaners,** Primary Facility ID # **839851,** 1456 Ferry Road, Unit 10, Doylestown, PA 18901, New Britain Township, **Bucks County.** Joseph Kraycik, Environmental Standards, Inc., 1140 Valley Forge Road, P.O. Box 810, Valley Forge, PA 19482, on behalf of Michael Rosen, MAR & SAR, LLC d/b/a/ Signature Cleaners,



1456 Ferry Road, Unit 10, Doylestown, PA 18901, submitted a combined Remedial Investigation Report/Cleanup Plan/Final Report concerning remediation of soil and groundwater contaminated with VOVs. The combined Remedial Investigation Report/Cleanup Plan/Final Report is intended to document remediation of the site to meet the site-specific standards.

**Providence Village Shopping Center**, Primary Facility ID # **784565**, 519 North Oak Avenue, Aldan, PA 19018, Aldan Borough, **Delaware County**. Thomas A. Petrecz, Penn E&R, 400 Old Dublin Pike, Doylestown, PA 18901, on behalf of Gordon Saul, Providence Village Associates, LP, 115 Old York Road, Jenkintown, PA 19046, submitted a Remedial Investigation Report/Risk Assessment/Cleanup Plan/Final Report concerning remediation of groundwater contaminated with tetrachloroethene, trichloroethene, cis-1,2-Dichloroethene, vinyl chloride, 1,1-Dichloroethene. The Remedial Investigation Report/Risk Assessment/Cleanup Plan/Final Report is intended to document remediation of the site to meet the site-specific standards.

**4 Woodland Road**, Primary Facility ID # **860254**, 4 Woodland Road, Newtown, PA 18940, Upper Makefield Township, **Bucks County**. Ryan B. Beebe, Crawford Environmental Services, LLC, 20 Cardinal Drive, Birdsboro, PA 19508, on behalf of Joe Clemenson, JC Heating & Cooling, 181 Fallsington-Tullytown Road, Levittown, PA 19054, submitted a Final Report concerning remediation of soil contaminated with No. 2 fuel oil. The Final Report is intended to document remediation of the site to meet the Statewide health standards.

**2630 West Girard Avenue**, Primary Facility ID # **619558**, Southeast Corner of North 27th Street and West Girard Avenue, Philadelphia, PA 19130, City of Philadelphia, **Philadelphia County**. Jennifer Poole, Pennoni, 1900 Market Street, Suite 300, Philadelphia, PA 19103, on behalf of Dan Bleznak, 27th & Girard Limited Partnership, c/o ADCO, American Development Company, 715 Montgomery Avenue, Suite 3, Narberth, PA 19072, submitted a Final Report concerning remediation of soil contaminated with metals and PAHs. The Final Report is intended to document remediation of the site to meet the Statewide health standards.

## 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 of Environmental Protection (DEP) 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 DEP may approve or disapprove plans and reports submitted. This notice provides DEP's decision and, if relevant, the basis for disapproval.

For further information concerning plans or reports, please contact the Regional Office Program Manager previously listed in the notice.

Individuals in need of accommodations should contact DEP through the Pennsylvania Hamilton Relay Service at (800) 654-5984 (TDD users) or (800) 654-5988 (voice users).

The DEP has received the following plans and reports.

*Northeast Region: Environmental Cleanup & Brownfields Program, 2 Public Square, Wilkes-Barre, PA 18701-1915, 570-826-2511.*

*Contact: Eric Supey, Environmental Program Manager.*

**Keefe Property**, Primary Facility ID # **859232**, 6320 Pohopoco Drive, Lehigh, PA 18235, Towamensing Township, **Carbon County**. Environmental Maintenance Company, 1420 East Mermaid Lane, Glenside, PA 19038, on behalf of K&K Oil Company, Inc., 1257 Municipal Road, Lehigh, PA 18235, submitted a Final Report concerning remediation of soil contaminated with heating oil. The Final Report demonstrated attainment of the Statewide health standards. Approved: October 27, 2022.

*Southcentral Region: Environmental Cleanup & Brownfields Program, 909 Elmerton Avenue, Harrisburg, PA 17110-8200, 717-705-4700.*

*Contact: Environmental Cleanup & Brownfields Program Manager; 717-705-4705.*

**NGK Metals Manufacturing Corp.**, Primary Facility ID # **623136**, 150 Tuckerton Road, Temple, PA 19605, Muhlenberg Township, **Berks County**. HDR, 1720 Spillman Drive, Bethlehem, PA 18015, on behalf of NGK Metals Corporation, 917 US Highway 11 South, Sweetwater, TN 37874, submitted a Cleanup Plan/Final Report concerning remediation of soil contaminated with Metals, SVOCs and VOCs. The Report did not demonstrate attainment of the site-specific standards. Disapproved: October 20, 2022.

*Southeast Region: Environmental Cleanup & Brownfields Program, 2 East Main Street, Norristown, PA 19401, 484-250-5900.*

*Contact: Charline Bass, Administrative Assistant, 484-250-5787.*

**Sellersville Senior Apartments, LLC, Property,** Primary Facility ID # **839661**, Western Corner of the Intersection of East Clymer Avenue and Diamond Street, Sellersville, PA 18960, Sellersville Borough, **Bucks County**. Christopher M. Kern, PG, Liberty Environmental, Inc., 505 Penn Street, Suite 400, Reading, PA 19601, on behalf of Daniel McKee, CEO, Sellersville Senior Apartments, LLC, 12 Lutheran Drive, Telford, PA 18969, submitted a Final Report concerning remediation of soil contaminated with PAHs, mercury and lead. The Final Report demonstrated attainment of the site-specific standards. Approved: October 19, 2022.

**National Sports and Events Center (NSEC),** Primary Facility ID # **852693**, 115 West Lincoln Avenue (Route 82 and Lincoln Avenue), Coatesville, PA 19320, Coatesville Borough and Valley Township, **Chester County**. Paul White, Brickhouse Environmental, 515 South Franklin Street, Suite D-1, West Chester, PA 19382, on behalf of Crosby Wood, IDG Development LLC, 353 East Lincoln Highway, Coatesville, PA 19320, submitted a Remedial Investigation Report/Cleanup Plan concerning remediation of soil contaminated with VOCs and SVOCs and metals. The Report site-specific standards. Issued a technical deficiency letter: October 24, 2022.

#### HAZARDOUS WASTE TRANSPORTER LICENSE

**Action(s) Taken on Hazardous Waste Transporter License Under the Solid Waste Management Act of July 7, 1980 (P.L. 380, No. 97) (35 P.S. §§ 6018.101—6018.1003); and Hazardous Waste Regulations to Transport Hazardous Waste.**

##### *New Transporter License Issued*

*Central Office: Waste Management Program, Rachel Carson State Office Building, 400 Market Street, Harrisburg, PA 17101, 717-787-7561.*

*Contact: Jonathan Adams.*

**ARM NE LLC**, 1675 Old Trail Road, Etters, PA 17319. **License No. PA-AH 0927**. Application received: August 19, 2022. Effective October 11, 2022.

##### *Transporter License Renewed*

*Central Office: Waste Management Program, Rachel Carson State Office Building, 400 Market Street, Harrisburg, PA 17101, 717-787-7561.*

*Contact: Jonathan Adams.*

**Ferrick Construction Company, Inc.**, 811 Ivy Hill Road, Philadelphia, PA 19150. **License No. PA-AH 0473**. Application received: October 25, 2022. Effective October 26, 2022.

**HPC Industrial Services, LLC**, 900 Georgia Avenue, Deer Park, TX 77536. **License No. PA-AH 0694**. Application received: October 25, 2022. Effective October 26, 2022.

**Munoz Trucking Corp.**, 40 Porete Avenue, North Arlington, NJ 07031. **License No. PA-AH 0850**. Application received: October 19, 2022. Effective October 26, 2022.

**RSB Logistic Inc.**, 219 Cardinal Crescent, Saskatoon, SK S7L 7K8. **License No. PA-AH 0854**. Application received: October 20, 2022. Effective October 26, 2022.

**Environmental Protection & Improvement Co. LLC**, 319 Ave P, Newark, NJ 07105. **License No. PA-AH 0907**. Application received: October 11, 2022. Effective October 13, 2022.

#### REGULATED MEDICAL AND CHEMOTHERAPEUTIC WASTE TRANSPORTER LICENSE

**Action(s) Taken on Regulated and Chemotherapeutic Waste Transporter License Under the Solid Waste Management Act of July 7, 1980 (P.L. 380, No. 97) (35 P.S. §§ 6018.101—6018.1003); Act 93 of June 28, 1988 (P.L. 525, No. 93); and Regulated Medical and Chemotherapeutic Regulations to Transport Regulated Medical and Chemotherapeutic Waste.**

##### *Transporter License Expired*

*Central Office: Waste Management Program, Rachel Carson State Office Building, 400 Market Street, Harrisburg, PA 17101, 717-787-7561.*

*Contact: Jonathan Adams.*

**Dropoff, Inc.**, 520 East Oltorf, Austin, TX 78704. **License No. PA-HC 0285**. Received on September 1, 2022. Effective September 1, 2022.

#### HAZARDOUS WASTE TREATMENT, STORAGE & DISPOSAL FACILITIES

**Actions(s) Taken on Draft Permit(s) 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.**

*Northeast Region: Waste Management Program, 2 Public Square, Wilkes-Barre, PA 18701-1915, 570-826-2511.*

*Contact: Roger Bellas, Environmental Program Manager, 570-826-2201.*

**PA0000453084. Bethlehem Apparatus Company, Inc.**, P.O. Box Y, Hellertown, PA 18055, City of Bethlehem, **Northampton County**. The Department intends to issue to Bethlehem Apparatus Company a Solid Waste Management Act Permit. This permit is a renewal of the permit to operate a Hazardous Waste treatment facility in the City of Bethlehem, Northampton County. The renewed permit will allow the existing Facility to remain in operation for another ten (10) years. Bethlehem Apparatus Company is an existing permitted hazardous and residual waste treatment, storage and disposal facility that specializes in the treatment of mercury containing devices and apparatus, solids, liquids, compounds, soil, and residual waste in order to recover metallic mercury. The overall daily operations involve the receipt, sorting, preparation, storage, and thermal processing (retort mercury recovery) of mercury bearing materials, and shipment of treated residuals for off-site disposal or recycling. Elemental liquid mercury recovered through the process is shipped off-site to the Bethlehem Apparatus Hellertown Facility for further refinement. The public will be given forty-five (45) days to comment on the draft permit, issued November 10, 2022 and prepared under the Solid Waste Management Act. The comment period will begin on November 12, 2022 and will

end on December 27, 2022. Any person interested in commenting on the application or draft permit must do so within this comment period. An information repository has been established at the DEP Northeast Regional Office. To request to view the draft permit and related information, contact Roger Bellas at 570-826-2511 or rbellas@pa.gov for further information. When making a determination regarding the issuance of a hazardous waste permit to Bethlehem Apparatus Company, DEP will consider all written comments received during the comment period, the requirements of the hazardous waste regulations of 25 Pa. Code Chapters 260—270, and DEP's permitting policies. Application received: December 28, 2020. Issued: November 10, 2022.

Persons interested in reviewing the permit may contact Roger Bellas, Environmental Program Manager, 570-826-2511, rbellas@pa.gov, Northeast Region, 2 Public Square, Wilkes-Barre, PA 18701-1915, 570-826-2511. TDD users may contact DEP through the Pennsylvania Hamilton Relay Service, 800-654-5984.

### OPERATE WASTE PROCESSING OR DISPOSAL AREA OR SITE

**Actions(s) Taken on Permit(s) Under the Solid Waste Management Act of July 7, 1980 (P.L. 380, No. 97) (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.**

*Northeast Region: Waste Management Program, 2 Public Square, Wilkes-Barre, PA 18701-1915, 570-826-2511.*

*Contact: Roger Bellas, Environmental Program Manager, 570-826-2201.*

**101679. Blythe Recycling and Demolition Site Holdings, Inc.**, 1786 Salcman Road, Waterloo, NY 13165, Blythe Township, **Schuylkill County**. A permit reissuance to transfer the BRADS Landfill permit from Blythe Township to Blythe Recycling and Demolition Site Holdings, Inc. Application received: April 29, 2022. Issued: October 28, 2022.

Persons interested in reviewing the permit may contact Roger Bellas, Environmental Program Manager, 570-826-2201, Northeast Region, 2 Public Square, Wilkes-Barre, PA 18701-1915, 570-826-2511. TDD users may contact DEP through the Pennsylvania Hamilton Relay Service, 800-654-5984.

### AIR QUALITY

**Actions(s) Taken on General Plan Approval(s) and Operating Permit(s) 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 Elmer-ton Avenue, Harrisburg, PA 17110-8200, 717-705-4700.*

*Contact: Thomas Hanlon, PE, East Permit Section Chief, 717-705-4862.*

**GP1-36-03193: Lancaster Leaf Tobacco Company of PA, Inc.**, 207 Pitney Road, Lancaster, PA 17601, City of Lancaster, **Lancaster County**. For two natural gas-fired boilers, under GP1, at the North Water Street facility. The general permit authorization was renewed. Application received: October 18, 2022. Issued: October 28, 2022.

*Southwest Region: Air Quality Program, 400 Waterfront Drive, Pittsburgh, PA 15222-4745, 412-442-4000.*

*Contact: Thomas Joseph, PE, Facilities Permitting Chief, 412-442-4336.*

**GP5A-63-01066/AG5A-63-00032A: CNX Gas Company, LLC**, 1000 Consol Energy Drive, Canonsburg, PA 15317, West Finley Township, **Washington County**. Authorized on October 28, 2022 for the construction and operation of Five (5) natural gas wells; Five (5) gas processing units (GPU), each rated at 1.75 MMBtu/hr; Four (4) 400 BBL include (16,800 gallon) produced water tanks; One (1) 400 BBL include (16,800 gallons) sand separator tank; One (1) vapor destruction unit rated at 10.3 MMBtu/hr, to control emissions from storage tanks and intermittent pneumatic devices; One (1) vapor destruction unit rated at 10.3 MMBtu/hr. to control emissions from non-heated low-pressure separator; Truck load-out operations for produced water; Two (2) continuous low-bleed pneumatic controllers; Thirty-four (34) intermittent bleed pneumatic controllers; Three (3) pneumatic piston-driven pumps; Venting and blowdowns; and Fugitive emission components at their WFN-12 Well Pad. Application received: July 27, 2022. Authorized: October 31, 2022.

**Actions(s) Taken on Plan Approval(s) 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.**

*Northeast Region: Air Quality Program, 2 Public Square, Wilkes-Barre, PA 18701-1915, 570-826-2511.*

*Contact: Shailesh Patel, Air Quality Engineer, 570-826-2341.*

**13-00013B: Ampal, Inc.**, 2115 Little Gap Rd, Palmer-ton, PA 18071, Lower Towamensing Township, **Carbon County**. For the replacement of an existing aluminum melting furnace at the facility located in Lower Towamensing Township, Carbon County. Application received: July 7, 2022. Issued: October 27, 2022.

**Plan Approval Revision(s) Issued Including Extension(s), Minor Modification(s) and Transfer(s) 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 Elmer-ton Avenue, Harrisburg, PA 17110-8200, 717-705-4700.*

*Contact: Thomas Bianca, PE, West Permit Section Chief, 717-705-4862.*

**01-03040C: Sealed Air Corp.—Hanover Plant**, 260 North Blettner Avenue, Hanover, PA 17731, Cone-wago Township, **Adams County**. For the construction of a new central grinding system and new padded envelope production machine at the Hanover Facility. The new central grinding system will be controlled by two new IMS cyclones and a reverse jet fabric filter. The new padded envelope production machine will be controlled by two new cyclone/dust compactor units and a fabric filter. The project also involves modification of its existing padded envelope machines such that the existing baghouses are replaced by the new IMS cyclones and



reverse jet fabric filter. The facility's existing hammer mills will be modified such that they are controlled by the two IMS cyclones and reverse jet fabric filter. The plan approval was extended. Application received: October 20, 2022. Issued: October 28, 2022.

*Southeast Region: Air Quality Program, 2 East Main Street, Norristown, PA 1901, 484-250-5900.*

*Contact: James Beach, New Source Review Chief, 484-250-5920.*

**09-0196N: Abington Reldan Metals, LLC**, 550 Old Bordertown Road, Fairless Hills, PA 19030, Falls Township, **Bucks County**. This action is for a modification of Plan Approval 09-0196N for installation of new thermal destructor at their facility, the increased throughput for destructor, enlargement of afterburner for VOC control and minor typographic corrections to original plan approval. Emissions increases due to the increased throughput are 0.5 tpy for NO<sub>x</sub> and VOCs. All other emissions increases are less than one quarter of a ton per year. No changes to emissions limits, monitoring requirements or testing are proposed. Application received: May 23, 2022. Issued: October 31, 2022.

**09-0249: Pet Meadow LLC**, 6 Steel Road, Morrisville, PA 19067, Falls Township, **Bucks County**. An extension of a plan approval for installation of four (4) pet crematories at their facility. Application received: October 20, 2022. Issued: October 31, 2022.

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**Title V Operating Permit(s) Issued Under the Air Pollution Control Act (35 P.S. §§ 400—4015) and 25 Pa. Code Chapter 127, Subchapter G.**

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*Northwest Region: Air Quality Program, 230 Chestnut Street, Meadville, PA 16335-3481, 814-332-6945.*

*Contact: Matthew Williams, Facilities Permitting Chief, 814-332-6940.*

**62-00017: United Refining Company**, 15 Bradley Street, Box 780, Warren, PA 16365-0780, City of Warren, **Warren County**. The Department issued a modification of the Title V Operating Permit for the refinery. The Application was submitted to incorporate emission limits for SO<sub>2</sub>. By complying with the emission limits, the total tpy of SO<sub>2</sub> from the affected Best Available Retrofit Technology (BART) Sources is less than the 250 tpy potential that would require a Case-By-Case BART Determination. The following SO<sub>2</sub> emission limits were incorporated into the permit (on a TPY basis): FCC Heater—4.0 tpy; East Reformer Heater—40 tpy; North Crude Heater—80 tpy; South Crude Heater—80 tpy; and the Pretreater Heater 30.0 tpy. Fuel oil throughput limits were also incorporated for the previously listed sources. In addition, the permit was administratively amended to incorporate the change of responsible official and permit contact. Application received: April 8, 2022. Permit modification issued: October 27, 2022.

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**Operating Permit(s) 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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*Northwest Region: Air Quality Program, 230 Chestnut Street, Meadville, PA 16335-3481, 814-332-6945.*

*Contact: Matthew Williams, Facilities Permitting Chief, 814-332-6940.*

**25-00886: Cross Paving, LLC**, 8955 Wattsburg Road, Erie, PA 16509-6021, Venango Township, **Erie County**.

The Department issued the renewal State Only Synthetic Minor Operating Permit for operation of the hot mix asphalt (HMA) facility. The facility's primary emission sources include the batch HMA process controlled by a cyclone collector and venturi scrubber, the aggregate storage piles, and truck load-out. The potential emissions of the primary pollutants from the facility are as follows: 26.4 TPY (tons per year) NO<sub>x</sub>, 88.0 tpy CO, 1.80 tpy VOC, 30.8 tpy total PM, and 19.4 tpy SO<sub>x</sub>. The facility is a synthetic minor, taking a limit of 440,000 tons per year of asphalt produced to maintain CO emissions below 100 tpy. The renewal permit contains emission restrictions, recordkeeping, work practices, and additional requirements to ensure compliance with the Clean Air Act and the Air Pollution Control Act. Application received: February 17, 2022. Renewal issued: October 24, 2022.

**03-00196: National Fuel Gas Supply Corporation, Kaylor Compressor Station**, 6363 Main Street, Williamsville, NY 14221-5855, Sugarcreek Township, **Armstrong County**. The Department issued the new State Only Natural Minor Operating Permit for the compressor station located in Sugarcreek Township, Armstrong County. The facility's primary emission sources include the natural gas-fired 4SRB 145-bhp compressor engine, the tri-ethylene glycol (TEG) dehydrator controlled by an enclosed flare and its associated 0.25 mmBtu/hr reboiler, tanks/vessels, pneumatic devices, venting/blowdowns, and facility fugitives. The potential emissions of the primary pollutants from the facility are as follows: 4.37 tpy (tons per year) NO<sub>x</sub>, 4.16 tpy CO, 14.22 tpy VOC, 1.61 tpy total HAP, 0.20 tpy filterable PM<sub>10</sub> and PM<sub>2.5</sub>, and 0.01 TPY SO<sub>x</sub>; thus, the facility is a natural minor. The facility was originally permitted under plan approval 03-00196B, which includes emission restrictions and control device efficiencies for the TEG dehydrator. The engine is subject to 40 CFR 63 Subpart ZZZZ, NESHAP for Stationary Reciprocating Internal Combustion Engines. The renewal permit contains emission restrictions, recordkeeping, work practices, and additional requirements to ensure compliance with the Clean Air Act and the Air Pollution Control Act. Application received: December 22, 2021. Permit issued: October 25, 2022.

**10-00356: Linde Inc., Lyndora Plant**, 285 Wilmington, West Chester Pike, Chadds Ford, PA 19317, Butler Township, **Butler County**. The Department issued a renewal of the State Operating Permit. The facility operates an air separation plant including an oxygen vaporizer with two natural gas burners, each rated at 26 MMBtu/hr, a mole sieve regenerator with a natural gas burner rated at 2.25 MMBtu/hr, and three Ajax boilers (each rated at 9.5 MMBtu/hr) for heating the liquid nitrogen. The potential emissions from the facility are approximated as follows: NO<sub>x</sub> 22.3 tpy, CO; 17.9 tpy, PM 3.3 tpy, VOC 7.5 tpy, and SO<sub>2</sub> 0.3 tpy. The conditions of the previous plan approval were incorporated into the Operating Permit. The permit contains emission restrictions, recordkeeping, work practice, and additional requirements to ensure compliance with the Clean Air Act and the Air Pollution Control Act. Application received: November 17, 2021. Renewal issued: October 4, 2022.

**24-00127: National Fuel Gas Supply Corporation, Lamont Compressor Station**, 6363 Main Street, Williamsville, NY 14221, Jones Township, **Elk County**. The Department issued a State Only Operating Permit for National Fuel Gas Supply Corporation's Lamont compressor station. The primary sources at the facility include 3 natural gas fueled compressor engines and 2 natural gas fueled emergency generator, 2 parts washers, and natural gas fueled building heaters and water heaters.

Potential emissions are as follows: 32.73 tpy VOC; 96.22 tpy NO<sub>x</sub>; 94.26 tpy CO; 0.02 tpy SO<sub>x</sub>; 0.52 tpy PM<sub>10</sub>; 0.52 tpy PM<sub>2.5</sub>; 0.52 tpy formaldehyde; 3.25 tpy total combined HAPs; and 6,060 tpy CO<sub>2e</sub>. The facility is a Synthetic Minor. The compressor engines and the emergency generators are subject to 40 CFR Part 63 Subpart ZZZZ, the National Emissions Standards for Hazardous Air Pollutants for Stationary Reciprocating Internal Combustion Engines. The renewal permit contains emission restrictions, recordkeeping, work practice, and additional requirements to ensure compliance with the Clean Air Act and the Air Pollution Control Act. Application received: October 29, 2021. Issued: October 31, 2022.

**24-00166: National Fuel Gas Supply Corporation, Bowen Compressor Station**, 6363 Main Street, Williamsville, NY 14221, Highland Township, **Elk County**. The Department issued a renewal of a State Only Operating Permit for National Fuel Gas Supply Corporation's Bowen compressor station. The primary sources at the facility include 3 natural gas fueled compressor engines and a natural gas fueled emergency generator. Potential emissions are as follows: 40.95 tpy VOC;

43.31 tpy NO<sub>x</sub>; 35.75 tpy CO; 0.10 tpy SO<sub>x</sub>; 1.69 tpy PM<sub>10</sub>; 1.69 tpy PM<sub>2.5</sub>; 1.71 tpy formaldehyde; 5.46 tpy total combined HAPs; and 28,711 tpy CO<sub>2e</sub>. The facility is a Natural Minor. The compressor engines and the emergency generator are subject to 40 CFR Part 60 Subpart JJJJ, the Standards of Performance for Stationary Spark Ignition Internal Combustion Engines. The renewal permit contains emission restrictions, recordkeeping, work practice, and additional requirements to ensure compliance with the Clean Air Act and the Air Pollution Control Act. Application received: October 29, 2021. Renewal issued: October 31, 2022.

*Southcentral Region: Air Quality Program, 909 Elmer-ton Avenue, Harrisburg, PA 17110-8200, 717-705-4700.*

*Contact: Thomas Bianca, PE, West Permit Section Chief, 717-705-4862.*

**67-03116: Surtech Industries, Inc.**, 915 Borom Road, York, PA 17404-1382, City of York, **York County**. For the industrial manufacturing and surface coating facility. The State-Only Permit was renewed. Application received: April 19, 2022. Issued: October 25, 2022.

**67-03165: Evergreen On Lincoln Ltd.**, 654 Lincoln Drive, York, PA 17401, City of York, **York County**. For the human crematory at the facility. The State-Only Permit was renewed. Application received: July 5, 2022. Issued: October 25, 2022.

**28-03027: APX Industrial Coatings, Inc.**, 9473 Lincoln Way West, Saint Thomas, PA 17252-9710, Saint Thomas Township, **Franklin County**. For the surface coating facility. The State-Only Permit was renewed. Application received: May 6, 2022. Issued: October 25, 2022.

*Southwest Region: Air Quality Program, 400 Waterfront Drive, Pittsburgh, PA 15222-4745, 412-442-4000.*

*Contact: Thomas Joseph, PE, Facilities Permitting Chief, 412-442-4336.*

**04-00675: Cronimet Corporation**, 100 Woodlawn Road, Aliquippa, PA 15001, City of Aliquippa, **Beaver County**. The Department issued a natural minor State Only Operating Permit for a river terminal. The Operating Permit includes conditions relating to applicable emission restrictions, testing, monitoring, recordkeeping,

reporting, and work practice standards requirements at their facility. Application received: June 16, 2022. Issued: October 28, 2022.

**Operating Permit Revisions Issued Including Administrative Amendments, Minor Modifications or Transfer 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.**

*Northwest Region: Air Quality Program, 230 Chestnut Street, Meadville, PA 16335-3481, 814-332-6945.*

*Contact: Matthew Williams, Facilities Permitting Chief, 814-332-6940.*

**24-00012: Graftech USA, LLC**, 800 Theresia Street, Saint Marys, PA 15857-1831, City of Saint Marys, **Elk County**. The Department issued an administrative amendment to the Title V Operating Permit to incorporate the change in responsible official and permit contact for the facility. Application received: August 17, 2022. Issued: October 24, 2022.

**24-00083: Mersen USA St Marys**, 215 Stackpole Street, Saint Marys, PA 15857-1401, City of Saint Marys, **Elk County**. The Department issued an administrative amendment to the Title V Operating Permit to incorporate the conditions from plan approval 24-083X into the permit for the facility. Application received: March 21, 2022. Issued: October 4, 2022.

*Southcentral Region: Air Quality Program, 909 Elmer-ton Avenue, Harrisburg, PA 17110-8200, 717-705-4700.*

*Contact: Thomas Bianca, PE, West Permit Section Chief, 717-705-4862.*

**28-05002: US Army Letterkenny Army Depot**, AMLD-EN, Chambersburg, PA 17201-4150, Letterkenny Township, **Franklin County**. For the Letterkenny Army Depot. The Title V permit was administratively amended in order to incorporate the requirements of Plan Approval Nos. 28-05002J and 28-05002T. Application received: September 29, 2022. Issued: October 17, 2022.

*Contact: Thomas Hanlon, PE, East Permit Section Chief, 717-705-4862.*

**36-05076: Penn Medicine—Lancaster General Hospital**, 555 North Duke Street, P.O. Box 3555, Lancaster, PA 17604-3555, City of Lancaster, **Lancaster County**. For the operation of the medical and surgical hospital. The State-Only Permit was administratively amended in order to incorporate the requirements of GP1-36-05076B and GP1-36-05076C. Application received: June 28, 2022. Issued: October 25, 2022.

**De Minimis Emissions Increases Authorized under 25 Pa. Code § 127.449.**

*Southwest Region: Air Quality Program, 400 Waterfront Drive, Pittsburgh, PA 15222-4745, 412-442-4000.*

*Contact: Thomas Joseph, PE, Facilities Permitting Chief, 412-442-4336.*

**65-00890: Basic Carbide Corporation**, 900 Main Street, Lower, PA 15660, Sewickley Township, **Westmoreland County**. Per 25 Pa. Code § 127.449(i), for the following de minimis emission increase at Basic Carbide Corporation: installation and operation of a small-scale powder processing pilot plant which includes one (1) sealed premix tank, two (2) attritors, one (1) wet screen, one (1) dryer, and one (1) condenser. It also



includes utilizing the existing 4,000-gallon heptane storage tank. The de minimis increases for this facility include the following increase: less than or equal to 1.0 tpy of VOC. Total De Minimis increases for this facility since the most recent permit authorization of May 14, 2020 include only this project.

## ACTIONS ON COAL AND NONCOAL APPLICATIONS

**Actions on applications under the Surface Mining Conservation and Reclamation Act (52 P.S. §§ 1396.1—1396.31); 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); the Bituminous Mine Subsidence and Land Conservation Act (52 P.S. §§ 1406.1—1406.21).** The final action on each application also constitutes action on the National Pollutant Discharge Elimination System (NPDES) permit application and, if noted, the request for a Section 401 Water Quality Certification. Mining activity permits issued in response to such applications will also address the application permitting requirements of the following statutes; the Air Quality Control Act (35 P.S. §§ 4001—4015); the Dam Safety and Encroachments Act (32 P.S. §§ 693.1—693.27); and the Solid Waste Management Act (35 P.S. §§ 6018.101—6018.1103). Individuals in need of accommodations should contact DEP through the Pennsylvania Hamilton Relay Service at (800) 654-5984 (TDD users) or (800) 654-5988 (voice users).

### *Coal Permits*

*New Stanton District Mining Office: 131 Broadview Road, New Stanton, PA 15672, 724-925-5500.*

*Contact: Tracy Norbert or RA-EPNEWSTANTON@pa.gov.*

**Mining Permit No. 65960107. NPDES No. PA0201618. Amerikohl Mining, Inc.,** 1384 State Route 711, Stahlstown, PA 15687, Mount Pleasant Township, **Westmoreland County.** Permit renewal for continued treatment to an existing bituminous mine, affecting 460 acres. Receiving streams: Unnamed tributaries to Laurel Run and Jacobs Creek, classified for the following use: CWF. Application received: April 26, 2021. Issued: October 27, 2022.

### *Noncoal Permits*

*Moshannon District Mining Office: 186 Enterprise Drive, Philipsburg, PA 16866, 814-342-8200.*

*Contact: Cassie Stanton, Clerical Assistant 2.*

**Mining Permit No. 4773SM3. NPDES No. PA0207101. Hanson Aggregates Pennsylvania, LLC,** 7660 Imperial Way, Allentown, PA 18195, Limestone Township, **Lycoming County.** Renewal of a NPDES permit associated with a large noncoal (industrial minerals) mining site affecting 321.7 acres. Receiving stream(s): Antes Creek classified for the following use(s): CWF, MF. Application received: April 21, 2022. Issued: October 26, 2022.

*Pottsville District Mining Office: 5 West Laurel Boulevard, Pottsville, PA 17901, 570-621-3118.*

*Contact: RA-EPPottsvilleDMO@pa.gov.*

**Mining Permit No. 48870301. NPDES Permit No. PA0593893. H & K Group, Inc.,** P.O. Box 196, Skippack, PA 19474, Lower Mount Bethel Township, **Northampton County.** Renewal of a NPDES Permit on a quarry operation. Receiving stream: Delaware River and Mud Run. Application received: April 11, 2022. Renewal issued: October 28, 2022.

**Mining Permit No. 4875SM2. NPDES Permit No. PA0119563. Glen-Gery Corp.,** 1166 Spring Street, Wyomissing, PA 19610, Dover Township, **York County.** Renew NPDES Permit on a quarry operation. Receiving stream: Fox Run and unnamed tributary to Fox Run. Application received: May 18, 2021. Renewal issued: October 31, 2022.

## ACTIONS ON BLASTING ACTIVITY APPLICATIONS

**Action(s) Taken on Application(s) 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*

*Pottsville District Mining Office: 5 West Laurel Boulevard, Pottsville, PA 17901, 570-621-3118.*

*Contact: RA-EPPottsvilleDMO@pa.gov.*

**Permit No. 67224114. J Roy's, Inc.,** P.O. Box 125, Bowmansville, PA 17507, Warrington Township, **York County.** Construction blasting at 1080 Alpine Road. Application received: October 20, 2022. Permit issued: October 27, 2022. Expiration date: October 20, 2023.

**Permit No. 36224142. Keystone Blasting Service,** 15 Hopeland Road, Lititz, PA 17543, Upper Leacock Township, **Lancaster County.** Construction blasting for Melvin Stoltzfus manure pit. Application received: October 25, 2022. Permit issued: October 28, 2022. Expiration date: December 31, 2022.

**Permit No. 35224108. Explosive Services, Inc.,** 7 Pine Street, Bethany, PA 18431, Jefferson Township, **Lackawanna County.** Construction blasting for James O'Hara Pavilion prep area. Application received: October 26, 2022. Permit issued: October 28, 2022. Expiration date: October 26, 2023.

## FEDERAL WATER POLLUTION CONTROL ACT SECTION 401

The Department of Environmental Protection (DEP) 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, DEP has granted 401 Water Quality Certification certifying that the construction and operation described will comply with the applicable provisions of Sections 301—303, 306 and 307 of the FWPCA (33 U.S.C.A. §§ 1311—1313, 1316 and 1317), and that the construction will not violate applicable Federal and State Water Quality Standards.



Individuals aggrieved by these actions may appeal, pursuant to Section 4 of the Environmental Hearing Board Act, 35 P.S. § 7514, and the Administrative Agency Law, 2 Pa.C.S. Chapter 5A, 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. Appeals must be filed with the Environmental Hearing Board within 30-days of publication of this notice in the *Pennsylvania Bulletin*, unless the appropriate statute provides a different time period. Copies of the appeal form and the Board's rules of practice and procedure may be obtained from the Board. The appeal form and the Board's rules of practice and procedure are also available in braille or on audiotape from the Secretary to the Board at 717-787-3483. This paragraph does not, in and of itself, create any right of appeal beyond that permitted by applicable statutes and decisional law.

If you want to challenge this action, your appeal must reach the Board within 30-days. You do not need a lawyer to file an appeal with the Board.

Individuals in need of accommodations should contact the Environmental Hearing Board through the Pennsylvania Hamilton Relay Service at (800) 654-5984 (TDD users) or (800) 654-5988 (voice users).

Important legal rights are at stake, however, so you should show this notice to a lawyer at once. If you cannot afford a lawyer, you may qualify for free pro bono representation. Call the Secretary to the Board 717-787-3483 for more information.

#### WATER OBSTRUCTIONS AND ENCROACHMENTS

**Action(s) Taken on Application(s) 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.**

*Eastern District: Oil and Gas Management Program, 208 West Third Street, Williamsport, PA 17701-6448.*

*Contact: RA-EPEASTERNOGPRG@pa.gov.*

**E0829222-032. Chesapeake Appalachia, LLC**, 14 Chesapeake Lane, Sayre, PA 18840, West Burlington Township, **Bradford County**. U.S. Army Corps of Engineers Baltimore District. Application received: August 22, 2022. Issued: October 26, 2022.

To construct, operate and maintain:

1. a well pad rock lined channel permanently impacting 1,755 square feet (0.04 acre) of a Palustrine Forested Wetland (East Troy, PA Quadrangle Latitude: 41.77998°, Longitude: -76.63969°).

This project is an after-the-fact permit and will result in 1,755 square feet (0.04 acre) of permanent PFO impacts, all for the purpose of installing a natural gas well pad and permanent access road for Marcellus Shale development in West Burlington Township, Bradford County.

**E0829222-023. Chesapeake Appalachia, LLC**, 14 Chesapeake Lane, Sayre, PA 18840, Sheshequin Township, **Bradford County**. U.S. Army Corps of Engineers Baltimore District. Application received: May 25, 2022. Issued: October 31, 2022.

To construct, operate and maintain the Packard Bra Pad Project, which consists of the following impacts:

1. 128.0 linear feet of permanent direct impacts to a UNT to Deer Lick Creek (CWF, MF), 6,360 square feet of temporary direct impacts to the floodway of a UNT to Deer Lick Creek (CWF, MF), and 5,053 square feet of permanent direct impacts to the floodway of a UNT to Deer Lick Creek (CWF, MF) via the placement of fill (Towanda, PA Quadrangle, Latitude N41° 51' 37.61", Longitude W76° 27' 55.84");

2. 11,413 square feet of permanent direct impacts to Palustrine Forested (PFO) Wetlands via conversion (Towanda, PA Quadrangle, Latitude N41° 51' 41.37", Longitude W76° 27' 57.38"); and

3. 87 square feet of temporary direct impacts to Palustrine Emergent (PEM) Wetlands via the placement of fill (Towanda, PA Quadrangle, Latitude N41° 51' 43.33", Longitude W76° 27' 54.79").

This project is an after-the-fact permit that is associated with the Chesapeake Audit and will result in 128.0 linear feet of permanent direct stream impacts, 6,360 square feet (0.146 acre) temporary direct floodway impacts, 5,053 square feet (0.116 acre) of permanent direct floodway impacts, 11,413 square feet (0.262 acre) of permanent direct conversion impacts to PFO wetlands, and 87 square feet (0.002 acre) of temporary direct impacts to PEM wetlands, all for the purpose of Marcellus well development in Sheshequin Township, Bradford County.

**E0829222-022. Chesapeake Appalachia LLC**, 14 Chesapeake Lane, Sayre, PA 18840-1567, Rome Township, **Bradford County**. U.S. Army Corps of Engineers Baltimore District. Application received: May 2, 2022. Issued: October 31, 2022.

To construct, operate and maintain the Treat Bra Pad Project, which consists of the following impacts:

1. 4,399 square feet of permanent direct impacts to Palustrine Emergent (PEM) Wetlands and 7,221 square feet of temporary direct impacts to Palustrine Emergent (PEM) Wetlands via the placement of fill (Windham, PA Quadrangle, Latitude N41° 52' 44.65", Longitude W76° 21' 29.94");

2. 523 square feet of temporary direct impacts to Palustrine Emergent (PEM) Wetlands for on-site wetland restoration (Windham, PA Quadrangle, Latitude N41° 52' 47.25", Longitude W76° 21' 28.82"); and

3. 7,710 square feet of temporary direct impacts to Palustrine Emergent (PEM) Wetlands for on-site wetland restoration (Windham, PA Quadrangle, Latitude N41° 52' 43.38", Longitude W76° 21' 30.47").

This project is an after-the-fact permit that is associated with the Chesapeake Audit and will result in 4,399 square feet (0.101 acre) of permanent direct PEM wetland impacts, 7,221 square feet (0.166 acre) of temporary direct PEM wetland impacts, and 8,233 square feet (0.189 acre) of temporary direct PEM wetland restoration impacts, all for the purpose of Marcellus well development in Rome Township, Bradford County.

*Northeast Region: Waterways & Wetlands Program, 2 Public Square, Wilkes-Barre, PA 18701-1915, 570-826-2511.*

*Contact: RA-EPWW-NERO@pa.gov.*

**E5802222-004. Kowalewski Family, LP**, 4669 Highlands Road, New Milford, PA 18834, Great Bend Township, **Susquehanna County**. U.S. Army Corps of Engineers Baltimore District.

To construct and maintain a gravel access crossing of Deacon Brook (CWF, MF) consisting of a 30-foot long, 9.50-foot span by 4.33-foot high elliptical metal pipe culvert depressed 1-foot below the natural streambed and two (2) 30-inch SLCPP culverts with upstream and downstream wingwalls, and riprap outlet protection. The project is located on the right of Highlands Road approximately 2.3 miles after the intersection of East Lake Road and Brushville Road (Great Bend, PA Quadrangle Latitude: 41° 54' 41", Longitude: -75° 39' 47") in Great Bend Township, Susquehanna County. Application received: May 16, 2022.

*Southcentral Region: Waterways & Wetlands Program, 909 Elmerton Avenue, Harrisburg, PA 17110-8200, 717-705-4700.*

*Contact: 717-705-4802.*

**E6703222-001. Dover Township**, 2480 West Canal Road, Dover, PA 17315, Dover Township, **York County**. U.S. Army Corps of Engineers Baltimore District.

The applicant proposed to construct and maintain 1,615 linear feet of walking trail path and an outdoor classroom platform in the floodway/floodplain of Unnamed Tributaries to Fox Run (TSF, MF) permanently impacting 0.34 acre of floodway, temporarily impacting 0.22 acre of floodway, permanently impacting 0.26 acre of 100-year floodplain, and temporarily impacting 0.11 acre of 100-year floodplain, all for the purpose of making park improvements and to showcase riverine resources. This project is located at Eagle View Park. Latitude: 39.9952°, Longitude: -76.8504°. Application received: January 14, 2022. Issued: October 25, 2022.

*Southeast Region: Waterways & Wetlands Program, 2 East Main Street, Norristown, PA 19401, 484-250-5900.*

*Contact: Elaine Henderson, Clerical Assistant 3, 484-250-5157.*

**E5101222-003. Richmond Street Developers, LLC**, 2337 Philmont Avenue, Huntington Valley, PA 19006, City of Philadelphia, **Philadelphia County**. U.S. Army Corps of Engineers Philadelphia District.

To construct and maintain structures, roadways, walkways, and green space on the waterward side of the 1984 Bulkhead line in and along the assumed 100-year floodway of the Delaware River. The work will include a proposed 12-foot-wide pedestrian walkway, stormwater outfall along the existing bank, and 656-square-foot riprap drain field. The site is located at 2001 Richmond Street near Piers 75 North, 76 North, and 77 North (Philadelphia, PA USGS Map) in the City and County of Philadelphia. Latitude: 39.969824°, Longitude: -75.120444°. Application received: March 28, 2022. Issued: October 26, 2022.

#### **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. 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.

Individuals in need of accommodations should contact the Environmental Hearing Board through the Pennsylvania Hamilton Relay Service at (800) 654-5984 (TDD users) or (800) 654-5988 (voice users).

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.

*Eastern District: Oil and Gas Management Program, 208 West Third Street, Williamsport, PA 17701-6448.*

*Contact: RA-EPEASTERNOPRG@pa.gov.*

#### **ESCGP # 3 ESG290822037-00**

Applicant Name **Chesapeake Appalachia, LLC**

Contact Person Eric Haskins

Address 14 Chesapeake Lane

City, State, Zip Sayre, PA 18840

Township(s) Albany Township and Overton Township

County **Bradford County**

Receiving Stream(s) and Classification(s) UNT Black Creek (EV, MF), Ladds Creek (CWF, MF)

Application received: August 19, 2022

Issued: October 27, 2022

#### **ESCGP # 3 ESG294122007-00**

Applicant Name **Inflection Energy (PA) LLC**

Contact Person Gregg Saunders

Address 101 W Third Street, 5th Floor

City, State, Zip Williamsport, PA 17701-6413

Township(s) Gamble Township

County **Lycoming County**

Receiving Stream(s) and Classification(s) Sugarcamp Run (EV, MF)

Application received: August 23, 2022

Issued: October 27, 2022

*Southwest Region: Oil and Gas Management Program, 400 Waterfront Drive, Pittsburgh, PA 15222-4745, 412-442-4000.*

*Contact: D. J. Stevenson, 412-442-4281.*

#### **ESCGP # 3 ESG076322012-00**

Applicant Name **Range Resources—Appalachia, LLC**

Contact Person Karl Mazt

Address 3000 Town Center Boulevard

City, State, Zip Canonsburg, PA 15317-5839

Township(s) North Franklin Township

County **Washington County**

Receiving Stream(s) and Classification(s) UNT to Chartiers Creek WWF

Application received: September 21, 2022

Issued: October 31, 2022

## CORRECTIVE ACTION UNDER ACT 32, 1989

### PREAMBLE 2

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#### The Following Plan(s) and Report(s) Were Submitted Under the Storage Tank and Spill Prevention Act (35 P.S. §§ 6021.101—6021.2104).

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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 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.

For further information concerning plans or reports, please contact the Regional Office Program Manager previously listed in the notice.

Individuals in need of accommodations should contact DEP through the Pennsylvania Hamilton Relay Service at (800) 654-5984 (TDD users) or (800) 654-5988 (voice users).

DEP has received the following plans and reports.

*Northeast Region: Environmental Cleanup & Brownfields Program, 2 Public Square, Wilkes-Barre, PA 18701-1915, 570-826-2511.*

*Contact: Eric Supey, Environmental Program Manager.*

**Carriage Stop Plaza Sunoco**, Storage Tank Facility ID # **49-38017**, 2500 East End Boulevard, Wilkes-Barre, PA 18702, Plains Township, **Luzerne County**. MEA, 1365 Ackermanville Road, Bangor, PA 18013, on behalf of Anup Patel, 2500 East End Boulevard, Wilkes-Barre, PA 18702 submitted a Remedial Action Completion Report concerning remediation of soil and groundwater contaminated with gasoline. The report is intended to document the remedial actions for meeting Statewide health standards.

**Pulmer Mini Mart (Former Route 248 Texaco)**, Storage Tank Facility ID # **48-28478**, 3627 Nazareth Road, Easton, PA 18045, Palmer Township, **Northampton County**. MEA, 1365 Ackermanville Road, Bangor, PA 18013, on behalf of Henry Chamesian, P.O. Box 156, Cedar Grove, NJ 07009 submitted a Remedial Action Completion Report concerning remediation of soil and groundwater contaminated with gasoline. The report is intended to document the remedial actions for meeting residential Statewide health standards.

**Stroudsburg C Store Holdings**, Storage Tank Facility ID # **45-29830**, 1229 West Main Street, Stroudsburg, PA 18360, Stroudsburg Borough, **Monroe County**. MEA, 1365 Ackermanville Road, Bangor, PA 18013, on behalf of Stroudsburg C Store Holdings, LLC, 1229 West Main Street, Stroudsburg, PA 18360 submitted a Remedial Action Completion Report concerning remediation of groundwater contaminated with gasoline. The report is intended to document the remedial actions for meeting residential Statewide health standards.

*Northwest Region: Environmental Cleanup & Brownfields Program, 230 Chestnut Street, Meadville, PA 16335-3481, 814-332-6945.*

*Contact: Ellen Roberts.*

**Sunoco 0363 9200**, Storage Tank Facility ID # **32-24181**, 1165 Wayne Avenue, Indiana, PA 15701, Indiana Borough, **Indiana County**. GES, 508 Thomson Park Drive, Cranberry Township, PA 16066, on behalf of Retail/Service Station Operations, a series of Evergreen Resources Group, LLC, 2 Righter Parkway, Suite 120, Wilmington, DE 19803 submitted a Combined Remedial Action Plan and Remedial Action Completion Report concerning remediation of soil and groundwater contaminated with Unleaded gasoline. The combined plan and report is intended to document the remedial actions for meeting residential site-specific standards.

*Southcentral Region: Environmental Cleanup & Brownfields Program, 909 Elmerton Avenue, Harrisburg, PA 17110-8200, 717-705-4700.*

*Contact: Gregory Bowman, Environmental Group Manager, 717-705-4705.*

**Tanglewood Valero**, Storage Tank Facility ID # **36-28236**, 1201 Lancaster Pike, Quarryville, PA 17566-9748, East Drumore Township, **Lancaster County**. Environmental Alliance, Inc., 5341 Limestone Road, Wilmington, DE 19808, on behalf of Shreeji Petroleum, Inc., 1201 Lancaster Pike, Quarryville, PA 17566-9748 submitted a Remedial Action Completion Report concerning remediation of soil and groundwater contaminated with Petroleum Constituents. The report is intended to document the remedial actions for meeting nonresidential site-specific standards.

*Contact: Robin L. Yerger, LPG, 717-705-4705.*

**Shrewsbury Exxon 18**, Storage Tank Facility ID # **67-01754**, 648 Forrest Avenue, New Freedom, PA 17349, Shrewsbury Township, **York County**. Buchart Horn, 445 West Philadelphia Street, P.O. Box 15040, York, PA 17405, on behalf of Shipley Energy, 415 Norway Street, York, PA 17403 submitted a Remedial Action Completion Report concerning remediation of soil contaminated with Petroleum Constituents. The report is intended to document the remedial actions for meeting nonresidential Statewide health standards.

## CORRECTIVE ACTION UNDER ACT 32, 1989

### PREAMBLE 3

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#### Action(s) Taken on the Following Plans and Reports Under the Storage Tank and Spill Prevention Act (35 P.S. §§ 6021.101—6021.2104).

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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 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.

DEP may approve or disapprove plans and reports submitted. This notice provides DEP's decision and, if relevant, the basis for disapproval.

For further information concerning plans or reports, please contact the Regional Office Program Manager previously listed in the notice.

Individuals in need of accommodations should contact DEP through the Pennsylvania Hamilton Relay Service at (800) 654-5984 (TDD users) or (800) 654-5988 (voice users).

DEP has received the following plans and reports.

*Northeast Region: Environmental Cleanup & Brownfields Program, 2 Public Square, Wilkes-Barre, PA 18701-1915, 570-826-2511.*

*Contact: Eric Supey, Environmental Program Manager.*

**Speedway # 6756**, Storage Tank Facility ID # **54-14427**, 6 Tremont Road, Pine Grove, PA 17963, Pine Grove Township, **Schuylkill County**. AECOM, 625 West Ridge Pike, Suite E-100, Conshohocken, PA 19428, on behalf of 7-Eleven, Inc., 3200 Hackberry Road, P.O. Box 711 (0148), Dallas, TX 75221-0711 submitted a Remedial Action Plan concerning remediation of soil and groundwater contaminated with petroleum. The plan residential was acceptable to meet the Statewide health standards and was approved by DEP on October 26, 2022.

**Turkey Hill Minit Market 107**, Storage Tank Facility ID # **48-41672**, 1060 Main Street, Northampton, PA 18067, Northampton Borough, **Northampton County**. Liberty Environmental, 505 Penn Street, Reading, PA 19601, on behalf of Turkey Hill Minit Markets, LLC, 165 Flanders Road, Westborough, MA 01581 submitted a Remedial Action Completion Report concerning remediation of soil contaminated with gasoline. The report residential demonstrated attainment of the Statewide health standards and was approved by DEP on October 27, 2022.

**Sai Satguru Fuel (Former Scott 60)**, Storage Tank Facility ID # **35-17571**, 10 Hill Road, Dalton, PA 18414, Scott Township, **Lackawanna County**. LaBella Associates, 1000 Dunham Drive, Suite B, Dunmore, PA 18512, on behalf of GBM Partners, LP, 700 North Keyser

Avenue, Scranton, PA 18504 submitted a Remedial Action Plan concerning remediation of soil and groundwater contaminated with petroleum. The plan was acceptable to meet the Statewide health standards and was approved by DEP on October 27, 2022.

*Northwest Region: Environmental Cleanup & Brownfields Program, 230 Chestnut Street, Meadville, PA 16335-3481, 814-332-6945.*

*Contact: Ellen Roberts.*

**Kwik Fill M175**, Storage Tank Facility ID # **61-14854**, 3670 State Route 257, Seneca, PA 16346, Cranberry Township, **Venango County**. Atlas Technical Consultants, 270 William Pitt Way, Pittsburgh, PA 15238, on behalf of United Refining Company, 15 Bradley St, Warren, PA 16365 submitted a Remedial Action Completion Report concerning remediation of soil and groundwater contaminated with Petroleum. The report residential demonstrated attainment of the Statewide health standards and was approved by DEP on October 26, 2022.

**Fueland 209**, Storage Tank Facility ID # **32-19060**, 102 Washington St, Saltsburg, PA 15681, Saltsburg Borough, **Indiana County**. Letterle & Associates, 191 Howard St, Suite 108, Franklin, PA 16323, on behalf of SPC Realty Company, 8199 McNight Road, Pittsburgh, PA 15237 submitted a Remedial Action Completion Report concerning remediation of soil and groundwater contaminated with petroleum. The report nonresidential demonstrated attainment of the Statewide health and site-specific standards and was approved by DEP on October 27, 2022.

**Seneca Mini Mart**, Storage Tank Facility ID # **61-18854**, 3390 State Route 257, Seneca, PA 16346, Cranberry Township, **Venango County**. Insite Group, 611 S Irvine Ave, Sharon, PA 16146, on behalf of Harper Oil Co, P.O. Box 1128, Oil City, PA 16301 submitted a Remedial Action Plan concerning remediation of soil and groundwater contaminated with Petroleum. The plan residential was acceptable to meet the Statewide health standards and was approved by DEP on October 27, 2022.

**Kwik Fill M 176**, Storage Tank Facility ID # **25-14853**, 271 Main Street W, Girard, PA 16417, Girard Borough, **Erie County**. Atlas Technical Consultants, 270 William Pitt Way, Building A3, 3rd Floor, Pittsburgh, PA 15238, on behalf of United Refining Company, 15 Bradley St, Warren, PA 16365 submitted a Remedial Action Completion Report concerning remediation of soil and groundwater contaminated with Petroleum. The report residential demonstrated attainment of the Statewide health standards and was approved by DEP on October 27, 2022.

*Southcentral Region: Environmental Cleanup & Brownfields Program, 909 Elmerton Avenue, Harrisburg, PA 17110-8200, 717-705-4700.*

*Contact: Robin L. Yerger, LPG, 717-705-4705.*

**Shrewsbury Exxon 18**, Storage Tank Facility ID # **67-01754**, 648 East Forrest Avenue, New Freedom, PA 17349, Shrewsbury Township, **York County**. Buchart Horn, 445 West Philadelphia Street, P.O. Box 15040, York, PA 17405, on behalf of Shipley Energy, 415 Norway Street, York, PA 17403 submitted a Remedial Action Completion Report concerning remediation of soil contaminated with Petroleum Constituents. The report nonresidential was acceptable to meet the Statewide health standards and was approved by DEP on October 24, 2022.

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**SPECIAL NOTICES**


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**WATER PROGRAMS****EROSION AND SEDIMENT CONTROL PERMIT AMENDMENT**

*Southeast Region: Waterways & Wetlands Program, 2 East Main Street, Norristown, PA 19401, 484-250-5900.*

*Contact: John Hohenstein.*

The Department of Environmental Protection (Department) provides notice of the Department's approval of modifications (Major Amendment) to the following Chapter 102, Erosion and Sediment Control Permit, issued for the Pennsylvania Pipeline Project (PPP)/Mariner East II.

<i>Ch. 102 Permit No.</i>	<i>Applicant Name &amp; Address</i>	<i>Counties</i>	<i>DEP Regional Office</i>
ESG0100015001	Sunoco Pipeline, LP (SPLP) 535 Fritztown Road Sinking Spring, PA 19608	Delaware	Southeast Region

**Chapter 102 Permit No. ESG0100015001**

This request received initially on April 20, 2021, with subsequent resubmissions on July 27, 2021, September 14, 2021, October 13, 2021, October 15, 2021, August 17, 2022, and September 27, 2022 is entitled "Major Amendment HDD 0541 PCSM BMPs" and is located in Thornbury Township, Delaware County.

The permit amendment request is for the installation of Post Construction Stormwater Management (PCSM) Best Management Practices (BMPs) in the area of Horizontal Directional Drill (HDD) 541 along Middletown Road in Thornbury Township, Delaware County, PA. The PCSM BMPs to be installed include amended soils, 3 detention berms, a diversion berm, and 36-inch perforated storage pipe to collect and detain upstream flow. Additional earth disturbance will be required to connect the Infiltration basin No. 2 and No. 3 discharges to the existing municipal storm sewer system. Infiltration Basins No. 3 will discharge into proposed Inlet A at southern corner of SR 926 and SR 352. Inlet A will then be connected to the municipal storm sewer system via the existing storm inlet on the northeastern side of SR 352. Infiltration basin No. 2 discharge will be connected to the existing storm inlet on the southern side of SR 352. The current and proposed LOD are within upland areas and will have no impacts to resources. The additional LOD is 0.091 acre.

For more detailed information regarding the Southeast Regional Office Chapter 102 Permit (ESG0100015001) related to this project, which is available in the Department's Regional Office and available online at [dep.pa.gov/pipelines](http://dep.pa.gov/pipelines), contact the Southeast Regional Office, (484) 250-5160 to request a file review.

Any person aggrieved by these actions may appeal, pursuant to Section 4 of the Environmental Hearing Board Act, 35 P.S. § 7514, and the Administrative Agency Law, 2 Pa.C.S. Chapter 5A, 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 Hamilton Relay Service, 800-654-5984. Appeals must be filed with the Environmental Hearing Board within 30 days of receipt of written notice of this action unless the appropriate statute provides a different time period. Copies of the appeal form and the Board's rules of practice and procedure may be obtained from the Board. The appeal form and the Board's rules of practice and procedure are also available in braille or on audiotape from the Secretary to the Board at 717-787-3483. This paragraph does not, in and of itself, create any right of appeal beyond that permitted by applicable statutes and decisional law.

[Pa.B. Doc. No. 22-1740. Filed for public inspection November 11, 2022, 9:00 a.m.]

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**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 29, 51 and 551—571 (relating to miscellaneous health provisions; general information; and ambulatory surgical facilities).

<i>Facility Name</i>	<i>Regulation and relating to</i>
Doylestown Surgery Center, LLC	28 Pa. Code § 551.21(d)(1) (relating to criteria for ambulatory surgery)
Indiana Ambulatory Surgical Associates, Inc.	28 Pa. Code § 555.1 (relating to principle)
	28 Pa. Code § 555.2 (relating to medical staff membership)
	28 Pa. Code § 555.3(a)—(f) (relating to requirements for membership and privileges)
	28 Pa. Code § 555.4(a)—(c) (relating to clinical activities and duties of physician assistants and certified registered nurse practitioners)

<i>Facility Name</i>	<i>Regulation and relating to</i>
King of Prussia Surgery Center, LLC	28 Pa. Code § 555.32(a) (relating to administration of anesthesia)
Log Surgery Center	28 Pa. Code § 569.35(7) (relating to general safety precautions)
Wills Eye Surgery Center of the Northeast	28 Pa. Code § 569.35(7)

The following ASF has filed a request for exception under 28 Pa. Code § 571.1 (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 Facility Guidelines Institute (FGI *Guidelines*). 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>
Geisinger Healthplex State College Outpatient Surgery and Endoscopy	A2.1-3.2.3.2 space requirements	18-O

<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, or for speech and/or hearing-impaired persons, call the Pennsylvania Hamilton Relay Service at (800) 654-5984 (TDD users) or (800) 654-5988 (voice users).

DR. DENISE A. JOHNSON,  
*Acting Secretary*

[Pa.B. Doc. No. 22-1741. Filed for public inspection November 11, 2022, 9:00 a.m.]

## DEPARTMENT OF HEALTH

### Decisions on Requests for Exceptions to Health Care Facility Regulations

Under 28 Pa. Code § 51.33 (relating to requests for exceptions), effective June 6, 1998, the Department of Health (Department) has published in the *Pennsylvania Bulletin* all requests by entities licensed under the Health Care Facilities Act (35 P.S. §§ 448.101—448.904b), for exceptions to regulations contained in 28 Pa. Code Part IV Subparts B—G.

Section 51.33(d) of 28 Pa. Code provides that the Department will publish notice of all approved exceptions on a periodic basis. The Department has determined that it will publish notice of all exceptions, both approved and denied. The following list contains the decisions made on exception requests published in the *Pennsylvania Bulletin* from October 1, 2022, through October 31, 2022. Future publications of decisions on exception requests will appear on a quarterly basis.

Requests for additional information on the exception request and the Department’s decision should be made to the relevant division of the Department. Inquiries regarding hospitals, abortion facilities and ambulatory surgical facilities shall be addressed to Garrison E. Gladfelter, Jr., Director, Division of Acute and Ambulatory Care, Room 532, Health and Welfare Building, Harrisburg, PA 17120, (717) 783-8980. Inquiries regarding long-term care facilities shall be addressed to Susan Williamson, Director, Division of Nursing Care Facilities, Room 528, Health and Welfare Building, Harrisburg, PA 17120, (717) 787-1816. Inquiries regarding Home Health agencies should be directed to Linda Chamberlain, Director, Division of Home Health, Forum Place, Suite 701, 555 Walnut Street, Harrisburg, PA 17101, (717) 783-1379.

#### Ambulatory Surgical Facilities

<i>Facility Name</i>	<i>28 Pa. Code Regulation</i>	<i>Dec. Date</i>	<i>Decision</i>
Aestique Ambulatory Surgical Center, Inc.	§ 571.1 (relating to minimum standards) 2.1-4.3.2.3(1)(b), (2)(a)(v) and (3)(d) one-room sterile processing facility	10/13/2022	Granted Temporary
Carlisle Endoscopy Center, Ltd.	§ 571.1 2.1-3.7.2.2(2)(b)(ii) space requirements	10/12/2022	Granted
Geisinger Wyoming Valley Outpatient Surgery Centerpoint	§ 569.35(7) (relating to general safety precautions)	10/12/2022	Granted w/Conditions
Metropolitan Nephrology Associates, PC	§ 569.35(7)	10/12/2022	Granted w/Conditions



<i>Facility Name</i>	<i>28 Pa. Code Regulation</i>	<i>Dec. Date</i>	<i>Decision</i>
Nemours Children's Health Malvern Surgery Center	§ 567.53(1) (relating to sterilization control)	10/13/2022	Granted
Philadelphia Women's Center, Inc.	§ 29.33(6) (relating to requirements for abortion)	10/12/2022	Granted w/Conditions

**Hospitals**

<i>Facility Name</i>	<i>28 Pa. Code Regulation</i>	<i>Dec. Date</i>	<i>Decision</i>
Allegheny General Hospital	§ 153.1(a) (relating to minimum standards) 2.2-3.4.10.1(1)—(4) patient waiting room or area	10/12/2022	Granted Temporary
	§ 153.1(a) 2.2-3.4.10.2(2)(a) patient toilet rooms	10/12/2022	Granted Temporary
Geisinger—Bloomsburg Hospital	§ 107.5(b)(1)—(5) (relating to membership appointment and reappointment)	10/12/2022	Granted w/Conditions
	§ 107.26(b)(1) (relating to additional committees)	10/12/2022	Granted w/Conditions
Geisinger Jersey Shore Hospital	§ 101.4 (relating to definitions)	10/12/2022	Granted w/Conditions
	§ 135.5 (relating to surgical emergency care)	10/12/2022	Granted w/Conditions
Geisinger Medical Center Muncy	§ 107.64 (relating to administration of drugs)	10/12/2022	Granted w/Conditions
The Lancaster General Hospital	§ 153.1(a) 2.2-3.1.3.6(8)(a)(ii) treatment room or area	10/12/2022	Granted Temporary
The Milton S. Hershey Medical Center	§ 153.1(a) 2.1-2.2.6.3(2) room features	10/17/2022	Granted
	§ 153.1(a) 2.2-2.2.2.6 patient toilet room	10/17/2022	Granted
Penn Highlands Dubois	§ 153.1(a) 2.1-8.4.3.2(2) hand-washing station sinks	10/12/2022	Granted
Penn Highlands Huntingdon	§ 153.1(a) 2.2-3.5.2.5(1)(c) system component room	10/12/2022	Granted
Saint Luke's Hospital—Anderson Campus	§ 153.1(a) 2.2-3.4.2.2(2)(a) space requirements	10/13/2022	Granted
UPMC Passavant	§ 153.1(a) 2.1-8.4.2.6(3)(b) drainage systems	10/20/2022	Granted w/Conditions
UPMC Presbyterian Shadyside	§ 153.1(a) 2.2-3.5.2.2(1)(b)(i) radiation therapy room	10/12/2022	Granted
Wellspan Surgery and Rehabilitation Hospital	§ 113.5(a) (relating to pharmacy and therapeutics committee)	10/12/2022	Granted w/Conditions

**Nursing Care Facilities**

<i>Facility Name</i>	<i>28 Pa. Code Regulation</i>	<i>Dec. Date</i>	<i>Decision</i>
Advanced Care Center of Butler	§ 201.22(e) and (j) (relating to prevention, control and surveillance of tuberculosis (TB))	10/31/2022	Granted
Kingston Rehabilitation and Nursing Center	§ 201.22(e) and (j)	10/03/2022	Granted
Promedica Skilled Nursing and Rehabilitation (Montgomery)	§ 201.22(j)	10/03/2022	Granted
Transitions Healthcare Autumn Grove Care Center	§ 211.9(g) (relating to pharmacy services)	10/03/2022	Granted
Willowbrooke Court at Granite Farms Estates	§ 201.22(e), (h) and (j)	10/31/2022	Granted

Persons with a disability who require an alternative format of this notice (for example, large print, audiotape, Braille) should contact the Division of Acute and Ambulatory Care or the Division of Nursing Care Facilities at the previously referenced address or telephone number, or for speech and/or hearing-impaired persons, call the Pennsylvania Hamilton Relay Service at (800) 654-5984 (TDD users) or (800) 654-5988 (voice users).

DR. DENISE A. JOHNSON,  
*Acting Secretary*

[Pa.B. Doc. No. 22-1742. Filed for public inspection November 11, 2022, 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).

<i>Facility Name</i>	<i>Regulation and relating to</i>
Geisinger—Community Medical Center	28 Pa. Code § 107.5(b)(1)—(5) (relating to membership appointment and reappointment)
	28 Pa. Code § 107.26(a) and (b)(1)—(8) (relating to additional committees)
Penn Highlands Elk	28 Pa. Code § 109.2(b) (relating to director of nursing services)

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 minimum standards that hospitals must comply with under the *Guidelines for Design and Construction of Hospitals—2018 Edition*, *Guidelines for Design and Construction of Outpatient Facilities—2018 Edition* or the *Guidelines for Design and Construction of Hospitals—2022 Edition*, *Guidelines for Design and Construction of Outpatient Facilities—2022 Edition*. The following list includes the citation to the section under the *Guidelines* that the hospital is seeking an exception.

<i>Facility Name</i>	<i>FGI Guidelines Section and relating to</i>	<i>Yr<sup>1</sup></i>
Doylestown Hospital	2.1-2.4.3.9(1)(b) special design elements	18
Geisinger—Community Medical Center	ASHRAE 6.6—humidifiers	18
Geisinger—Lewistown Hospital	2.8-8.2.1.2(1)(a) and (b) class 1 units	18
The Milton S. Hershey Medical Center	ASHRAE 7.2.2(b) protective environment (PE) rooms	18
	2.1-2.2.6.3(2) room features	18
	2.2-2.2.2.6 patient toilet room	18
	2.2-2.3.4.1(1)(b) general	18
Penn Highlands Huntingdon	2.1-8.4.3.2 hand-washing station sinks	18
	2.2-3.1.3.7 patient toilet room	18
Penn Highlands Tyrone	2.1-3.2.1.2(2)(a)(i) single-patient examination/observation room	18-O
	2.1-3.8.7.1 location	18-O
	2.1-8.3.6 electrical receptacles	18-O
	2.1-8.4.3.2(2) hand-washing station sinks	18-O
Pottstown Hospital	2.5-3.4.2.2(1) ECT treatment room	18
Thomas Jefferson University Hospitals, Inc.	2.2-2.2.2 patient room	18
UPMC Hamot	2.1-2.2.6.3(2) room features	18

<sup>1</sup> 2018 Year FGI Regulations for Outpatient Facilities are indicated by “-O.”

<sup>2</sup> 2022 Year FGI Regulations for Outpatient Facilities are 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 Hamilton Relay Service at (800) 654-5984 (TDD users) or (800) 654-5988 (voice users).

DR. DENISE A. JOHNSON,  
*Acting Secretary*

## 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 § 201.22(e) (relating to prevention, control and surveillance of tuberculosis (TB)):

Parkhouse Rehabilitation and Nursing Center  
1600 Black Rock Road  
Royersford, PA 19468  
FAC ID # 133402

The following long-term care nursing facility is seeking an exception to 28 Pa. Code § 201.22(e) and (j):

Complete Care at Lehigh, LLC  
1718 Spring Creek Road  
Macungie, PA 18062  
FAC ID # 044602

The following long-term care nursing facility is seeking an exception to 28 Pa. Code § 201.22(j):

Promedica Skilled Nursing and Rehabilitation  
(Sinking Spring)  
3000 Windmill Road  
Sinking Spring, PA 19608  
FAC ID # 380702

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, rapaexcept@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 contact information.

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 Hamilton Relay Service at (800) 654-5984 (TDD users) or (800) 654-5988 (voice users).

DR. DENISE A. JOHNSON,  
*Acting Secretary*

[Pa.B. Doc. No. 22-1744. Filed for public inspection November 11, 2022, 9:00 a.m.]

## DEPARTMENT OF HEALTH

### Medical Marijuana Advisory Board Meeting; Change of Meeting Format and Location

The Medical Marijuana Advisory Board (Board), established under section 1201 of the Medical Marijuana Act (35 P.S. § 10231.1201), hereby gives notice that the November 22, 2022, Board meeting will not be held virtually for live broadcast and will instead be held in

person in Hearing Room 1, Keystone Building, 400 North Street, Harrisburg, PA. The date and time of the meeting remain unchanged.

For additional information, including an alternative format of this notice (for example, large print, audiotape, Braille) or for persons with a disability who wish to attend the meeting who require an auxiliary aid, service or other accommodation to do so, contact Holli Senior, Special Assistant, Office of Medical Marijuana, 625 Forster Street, Room 628, Health and Welfare Building, Harrisburg, PA 17120, (717) 547-3047, or for speech and/or hearing-impaired persons, call the Pennsylvania Hamilton Relay Service at (800) 654-5984 (TDD users) or (800) 654-5988 (voice users).

This meeting is subject to cancellation without notice.

DR. DENISE A. JOHNSON,  
*Acting Secretary*

[Pa.B. Doc. No. 22-1745. Filed for public inspection November 11, 2022, 9:00 a.m.]

## DEPARTMENT OF HEALTH

### Newborn Screening and Follow-Up Technical Advisory Board Public Meeting

The Newborn Screening and Follow-Up Technical Advisory Board (Board), established under the Newborn Child Testing Act (35 P.S. §§ 621—625), will hold a public meeting on Thursday, November 17, 2022, from 10 a.m. until 1 p.m. The meeting will be conducted both in person and as a virtual teleconference.

The location for in-person attendance is the Health and Welfare Building, WIC Office Conference Room, 625 Forster Street, 7th Floor West, Harrisburg, PA. Individuals must RSVP no later than Tuesday, November 15, 2022, if they plan to attend in person.

The public meeting will be conducted as a teleconference at by means of Microsoft Teams at [https://teams.microsoft.com/l/meetup-join/19%3ameeting\\_YzE2OGRhMmYtOTdiOS00NjE0LTg4MDItODcyYTViYjA5ZGJi%40thread.v2/0?context=%7b%22Tid%22%3a%22418e2841-0128-4dd5-9b6c-47fc5a9a1bde%22%2c%22Oid%22%3a%2257f4c8d4-0b5e-4b47-b04d-cf584316ca06%22%7d](https://teams.microsoft.com/l/meetup-join/19%3ameeting_YzE2OGRhMmYtOTdiOS00NjE0LTg4MDItODcyYTViYjA5ZGJi%40thread.v2/0?context=%7b%22Tid%22%3a%22418e2841-0128-4dd5-9b6c-47fc5a9a1bde%22%2c%22Oid%22%3a%2257f4c8d4-0b5e-4b47-b04d-cf584316ca06%22%7d).

Individuals may participate by calling (267) 332-8737 and entering conference access ID 145126201#.

The agenda will include: discussions about Board member terms; updates from the Bureau of Family Health (Bureau); a discussion on Dup15q; and updates from the Lysosomal Storage Disorders/X-ALD, Cystic Fibrosis, Hemoglobinopathy and Critical Congenital Heart Defects subcommittees. The Bureau will provide data for each subcommittee update as needed.

For additional information or for persons with a disability who wish to attend the public meeting and require auxiliary aid, service or other accommodation to do so, contact Patricia Alexander, Nursing Services Consultant, Division of Newborn Screening and Genetics, at (717) 783-8143. Speech and/or hearing-impaired persons please use V/TT (717) 783-6514 or the Pennsylvania Hamilton Relay Services at (800) 654-5984 (TT).



This public meeting is subject to cancellation without notice.

DR. DENISE A. JOHNSON,  
*Acting Secretary*

[Pa.B. Doc. No. 22-1746. Filed for public inspection November 11, 2022, 9:00 a.m.]

## DEPARTMENT OF HEALTH

### Special Supplemental Nutrition Program for Women, Infants and Children (WIC Program); WIC Advisory

The WIC Advisory will meet on November 30, 2022, from 1 p.m. to 2 p.m. The purpose of this meeting is for the members of the WIC Advisory to vote on a slate of officers and discuss future suggestions and next steps for the WIC Advisory. The Department of Health (Health) will send out the meeting agenda no later than November 28, 2022, at 12 p.m. by e-mail. Individuals interested in receiving a copy of the agenda may send an e-mail to [ra-dhwicadvisory@pa.gov](mailto:ra-dhwicadvisory@pa.gov) requesting to be added to the distribution list.

Individuals can join at [https://teams.microsoft.com/l/meetup-join/19%3ameeting\\_NjZmYjRhYjAtZGY4OS00NmNlLWFmUyZmYNDVmNWm5ZGIy%40thread.v2/0?context=%7b%22Tid%22%3a%22418e2841-0128-4dd5-9b6c-47fc5a9a1bde%22%2c%22Oid%22%3a%220cfa0410-062c-44ce-8c0c-5e4c0a12ecd9%22%7d](https://teams.microsoft.com/l/meetup-join/19%3ameeting_NjZmYjRhYjAtZGY4OS00NmNlLWFmUyZmYNDVmNWm5ZGIy%40thread.v2/0?context=%7b%22Tid%22%3a%22418e2841-0128-4dd5-9b6c-47fc5a9a1bde%22%2c%22Oid%22%3a%220cfa0410-062c-44ce-8c0c-5e4c0a12ecd9%22%7d).

*Note:* The previous link to access the meeting does not include a period. The link ends at 22%7d with no period at the end if there is one.

Individuals can also join by calling (267) 332-8737. The conference ID number is 805 686 232#.

The meeting will be recorded so if individuals choose to attend, they are consenting to being recorded. Individuals should not attend the meeting if they do not wish to be recorded.

Questions about the WIC Advisory may be submitted by e-mail to the Department at [ra-dhwicadvisory@pa.gov](mailto:ra-dhwicadvisory@pa.gov).

Persons with a disability who require an alternative format of this listing (for example, large print, audiotape, Braille) should contact the Department of Health, Bureau of WIC, 625 Forster Street, 7th Floor West, Health and Welfare Building, Harrisburg, PA 17120, (717) 783-1289, or, for speech and/or hearing-impaired persons, call the Pennsylvania Hamilton Relay Service at (800) 654-5984 (TDD users) or (800) 654-5988 (voice users).

The Pennsylvania WIC program is funded by the United States Department of Agriculture (USDA). The USDA is an equal opportunity provider.

#### *USDA Nondiscrimination Statement:*

In accordance with Federal civil rights law and the USDA civil rights regulations and policies, this institution is prohibited from discriminating on the basis of race, color, national origin, sex (including gender identity and sexual orientation), disability, age or reprisal or retaliation for prior civil rights activity.

Program information may be made available in languages other than English. Persons with disabilities who require alternative means of communication to obtain program information (for example, Braille, large print, audiotape, American Sign Language), should contact the responsible State or local agency that administers the program or the USDA's TARGET Center

at (202) 720-2600 (voice and TTY) or contact the USDA through the Federal Relay Service at (800) 877-8339.

To file a program discrimination complaint, a complainant should complete a Form AD-3027, USDA Program Discrimination Complaint Form which can be obtained online at <https://www.usda.gov/sites/default/files/documents/USDA-OASCR%20P-Complaint-Form-0508-0002-508-11-28-17Fax2Mail.pdf>, from any USDA office, by calling (866) 632-9992 or by writing a letter addressed to the USDA. The letter must contain the complainant's name, address, telephone number and a written description of the alleged discriminatory action in sufficient detail to inform the Assistant Secretary for Civil Rights about the nature and date of an alleged civil rights violation. The completed AD-3027 form or letter must be submitted to the USDA by mail to the United States Department of Agriculture, Office of the Assistant Secretary for Civil Rights, 1400 Independence Avenue, SW, Washington, DC 20250-9410, fax (833) 256-1665, (202) 690-7442, [Program.Intake@usda.gov](mailto:Program.Intake@usda.gov).

This institution is an equal opportunity provider.

DR. DENISE A. JOHNSON,  
*Acting Secretary*

[Pa.B. Doc. No. 22-1747. Filed for public inspection November 11, 2022, 9:00 a.m.]

## DEPARTMENT OF HUMAN SERVICES

### Availability of Amendment to the Office of Long-Term Living's Home and Community-Based Community HealthChoices Waiver

The Department of Human Services (Department) is making available for public review and comment the Office of Long-Term Living's proposed amendment to the Community HealthChoices (CHC) waiver. The proposed amendment will be effective April 1, 2023.

#### *Background*

Whenever substantive changes are made to an approved waiver, the Department must submit an amendment to the Centers for Medicare & Medicaid Services for approval. The Department proposes to amend the CHC waiver effective April 1, 2023, by adding Agency with Choice as a Financial Management Services model for the participant-directed services of Personal Assistance Services and Respite, modifying Service Coordinator and Service Coordinator Supervisor qualifications to align with the CHC Agreement, and to amend the service definitions for the following CHC waiver services:

- Benefits Counseling.
- Nursing Services.
- Physical Therapy Services.
- Occupational Therapy Services.
- Speech and Language Therapy Services.

The Department also proposes to make a technical change to the waiver by revising performance measures.

The proposed CHC waiver amendment and a summary of all revisions are available for review at <https://www.dhs.pa.gov/contact/DHS-Offices/Pages/OLTL-Waiver-Amendments-and-Renewals.aspx> or by contacting the Department of Human Services, Office of Long-Term Living at (717) 857-3280.

*Fiscal Impact*

The fiscal impact of this change is estimated at \$1.333 million (\$0.640 million in State funds) for Fiscal Year 2022-2023. The annualized fiscal impact is \$8.000 million (\$3.712 million in State funds).

*Public Comment*

Interested persons are invited to submit written comments regarding the proposed waiver amendment to the Department of Human Services, Office of Long-Term Living, Bureau of Policy Development and Communications Management, Attention: CHC 2023 Waiver Amendment, P.O. Box 8025, Harrisburg, PA 17105-8025. Comments may also be submitted to the Department at RA-waiverstandard@pa.gov. Use “CHC 2023 Waiver Amendment” as the subject line. Comments received within 30 days of publication of this notice will be reviewed and considered for revisions to the proposed waiver amendment.

Persons with a disability who require an auxiliary aid or service may submit comments using the Pennsylvania Hamilton Relay Service by dialing 711 or by using one of the toll-free numbers: (800) 654-5984 (TDD users); (800) 654-5988 (voice users); (844) 308-9292 (Speech-to-Speech); or (844) 308-9291 (Spanish).

MEG SNEAD,  
*Acting Secretary*

**Fiscal Note:** 14-NOT-1546. (1) General Fund; (2) Implementing Year 2022-23 is \$640,000; (3) 1st Succeeding Year 2023-24 through 5th Succeeding Year 2027-28 are \$3,712,000; (4) 2021-22 Program—\$4,252,000,000; 2020-21 Program—\$3,166,000,000; 2019-20 Program—\$2,329,000,000; (7) Community HealthChoices; (8) recommends adoption. Funds have been included in the budget to cover this increase.

[Pa.B. Doc. No. 22-1748. Filed for public inspection November 11, 2022, 9:00 a.m.]

**DEPARTMENT OF  
HUMAN SERVICES**

**Medical Assistance Fee Schedule Revisions in the OBRA Waiver and the Act 150 Program and Availability of Amendment to the Office of Long-Term Living’s Home and Community-Based OBRA Waiver**

This notice announces the Department of Human Services’ (Department) addition of the following revisions to the Medical Assistance (MA) fee schedule for the OBRA

Waiver and the Act 150 Program: Personal Assistance Service (PAS) (Agency with Choice) and Respite (Agency with Choice).

The Department also proposes to amend the OBRA Waiver and make available for public review and comment the Office of Long-Term Living’s proposed amendment.

The revisions to the fee schedule and the amendment are proposed to take effect April 1, 2023.

*Background*

Under 55 Pa. Code § 52.45 (relating to fee schedule rates), the Department is to publish fee schedule rates under the MA Program and the Act 150 program as a notice in the *Pennsylvania Bulletin*.

The Department used the same rate methodology for the fee schedule rates as that used in the public notice published at 42 Pa.B. 3343 (June 9, 2012). Fee schedule rates were developed using a standardized market-based rate setting methodology. Relevant market-based information used to determine the fee schedule rates included Commonwealth-specific wage information from the Center for Workforce Information and Analysis, Occupational Wages by County, Bureau of Labor Statistics Employer Costs, cost surveys from providers, Medicare rate information and MA State Plan Fee Schedules.

Whenever substantive changes are made to an approved waiver, the Department must submit an amendment to the Centers for Medicare & Medicaid Services for approval. The Department proposes the following substantive and technical changes to the OBRA Waiver:

- Add Agency with Choice as a Financial Management Services model for the participant-directed services of PAS and Respite.
- Revise the Benefits Counseling service definition.
- Amend the responsibilities of the Fiscal/Employer Agent.
- Update the Quality Improvement Strategy to the current process.
- Add a new performance measure for Agency with Choice.
- Remove a performance measure that is duplicative.

The proposed OBRA Waiver amendment and a summary of all revisions are available for review at <https://www.dhs.pa.gov/contact/DHS-Offices/Pages/OLTL-Waiver-Amendments-and-Renewals.aspx> or by contacting the Department of Human Services, Office of Long-Term Living at (717) 857-3280.

*Fee Schedule Rates*

The following table provides the procedure code and rates for PAS (Agency with Choice):

**PAS (Agency with Choice)**

<i>Region</i>	<i>OBRA Waiver and Act 150</i>	<i>Procedure Code</i>	<i>Modifier</i>	<i>Rate</i>	<i>Unit</i>
1	X	W0164	N/A	\$4.02	15 minutes
2	X	W0164	N/A	\$3.89	15 minutes
3	X	W0164	N/A	\$4.12	15 minutes
4	X	W0164	N/A	\$4.58	15 minutes

The following table provides the procedure code and rates for Respite (Agency with Choice):

**Respite (Agency with Choice)**

<i>Region</i>	<i>OBRA Waiver and Act 150</i>	<i>Procedure Code</i>	<i>Modifier</i>	<i>Rate</i>	<i>Unit</i>
1	X	W0165	N/A	\$4	15 minutes
2	X	W0165	N/A	\$3.90	15 minutes
3	X	W0165	N/A	\$4.12	15 minutes
4	X	W0165	N/A	\$4.59	15 minutes

*Fiscal Impact*

The fiscal impact of this change is estimated at \$0.147 million (\$0.070 million in State funds) for Fiscal Year (FY) 2022-2023 and \$0.598 million (\$0.278 million in State funds) for FY 2023-2024.

*Public Comment*

Interested persons are invited to submit written comments regarding these fee schedule rates and the proposed amendment to the Department of Human Services, Office of Long-Term Living, Bureau of Policy Development and Communications Management, Attention: Robyn Kokus, P.O. Box 8025, Harrisburg, PA 17105-8025. Comments can also be sent to RA-waiverstandard@pa.gov. Use "OBRA 2023" as the subject line. Comments received within 30 days will be considered in subsequent revisions to the fee schedule or for revisions to the proposed amendment.

Persons with a disability who require an auxiliary aid or service may submit comments using the Pennsylvania Hamilton Relay Service by dialing 711 or by using one of the toll-free numbers: (800) 654-5984 (TDD users); (800) 654-5988 (voice users); (844) 308-9292 (Speech-to-Speech); or (844) 308-9291 (Spanish).

MEG SNEAD,  
*Acting Secretary*

**Fiscal Note:** 14-NOT-1545. (1) General Fund; (2) Implementing Year 2022-23 is \$70,000; (3) 1st Succeeding Year 2023-24 through 5th Succeeding Year 2027-28 are \$278,000; (4) 2021-22 Program—\$121,346,000; 2020-21 Program—\$208,841,000; 2019-20 Program—\$470,244,000; (7) Long-Term Living; (8) recommends adoption. Funds have been included in the budget to cover this increase.

[Pa.B. Doc. No. 22-1749. Filed for public inspection November 11, 2022, 9:00 a.m.]

## DEPARTMENT OF TRANSPORTATION

### Contemplated Sale of Land No Longer Needed for Transportation Purposes

The Department of Transportation (Department), under the Sale of Transportation Lands Act (71 P.S. §§ 1381.1—1381.3), intends to sell certain land owned by the Department.

The following property is available for sale by the Department.

State Route 3024-07S, Parcel 16, Adams Township, Somerset County. This parcel contains approximately 0.311 acre of unimproved landlocked land. The property will be sold in as is condition. The estimated fair market

value of the parcel is \$5,000. It has been determined that the land is no longer needed for present or future transportation purposes.

Interested public agencies are invited to express their interest in purchasing the site within 30 calendar days from the date of publication of this notice to Thomas A. Prestash, PE, District Executive, Engineering District 9-0, 1620 North Juniata Street, Hollidaysburg, PA 16648.

Questions regarding this application or the proposed use may be directed to Robert Lynn, Property Manager, 1620 North Juniata Street, Hollidaysburg, PA 16648, (814) 317-1674, ROLYNN@PA.GOV.

YASSMIN GRAMIAN,  
*Secretary*

[Pa.B. Doc. No. 22-1750. Filed for public inspection November 11, 2022, 9:00 a.m.]

## DEPARTMENT OF TRANSPORTATION

### Public-Private Partnerships Board Meeting

The Public-Private Partnerships Board will hold a meeting on Tuesday, December 13, 2022, from 9 a.m. to 11 a.m. in the Forest Room, Plaza Level, Keystone Building, Harrisburg, PA. For more information, contact Maddie Vergos, (717) 787-3154, mvergos@pa.gov.

YASSMIN GRAMIAN,  
*Secretary*

[Pa.B. Doc. No. 22-1751. Filed for public inspection November 11, 2022, 9:00 a.m.]

## DEPARTMENT OF TRANSPORTATION

### State Transportation Innovation Council Business Meeting

The State Transportation Innovation Council will hold its business meeting on Wednesday, November 16, 2022, from 1 p.m. to 4 p.m. in the Aztec Room at the Hershey Lodge, 325 University Drive, Hershey, PA 17033. For more information, including an agenda and registration, contact Anja Walker, (717) 425-6288, anjwalker@pa.gov.

YASSMIN GRAMIAN,  
*Secretary*

[Pa.B. Doc. No. 22-1752. Filed for public inspection November 11, 2022, 9:00 a.m.]



## HOUSING FINANCE AGENCY

### Housing Options Grant Program—Multi-Family Draft Program Guidelines and Application/Award Process

In accordance with section 196-C of Act 54 of 2022 (act) (P.L. 540, No. 54), the General Assembly voted to establish the Housing Options Grant Program—Multi-Family (HOP-MF). The General Assembly agreed to transfer \$100 million of the United States Treasury American Rescue Plan Act (ARPA) funds to the Housing Finance Agency (Agency) to operate the HOP-MF.

The Agency is proposing the following draft guidelines for the HOP-MF program and is soliciting public comments from interested parties. Public comments must be submitted in writing to HOP-MF@phfa.org no later than 2 p.m. on Friday, December 2, 2022.

#### *Purpose*

HOP-MF funds shall be used to help continue affordable housing production in this Commonwealth. In accordance with the act, “The program shall make grants available from amounts appropriated for COVID Relief—ARPA—Affordable Housing Construction for the development of affordable housing units, including, but not limited to, building new units, rehabbing existing properties to make them affordable housing units or preserving existing affordable units.”

HOP-MF funds are not intended to be used in conjunction with current or anticipated Federal Low Income Housing Tax Credit (LIHTC) applications. This resource is meant to be a stand-alone program to further expand the development and preservation of affordable rental housing throughout this Commonwealth as a complement to the Federal resource. The Agency will not entertain proposals that anticipate both HOP-MF and LIHTC as part of the final preservation or development budget.

*Total Funding in Program:* \$100 million.

*Legislated Timeline:* Grants should be awarded no later than December 31, 2024. Funds must be expended by December 31, 2026.

#### *Threshold Criteria*

In accordance with the act, the following are threshold requirements.

1. Each project receiving a grant from HOP-MF must meet both the rent and income requirements of the Federal LIHTC program and also the income requirements listed in the American Rescue Plan Act State and Local Fiscal Recovery Funds guidelines as published by the United States Treasury. Primarily, the project must meet the following Internal Revenue Service requirements:

a. The grant must be used to provide housing for households at or below 60% Area Median Income (AMI). (Additionally, for new construction developments, at least 10% of the units must be affordable at or below 20% AMI.)

b. For rehabilitated units, the period of affordability must be at least 20 years but may be as high as 30 years based on the amount of HOP-MF funding.

c. The period of affordability for newly constructed units must be at least 20 years but may be as high as 30 years based on the amount of HOP-MF funding.

d. Monthly rents must not exceed 30% of the monthly income for households at 60% AMI (by household size). Additionally, for extremely low-income households, monthly rent must not exceed 30% of a 20% AMI household income.

2. The developer or nonprofit must agree to provide matching funds of at least 25% of the grant amount to be awarded for the development. Matching funds include:

a. Developer equity in the deal.

b. Contribution of land/building (based on appraised value).

c. Matching grants.

d. If the previously listed sources are not available at a 25% match, a loan recorded on the property will be allowed but the match requirement will be at least 50%.

*Note:* This program may be a good fit for existing affordable buildings that do not fit all the parameters of the LIHTC program or any given year Qualified Allocation Plan, or both. Additionally, this program may be a good fit for portfolio or scattered site properties, or both, that need minimal to moderate repair or new construction buildings that do not have enough units to be competitive for LIHTCs. Naturally occurring affordable housing or existing market units, or both, may also be eligible for the Preservation Program as long as mass displacement is not required.

#### *Low-Income Definition*

For purposes of the HOP-MF program, the definition of a “Low-Income Household” is a household that is at or below 60% of the AMI.

The definition of an “Extremely Low-Income Household” is a household that is at or below 20% of the AMI.

#### *Program Structure*

The HOP-MF program will have three subprograms: (1) the HOP-MF Emergency Grant Initiative; (2) the HOP-MF Preservation Initiative; and (3) the HOP-MF New Construction Initiative.

##### *(1) The HOP-MF Emergency Grant Initiative*

*Purpose:* The purpose of the HOP-MF Emergency Grant Initiative is to provide funding for emergency repairs to existing deed-restricted affordable housing throughout this Commonwealth so that existing tenants are not displaced.

#### *Property eligibility requirements*

1. Eligible properties must currently be occupied by low-income households (defined as households underneath 60% AMI). At least 90% of the units in a multi-unit building must have existing tenants that meet the definition of low-income. Note that the HOP grant cannot be used for units that are not below 60% AMI. Matching funds must be used for units above 60% AMI.

2. Eligible properties must currently have existing affordability requirements or deed restrictions, or both, through the LIHTC program, the Section 8 Housing Assistance Program, the United States Department of Housing and Urban Development 202 Program, or another Federal or publicly subsidized program, or both. The affordability requirements must need to be in place for an additional 20 years or the owner must agree to extend the affordability requirements for at least another 20 years, or both.

3. Properties must need critical capital repairs to pass code and provide a safe and healthy living environment for the tenants. Examples of critical capital repairs include but are not limited to:

- a. Roof replacement
- b. Mold or asbestos remediation, or both
- c. Lead-based paint removal
- d. HVAC repair/replacement
- e. Plumbing repair/replacement
- f. Electrical repair/replacement
- g. Window replacement
- h. Elevator repair/replacement

*Program parameters*

1. HOP-MF Emergency Grant Initiative funding will be limited to a maximum of \$50,000 per unit or a per project cap of \$1 million whichever is less.

2. The owner/applicant must demonstrate the capacity to complete the construction work. A Project Capital Needs Assessment (PCNA) must be included in the application and there must be at least two documented construction bids on file.

3. Construction must begin within 2 months of the award and must be completed within a 6-month construction period.

4. Permanent displacement is not allowed. If temporary relocation is needed, the plan must be approved by the Agency.

*(2) The HOP-MF Preservation Initiative*

*Purpose:* The purpose of the HOP-MF Preservation Initiative is to provide funding to rehabilitate properties on a nonemergency basis with the goal to: (1) create/extend the affordability period; and (2) make sufficient repairs to the property to ensure the stability of the building through the affordability period.

*Property eligibility requirements*

1. Eligible properties must be either:

a. Currently occupied by low-income households (defined as households underneath 60% AMI). At least 90% of the units in a multi-unit building must have existing tenants that meet the definition of low-income (only low-income units are eligible for HOP-MF funding); or

b. Must agree to be occupied by low-income households upon lease-up/turnover.

c. For buildings that currently have over-income tenants, a detailed plan must be submitted related to when leases expire and how the units will be turned over to income eligible tenants at that point. Note, that the Agency has the right to reject any application which requires displacement.

2. Properties must need critical capital repairs to pass code and provide a safe and healthy living environment for the tenants. Examples of critical capital repairs include but are not limited to:

- a. Roof replacement
- b. Mold or asbestos remediation, or both
- c. Lead-based paint removal
- d. HVAC repair/replacement
- e. Plumbing repair/replacement

- f. Electrical repair/replacement
- g. Window replacement
- h. Elevator repair/replacement

3. Additionally, rehabilitation can be proposed to the units in order to provide quality housing for the tenants for the affordability period. Examples of additional rehabilitation activities are:

- a. Interior unit repairs
- b. New appliances and cabinets
- c. Carpeting
- d. Painting
- e. Common area repairs
- f. Façade repairs
- g. Basement repairs
- h. Broadband internet wiring

*Program parameters*

1. The property must not also be part of a current LIHTC application or current reservation.

2. HOP-MF Preservation Initiative funding will be limited to a maximum of \$50,000 per unit or a per project cap of \$5 million whichever is less.

3. The owner/applicant must demonstrate the capacity to complete the construction work. A PCNA must be included in the application and there must be at least two documented construction bids on file.

4. Construction must begin within 4 months of the award and must be completed within a 12-month construction period (prior to December 31, 2026).

5. Permanent displacement is not allowed. If temporary relocation is needed, the plan must be approved by the Agency.

*(3) The HOP-MF New Construction Initiative and Construction Conversion Initiative*

*Purpose:* The purpose of the HOP-MF New Construction and Construction Conversion Initiative is to provide financing for the construction of affordable rental properties. At least 90% of the units in each development must house households at or below 60% AMI which includes at least 10% of the units being reserved for extremely low-income households at or below 20% AMI. Up to 10% of the units in the project can be market-rate; however, HOP-MF funding cannot be used for units above 60% AMI.

The new construction of affordable units should occur in areas of opportunity or in areas that have been historically underinvested in, or both. The HOP-MF New Construction Initiative Grant funds should be used for developments that are not competitive for LIHTC or other government resources, or both.

*Property eligibility requirements*

1. Eligible properties include existing buildings that currently do not have affordable housing and will be converted to affordable housing (for example, abandoned schools and other facilities or existing market rate housing where no displacement will occur).

2. If a property has an existing building on it which is being demolished, the demolition of that building must be funded by a separate source.

3. The new construction of affordable units should be consistent with the Low-Income Housing Tax Credit program design and construction standards.

4. Family housing (two-bedroom and three-bedroom units) will be prioritized above one-bedroom developments.

*Program parameters*

1. The property must not also be part of a current LIHTC application or current reservation.

2. HOP-MF New Construction and Construction Conversion Initiative funding will be limited to a maximum of \$100,000 per unit or a per project cap of \$7.5 million whichever is less.

3. Construction must begin within 4 months of the award and must be completed within a 15-month construction period (prior to December 31, 2026).

*Additional Requirements for All Three Program Structures*

1. State prevailing wage may apply.
2. The grant proceeds will only cover the following costs:
  - a. Construction costs (caps may apply).
  - b. Administrative costs capped at 5% of the grant award or \$300,000 whichever is less. A developer fee is not allowable in the HOP program.
  - c. Architectural and engineering costs (caps may apply).
  - d. Other fees and soft costs capped at \$5,000 per unit or \$100,000 per project whichever is less.
3. Acquisition will be limited to 5% of the total grant award.
4. Owners/applicants are limited to receiving a maximum of three HOP-MF awards or \$10 million whichever is less.
5. HOP-MF can only be used for the construction or preservation of rental housing. For-sale housing is not an eligible use of the program.
6. There needs to be at least a 25% match. Additionally, the owner/applicant must demonstrate that additional fundraising occurred. The HOP-MF grant should only fill the last remaining unmet budget need for the project to move into the construction phase.
7. To the extent possible, all projects should also secure private debt financing to the extent the cashflow is sufficient enough to repay the debt at a 1.2 debt coverage ratio.
8. Monthly rent must not exceed 30% of the income that a 60% AMI household makes for that bedroom size or the rent must not exceed 30% of the income that a 20% AMI household makes for that bedroom size, or both.

*Owner/Applicant Eligibility Requirements*

1. For the Emergency Grant Initiative, the owner must document why capital repairs were not previously made to the building. If the existing owner has a track record that shows more than 1 year of mismanagement, the Agency at its discretion may: (1) turn down the application; (2) recommend that a new partner be added; and (3) require a new property manager be hired.

2. The owner must complete certifications and attestations about past business management and behavior.

3. Applicants with existing affordable housing projects that are or have been subject to the Agency compliance monitoring by virtue of participation in LIHTC, PennHOMES, PHARE or other agency programs must be able to demonstrate a history of good standing with the Agency.

4. The owner or partnership entity must be in good legal and fiscal standing with the Commonwealth.

*Administration and Application*

The Agency will review all HOP-MF applications and will hold an application cycle anticipated to open in the 4th Quarter of 2022. Applications under the HOP-MF Emergency Repair Initiative category will continue to be accepted on a rolling basis until the time that the grant award total reaches \$10 million or otherwise announced by the Agency. The Agency staff will review all applications for applicability in accordance with the program guidelines. If qualified applications request more than the funding availability, the Agency staff will make funding applications based on the following parameters:

1. Projects in areas of opportunities (areas close to public transit, employment opportunities and high performing schools) and those which have been historically underinvested in (census tracts that have had a low percentage of the Community Reinvestment Act investment and qualify as a low-income community), will be prioritized.
2. In accordance with the act, geographic disparity across this Commonwealth will be prioritized.
3. Family housing will be prioritized.
4. Minority or women-owned business enterprise developers or nonprofits with more than 50% of its members as minority or women, or both, will be prioritized.
5. Projects with longer than the minimum affordability period will be prioritized. The Agency reserves the right to require larger affordability periods for larger grants.

The program staff in the Development Department will make funding recommendations based on the program guidelines and the prioritized criteria previously shown. The funding recommendations will be presented to an internal review committee followed by the Agency Board of Director's Policy Committee and Board.

Note, the Agency reserves the right to hold a second funding cycle at its discretion if the full allocation of funding is not committed in the first funding cycle.

*Disclaimers*

1. The Agency may reduce or may deny a request based upon review of required materials or source availability or applicability, or both.
2. The Agency has sole discretion to waive nonstatutory requirements as necessary to address the needs of a specific proposal if it is in the best interest of the community or tenant base, or both.
3. The Agency may ask for additional information prior to an award if a project does not provide adequate information or if information has changed.
4. Funding decisions are at the sole discretion of the Agency.



5. If developers are unable to initiate construction within the required time periods, the Agency has the right to rescind the award and reallocate to another project.

#### Grant Terms

*Affordability period:* At least 20 years. Projects receiving \$5 million or more will have at least a 30-year affordability period.

*Mechanism to record affordability:* An easement or a deed restriction, or both, will be recorded as the mechanism to enforce the affordability periods. Future program compliance will occur under the existing Agency monitoring process including provisions for noncompliance when necessary.

*Procedure in instances of default:* In the event of default with program compliance, the Agency will have the first right of refusal to purchase a property financed using HOP-MF grants at an amount not to exceed the current appraised value or the amount of the initial HOP-MF grant, whichever is less. Or in instances of transfer of ownership, the new owner agrees in writing to assume the remainder of the affordability period.

*Application fee/origination fee:* To be determined.

#### Disbursement of Funds

Once the grant documents are executed, the funds will be disbursed to pay for construction costs through the Agency-approved draw-down process in accordance with PHARE/Housing Trust Fund disbursement procedures.

Date: November 1, 2022

ROBIN L. WIESSMANN,  
*Executive Director*

[Pa.B. Doc. No. 22-1753. Filed for public inspection November 11, 2022, 9:00 a.m.]

## INDEPENDENT REGULATORY REVIEW COMMISSION

### Actions Taken by the Commission

The Independent Regulatory Review Commission met publicly at 10 a.m., Thursday, October 28, 2022, and announced the following:

#### Actions Taken—Regulations Approved:

Department of Health # 10-221: Long-Term Care Nursing Facilities (amends 28 Pa. Code §§ 201.1—201.3)

Department of Health # 10-222: Long-Term Care Nursing Facilities (amends 28 Pa. Code Chapters 201, 205, and 207, deletes 28 Pa. Code Chapter 203, and adds 28 Pa. Code Chapter 204)

Department of Health # 10-223: Long-Term Care Nursing Facilities (amends 28 Pa. Code Chapters 201, 209, and 211)

Department of Health # 10-223: Long-Term Care Nursing Facilities (amends 28 Pa. Code Chapters 201, 207, 209, and 211)

### Approval Order

Public Meeting Held  
October 28, 2022

*Commissioners Voting:* George D. Bedwick, Chairperson; John F. Mizner, Esq., Vice Chairperson; John J. Soroko, Esq.; Murray Ufberg, Esq.; Dennis A. Watson, Esq.

*Department of Health—Long-Term Care Nursing  
Facilities Regulation No. 10-221 (# 3312)*

On July 21, 2021, the Independent Regulatory Review Commission (Commission) received this proposed regulation from the Department of Health (Department). This rulemaking amends 28 Pa. Code §§ 201.1—201.3. The proposed regulation was published in the July 31, 2021 *Pennsylvania Bulletin* with a public comment period ending on August 30, 2021. The final-form regulation was submitted to the Commission on September 27, 2022.

This regulation expands the incorporation by reference of 42 CFR Part 483, Subpart B (relating to requirements for long term care facilities) and updates definitions.

We have determined this regulation is consistent with the statutory authority of the Department (35 P.S. §§ 448.102, 448.201(12), 448.601, 448.801a and 448.803; and 71 P.S. § 532(a) and (g)) and the intention of the General Assembly. Having considered all of the other criteria of the Regulatory Review Act, we find promulgation of this regulation is in the public interest.

*By Order of the Commission:*

This regulation is approved.

### Approval Order

Public Meeting Held  
October 28, 2022

*Commissioners Voting:* George D. Bedwick, Chairperson; John F. Mizner, Esq., Vice Chairperson; John J. Soroko, Esq.; Murray Ufberg, Esq.; Dennis A. Watson, Esq.

*Department of Health—Long-Term Care Nursing  
Facilities Regulation No. 10-222 (# 3316)*

On September 27, 2021, the Independent Regulatory Review Commission (Commission) received this proposed regulation from the Department of Health (Department). This rulemaking amends 28 Pa. Code Chapters 201, 205, and 207, deletes 28 Pa. Code Chapter 203, and adds 28 Pa. Code Chapter 204. The proposed regulation was published in the October 9, 2021 *Pennsylvania Bulletin* with a public comment period ending on November 8, 2021. The final-form regulation was submitted to the Commission on September 27, 2022.

This final-form regulation amends regulations relating to general operation and physical requirements of long-term care nursing facilities, including closure, construction, alteration and renovation.

We have determined this regulation is consistent with the statutory authority of the Department (35 P.S. §§ 448.102, 448.201(12), 448.601, 448.801a and 448.803; and 71 P.S. § 532(a) and (g)) and the intention of the General Assembly. Having considered all of the other criteria of the Regulatory Review Act, we find promulgation of this regulation is in the public interest.

By Order of the Commission:

This regulation is approved.

**Approval Order**

Public Meeting Held  
October 28, 2022

*Commissioners Voting:* George D. Bedwick, Chairperson; John F. Mizner, Esq., Vice Chairperson; John J. Soroko, Esq.; Murray Ufberg, Esq.; Dennis A. Watson, Esq.

*Department of Health—Long-Term Care Nursing Facilities Regulation No. 10-223 (# 3335)*

On March 2, 2022, the Independent Regulatory Review Commission (Commission) received this proposed regulation from the Department of Health (Department). This rulemaking amends 28 Pa. Code Chapters 201, 209, and 211. The proposed regulation was published in the March 19, 2022 *Pennsylvania Bulletin* with a public comment period ending on April 18, 2022. The final-form regulation was submitted to the Commission on September 27, 2022.

This final-form regulation amends regulations relating to ownership and management of long-term care nursing facilities, as well as health and safety, and infection prevention and control at these facilities.

We have determined this regulation is consistent with the statutory authority of the Department (35 P.S. §§ 448.102, 448.201(12), 448.601, 448.801a and 448.803; and 71 P.S. § 532(a) and (g)) and the intention of the General Assembly. Having considered all of the other criteria of the Regulatory Review Act, we find promulgation of this regulation is in the public interest.

By Order of the Commission:

This regulation is approved.

**INDEPENDENT REGULATORY REVIEW COMMISSION**

**Notice of Filing of Final Rulemakings**

The Independent Regulatory Review Commission (Commission) received the following regulations. They are scheduled to be considered on the date noted. The Commission’s public meetings are held at 333 Market Street, 14th Floor, Harrisburg, PA at 10 a.m. To obtain a copy of the regulation, interested parties should first contact the promulgating agency. If a copy cannot be obtained from the promulgating agency, the Commission will provide a copy or it can be viewed at the Commission’s web site at [www.irrc.state.pa.us](http://www.irrc.state.pa.us).

<i>Final-Form Reg. No.</i>	<i>Agency/Title</i>	<i>Received</i>	<i>Public Meeting</i>
7-569	Environmental Quality Board Safe Drinking Water PFS MCL Rule	10/13/22	11/17/22
14-549	Department of Human Services Interrelationship of Providers	10/24/22	12/8/22
54-96	Liquor Control Board Promotion with Licensees	10/25/22	12/8/22
16A-6015	State Board of Vehicle Manufacturers, Dealers and Salespersons Fee Increase	10/26/22	12/8/22

GEORGE D. BEDWICK,  
Chairperson

[Pa.B. Doc. No. 22-1755. Filed for public inspection November 11, 2022, 9:00 a.m.]

**Approval Order**

Public Meeting Held  
October 28, 2022

*Commissioners Voting:* George D. Bedwick, Chairperson; John F. Mizner, Esq., Vice Chairperson; John J. Soroko, Esq.; Murray Ufberg, Esq.; Dennis A. Watson, Esq.

*Department of Health—Long-Term Care Nursing Facilities Regulation No. 10-224 (# 3343)*

On May 11, 2022, the Independent Regulatory Review Commission (Commission) received this proposed regulation from the Department of Health (Department). This rulemaking amends 28 Pa. Code Chapters 201, 207, 209, and 211. The proposed regulation was published in the May 28, 2022 *Pennsylvania Bulletin* with a public comment period ending on June 27, 2022. The final-form regulation was submitted to the Commission on September 27, 2022.

This final-form regulation amends regulations relating to management of long-term care nursing facilities, along with program standards and resident rights. Regulations relating to staff are amended, including those relating to qualifications, training, job duties, and minimum staffing ratios.

We have determined this regulation is consistent with the statutory authority of the Department (35 P.S. §§ 448.102, 448.201(12), 448.601, 448.801a and 448.803; and 71 P.S. § 532(a) and (g)) and the intention of the General Assembly. Having considered all of the other criteria of the Regulatory Review Act, we find promulgation of this regulation is in the public interest.

By Order of the Commission:

This regulation is approved.

GEORGE D. BEDWICK,  
Chairperson

[Pa.B. Doc. No. 22-1754. Filed for public inspection November 11, 2022, 9:00 a.m.]

## INSURANCE DEPARTMENT

### John Edward Landis; Motor Vehicle Physical Damage Appraiser License Denial Appeal; Doc. No. AG22-10-037

Under the Motor Vehicle Physical Damage Appraiser Act (63 P.S. §§ 851—863), John Edward Landis has appealed the denial of an application for a motor vehicle physical damage appraiser license. The proceedings in this matter will be governed by 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).

A prehearing telephone conference initiated by this office is scheduled for January 6, 2023, at 2 p.m. Each party shall provide the Hearings Administrator a telephone number to be used for the telephone conference on or before January 4, 2023. A hearing will occur on January 18, 2023, at 9:30 a.m. in the Administrative Hearings Office, Capitol Associates Building, Room 200, 901 North Seventh Street, Harrisburg, PA.

Protests, petitions to intervene or notices of intervention, if any, must be electronically filed on or before December 23, 2022. The e-mail address to be used for the Administrative Hearings Office is ra-hearings@pa.gov. Answers to protests, petitions to intervene or notices of intervention, if any, shall be electronically filed on or before January 4, 2023.

Persons with a disability who wish to attend the previously referenced administrative hearing and require an auxiliary aid, service or other accommodations to participate in the hearing, contact Joseph Korman, (717) 787-4429, jkorman@pa.gov.

MICHAEL HUMPHREYS,  
*Acting Insurance Commissioner*

[Pa.B. Doc. No. 22-1756. Filed for public inspection November 11, 2022, 9:00 a.m.]

## INSURANCE DEPARTMENT

### Daisy T. Pagan; License Denial Appeal; Doc. No. AG22-10-036

Under Article VI-A of The Insurance Department Act of 1921 (40 P.S. §§ 310.1—310.99a), Daisy T. Pagan has appealed the denial of an application for an insurance producer's license. The proceedings in this matter will be governed by 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).

A prehearing telephone conference initiated by this office is scheduled for December 19, 2022, at 2 p.m. Each party shall provide the Hearings Administrator a telephone number to be used for the telephone conference on or before December 16, 2022. A hearing will occur on January 4, 2023, at 9:30 a.m. in the Administrative Hearings Office, Capitol Associates Building, Room 200, 901 North Seventh Street, Harrisburg, PA.

Protests, petitions to intervene or notices of intervention, if any, must be electronically filed on or before

December 5, 2022. The e-mail address to be used for the Administrative Hearings Office is ra-hearings@pa.gov. Answers to protests, petitions to intervene or notices of intervention, if any, shall be electronically filed on or before December 16, 2022.

Persons with a disability who wish to attend the previously referenced administrative hearing and require an auxiliary aid, service or other accommodations to participate in the hearing, contact Joseph Korman, (717) 787-4429, jkorman@pa.gov.

MICHAEL HUMPHREYS,  
*Acting Insurance Commissioner*

[Pa.B. Doc. No. 22-1757. Filed for public inspection November 11, 2022, 9:00 a.m.]

## INSURANCE DEPARTMENT

### Thomas Scott Persing; License Denial Appeal; Doc. No. AG22-10-035

Under Article VI-A of The Insurance Department Act of 1921 (40 P.S. §§ 310.1—310.99a), Thomas Scott Persing has appealed the denial of an application for an insurance producer's license. The proceedings in this matter will be governed by 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).

A prehearing telephone conference initiated by this office is scheduled for December 20, 2022, at 1 p.m. Each party shall provide the Hearings Administrator a telephone number to be used for the telephone conference on or before December 16, 2022. A hearing will occur on January 11, 2023, at 9:30 a.m. in the Administrative Hearings Office, Capitol Associates Building, Room 200, 901 North Seventh Street, Harrisburg, PA.

Protests, petitions to intervene or notices of intervention, if any, must be electronically filed on or before December 6, 2022. The e-mail address to be used for the Administrative Hearings Office is ra-hearings@pa.gov. Answers to protests, petitions to intervene or notices of intervention, if any, shall be electronically filed on or before December 16, 2022.

Persons with a disability who wish to attend the previously referenced administrative hearing and require an auxiliary aid, service or other accommodations to participate in the hearing, contact Joseph Korman, (717) 787-4429, jkorman@pa.gov.

MICHAEL HUMPHREYS,  
*Acting Insurance Commissioner*

[Pa.B. Doc. No. 22-1758. Filed for public inspection November 11, 2022, 9:00 a.m.]

## MILK MARKETING BOARD

### Hearing and Presubmission Schedule for All Milk Marketing Areas; Over-Order Premium

Under the provisions of the Milk Marketing Law (31 P.S. §§ 700j-101—700j-1302), the Milk Marketing Board (Board) will conduct a public hearing for Milk Marketing



Areas 1—6 on December 7, 2022, at 9 a.m. in Room 202, Department of Agriculture Building, 2301 North Cameron Street, Harrisburg, PA 17110.

The purpose of the hearing is to receive testimony and exhibits concerning the level and duration of the Class I over-order premium.

The staff of the Board is deemed to be a party to this hearing, and the attorney representing staff is deemed to have entered his appearance. Other persons who wish to present evidence may be included on the Board's list of parties by: (1) having their attorney file with the Board on or before 12 p.m. on November 14, 2022, a notice of appearance substantially in the form prescribed by 1 Pa. Code § 31.25 (relating to form of notice of appearance); or (2) if unrepresented by counsel, filing with the Board on or before 12 p.m. on November 14, 2022, notification of their desire to be included as a party. Parties shall indicate in their notices of appearance if alternate means of service, that is, e-mail or fax, are acceptable. Notices of appearance should be filed electronically and be directed to [deberly@pa.gov](mailto:deberly@pa.gov).

The parties shall observe the following requirements for advance filing of witness information and exhibits. The Board may exclude witnesses or exhibits of a party that fails to comply with these requirements. Copies of the filings will be available on the Board web site at <http://www.mmb.pa.gov/Public%20Hearings/>. Filing may be done by mail to the Board office or electronically to [deberly@pa.gov](mailto:deberly@pa.gov).

1. By 2 p.m. on November 15, 2022, Pennsylvania Grange (petitioner) shall file with the Board one original and ensure receipt by all other parties of one copy of:

a. A list of witnesses who will testify for the petitioner, along with a statement of the subjects concerning which each witness will testify, regarding the level and duration of the over-order premium. A witness who will be offered as an expert shall be so identified, along with the witness's area or areas of proposed expertise. For expert witnesses there shall also be filed a written report or written testimony explaining the substance of the facts and opinions to which the expert is expected to testify and a summary of the grounds for each opinion.

b. Each exhibit to be presented, including testimony to be offered in written form.

2. By 2 p.m. on November 22, 2022, each responding party shall file and serve as set forth in paragraph 1 information concerning rebuttal witnesses and copies of rebuttal exhibits.

3. By 2 p.m. on December 1, 2022, parties shall file and serve as set forth in paragraph 1 information concerning surrebuttal witnesses and copies of surrebuttal exhibits.

Parties that wish to offer in evidence documents on file with the Board, public documents, or records in other proceedings before the Board, or wish the Board to take official notice of facts, shall comply with, respectively, 1 Pa. Code § 35.164, § 35.165, § 35.167 or § 35.173. Whenever these rules require production of a document as an exhibit, five copies shall be provided for Board use and one copy shall be provided to each interested party.

Requests by parties for Board staff to provide data pertinent to the hearing shall be made in writing addressed to [chardbarga@pa.gov](mailto:chardbarga@pa.gov) and received in the Board office by 3 p.m. on November 23, 2022.

The filing address for the Board is Milk Marketing Board, Room 110, Agriculture Building, 2301 North Cameron Street, Harrisburg, PA 17110.

CAROL HARDBARGER,  
*Secretary*

[Pa.B. Doc. No. 22-1759. Filed for public inspection November 11, 2022, 9:00 a.m.]

## OFFICE OF OPEN RECORDS

### Right-to-Know Law and Sunshine Act Annual Training

The Office of Open Records (OOR) will hold its annual Right-to-Know Law (RTKL) (65 P.S. §§ 67.101—67.3104) and Sunshine Act training (65 Pa.C.S. §§ 701—716) (relating to Sunshine Act) on Tuesday, November 15, 2022, at 10 a.m. This year's session, which will be held by means of Microsoft Teams, will include the following topics:

- Basics of the Commonwealth's RTKL.
- Best practices and tips for requesting records.
- Best practices and tips for agencies when dealing with Right-to-Know requests and appeals.

The OOR's annual training is free and open to everyone. Attendees will have ample opportunity to ask questions. Visit <https://www.openrecords.pa.gov/> for information on how to participate in this year's session. (CLE credits are not available this year.)

LIZ WAGENSELLER,  
*Executive Director*

[Pa.B. Doc. No. 22-1760. Filed for public inspection November 11, 2022, 9:00 a.m.]

## PENNSYLVANIA PUBLIC UTILITY COMMISSION

### Cancellation of Certificates of Public Convenience for Motor Carriers; Failure to Maintain Evidence of Insurance

Public Meeting held  
October 27, 2022

*Commissioners Present:* Gladys Brown Dutrieuille, Chairperson; Stephen M. DeFrank, Vice Chairperson; Ralph V. Yanora; Kathryn L. Zerfuss; John F. Coleman, Jr.

*Cancellation of Certificates of Public Convenience for Motor Carriers; Failure to Maintain Evidence of Insurance; M-2022-3034805*

#### Tentative Order

*By the Commission:*

Pursuant to Section 512 of the Public Utility Code, 66 Pa.C.S. § 512, the Commission is authorized to prescribe appropriate insurance requirements for motor carriers. Section 512 provides, in relevant part:

The commission may, as to motor carriers, prescribe, by regulation or order, such requirements as it may

deem necessary for the protection of persons or property of their patrons and the public, including the filing of surety bonds, the carrying of insurance, or the qualifications and conditions under which such carriers may act as self-insurers with respect to such matters. All motor carriers of passengers...shall cover each and every vehicle, transporting such passengers, with a public liability insurance policy or a surety bond issued by an insurance carrier, or a bonding company authorized to do business in this Commonwealth, in such amounts as the commission may prescribe. . . .

Consistent with this broad statutory charge, the Commission promulgated regulations governing motor carrier insurance requirements. 52 Pa. Code Chapter 32. Those regulations provide, inter alia, that a motor carrier may not operate, and a certificate of public convenience will not be issued or remain in force, until there has been filed with and approved by the Commission a certificate of insurance by an insurer authorized to do business in Pennsylvania for the payment of claims resulting from the operation, maintenance, or use of a motor vehicle in the carrier's authorized service. 52 Pa. Code §§ 32.11, 32.12. The certificate of insurance, commonly known as a Form E, is in a form prescribed and approved by the Commission and provides protection for bodily injury, death, or property damage. 52 Pa. Code § 32.2(a). Additionally, the Commission regulations require that certain carriers maintain evidence of cargo insurance via a certificate of insurance commonly known as a Form H. The Commission's regulations require that evidence of insurance be maintained at all times with the Commission to ensure the protection of the public:

(h) *Compliance.* Failure to maintain evidence of insurance on file with the Commission in accordance with this chapter shall cause the immediate suspension of the rights and privileges conferred by a certificate of public convenience or permit held by the motor carrier. The Commission may establish rules under which suspended rights and privileges may be temporarily reinstated pending compliance with this chapter.

52 Pa. Code § 32.2(h).

The Commission has been notified that the motor carriers listed in Appendix A, attached hereto, no longer have acceptable evidence of insurance on file with the Commission. The Commission sent all carriers a letter notifying them that their operating authority was suspended. Since the date of the suspensions, these motor carriers have failed to maintain acceptable evidence of insurance, notwithstanding notification by the Commission of the suspension and the necessity to provide acceptable evidence of insurance.

Under these circumstances, we tentatively conclude that the motor carriers listed in Appendix A are not in compliance with the insurance requirements of 66 Pa.C.S. § 512 and our regulations at 52 Pa. Code Chapter 32. As such, it is appropriate to initiate the process to cancel their certificates of public convenience as being in the public interest; *Therefore,*

*It Is Ordered That:*

1. 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. The Secretary's Bureau shall publish a copy of this Tentative Order in the *Pennsylvania Bulletin*.
3. The Secretary shall serve a copy of this Tentative Order upon all motor carriers listed in Appendix A.
4. The Secretary shall file this Tentative Order at each motor carrier's assigned docket number.
5. To the extent that any of the motor carriers listed on Appendix A challenge cancellation of their Certificates of Public Convenience, they must file comments within thirty (30) days after publication of this Tentative Order 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.
6. Alternatively, acceptable evidence of insurance may be filed with the Commission on behalf of the motor carriers listed in Appendix A, within thirty (30) days after publication of this order in the *Pennsylvania Bulletin*. Motor carriers listed in Appendix A who desire to continue operations should immediately contact their insurance agents to secure compliance with Commission insurance requirements. It is the motor carrier's responsibility to ensure compliance. Motor carriers can verify their insurance status at our Web Site at <https://www.puc.pa.gov/search/utility-authority-search/>. Additionally, motor carriers may call our insurance hotline at (717)-787-1227 for more information.
7. Absent the timely filing of comments challenging the cancellation of the Certificate of Public Convenience or the timely filing of acceptable evidence of insurance, the Bureau of Technical Utility Services shall prepare a Secretarial Letter for issuance by the Secretary's Bureau canceling the carrier's applicable Certificate of Public Convenience. The Secretarial Letter shall direct the Department of Transportation to suspend the carrier's vehicle registration(s) consistent with 75 Pa.C.S. § 1375.
8. Upon issuance of the Secretarial Letter described in Ordering Paragraph No. 7 above, the applicable Certificate of Public Convenience of each non-compliant carrier shall be cancelled.
9. The Secretary serve a copy of the Secretarial Letter upon the Commission's Bureau of Investigation and Enforcement, Bureau of Technical Utility Services, Bureau of Administration, the Pennsylvania Department of Revenue—Bureau of Corporation Taxes, and the Pennsylvania Department of Transportation.

ROSEMARY CHIAVETTA,  
*Secretary*

ORDER ADOPTED: October 27, 2022

ORDER ENTERED: October 27, 2022

**Appendix A  
Carriers Without Acceptable Evidence of Insurance**

<i>Utility Code</i>	<i>Utility Name</i>	<i>Suspended Authorities</i>	<i>Insurance Type Not on File</i>
6220172	HONEYBEE TRANSPORTATION, LLC	Contract Carrier	Liability

<i>Utility Code</i>	<i>Utility Name</i>	<i>Suspended Authorities</i>	<i>Insurance Type Not on File</i>
6222171	COMFORT RIDES CORPORATION	Paratransit	Liability
6320503	AAMIR BROTHERS, INC., T/A PENN-DEL CAB	Taxi	Liability
6324393	NOMAD RIDES, INC.	TNC	Liability
632757	CLASSY CAB COMPANY, INC.	Taxi and Paratransit	Liability
640234	TROPIANO AIRPORT SHUTTLE, INC.	Airport Transfer	Liability
640310	J&B LIMOUSINE SERVICE & AUTO LEASING, INC., T/A ELEGANT ARRIVALS	GP11—15 and GP16+	Liability
6410933	VAUXCO LIMOUSINES, LLC	GP11—15	Liability
641385	TRI COUNTY ACCESS CO., INC.	Taxi	Liability
6414126	COMFORT RIDE TRANSIT, INC.	Paratransit	Liability
6416002	GRETHER E. CAMILO HERNANDEZ	Paratransit	Liability
6416821	LIFELINE MEDICAL SERVICES, INC., T/A LIFECARE TRANSPORT	Paratransit	Liability
6417202	US TRANSIT AUTHORITY, LLC, T/A LUXURY LIFT, D/B/A CUMBERLAND VALLEY TRANSIT	All	Liability
6417234	LUXURY LIMOUSINE & CAR SERVICE, LLC	Limousine	Liability
6417260	FIRST CLASS LIMOUSINE, LLC	Limousine	Liability
6417513	GARY L. SNYDER AND MARIE SNYDER	Paratransit	Liability
641771	A1 LIMOUSINE SERVICE/UNIVERSAL, INC.	Limousine	Liability
6418049	TOWER LIMO, LLC	Limousine	Liability
6418069	APEX HEALTHCARE SERVICES, LLC	Paratransit	Liability
6418791	YES LIMOUSINE, LLC	GP11—15	Liability
6419312	JACKIE WLEH & JOHNETTA WLEH, T/A J & J CAR SERVICES	Limousine	Liability
6419357	TAJOMA, INC., T/A EXCLUSIVE DESTINATIONS SERVICES	GP11—15	Liability
6419854	WILLIAM RODRIGUEZ, T/A LA BALLENA TRANSPORT	Paratransit	Liability
6419868	RIDE2CARE, INC., T/A RIDE2CARE	Paratransit	Liability
6420863	MED SWIFT TRANSPORTATION SERVICES, LLC	Paratransit	Liability
6421164	ANB TRANS, INC.	Limousine	Liability
6421186	S&S MEDICAL TRANSPORT, LLC	Paratransit	Liability
6421583	LMC LIMOUSINE & TRANSPORTATION SERVICES, INC.	Limousine	Liability
6421693	AERO MEDICAL TRANSPORTATION, LLC	Paratransit	Liability
6422344	ED TRANSPORTATION, LLC	Paratransit	Liability
6422406	RAYMOND AND KRYSTAL GOUGH, T/A GLORY TRANSPORTATION	Paratransit	Liability
6422445	MOGA TRANS, LLC	Paratransit	Liability
6422528	GENIUS TRANSPORTATION, LLC	Paratransit	Liability
6422630	BATE RELIABLE TRANSPORTATION, LLC	Paratransit	Liability
6422817	PULLMAN VALET, LLC	GP16+	Liability
6423700	TRANSPORTATION NETWORK SERVICES, LLC, T/A GO WOLLEY	Paratransit and Airport Transfer	Liability
6423851	VISION OF LOVE HOMECARE, LLC	Paratransit	Liability
6424374	TZADIK MULTISERVICE & TRANSPORTATION, LLC	Limousine	Liability
6424385	KRALL LIMO AND PARTY RENTALS, CO.	GP16+	Liability
6424922	EZRIDE, LLC	Paratransit	Liability



<i>Utility Code</i>	<i>Utility Name</i>	<i>Suspended Authorities</i>	<i>Insurance Type Not on File</i>
647995	F & S TRANSPORTATION, INC.	Airport Transfer and Paratransit	Liability
700793	JOSEPH P. RILEY & SONS MOVING COMPANY, INC.	Truck	Liability
700806	HERBERT B. SMITH & AGEE COPART	Truck	Liability and Cargo
701170	AFTON TRUCKING, INC.	Truck	Liability
701645	CHAPMAN AUTO PARTS & SALES, INC.	Truck	Liability and Cargo
703432	ANDREWS TRUCKING, INC.	Truck	Cargo
703630	JOHN M. STROCKOZ	Truck	Liability and Cargo
705144	AMIS, HENRY	Truck	Liability and Cargo
705276	BROOKS COURIER SERVICE, INC.	Truck	Cargo
705393	M. BYLER TRANSPORTATION, LLC	Truck	Cargo
706021	THEODORE JAMES BALZANO	Truck	Liability and Cargo
706050	NED C. HARTMAN	Truck	Liability
706242	KREIDER, SAMUEL W.	Truck	Liability and Cargo
706736	BOSCO TRUCKING, INC.	Truck	Liability and Cargo
707142	ASHBAUGH, RICHARD WAYNE	Truck	Liability
707351	DENNIS ROY EVANS	Truck	Liability
707741	AUMAN BROTHERS CONSTRUCTION, LLC	Truck	Liability and Cargo
708342	BRIAN PEOPLES	Truck	Liability
708800	EARL E. PAIGE, JR.	Truck	Liability and Cargo
708909	GRAEFE MOVING SERVICES, INC.	Truck	Liability
822140	PIERCE, PAUL E.	Truck	Liability and Cargo
845670	SMEAL, JOHN	Truck	Liability
869650	YEAGER MOVING & STORAGE, INC.	Household Goods Carrier and Truck	Liability and Cargo
890398	FIRST FREIGHT TRANSPORT, INC.	Truck	Liability and Cargo
8911031	STEVEN C. SIPLE	Truck	Liability and Cargo
8912179	RICHARD J. REXER, T/A REXER'S	Truck	Liability
8914157	GREYHAN TRANSPORT, LLC	Truck	Liability and Cargo
8915122	WHEELS EXPRESS, INC.	Truck	Liability and Cargo
8915684	J & L TRUCKING SERVICE, LLC	Truck	Liability
8916391	BELLS TRANSIT, LLC	Truck	Liability and Cargo
8916682	BIOTA LOGISTICS, INC.	Truck	Liability
8916924	SMITTYS TOWING, LLC	Truck	Cargo
8916963	GARY HOLDREN	Truck	Cargo
8917166	WAMBOLD BULK SERVICES, LLC	Truck	Liability and Cargo
8917253	MARKS XPRESS TRUCKING & HAULING, LLC	Truck	Liability
8917573	JEFFREY L. BANGE, T/A J & K FARM	Truck	Liability and Cargo
8917597	IRVEN L. BUTTRAY	Truck	Liability and Cargo
8917834	STAUFFER SHEDS, LLC	Truck	Liability and Cargo
8917886	HARE TRUCKING, LLC	Truck	Liability
8918420	RECOVERY PROS, INC.	Truck	Liability and Cargo
8918690	TODD ALLEN LIVENGOOD, D/B/A TODD LIVENGOOD TRUCKING	Truck	Liability
8918904	DAVID R. VINSEK, T/A D. VINSEK TRUCKING	Truck	Liability
8919188	CHARLES R. VARGO TRANSPORTATION, INC.	Truck	Liability and Cargo
8919793	JEROME SCHULTZ, T/A JJS TRUCKING AND EXCAVATING	Truck	Cargo

## NOTICES

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<i>Utility Code</i>	<i>Utility Name</i>	<i>Suspended Authorities</i>	<i>Insurance Type Not on File</i>
8920287	METHENY TRUCKING, LLC	Truck	Liability and Cargo
8921018	NEPA TRUCKING AND TRANSPORT, LLC	Truck	Liability
8921094	M&K LOGISTICS, LLC	Truck	Liability and Cargo
8921357	MCDONALD POWER, LLC	Truck	Liability and Cargo
8921405	TITAN TRUCKING AND LOGISTICS, INC.	Truck	Liability and Cargo
8921690	BILL FRANKS	Truck	Liability and Cargo
8921860	MILK MAN CONNECTION, LLC	Truck	Liability and Cargo
8921924	MEGMAR CONTRACTING, LLC	Truck	Liability and Cargo
8921954	OWL CREEK SPECIALIZED, LLC	Truck	Liability and Cargo
8922149	MONSTER TRANSPORTATION, LLC	Truck	Liability and Cargo
8922250	ASH TRANSFER, LLC	Truck	Liability and Cargo
8922312	BALL LOGISTICS, LLC	Truck	Liability and Cargo
8922317	AMMI LOGISTICS, LLC	Truck	Liability and Cargo
8922574	B. BLAIR CORPORATION	Truck	Liability and Cargo
8922840	MOVING FORWARD, LLC	Household Goods Carrier	Cargo
8922890	TAYLOR TRUCKING SERVICES, LLC	Truck	Liability and Cargo
8922932	EXCLUSIVE SERVICES, INC.	Household Goods Carrier	Cargo
8922971	DLH TRANSPORT, LLC	Truck	Liability and Cargo
8923066	MICHAEL D. AMSLER	Truck	Liability and Cargo
8923173	PGH LOGISTICS, INC.	Truck	Cargo
8923197	NEXT GEN LOGISTICS, LLC	Truck	Liability and Cargo
8923203	JL TRUCKING, LLC	Truck	Cargo
8923275	LATTUCAS TRANSPORTATION SERVICE, LLC	Truck	Cargo
8923285	JJ DENTICI HOTSHOT, LLC	Truck	Liability and Cargo
8923357	FIRST OPTION TRANSPORT, LLC	Truck	Liability and Cargo
8923385	DONALD MARSHALL, III	Truck	Liability and Cargo
8923394	NAVARRO TRUCKING, LLC	Truck	Liability
8923692	HAIRE MOBILE COURIER, LLC	Truck	Liability and Cargo
8923696	RJ COURIER LOGISTICS, LLC	Truck	Liability and Cargo
8923724	J & B LOGISTICS, LLC	Truck	Liability and Cargo
8923866	INVERTECH, LLC	Truck	Liability and Cargo
8923882	G-CODE TRANSPORTATION & LOGISTICS, LLC	Truck	Liability and Cargo
8923886	TOP NOTCH TRANSPORTS, LLC	Truck	Liability
8923924	D. F. PROCTOR ENTERPRISES, LLC	Truck	Liability and Cargo
8923930	MAMET, LLC	Truck	Liability and Cargo
8923961	NICKS TOWING AND TRANSPORT, LLC	Truck	Liability and Cargo
8924002	M. D. HIGLEY TRUCKING, LLC	Truck	Liability and Cargo
8924006	SHANKS SAWMILL, LLC	Truck	Cargo
8924028	GREENE AND GARBER TRANSPORT, LLC	Truck	Liability and Cargo
8924042	NEIGHBORHOOD KREW, INC.	Truck	Liability and Cargo
8924079	EQP TRANSPORTATION, LLC	Truck	Liability and Cargo
8924081	MILLS LOGISTICS, LLC	Truck	Liability and Cargo
8924186	DRT LOGISTICS, LLC	Truck	Liability
8924199	ORIONS LANDSCAPING, LLC	Truck	Liability and Cargo
8924252	FOUR VALLEYS TRANSPORT, LLC	Truck	Liability and Cargo
8924284	BIG RED TRANSPORT, LLC	Truck	Cargo

<i>Utility Code</i>	<i>Utility Name</i>	<i>Suspended Authorities</i>	<i>Insurance Type Not on File</i>
8924302	MAHOGANY QUEEN TRUCKING, LLC	Truck	Liability and Cargo
8924360	KINGSIDE LOGISTICS, LLC	Truck	Liability and Cargo
8924483	COBRE TRANSPORTATION, LLC	Truck	Cargo
8924485	AZ TOW 4 U, LLC	Truck	Liability and Cargo
8924599	JNF EXPRESS, INC.	Truck	Liability and Cargo
8924643	THOMAS MILLER	Truck	Liability and Cargo
8924698	QUICKSHOT SERVICES, LLC	Truck	Liability and Cargo
8924726	MOUNTAIN WAY, LLC	Truck	Liability
8924769	ALL DAY SERVICES, LLC	Truck	Liability and Cargo
8924917	SCOTT PATTERSON, LLC	Truck	Liability and Cargo
8924934	BIG RIG TRUCKING, LLC	Truck	Liability and Cargo
8924935	TF & SM, LLC	Truck	Liability and Cargo
8924978	KUMM & GO ENTERPRISE, LLC	Truck	Liability and Cargo
8925107	T. ALLEN TRANSPORTATION, LLC	Truck	Liability and Cargo
8925120	H&B TRANSPORT, LLC	Truck	Liability and Cargo
8925127	CASTRO LOGISTIC SERVICES, LLC	Truck	Liability and Cargo
8925188	4 SURE CONTRACTING AND EXCAVATING, LLC	Truck	Liability and Cargo
8925258	LTS AUTO, LLC	Truck	Liability and Cargo

[Pa.B. Doc. No. 22-1761. Filed for public inspection November 11, 2022, 9:00 a.m.]

## PENNSYLVANIA PUBLIC UTILITY COMMISSION

### Distribution System Improvement Charge Implementation Order to Address all Issues Pertaining to the Distribution System Improvement Charge Calculations Required in the Pennsylvania Supreme Court's Decision in *McCloskey v. Pa. PUC*, 255 A.3d 416 (Pa. 2021)

Public Meeting held  
October 27, 2022

*Commissioners Present:* Gladys Brown Dutrieuille, Chairperson; Stephen M. DeFrank, Vice Chairperson; Ralph V. Yanora; Kathryn L. Zerfuss; John F. Coleman, Jr.

*Distribution System Improvement Charge Implementation Order to Address all Issues Pertaining to the Distribution System Improvement Charge Calculations Required in the Pennsylvania Supreme Court's Decision in *McCloskey v. Pa. PUC*, 255 A.3d 416 (Pa. 2021); Docket Nos. M-2012-2293611*

#### Supplemental Implementation Order

*By the Commission:*

On April 22, 2022, the Pennsylvania Public Utility Commission (Commission) issued a Secretarial Letter (April Secretarial Letter) to provide interested parties notice and an opportunity to be heard and to initiate a generic proceeding for the purpose of revising the Model Tariff adopted by the Commission on August 2, 2012, to comply with Section 1301.1(a) of the Pennsylvania Public Utility Code, 66 Pa.C.S. § 1301.1(a), as interpreted by the Pennsylvania Supreme Court in *McCloskey v. Pa. Pub. Util. Comm'n*, 255 A.3d 416 (Pa. 2021) (*McCloskey*).

The April Secretarial Letter initiated the generic proceeding and sought comments within thirty (30) days from interested parties addressing four key topics, which will facilitate resolution of the issues stemming from the *McCloskey* decision described in the Letter. Subsequently, the Commission extended the timeframe for filing comments to July 22, 2022.<sup>1</sup>

By this order, the Commission has determined that there is general agreement on the changes that must be made to the DSIC calculation and the DSIC model tariff to implement changes required by the *McCloskey* decision. As such, the Commission directs each utility to file a proforma tariff supplement reflecting the updated formula for calculation of the DSIC, as set forth in Appendix A, the New Model DSIC Tariff attached to this Implementation Order, by December 1, 2022. Upon Commission approval of the pro forma supplement, each utility shall file its quarterly DSIC calculations and corresponding tariff updates by December 21, 2022, to be effective on January 1, 2023.<sup>2</sup> The updated DSIC calculations will therefore be made with each utility's fourth quarter 2022 quarterly DSIC filing. In this way, the DSIC surcharge mechanism will be in place for 2023 and avoid any further delay in implementing the changes required by the *McCloskey* decision.

Based on the comments received, issues related to refunds that may be required due to the *McCloskey* decision are beyond the scope of this implementation proceeding and cannot be made on the record before the Commission in this proceeding.

<sup>1</sup> The Energy Association of Pennsylvania filed a Petition for Expedited Consideration of its request to extend the due date for all interested parties to submit comments to the April 22 Secretarial Letter which was subsequently granted by the PUC on May 18, 2022.

<sup>2</sup> As will be explained in the body of the order, the Philadelphia Gas Works and Pittsburgh Water and Sewer Authority will not be required to file updated tariffs. Additionally, the Newtown Artesian Water Company, Inc. and the Columbia Water Company may file an updated DSIC calculation with their quarterly DSIC filings on January 21, 2023 with an effective date of February 1, 2023.



### Background

As noted above, on April 22, 2022, the Commission issued a Secretarial Letter to provide interested parties notice and an opportunity to be heard and to initiate a generic proceeding for the purpose of revising the Model Tariff adopted in its Implementation Order entered at Docket No. M-2012-2293611 on August 2, 2012, to comply with Section 1301.1(a) of the Pennsylvania Public Utility Code, 66 Pa.C.S. § 1301.1(a), as interpreted by the Pennsylvania Supreme Court in *McCloskey*.

In *McCloskey*, the Supreme Court affirmed the holding of the Commonwealth Court that new statutory language added by Act 40 applied to the DSIC and altered its calculation. Specifically, the Court affirmed the Commonwealth Court's decision, finding that Section 1301.1(a) of the Public Utility Code requires state income tax deductions and accumulated deferred federal income taxes (ADIT) associated with DSIC-eligible plant additions to be included in the DSIC calculation. *McCloskey*, 255 A.3d at 427. The Supreme Court remanded the matter, which involved Metropolitan Edison Company, Pennsylvania Electric Company, Pennsylvania Power Company and West Penn Power Company (collectively, the "FE Companies"), to the Commission for the purpose of requiring revisions to the FE Companies' tariffs and DSIC calculations in accordance with its interpretation of Section 1301.1(a) of the Public Utility Code, 66 Pa.C.S. § 1301.1(a).<sup>3</sup> *McCloskey*, 255 A.3d at 437.

On January 31, 2022, the FE Companies filed a Petition for Interlocutory Review and Answer to Material Question asking the Commission to initiate a generic proceeding in light of due process concerns for the purpose of revising the model DSIC tariff<sup>4</sup> to comply with the Supreme Court interpretation of Section 1301.1(a) of the Pennsylvania Public Utility Code, 66 Pa.C.S. § 1301.1(a). In its Order entered February 24, 2022,<sup>5</sup> the Commission affirmed the Petition for Interlocutory Review and Answer to Material Question filed by the FE Companies, stating:

In order to provide all interested parties notice and an opportunity to be heard, as due process requires, should the Commission initiate a generic proceeding within 60 days from a determination on this material question at Docket No. M-2012-2293611 for the purpose of revising the Model Tariff adopted in its Implementation Order entered at that docket number on August 2, 2012, to comply with Section 1301.1(a) of the Pennsylvania Public Utility Code as interpreted by the Pennsylvania Supreme Court in *McCloskey v. Pa. PUC*, 255 A.3d 416 (Pa. 2021)?

February Order, Ordering Paragraph 1.

Additionally, the Commission ordered:

That the Commission's Secretary's Bureau in consultation with the Bureau of Technical Utility Services within sixty (60) days of entry of this Opinion and Order issue a secretarial letter with appropriate notices to all jurisdictional water and wastewater utilities, electric distribution companies, natural gas distribution companies and city natural gas distribution operations and all appropriate

<sup>3</sup> See Petition of Metropolitan Edison Company for Approval of a Distribution System Improvement Charge, et al., at Docket Nos. P-2015-2508942, P-2015-2508948, P-2015-2508936 and P-2015-2508931.

<sup>4</sup> The current model DSIC tariff was approved by the Commission in 2016. See, Supplemental Implementation Order Re: Implementation of Act 11 of 2012, Docket No. M-2012-2293611 (September 15, 2016).

<sup>5</sup> See Petition of Metropolitan Edison Company for Approval of a Distribution System Improvement Charge, et al., Opinion and Order at Docket Nos. P-2015-2508942, P-2015-2508948, P-2015-2508936 and P-2015-2508931. (February Order).

stakeholders establishing a generic proceeding at Docket No. M-2012-2293611 to address all issues pertaining to the distribution system improvement charge calculations required in the Pennsylvania Supreme Court's decision in *McCloskey v. Pa. PUC*, 255 A.3d 416 (Pa. 2021).

February Order, Ordering Paragraph 2.

In order to provide a forum for discussion and feedback from stakeholders as ordered by the Commission, the April Secretarial Letter invited interested persons to provide comments and to address the following key topics:

- Changes to be made to the current model DSIC tariff, including the necessary computation, reconciliation and other language to implement the directive of the Court to recognize incremental Accumulate Deferred Income Taxes (ADIT) and state tax depreciation deductions for accelerated depreciation in quarterly calculations of DSIC charges.

- Elements of the formula required for calculating quarterly DSIC updates needed to determine: (1) the state income tax effects of book-tax timing differences created by placing in service eligible property included in the DSIC calculation; and (2) ADIT that reflects the book-tax timing differences created by placing in service eligible property included in the DSIC, and to do so that such revisions to the formula for calculating the DSIC do not require unduly complicated computations but permit reasonable review and audit of DSIC charges and their supporting calculations;

- Determination of the revisions to the DSIC calculations and the potential refund/recoupment of overcharges dated back to August 2016, the date that Act 40 added Section 1301.1 to the Code:

- Should a refund/recoupment be required;
- Timing of any required refund/recoupment (When should the recoupment begin?)
- Amortization period of any refund/recoupment;
- Impact of the refund/recoupment on the utilities DSIC cap for each utility;
- Should interest be applied, and if so, at what rate and the weighting for when interest is to be applied; and

- Standards to establish a reconciliation process for timing differences and issues for determining the proper level of ADIT and state income taxes for book-tax timing issues created by placing in service eligible property included in the DSIC.

### Discussion

Comments were received from the Office of Consumer Advocate (OCA), the Energy Association of Pennsylvania (EAP),<sup>6</sup> the National Association of Water Companies (NAWC),<sup>7</sup> the Industrial Energy Consumers of

<sup>6</sup> The EAP is a trade association whose members include the major natural gas and electric public utilities operating in the Commonwealth of Pennsylvania. Its electric distribution company (EDC) members include: Citizens' Electric Company; Duquesne Light Company; Metropolitan Edison Company; PECO Energy Company; Pennsylvania Electric Company; Pennsylvania Power Company; Pike County Light & Power Company; PPL Electric Utilities Corporation; UGI Utilities, Inc. (Electric Division); Wellsboro Electric Company; and, West Penn Power Company, and its natural gas distribution company (NGDC) members include: Columbia Gas of Pennsylvania, Inc.; Pike County Light & Power Company; National Fuel Distribution Corp.; PECO Energy Company; Peoples Natural Gas Company, LLC; Philadelphia Gas Works; UGI Utilities, Inc.; and Valley Energy, Inc.

<sup>7</sup> The NAWC is a trade organization whose members are investor-owned water and wastewater utilities in Pennsylvania. The members of NAWC include Aqua Pennsylvania, Inc.; Columbia Water Company; Newtown Artesian Water Company; Pennsylvania-American Water Company; The York Water Company; and, Veolia Water Pennsylvania, Inc. (f/k/a SUEZ Water Pennsylvania, Inc.).

Pennsylvania (IECPA),<sup>8</sup> the Columbia Water Company (CWC), the FE Companies, PPL Electric Utilities Corporation (PPL Electric), Philadelphia Gas Works (PGW) and Duquesne Light Company. Other companies such as UGI Utilities, Inc. and PPL Electric provided additional contacts for the informal exchange of information related to the DSIC ADIT proceeding.

*A. Elements of the formula required for calculating quarterly DSIC updates.*

Prior to determining any changes to the current DSIC Model Tariff we will discuss the Elements of the formula required for calculating quarterly DSIC updates needed to determine the following: (1) the state income tax effects of book-tax timing differences created by placing in service eligible property included in the DSIC calculation; and (2) ADIT that reflects the book-tax timing differences created by placing in service eligible property included in the DSIC, and to do so such that revisions to the formula for calculating the DSIC do not require unduly complicated computations but permit reasonable review and audit of DSIC charges and their supporting calculations.

The Commission notes that the Philadelphia Gas Works (PGW) and the Pittsburgh Water and Sewer Authority (PWSA) do not need to modify their DSIC respective tariffs because these entities are permitted a different methodology in determining their DSIC surcharge and each of these entities are not subject to state or federal taxes.

#### (1) State Income Tax Deductions

Commentors agree that per *McCloskey* the DSIC calculation will need to be adjusted for actual state taxes. The EAP defined State Tax Flow Through (STFT) as the “pre-tax flow through calculated on book-tax timing differences between accelerated tax depreciation and book depreciation, net of federal tax.” EAP Comments at 5. The Commission accepts the use of this term to define a utility’s state income tax deductions for the purposes of its DSIC tariff.

Both the EAP and the OCA suggest that the STFT can be used to adjust the DSIC calculation for the STFT by either calculating the STFT by a separate calculation (Method 1), or alternatively, by using an effective tax rate method and include the STFT in the pre-tax rate of return (PTRR) component (Method 2). Method 1 as proposed by the OCA would determine the amount of state income tax expense that’s reflected in the DSIC revenue requirement. This amount would not be converted to a percentage and the unadjusted statutory state income tax rate would be used as a separate component in the DSIC surcharge calculation. Alternately, Method 2 would derive an effective tax rate and this effective tax rate would be used in the tax gross-up for the PTRR calculation. EAP Comments at 5-6, OCA Comments at 2. OCA states that Method 2 is its preferred method and the NAWC suggests using the PTRR calculation as the means for adjusting the DSIC for state taxes. OCA Comments at 4, NWAC Comments at 5. The EAP suggests that the model DSIC tariff provide utilities with the option to include the alternative approach (Method 2) in their specific DSIC tariff. EAP Comments at 5-6.

<sup>8</sup> The IECPA is an association of energy-intensive industrial consumers of electricity and natural gas taking service from regulated utilities in Pennsylvania. IECPA states that for the purpose of this matter, IECPA’s membership consists of: Air Products & Chemicals, Inc.; Benton Foundry, Inc.; Carpenter Technology Corporation; Cleveland-Cliffs, Inc.; East Penn Manufacturing Company; Keystone Cement Company; Knouse Foods Cooperative, Inc.; Linde, Inc.; Marathon Petroleum Corporation; Proctor & Gamble Paper Products Company; and United States Gypsum Company.

CWC suggests that the Commission should allow utilities flexibility and optionality in how to apply Section 1301.1 to their respective DSICs and that at this time the “Effective Tax Rate” method proposed by the OCA in the *McCloskey* proceeding appears to be an efficient and straightforward method of implementation for CWC. CWC further notes that it prefers using the effective tax rate paid by a utility instead of the statutory tax rate to modify the revenue conversion factor/tax multiplier used to calculate the PTTR in the DSIC formula. CWC Comments at 1, 4.

The Commission has determined that utilities with a DSIC mechanism should revise their tariffs to incorporate its STFT into the DSIC formula and will permit either Method 1 or Method 2 as described above. Ultimately, either method will calculate an identical DSIC surcharge. However, as suggested by the OCA, the Commission prefers that Method 2 be used when a utility calculates its DSIC surcharge.

#### (2) Federal Income Tax Deductions

Commentors agree that federal income taxes should be reflected in the tax credits associated with DSIC-eligible infrastructure investment in DSIC rates by reducing the net DSIC plant investment amount by the directly related Accumulated Deferred Income Taxes (ADIT). More specifically, the EAP suggests that ADIT be recognized and included in the Distribution System Improvement (“DSI”) component of the formula and expands the definition of DSI to include the phrase “and associated accumulated deferred income taxes pertaining to property-related book/tax depreciation timing differences resulting from the use of accelerated depreciation per Internal Revenue Code, 26 U.S. Code § 168” at the end of the sentence to comply with the Supreme Court interpretation of Section 1301.1(a). 66 Pa.C.S. § 1301.1(a). EAP Comments at 5. The OCA and NAWC also agree that the DSI component of the tariff should be modified to include ADIT and the model tariff should be modified accordingly. OCA Comments at 7.

Similar to adjusting for state taxes, CWC suggest that it prefers using the effective tax rate paid by a utility instead of the statutory tax rate to modify the revenue conversion factor (or tax multiplier) used to calculate the PTTR in the DSIC formula. CWC Comments at 4.

Accordingly, the Commission directs all jurisdictional utilities that have a DSIC mechanism to modify their tariffs as suggested by the EAP to include ADIT in the DSI component of the formula and expand the definition of DSI to include the phrase “and associated accumulated deferred income taxes pertaining to property-related book/tax depreciation timing differences resulting from the use of accelerated depreciation per Internal Revenue Code, 26 U.S. Code § 168.”

Additionally, to provide for flexibility and optionality in how to apply Section 1301.1 to their respective DSICs as requested by CWC and echoed by the NAWC, the Commission will permit those companies with the inability to determine its ADIT on a quarterly basis and/or pay no federal income taxes, to adjust its federal income using the effective tax rate paid by a utility, instead of the statutory tax rate, to modify the revenue conversion factor (or tax multiplier) used to calculate the PTTR in the DSIC formula. However, the Commission’s preference is that the DSI component be adjusted for ADIT and that the PTRR adjustment for federal taxes be permitted only in particular circumstances as described above.

### B. Required DSIC Model Tariff Changes

The DSIC Model Tariff changes will mirror the discussion of state income tax adjustments, STFT, and the federal tax adjustments mainly due to ADIT. Currently, the formula for calculation of the DSIC rate is as follows:

$$\text{DSIC} = \frac{(\text{DSI} * \text{PTRR}) + \text{Dep} + e}{\text{PQR}}$$

Where:

DSI = Original cost of eligible distribution system improvement projects net of accrued depreciation.

PTRR = Pre-tax return rate applicable to DSIC-eligible property.

Dep = Depreciation expense related to DSIC-eligible property.

e = Amount calculated under the annual reconciliation feature or Commission audit, as described below.

PQR = Projected quarterly revenues for distribution service (including all applicable clauses and riders) from existing customers plus revenue from any customers which will be acquired by the beginning of the applicable service period. (NOTE: UTILITY TO MAKE ELECTION AND STATE WHETHER SUCH QUARTERLY REVENUES WILL BE DETERMINED ON THE BASIS OF EITHER THE SUMMATION OF PROJECTED REVENUES FOR THE APPLICABLE THREE-MONTH PERIOD OR ONE-FOURTH OF PROJECTED ANNUAL REVENUES.)

The Commission proposes that the changes to the Model Tariff mirror the model tariff as presented by the EAP in its comments where:

The formula for calculation of the DSIC is as follows:

$$\text{DSIC} = \frac{(\text{DSI} * \text{PTRR} + \text{STFT} + \text{Dep} + e) \times 1/(1-T)}{\text{PQR}}$$

Where:

DSI = Original cost of eligible distribution system improvement projects net of accrued depreciation and associated accumulated deferred income taxes pertaining to property-related book/tax depreciation timing differences resulting from the use of accelerated depreciation per Internal Revenue Code, 26 U.S. Code § 168.

PTRR = Pre-tax return rate applicable to DSIC-eligible property.

Dep = Depreciation expense related to DSIC-eligible property.

STFT (State Tax Flow Through) = Pre-tax flow through calculated on book-tax timing differences between accelerated tax depreciation and book depreciation net of federal tax (Note that a utility may elect to include STFT calculation in the PTRR component.)

e = Amount calculated (+/-) under the annual reconciliation feature or Commission audit, as described below.

PQR = Projected quarterly revenues for distribution service (including all applicable clauses and riders) from applicable customers. (NOTE: UTILITY TO MAKE ELECTION AND STATE WHETHER SUCH QUARTERLY REVENUES WILL BE DETERMINED ON THE BASIS OF EITHER THE SUMMATION OF PROJECTED REVENUES FOR THE APPLICABLE THREE-MONTH PERIOD OR ONE-FOURTH OF PROJECTED ANNUAL REVENUES.)

(NOTE: The DSIC calculation does not factor in the plant of acquired troubled companies or the revenue of customers acquired from troubled companies until such plant and customer rates have been part of a base rate case by the acquiring utility.)

T= If applicable, Pennsylvania Gross Receipts Tax rate in effect during the billing month, expressed in decimal form.

EAP Comments Attachment A.

Alternately, for those utilities that desire the flexibility to report their federal tax adjustment through the PTRR as described above, the model tariff may be changed to reflect the following definition of Pre-Tax return:

Pre-Tax Return: The pre-tax return will be calculated using the Company's effective tax rate (rather than its statutory state and federal income tax rates).

### C. Standards to establish a reconciliation process

The Commission requested comments regarding the need for standards to establish a reconciliation process for timing differences and issues for determining the proper level of ADIT and state income taxes for book-tax timing issues created by placing in service eligible property included in the DSIC.

The OCA recommended that state income tax expense and ADIT should be trued-up at the same time the utility prepares its annual DSIC reconciliation for each calendar year and in the same manner in which estimates for projected quarterly DSIC revenue are reconciled to actual per 66 Pa.C.S. §§ 1357(d), 1358(d)(2), (e). OCA Comments at 15.

EAP, along with the FE Companies and PPL Electric suggest that a reconciliation process as already provided in the DSIC tariff is sufficient and that no additional reconciliation is necessary.<sup>9</sup> EAP Comments at 8, FE Companies Comments at 10, PPL Electric Comments at 8-9. These parties further explain that the quarterly DSIC calculation is based on eligible property placed in service and can be determined at the time of the DSIC rate filing, including the calculation of ADIT and STFT. Therefore, reconciliation of the book versus tax depreciation timing differences would not be necessary as such differences are already included in the DSIC calculation. EAP Comments at 8, FE Companies Comments at 10, PPL Electric Comments at 8.

The Commission agrees that an additional reconciliation process for ADIT and STFT is not warranted at this time and that the reconciliation of DSIC revenues and DSIC costs as provided in the model tariff is sufficient.

In its request for comments, the Commission also requested that the DSIC calculation changes required by the *McCloskey* Decision be made in such a way that such revisions to the formula for calculating the DSIC do not require unduly complicated computations but permit reasonable review and audit of DSIC charges and their supporting calculations. In general, Commentors have not provided much in the way of details as to the supporting calculations/information that will be required for the STFT and ADIT/federal tax adjustments.

PPL Electric in its detailed explanation as to why a reconciliation process is not required details its process for determining how the company can calculate the actual tax depreciation and utilize the actual book depreciation

<sup>9</sup> PPL Electric and EAP do suggest that a reconciliation may be necessary if legislation is passed that changes the way tax depreciation is calculated on a retrospective basis.



on its DSIC assets to calculate the deferred tax and state flow-through impacts. PPL Electric further explains that “By isolating the DSIC assets in a separate tax case, PPL Electric can calculate the actual tax depreciation and utilize the actual book depreciation on the DSIC assets to calculate the deferred tax and state flow-through impacts. Because the tax system calculates an annual tax depreciation amount on monthly book additions, PPL Electric will allocate the annual tax depreciation calculated each period (monthly or quarterly) across the remaining months of the year to be more in line with how book depreciation is reflected. By the end of each year, the DSIC will be completely supported by the cumulative net book and net tax amounts reflected in the tax system.” PPL Electric states that it uses a similar approach in the Smart Meter Rider—Phase 2. PPL Comments at 8.

The OCA states: “To inform the evaluation and consideration of these matters by the Commission and its staff, the OCA suggests that the utilities with DSIC provisions in their tariffs should be directed to inform the Commission whether they are subject to income tax return filing requirements and/or whether they pay federal and state income taxes. To the extent that some utilities with DSICs are not subject to income taxes (such as municipally-owned utilities), a different modification to the DSIC tariff and supporting calculations may be warranted.” OCA Comments at 10.

The Commission agrees with the example provided by PPL Electric and directs jurisdictional utilities to track and file adequate documentation to adjust their DSIC for STFT and federal ADIT as described above.

#### Conclusion

The purpose of this Supplemental Implementation Order is to address the DSIC calculation and the DSIC model tariff to implement changes required by the *McCloskey* decision. The Commission has determined that to comply with the *McCloskey* decision jurisdictional utilities that have a DSIC mechanism file an updated DSIC tariff and DSIC calculations consistent with the Model Tariff as attached as Appendix A. The updated Model Tariff should be filed as the utility's fourth quarter 2022 quarterly DSIC filing with an issue date of December 1, 2022 to be effective January 1, 2023. Should a utility not file a tariff consistent with the Model Tariff, such as those variances described by the Columbia Water Company, it should provide an explanation for the variance. The Commission will review the tariff filings and claims made under this Supplemental DSIC Implementation Order and will, after notice and opportunity to be heard, adjudicate any disputes as they arise; *Therefore*,

#### It Is Ordered That:

1. The Secretary shall publish a copy of this Supplemental Implementation Order in the *Pennsylvania Bulletin*.

2. All jurisdictional utilities with a Commission-approved DSIC mechanism file a pro forma tariff supplement reflecting the updated formula for calculation of the DSIC, as set forth in Appendix A, the New Model DSIC Tariff attached to this Implementation Order by December 1, 2022. Upon Commission approval of the pro forma supplement, the utility shall be permitted to implement the proposed tariff changes with its quarterly DSIC update effective January 1, 2023.

3. A copy of this Supplemental Implementation Order be served on all jurisdictional water and wastewater companies, electric distribution companies, natural gas distribution companies and Philadelphia Gas Works, the Energy Association of Pennsylvania, the National Association of Water Companies, the Industrial Energy Consumers of Pennsylvania and the statutory advocates.

ROSEMARY CHIAVETTA,  
*Secretary*

ORDER ADOPTED: October 27, 2022

ORDER ENTERED: October 27, 2022

#### Appendix A

Supplement No. \_\_\_ to  
Tariff (UTILITY TYPE)-PA P.U.C. No. \_\_\_

Revised Page \_\_\_

[UTILITY NAME] \_\_\_ Canceling \_\_\_ Rev. Pag \_\_\_

#### DISTRIBUTION SYSTEM IMPROVEMENT CHARGE (DSIC)

In addition to the net charges provided for in this Tariff, a charge of \_\_\_ % will apply consistent with the Commission Order dated \_\_\_ at Docket No. \_\_\_, approving the DSIC.

(NOTE: THIS MODEL TARIFF IS EXPRESSED IN TERMS OF “DISTRIBUTION SYSTEMS.” FOR WASTEWATER UTILITIES, THIS REFERS TO THEIR COLLECTION SYSTEMS.)

Issued: (ISSUED DATE) Effective: (EFFECTIVE DATE)

#### 1. General Description

A. *Purpose*: To recover the reasonable and prudent costs incurred to repair, improve, or replace eligible property which is completed and placed in service and recorded in the individual accounts, as noted below, between base rate cases and to provide the Utility with the resources to accelerate the replacement of aging infrastructure, to comply with evolving regulatory requirements and to develop and implement solutions to regional supply problems.

The costs of extending facilities to serve new customers are not recoverable through the DSIC.

(WATER/WASTEWATER UTILITIES ONLY: Utility projects receiving PENNVEST funding or using PENNVEST surcharges are not DSIC-eligible property to the extent of the PENNVEST funding or surcharge.)

B. *Eligible Property*: The DSIC-eligible property<sup>10</sup> will consist of the following:

(CHOOSE UTILITY TYPE)

(ELECTRIC DISTRIBUTION COMPANIES)

- Poles and towers (account 364);
- Overhead conductors (account 365) and underground conduit and conductors (accounts 366 and 367);
- Line transformers (account 368) and substation equipment (account 362);
- Any fixture or device related to eligible property listed above including insulators, circuit breakers, fuses, reclosers, grounding wires, crossarms and brackets, relays, capacitors, converters and condensers;

<sup>10</sup> Whether a project is DSIC eligible is not controlled by the account number. The listing of projects and inclusion of account numbers in the model tariff is illustrative to emphasize that DSIC tariffs must reflect account numbers. The lists of property and account numbers in the model tariff are neither finite nor exclusive.

- Unreimbursed costs related to highway relocation projects where an electric distribution company must relocate its facilities; and

- Other related capitalized costs.

(NATURAL GAS DISTRIBUTION COMPANIES AND CITY NATURAL GAS DISTRIBUTION OPERATIONS)

- Piping (account 376);
- Couplings (account 376);
- Gas services lines (account 380) and insulated and non-insulated fittings (account 378);
- Valves (account 376);
- Excess flow valves (account 376);
- Risers (account 376);
- Meter bars (account 382);
- Meters (account 381);
- Unreimbursed costs related to highway relocation projects where a natural gas distribution company or city natural gas distribution operation must relocate its facilities; and
- Other related capitalized costs.

(WATER UTILITIES)

- Services (account 333000), meters (account 334100) and hydrants (account 335000) installed as in-kind replacements for customers;
- Mains and valves (account 331800) installed as replacements for existing facilities that have worn out, are in deteriorated condition, or are required to be upgraded to meet under 52 Pa. Code § 65 (relating to water service);
- Main extensions (account 331800) installed to eliminate dead ends and to implement solutions to regional water supply problems that present a significant health and safety concern for customers currently receiving service from the water utility;
- Main cleaning and relining (account 331800) projects; and
- Unreimbursed costs related to highway relocation projects where a water utility must relocate its facilities; and
- Other related capitalized costs.

(WASTEWATER UTILITIES)

- Collection sewers (account 360), collecting mains (account 360), and service laterals (account 361), including sewer taps, curbstops, and lateral cleanouts installed as in-kind replacements for customers;
- Collection mains (account 361) and valves (account 367) for gravity and pressure systems and related facilities such as manholes, grinder pumps, air and vacuum release chambers, cleanouts, main line flow meters, valve vaults, and lift stations installed as replacements or upgrades for existing facilities that have worn out, are in deteriorated condition, or are required to be upgraded by law, regulation, or order;

- Collection main extensions (account 381) installed to implement solutions to wastewater problems that present a significant health and safety concern for customers currently receiving service from the wastewater utility;

- Collection main rehabilitation (account 360) including inflow and infiltration projects;

- Unreimbursed costs related to highway relocation projects where a wastewater utility must relocate its facilities; and

- Other related capitalized costs.

C. *Effective Date*: The DSIC will become effective (EFFECTIVE DATE).

2. *Computation of the DSIC*

A. *Calculation*: The initial DSIC, effective (EFFECTIVE DATE), shall be calculated to recover the fixed costs of eligible plant additions that have not previously been reflected in the Utility's rates or rate base and will have been placed in service between (THREE-MONTH PERIOD ENDING ONE MONTH PRIOR TO EFFECTIVE DATE). Thereafter, the DSIC will be updated on a quarterly basis to reflect eligible plant additions placed in service during the three-month periods ending one month prior to the effective date of each DSIC update. Thus, changes in the DSIC rate will occur as follows:

<i>Effective Date of Change</i>	<i>Date to which DSIC-Eligible Plant Additions Reflected</i>
<i>(CHART TO BE FILLED IN BY UTILITY)</i>	

(THE FOLLOWING PARAGRAPHS PERTAIN TO WATER, WASTEWATER, ELECTRIC DISTRIBUTION, AND NATURAL GAS DISTRIBUTION UTILITIES ONLY. FOR CITY NATURAL GAS DISTRIBUTION OPERATIONS, SEE BELOW.)

B. *Determination of Fixed Costs*: The fixed costs of eligible distribution system improvements projects will consist of depreciation and pre-tax return, calculated as follows:

1. *Depreciation*: The depreciation expense shall be calculated by applying the annual accrual rates employed in the Utility's most recent base rate case for the plant accounts in which each retirement unit of DSIC-eligible property is recorded to the original cost of DSIC-eligible property.

2. *Pre-tax return*: The pre-tax return shall be calculated using the statutory state and federal income tax rates, the Utility's actual capital structure and actual cost rates for long-term debt and preferred stock as of the last day for the three-month period ending one month prior to the effective date of the DSIC and subsequent updates. The cost of equity will be the equity return rate approved in the Utility's last fully litigated base rate proceeding for which a final order was entered not more than two years prior to the effective date of the DSIC. If more than two years shall have elapsed between the entry of such a final order and the effective date of the DSIC, then the equity return rate used in the calculation will be the equity return rate calculated by the Commis-

sion in the most recent Quarterly Report on the Earnings of Jurisdictional Utilities released by the Commission.

C. *Application of DSIC*: The DSIC will be expressed as a percentage carried to two decimal places and will be applied to the total amount billed to each customer for distribution service (Water/Wastewater Utilities Only: for service) under the Utility's otherwise applicable rates and charges, excluding amounts billed for (Water Utilities Only: public fire protection service) and the State Tax Adjustment Surcharge (STAS). To calculate the DSIC, one-fourth of the annual fixed costs associated with all property eligible for cost recovery under the DSIC will be divided by the Utility's projected revenue for distribution service (including all applicable clauses and riders) for the quarterly period during which the charge will be collected, exclusive of (Water Utilities Only: revenues from public fire protection service and) the STAS.

D. *Formula*: The formula for calculation of the DSIC is as follows:

$$\text{DSIC} = \frac{(\text{DSI} * \text{PTRR} + \text{STFT} + \text{Dep} + e) \times 1/(1-T)}{\text{PQR}}$$

Where:

DSI = Original cost of eligible distribution system improvement projects net of accrued depreciation and associated accumulated deferred income taxes pertaining to property-related book/tax depreciation timing differences resulting from the use of accelerated depreciation per Internal Revenue Code, 26 U.S. Code § 168.

PTRR = Pre-tax return rate applicable to DSIC-eligible property.

STFT = (State Tax Flow Through) Pre-tax flow through calculated on book-tax timing differences between accelerated tax depreciation and book depreciation net of federal tax. (NOTE: UTILITY MAY ELECT TO INCLUDE STFT CALCULATION IN THE PTRR COMPONENT.)

Dep = Depreciation expense related to DSIC-eligible property.

e = Amount calculated (+/-) under the annual reconciliation feature or Commission audit, as described below.

T = If applicable, Pennsylvania Gross Receipts Tax rate in effect during the billing month, expressed in decimal form.

PQR = Projected quarterly revenues for distribution service (including all applicable clauses and riders) from applicable customers. (NOTE: UTILITY TO MAKE ELECTION AND STATE WHETHER SUCH QUARTERLY REVENUES WILL BE DETERMINED ON THE BASIS OF EITHER THE SUMMATION OF PROJECTED REVENUES FOR THE APPLICABLE THREE-MONTH PERIOD OR ONE-FOURTH OF PROJECTED ANNUAL REVENUES.)

(NOTE: THE DSIC CALCULATION DOES NOT FACTOR IN THE PLANT OF ACQUIRED TROUBLED COMPANIES OR THE REVENUE OF CUSTOMERS ACQUIRED FROM TROUBLED COMPANIES UNTIL SUCH PLANT AND CUSTOMER RATES HAVE BEEN PART OF A BASE RATE CASE BY THE ACQUIRING UTILITY.)

(FOR CITY NATURAL GAS DISTRIBUTION OPERATIONS ONLY)

B. *Recoverable Costs*: The recoverable costs shall be amounts reasonably expended or incurred to purchase and install eligible property and associated financing costs, if any, including debt service, debt service coverage, and issuance costs.

C. *Application of DSIC*: The DSIC will be expressed as a percentage carried to two decimal places and will be applied to the total amount billed to each customer for distribution service under the Utility's otherwise applicable rates and charges. To calculate the DSIC, one-fourth of the annual recoverable costs associated with all property eligible for cost recovery under the DSIC will be divided by the Utility's projected revenue for distribution services (including all applicable clauses and riders) for the quarterly period during which the charge will be collected.

D. *Formula*: The formula for calculation of the DSIC is as follows:

$$\text{DSIC} = \frac{\text{DSI} + e}{\text{PQR}}$$

Where:

DSI = Recoverable costs (defined in Section B. directly above)

e = the amount calculated under the annual reconciliation feature or Commission audit, as described below.

PQR = Projected quarterly revenues for distribution service (including all applicable clauses and riders) including any revenue from existing customers plus netted revenue from any customers which will be gained or lost by the beginning of the applicable service period. (NOTE: UTILITY TO MAKE ELECTION AND STATE WHETHER SUCH QUARTERLY REVENUES WILL BE DETERMINED ON THE BASIS OF EITHER THE SUMMATION OF PROJECTED REVENUES FOR THE APPLICABLE THREE-MONTH PERIOD OR ONE-FOURTH OF PROJECTED ANNUAL REVENUES.)

3. *Quarterly Updates*: Supporting data for each quarterly update will be filed with the Commission and served upon the Commission's Bureau of Investigation and Enforcement, the Office of Consumer Advocate, and the Office of Small Business Advocate at least ten (10) days prior to the effective date of the update.

#### 4. *Customer Safeguards*:

A. *Cap*: The DSIC is capped at 5.0% of the amount billed to customers for distribution service (including all applicable clauses and riders) as determined on an annualized basis.

(NOTE: SEVERAL WATER UTILITIES HAVE COMMISSION-APPROVED DSICS THAT ARE CAPPED AT 7.5% OF THE AMOUNT BILLED FOR SERVICE.)

B. *Audit/Reconciliation*: The DSIC is subject to audit at intervals determined by the Commission. Any cost determined by the Commission not to comply with any provision of 66 Pa.C.S. §§ 1350, et seq., shall be credited to customer accounts. The DSIC is subject to annual



reconciliation based on a reconciliation period consisting of the twelve months ending December 31 of each year or the utility may elect to subject the DSIC to quarterly reconciliation but only upon request and approval by the Commission. The revenue received under the DSIC for the reconciliation period will be compared to the Company's eligible costs for that period. The difference between revenue and costs will be recouped or refunded, as appropriate, in accordance with Section 1307(e), over a one-year period commencing on April 1 of each year, or in the next quarter if permitted by the Commission. If DSIC revenues exceed DSIC-eligible costs, such over-collections will be refunded with interest. Interest on over-collections and credits will be calculated at the residential mortgage lending specified by the Secretary of Banking in accordance with the Loan Interest and Protection Law (41 P.S. §§ 101, et seq.) and will be refunded in the same manner as an over-collection. The utility is not permitted to accrue interest on under collections.

C. *New Base Rates*: The DSIC will be reset at zero upon application of new base rates to customer billings that provide for prospective recovery of the annual costs that had previously been recovered under the DSIC. Thereafter, only the fixed costs of new eligible plant additions that have not previously been reflected in the Utility's rates or rate base will be reflected in the quarterly updates of the DSIC.

D. *Customer Notice*: Customers shall be notified of changes in the DSIC by including appropriate information on the first bill they receive following any change. An explanatory bill insert shall also be included with the first billing.

E. *All customer classes*: The DSIC shall be applied equally to all customer classes.

F. *Earning Reports*: The DSIC will also be reset at zero if, in any quarter, data filed with the Commission in the Utility's then most recent Annual or Quarterly Earnings reports show that the Utility would earn a rate of return that would exceed the allowable rate of return used to calculate its fixed costs under the DSIC as described in the pre-tax return section. The utility shall file a tariff supplement implementing the reset to zero due to overearning on one-days' notice and such supplement shall be filed simultaneously with the filing of the most recent Annual or Quarterly Earnings reports indicating that the Utility has earned a rate of return that would exceed the allowable rate of return used to calculate its fixed costs. (NOTE: THIS PARAGRAPH IS NOT APPLICABLE TO CITY NATURAL GAS DISTRIBUTION OPERATIONS UTILITIES.)

G. *Residual E-Factor Recovery upon Reset to Zero*: The utility shall file with the Commission interim rate revisions to resolve the residual over/under collection or E-factor amount after the DSIC rate has been reset to zero. The utility can collect or credit the residual over/under collection balance when the DSIC rate is reset to zero. The utility shall refund any overcollection to customers and is entitled to recover any under collections as set forth in Section 4.B. Once the utility determines the specific amount of the residual over or under collection amount after the DSIC rate is reset to zero, the utility shall file a tariff supplement with supporting data to address that residual amount. The tariff supplement shall be served upon the Commission's Bureau of Investigation and Enforcement, the Bureau of Audits, the Office of Consumer Advocate, and the Office of Small Business Advocate at least ten (10) days prior to the effective date of the supplement.

H. *Public Fire Protection*: The DSIC of a water utility will not apply to public fire protection customers.

[Pa.B. Doc. No. 22-1762. Filed for public inspection November 11, 2022, 9:00 a.m.]

## PENNSYLVANIA PUBLIC UTILITY COMMISSION

### Electric Generation Supplier License Cancellations of Companies with an Expired Financial Security, Insufficient Financial Security Amount or Language

Public Meeting held  
October 27, 2022

*Commissioners Present*: Gladys Brown Dutrieuille, Chairperson; Stephen M. DeFrank, Vice Chairperson; Ralph V. Yanora; Katheryn L. Zerfuss; John F. Coleman Jr.

*Electric Generation Supplier License Cancellations of  
Companies with an Expired Financial Security,  
Insufficient Financial Security Amount or Language;  
M-2022-3030286*

#### 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, preferably 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 October 18, 2022, 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 or language directed by the Commission, to replace a bond which is expired, or which is non-compliant with Commission regulations.

*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 or Language</i>
A-2017-2616814	AEGEAN ENERGY ADVISORS, LLC	10/4/2022	Yes
A-110173*	AMERICAN POWERNET MANAGEMENT, LP	10/2/2023	No
A-2010-2195856*	APN STARFIRST, LP	10/5/2022	No
A-2009-2142612	CHOICE ENERGY SERVICES RETAIL, LP	9/22/2022	Yes
A-2018-3000917	GLOBAL ENERGY, LLC	9/27/2022	Yes
A-2010-2192916	XENCOM GREEN ENERGY, LLC	9/14/2022	Yes

\*Taking title to electricity

As part of its EGS license validation procedures, the Commission's Bureau of Technical Utility Services sent a 90-day Security Renewal Notice email to each entity in the Supplier Table above stating that original documentation of a bond, or other approved security in the amount or language directed by the Commission, 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 the 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 License of each company listed in the Supplier Table is hereby tentatively approved as being in the public interest.

2. The Secretary (i) serve a copy of this Tentative Order upon the Office of Consumer Advocate, the Office of Small Business Advocate, the Bureau of Investigation & Enforcement, all electric generation distribution companies, and all of the Electric Generation Suppliers listed in the Supplier Table; (ii) publish a copy of this Tentative Order in the *Pennsylvania Bulletin* with a 30-day comment period; and (iii) file a copy of this Tentative Order at each Electric Generation Supplier's assigned docket number.

3. To the extent any of the Electric Generation Suppliers listed in the Supplier Table challenge the cancellation of their license, they must file comments within thirty (30) days after publication of this Tentative Order in the *Pennsylvania Bulletin*. Written comments referencing Docket No. M-2022-3030286 must be eFiled to the Pennsylvania Public Utility Commission through the Commission's eFiling System. You may set up a free eFiling account with the Commission at <https://efiling.puc.pa.gov/> if you do not have one. Filing instructions may be found on the Commission's website at [http://www.puc.pa.gov/filing\\_resources.aspx](http://www.puc.pa.gov/filing_resources.aspx). Comments containing confidential information should be emailed to Commission Secretary Rosemary Chiavetta at [rchiavetta@pa.gov](mailto:rchiavetta@pa.gov) rather than eFiled.

4. Alternatively, Electric Generation Suppliers listed in the Supplier Table may provide the Commission an approved security up to and within thirty (30) days after publication in the *Pennsylvania Bulletin*. The Electric Generation Supplier must file an original bond, letter of

credit, continuation certificate, amendment, or other approved financial instrument displaying a "wet" signature or digital signature, preferably in blue ink, and displaying a "raised seal" or original notary stamp with Rosemary Chiavetta, Secretary, Pennsylvania Public Utility Commission, 400 North Street, Harrisburg, PA, 17120.

5. Absent the timely (i) filing of comments challenging the cancellation of the Electric Generation Supplier's license, or (ii) 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 revoking the license of each Electric Generation Supplier that fails to respond.

6. Upon entry of the Final Order, Electric Generation Suppliers that remain listed as not in compliance with 52 Pa. Code § 54.40(a) and (d) 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.

7. Upon entry of the Final Order, Electric Generation Suppliers that fail to respond will be prohibited from providing electric generation supply services to retail electric customers. That upon entry of the Final Order described in Ordering Paragraph No. 5, 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*

ORDER ADOPTED: October 27, 2022

ORDER ENTERED: October 27, 2022

[Pa.B. Doc. No. 22-1763. Filed for public inspection November 11, 2022, 9:00 a.m.]

## PENNSYLVANIA PUBLIC UTILITY COMMISSION

### Natural Gas Service

**A-2022-3036437. Columbia Gas of Pennsylvania, Inc.** Application for approval of abandonment of natural gas service by Columbia Gas of Pennsylvania, Inc. to one commercial customer in Fayette County.

Formal protests and petitions to intervene must be filed in accordance with 52 Pa. Code (relating to public utilities) on or before November 28, 2022. Filings must be made with the Secretary of the Pennsylvania Public Utility Commission, 400 North Street, 2nd Floor, Harrisburg, PA 17120, with a copy served on the applicant. The documents filed in support of the application are available only online for inspection and copying on the Pennsylvania Public Utility Commission's (Commission) web site at [www.puc.pa.gov](http://www.puc.pa.gov) and at the applicant's business address. Parties to proceedings pending before the Commission must open and use an eFiling account through the Commission's web site at [www.puc.pa.gov](http://www.puc.pa.gov) or individuals may submit the filing by overnight delivery to the Secretary, Pennsylvania Public Utility Commission, 400 North Street, Harrisburg, PA 17120. If a filing contains confidential or proprietary material, the filing is required to be submitted by overnight delivery. Large filings containing confidential or proprietary material may be submitted through the Commission's Share Point File system with advanced notice to the Commission prior to submittal.

*Applicant:* Columbia Gas of Pennsylvania, Inc., 121 Champion Way, Suite 100, Canonsburg, PA 15317

*Through and By Counsel for:* Candis A. Tunilo, Esquire, 800 North Third Street, Suite 204, Harrisburg, PA 17102, [ctunilo@nisource.com](mailto:ctunilo@nisource.com); Theodore J. Gallagher, Esquire, 121 Champion Way, Suite 100, Canonsburg, PA 15317, [tjgallagher@nisource.com](mailto:tjgallagher@nisource.com)

ROSEMARY CHIAVETTA,  
*Secretary*

[Pa.B. Doc. No. 22-1764. Filed for public inspection November 11, 2022, 9:00 a.m.]

## PENNSYLVANIA PUBLIC UTILITY COMMISSION

### Natural Gas Service

**A-2022-3036462. Columbia Gas of Pennsylvania, Inc.** Application for approval of abandonment of natural gas service by Columbia Gas of Pennsylvania, Inc. to one active commercial premise in Westmoreland County.

Formal protests and petitions to intervene must be filed in accordance with 52 Pa. Code (relating to public utilities) on or before November 28, 2022. Filings must be made with the Secretary of the Pennsylvania Public Utility Commission, 400 North Street, 2nd Floor, Harrisburg, PA 17120, with a copy served on the applicant. The documents filed in support of the application are available only online for inspection and copying on the Pennsylvania Public Utility Commission's (Commission) web site at [www.puc.pa.gov](http://www.puc.pa.gov) and at the applicant's business address. Parties to proceedings pending before the Commission must open and use an eFiling account through the Commission's web site at [www.puc.pa.gov](http://www.puc.pa.gov) or individuals may submit the filing by overnight delivery to the Secretary, Pennsylvania Public Utility Commission, 400 North Street, Harrisburg, PA 17120. If a filing contains confidential or proprietary material, the filing is required to be submitted by overnight delivery. Large filings containing confidential or proprietary material may be

submitted through the Commission's Share Point File system with advanced notice to the Commission prior to submittal.

*Applicant:* Columbia Gas of Pennsylvania, Inc., 121 Champion Way, Suite 100, Canonsburg, PA 15317

*Through and By Counsel for:* Candis A. Tunilo, Esquire, 800 North Third Street, Suite 204, Harrisburg, PA 17102, [ctunilo@nisource.com](mailto:ctunilo@nisource.com); Theodore J. Gallagher, Esquire, 121 Champion Way, Suite 100, Canonsburg, PA 15317, [tjgallagher@nisource.com](mailto:tjgallagher@nisource.com)

ROSEMARY CHIAVETTA,  
*Secretary*

[Pa.B. Doc. No. 22-1765. Filed for public inspection November 11, 2022, 9:00 a.m.]

## PENNSYLVANIA PUBLIC UTILITY COMMISSION

### Pennsylvania Public Utility Commission, Bureau of Investigation and Enforcement v. National Gas & Electric, LLC

Public Meeting held  
October 27, 2022

*Commissioners Present:* Gladys Brown Dutrieuille, Chairperson; Stephen M. DeFrank, Vice Chairperson; Ralph V. Yanora; Kathryn L. Zerfuss; John F. Coleman, Jr.

*Pennsylvania Public Utility Commission, Bureau of  
Investigation and Enforcement v. National Gas & Electric,  
LLC; M-2022-2633098*

### Opinion and Order

*By the Commission:*

Before the Pennsylvania Public Utility Commission (Commission) for consideration and disposition is a proposed Joint Petition for Approval of Settlement (Settlement Agreement or Joint Petition), filed on August 29, 2022, by the Commission's Bureau of Investigation and Enforcement (I&E) and National Gas & Electric, LLC (NG&E or the Company) (collectively the Parties), with respect to an informal investigation conducted by I&E. The Joint Petition contains terms and conditions representing a comprehensive settlement, along with Statements in Support of the Settlement Agreement (Statements in Support), regarding an Informal Investigation that I&E conducted. Both Parties submit that the proposed Settlement Agreement is in the public interest and is consistent with our Policy Statement at 52 Pa. Code § 69.1201, Factors and standards for evaluating litigated and settled proceedings involving violations of the Public Utility Code and Commission regulations—statement of policy (Policy Statement). Settlement Agreement at ¶ 41. Before issuing a final decision on the merits of the proposed Settlement, and consistent with the requirement of 52 Pa. Code § 3.113(b)(3), we shall publish the Settlement in the *Pennsylvania Bulletin* and provide an opportunity for interested parties to file comments regarding the proposed Settlement.<sup>1</sup>

<sup>1</sup> As discussed, *infra*, due to the nature of the alleged violations in this matter, it is appropriate to publish the Settlement in the *Pennsylvania Bulletin*.



### I. History of the Proceeding

This matter concerns an informal investigation initiated by I&E based on a referral from the Commission's Office of Competitive Market Oversight (OCMO) regarding six informal complaints made by NG&E's customers. OCMO alleged that the complaints reflected the possibility that customers were being charged more than the rate they contracted for with NG&E or that they were being enrolled without proper authorization.

To ensure that customers were being properly enrolled and that the Company was abiding by Commission Regulations and relevant statutes, I&E initiated an informal investigation requesting, *inter alia*, that NG&E provide copies of all third-party verifications (TPV) recorded by the Company and/or its agent(s) within the six-month time period from April 2019 to October 2019. Through its informal investigation, I&E concluded that sufficient data had been gathered to substantiate alleged violations of the Commission's Regulations in connection with the TPVs recorded by NG&E and/or its agents. Namely, I&E alleged that NG&E and/or its agents: (1) engaged in slamming by failing to obtain direct oral confirmation or written authorization from certain customers to change their electric generation supplier (EGS), which resulted in physically switching the EGS of those accounts without the proper authorization of the customers or without proper verification in violation of 52 Pa. Code §§ 54.42(a)(9), 54.43(f), 54.122(3), 57.171—179, and 111.12(d)(1) (multiple counts); (2) engaged in fraudulent, deceptive, or otherwise unlawful acts in the process of marketing and selling EGS services of the Company to Pennsylvania consumers in violation of 52 Pa. Code §§ 54.43(f), 54.122(3), and 111.12(d)(1) (multiple counts); (3) entered into sales agreements or changed the commodity providers for a consumer that was not personally accepted by the electric distribution company (EDC) Customer of Record in violation of 52 Pa. Code § 57.175 (two counts); and (4) failed to finalize the transaction process before initiating the verification process, which resulted in the verification process not being separated from the transaction process in violation of 52 Pa. Code § 111.7(b)(2) (five counts). I&E noted that while the source of the above violations appeared to have been the result of actions by NG&E's third-party vendor, Commission precedent holds the licensed entity responsible for the actions of its employees, agents, vendors, or contractors. See 52 Pa. Code § 54.43(f). I&E Statement in Support at 2-3.

The Parties entered into negotiations and agreed to resolve these matters in accordance with the Commission's policy to promote settlements at 52 Pa. Code § 5.231. Settlement Agreement at 3. The Parties filed the instant Settlement Agreement on August 29, 2022.

### II. Background

#### A. Informal Complaints and I&E Informal Investigation

As noted above, the basis for the instant Settlement resulted from six informal complaints made by NG&E's customers, which OCMO referred to I&E for an informal investigation. OCMO stated that the complaints reflected the possibility that NG&E's customers were being charged more than the rate they contracted for or that they were enrolled without proper authorization. In addition, OCMO reported to I&E that the Commission's Bureau of Consumer Services (BCS) was in possession of similar informal complaints, which were filed against NG&E, that were awaiting response from the Company. Settlement Agreement at ¶¶ 14—16.

As a result, I&E opened an informal investigation and issued Data Requests to NG&E regarding the informal complaints.<sup>2</sup> In response to I&E's Data Requests—Sets I and II, NG&E reported that it received approximately fifty-one (51) informal complaints between 2017 and 2019. The Company represented that it received forty-two of these complaints from BCS and that the remaining nine complaints came directly from its customers. The Company continued that of these fifty-one (51) total informal complaints, sixteen related to billing complaints about incorrect rates, nine alleged high bills, six related to customers not receiving notifications for changes to their rate and/or bill, and twenty of the complaints related to enrollment disputes. The Company admitted to overbilling fifteen (15) customers and invalidly enrolling one customer, but asserted that such customers had been refunded. As to the remaining thirty-five (35) complaints, NG&E alleged that they were unfounded but that the Company issued courtesy refunds to those customers who submitted complaints. Settlement Agreement at ¶¶ 17—20.

To ensure that NG&E's customers were being properly enrolled and that the Company was abiding by Commission Regulations and relevant statutes, I&E requested, by way of I&E Data Requests—Set III, that NG&E provide copies of all the TPVs recorded by the Company and/or its agent(s) within the six-month time period from April 2019 to October 29, 2019. In response, NG&E provided I&E with approximately 907 recordings of TPVs completed from May 5, 2019 to September 16, 2019. NG&E reported that the TPVs were conducted by TPV.com, the company NG&E contracted for TPV services. Settlement Agreement at ¶¶ 21-22.

#### B. Alleged Violations

Based on its informal investigation, I&E concluded that NG&E and/or its third-party vendor, TPV.com, engaged in six unauthorized customer enrollments, four instances of fraudulent, deceptive, or otherwise unlawful marketing and sales practices, two instances of an unauthorized person acting on behalf of a customer, and five instances where the verification process was not separated from the transaction process.<sup>3</sup> Settlement Agreement at ¶¶ 23—26.

If this matter had been litigated, I&E was prepared to allege in a Formal Complaint that NG&E violated certain provisions of our Regulations and the Pennsylvania Public Utility Code (Code). Specifically, I&E would have asserted that NG&E violated our Regulations at 52 Pa. Code §§ 54.42(a)(9), 54.43(f), 54.122(3), 57.171—179, and 111.12(d)(1) in that the Company and/or its agents failed to obtain direct oral confirmation or written authorization from the customer to change the EGS which resulted in physically switching the EGS of that account without the proper authorization of the customer or without proper verification. Second, I&E would have contended that NG&E violated Sections 54.43(f), 54.122(3), and 111.12(d)(1) of our Regulations in that the Company and/or its agents engaged in fraudulent, deceptive, or otherwise unlawful acts in the process of marketing and selling EGS services of the Company to Pennsylvania consumers. Third, I&E would have asserted that NG&E violated Section 57.175 of our Regulations in that the Company and/or its agents entered into a sales agreement or changed the commodity provider for a consumer that was not personally accepted by the EDC customer of record. Finally, I&E would have averred that

<sup>2</sup> The exact commencement date of I&E's informal investigation is not specified in the Settlement Agreement.

<sup>3</sup> These alleged violations occurred from September 13, 2019 through September 16, 2019. Settlement Agreement at ¶ 23, n.2.

NG&E violated Section 111.7(b)(2) of our Regulations in that the Company and/or its agents failed to finalize the transaction process before initiating the verification process, which resulted in the verification process not being separated from the transaction process. Settlement Agreement at ¶ 27.

On the other hand, if this matter had been litigated, NG&E was prepared to represent that, other than as set forth in Paragraph 20 of the Settlement Agreement, wherein it alleged that thirty-five of the complaints were unfounded, it did not dispute I&E's allegations and fully acknowledged the seriousness of the allegations as well as the need to prevent their occurrence or reoccurrence. Settlement Agreement at ¶ 31.

As a result of negotiations, the Parties entered into the proposed Settlement Agreement, which is attached to this Opinion and Order, to resolve their differences. The Parties assert that the proposed Settlement Agreement is in the public interest and should, therefore, be approved by the Commission. Settlement Agreement at ¶ 13. I&E submits that NG&E fully cooperated with its investigation by fully complying with I&E's requests for information and documentation and by timely providing I&E with records, correspondences, and other documents, as requested. *Id.* at ¶ 29.

### III. *Terms of the Settlement*<sup>4</sup>

The Parties state that the purpose of the Settlement is to terminate I&E's informal investigation and settle this matter completely without litigation. Both Parties jointly acknowledge that approval of the Settlement Agreement is in the public interest and is fully consistent with the Commission's Policy Statement at 52 Pa. Code § 69.1201. Moreover, the Parties agree that the Settlement Agreement is in the public interest because it effectively addresses I&E's allegations that are the subject of I&E's informal investigation and avoids the time and expense of litigation, which entails hearings, travel for out-of-state witnesses, and the preparation and filing of briefs, exceptions, and reply exceptions, as well as possible appeals. Settlement Agreement at ¶¶ 30, 35.

The essential terms of the Joint Settlement are set forth in Paragraph No. 32 of the Joint Petition, which is recited in full, below, as it appears in the Joint Petition:

32. I&E and NG&E, intending to be legally bound and for consideration given, desire to fully and finally conclude this informal investigation and agree to stipulate as to the following terms solely for the purposes of this Settlement Agreement:

A. NG&E will pay a civil penalty in the amount of Fifteen Thousand Two Hundred and Fifty Dollars (\$15,250.00), broken down as follows:

i. A civil penalty of One Thousand Dollars (\$1,000) for each of the six (6) unauthorized customer enrollments, totaling Six Thousand Dollars (\$6,000);

ii. A civil penalty of One Thousand Dollars (\$1,000) for each of the four (4) instances of deceptive marketing and sales practices, totaling Four Thousand Dollars (\$4,000);

iii. A civil penalty of Seven Hundred and Fifty Dollars (\$750) for each of the two (2) instances of an unauthorized person acting on behalf of a customer, totaling One Thousand Five Hundred Dollars (\$1,500); and

iv. A civil penalty of Seven Hundred and Fifty Dollars (\$750) for each of the five (5) instances where the verification process was not separated from the transaction process, totaling Three Thousand Seven Hundred and Fifty Dollars (\$3,750).

Said payment shall be made by wire transfer directly to the Commonwealth of Pennsylvania (utilizing wire transfer instructions provided by the Bureau of Investigation and Enforcement to NG&E) within thirty (30) days of the entry date of the Commission's Final Order approving the Settlement Agreement.

The civil penalty shall not be tax deductible pursuant to Section 162(f) of the Internal Revenue Code, 26 U.S.C.S. § 162(f) and shall not be passed through as an additional charge to NG&E's customers in Pennsylvania.

B. NG&E will take or has taken corrective action and implemented revisions to its operating procedures which will act as safeguards against future instances of unauthorized customer enrollments, deceptive marketing and sales practices, unauthorized person(s) acting on behalf of a customer, and initiating the verification process before finalizing the transaction process. The pertinent portions of NG&E's modified procedures are briefly described as follows:

i. NG&E will provide I&E staff with a monthly report of the number of customer complaints received by the Company directly from customers in Pennsylvania related to allegations of overbilling, slamming and/or fraudulent, deceptive or other unlawful marketing and sales of EGS products and/or services performed by NG&E or its agent. The report will categorize the complaints by type of allegation (i.e., unauthorized enrollment, deceptive marketing/sales, charged incorrect rate, etc.) and the form of marketing utilized by the Company (i.e., door-to-door, telemarketing, mailing, other). The report will be provided to I&E staff by the 15th of each month containing the customer complaint data from the previous month. This requirement will remain in effect for one (1) year after the entry of a Commission final order in this matter and may be extended at the discretion of I&E staff.

ii. For each customer identified in I&E's informal investigation that was invalidly enrolled with NG&E, the Company will provide a refund equal to that customer's first two (2) months of EGS charges pursuant to 52 Pa. Code § 57.177(b). NG&E will issue the customer refunds within thirty (30) days of the entry date of the Commission's Final Order approving the Settlement Agreement. Pursuant to 52 Pa. Code § 5.591, following payment of the refunds, NG&E will file with the Commission a verification acknowledging that all refund payments have been disbursed, satisfying this settlement provision.

iii. NG&E will provide training to all marketing and sales persons on conducting a no-pressure sales call and enforcing the concept that a customer is not required to choose a supplier or switch suppliers.

iv. NG&E shall add the following questions to all TPVs, whether via live agent or an interactive voice response system:

1. Do you understand that NG&E is not your electric utility?

<sup>4</sup> Pages 8 through 16 of the Settlement Agreement set forth the full Settlement Terms and Conditions.

2. Do you understand that you are not required to switch to NG&E in order to continue receiving electric service?

3. Does your name appear on the electric bill?

v. NG&E and its agents will commit to complying with 52 Pa. Code § 57.175 and shall not enter into a sales agreement or change the commodity provider for any consumer that is not personally accepted by the EDC Customer of Record or by a person purporting to be authorized to act on behalf of the Customer of Record. If the consumer answers that his/her name does not appear on the electric bill, NG&E and its agents shall first request that the consumer produce the person whose name appears on the electric bill to verify authorization to switch. If the customer of record is not available, NG&E and its agents shall then request that the consumer verify that he or she is authorized by the person whose name is on the bill to consent to changes in electric generation service for the account. If the consumer cannot verify such authorization, the sales solicitation and TPV must immediately end.

vi. NG&E and its agents shall fully comply with the Commission's regulations for third-party verifications, including but not limited to 52 Pa. Code § 111.7 and agrees that all TPVs will be performed outside the presence of the NG&E sales representative. The NG&E in-person sales representative shall leave the premises during the TPV in accordance with the Commission's regulations.

vii. NG&E and its agents shall not prompt consumers' responses to TPV questions, instruct the consumers as to the manner in which to respond to TPV questions, or otherwise participate in the TPV of any sale.

viii. As part of the quality assurance process, NG&E and its agents shall be instructed to reject an enrollment, even if it had cleared TPV, if the customer sounded uncertain, confused, or suspicious in any way.

Settlement Agreement at ¶ 32.

The Parties state that the Joint Petition represents the Settlement Agreement in its entirety. In consideration of NG&E's agreement to pay a civil penalty and its compliance with the non-monetary terms of the Settlement Agreement, I&E agrees that its informal investigation relating to NG&E's conduct will be terminated and marked closed upon approval by the Commission of the Settlement Agreement, without modification, and receipt of the civil penalty. Settlement Agreement at ¶¶ 33, 36.

The proposed Settlement Agreement is conditioned on the Commission's approval without modification of any of its terms or conditions. If the Commission rejects the proposed Settlement Agreement, or makes any change or modification thereto, either Party may elect to withdraw from the Settlement Agreement. Moreover, the Settlement Agreement represents a compromise of positions and does not constitute a finding of culpability or an admission concerning the alleged violations of the Code and the Commission's Regulations. Finally, the Parties present the Settlement Agreement without prejudice to any position that I&E or NG&E may advance in the future on the merits of the issues in any future proceeding, except to the extent necessary to effectuate the terms and conditions of the Settlement Agreement. Settlement Agreement at ¶¶ 37—41.

#### IV. Discussion

Pursuant to our Regulations at 52 Pa. Code § 5.231, it is the Commission's policy to promote settlements. However, the Commission must review proposed settlements to determine whether the terms are in the public interest. *Pa. PUC v. Philadelphia Gas Works*, Docket No. M-00031768 (Order entered January 7, 2004).

In reviewing settlements that resolve informal investigations, the Commission will provide other potentially affected parties with the opportunity to file comments regarding a proposed settlement prior to issuing a decision. The Commission's Regulations at 52 Pa. Code § 3.113(b) provide as follows:

#### § 3.113. Resolution of informal investigations.

\* \* \*

(b) Under 65 Pa.C.S. Chapter 7 (relating to Sunshine Act), the Commission's official actions resolving informal investigations will be as follows:

\* \* \*

(3) When the utility, or other person subject to the Commission's jurisdiction, has committed to undertake action to address or remedy a violation or potential violation of the act or to resolve another perceived deficiency at the utility, in the form of a settlement with the Commission staff or other resolution of the matter, the Commission's consideration of the settlement or approval of the utility's action will occur at public meeting. Except for staff reports and other documents covered by a specific legal privilege, documents relied upon by the Commission in reaching its determination shall be made part of the public record. *Before the Commission makes a final decision to adopt the settlement or to approve the utility's action, the Commission will provide other potentially affected persons with the opportunity to submit exceptions thereon or to take other action provided for under law.*

52 Pa. Code § 3.113(b) (emphasis added). See also *Pa. PUC, Bureau of Investigation and Enforcement v. PPL Electric Utilities Corporation*, Docket No. M-2012-2264635 (Order entered September 13, 2012); *Pa. PUC, Bureau of Investigation and Enforcement v. Liberty Power Holdings, LLC*, Docket No. M-2019-2568471 (Order entered August 8, 2019).

#### V. Conclusion

Before issuing a decision on the merits of the proposed Settlement, and consistent with the requirement of 52 Pa. Code § 3.113(b)(3), and for the reason(s) stated above, we believe it is appropriate to publish the Settlement in the *Pennsylvania Bulletin*. Therefore, we will: (1) publish this Opinion and Order and a copy of the proposed Settlement and Statements in Support, attached hereto, in the *Pennsylvania Bulletin*; and (2) provide an opportunity for interested parties to file comments regarding the proposed Settlement within twenty-five days after the date of publication in the *Pennsylvania Bulletin*; *Therefore,*

*It Is Ordered That:*

1. The Secretary's Bureau shall duly certify this Opinion and Order along with the attached Joint Petition



for Approval of Settlement and the Statements in Support thereof, at Docket No. M-2022-2633098, and deposit them with the Legislative Reference Bureau for publication in the *Pennsylvania Bulletin*.

2. Within twenty-five (25) days after the date that this Opinion and Order and the attached Joint Petition for Approval of Settlement and the Statements in Support thereof are published in the *Pennsylvania Bulletin*, interested parties may file comments concerning the proposed Settlement.

3. A copy of this Opinion and Order, together with the attached Joint Petition for Approval of Settlement and

the Statements in Support thereof, at Docket No. M-2022-2633098, shall be served on the Office of Consumer Advocate and the Office of Small Business Advocate.

4. Subsequent to the Commission’s review of any comments filed in this proceeding, at Docket No. M-2022-2633098, a final Opinion and Order will be issued by the Commission.

ROSEMARY CHIAVETTA,  
*Secretary*

ORDER ADOPTED: October 27, 2022

ORDER ENTERED: October 27, 2022

**BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Pennsylvania Public Utility Commission,  
Bureau of Investigation and Enforcement

v.

National Gas & Electric, LLC

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Docket No. M-2022-2633098

**JOINT PETITION FOR APPROVAL OF SETTLEMENT**

TO THE HONORABLE PENNSYLVANIA PUBLIC UTILITY COMMISSION:

Pursuant to 52 Pa. Code §§ 5.41 and 5.232, the Pennsylvania Public Utility Commission’s (“Commission”) Bureau of Investigation and Enforcement (“I&E”) and National Gas & Electric, LLC (“NG&E” or “Company”) hereby submit this Joint Petition for Approval of Settlement (“Settlement” or “Settlement Agreement”) to resolve all issues related to the above-docketed informal investigation.

As part of this Settlement Agreement, I&E and NG&E (hereinafter referred to collectively as the “Parties”) respectfully request that the Commission enter a Final Opinion and Order approving the Settlement without modification. An appendix entitled Proposed Ordering Paragraphs is attached hereto as Appendix A. Statements in Support of the Settlement expressing the individual views of I&E and NG&E are attached hereto as Appendix B and Appendix C, respectively.

*I. Introduction*

1. The Parties to this Settlement Agreement are the Pennsylvania Public Utility Commission’s Bureau of Investigation and Enforcement, by its prosecuting attorneys, with offices at 400 North Street, Harrisburg, PA 17120 and National Gas & Electric, LLC, with its principal place of business at 12140 Wickchester Lane, Suite 100, Houston, TX 77079.

2. The Commission is a duly constituted agency of the Commonwealth of Pennsylvania empowered to regulate public utilities within this Commonwealth as well as other entities subject to its jurisdiction, pursuant to the Public Utility Code (the “Code”), 66 Pa.C.S. §§ 101, et seq.

3. I&E is the entity established to prosecute complaints against public utilities and other entities subject to the Commission’s jurisdiction pursuant to 66 Pa.C.S. § 308.2(a)(11); See also Implementation of Act 129 of 2008; Organization of Bureaus and Offices, Docket No.

M-2008-2071852 (Order entered August 11, 2011) (delegating authority to initiate proceedings that are prosecutory in nature to I&E).

4. Section 501(a) of the Code, 66 Pa.C.S. § 501(a), authorizes and obligates the Commission to execute and enforce the provisions of the Code.

5. Section 701 of the Code, 66 Pa.C.S. § 701, authorizes the Commission, inter alia, to hear and determine complaints alleging a violation of any law or regulation that the Commission has jurisdiction to administer.

6. Section 3301 of the Code, 66 Pa.C.S. § 3301, authorizes the Commission to impose civil penalties on any public utility or on any other person or corporation subject to the Commission’s authority for violations of the Code, the Commission’s regulations, or both. Section 3301 allows for the imposition of a fine for each violation and each day’s continuance of such violation(s). 66 Pa.C.S. § 3301.

7. NG&E is a jurisdictional electric generation supplier (“EGS”)<sup>5</sup> licensed by the Commission at Docket No. A-2015-2517744 to operate in all of the electric distribution company (“EDC”) service territories throughout the Commonwealth of Pennsylvania.

8. NG&E, as an EGS in Pennsylvania, is a public utility as defined by Section 102 of the Code, 66 Pa.C.S. § 102, for the limited purposes as described in Sections 2809 and 2810 of the Competition Act, 66 Pa.C.S. §§ 2809-2810.

9. NG&E, as a licensed provider of electric generation service for compensation, is subject to the power and authority of the Commission and must observe, obey, and comply with the Commission’s regulations and orders pursuant to Section 501(c) of the Code, 66 Pa.C.S. § 501(c).

10. Pursuant to the provisions of the applicable Commonwealth statutes and regulations, the Commission has

<sup>5</sup> “Electric generation supplier” is defined in Section 2803 of the Electricity Generation Customer Choice and Competition Act, 66 Pa.C.S. §§ 2801–2812 (“Competition Act”). See also, 52 Pa. Code § 57.171.

jurisdiction over the subject matter and the actions of NG&E in its capacity as an EGS serving consumers in Pennsylvania.

11. Pursuant to Sections 331(a) and 506 of the Code, 66 Pa.C.S. §§ 331(a) and 506 and Section 3.113 of the Commission's regulations, 52 Pa. Code § 3.113, Commission staff has the authority to conduct informal investigations or informal proceedings in order to gather data and/or to substantiate allegations of potential violations of the Commission's regulations.

12. I&E instituted an informal investigation of NG&E based on information referred to I&E by the Commission's Office of Competitive Market Oversight ("OCMO"). The Director of OCMO notified I&E of six (6) informal complaints made by NG&E's customers regarding possible overcharges or unauthorized enrollments. I&E determined that these complaints warranted further investigation to examine whether the actions of NG&E violated Commission regulations and orders.

13. As a result of successful negotiations between I&E and NG&E, the Parties have reached an agreement on an appropriate outcome to the informal investigation as encouraged by the Commission's policy to promote settlements. See 52 Pa. Code § 5.231. The Settlement also is consistent with the Commission's Policy Statement for evaluating litigated and settled proceedings involving violations of the Code and Commission regulations, 52 Pa. Code § 69.1201. The duly authorized Parties executing this Settlement Agreement agree to the settlement terms set forth herein and urge the Commission to approve the Settlement Agreement as submitted as being in the public interest.

## II. Background

14. OCMO referred six (6) informal complaints made by NG&E's customers to I&E for an informal investigation.

15. According to OCMO, the complaints reflected the possibility that customers were being charged more than the rate they contracted for with NG&E or enrolled without proper authorization.

16. OCMO also reported to I&E that the Commission's Bureau of Consumer Services ("BCS") was in possession of similar informal complaints, which were filed against NG&E, that were awaiting response from the Company.

17. Through NG&E's responses to I&E's Data Requests—Sets I and II, NG&E reported that it received approximately fifty-one (51) informal complaints from 2017—2019. The Company reported that it received forty-two (42) of these complaints from BCS and that the remaining nine (9) complaints came directly from its customers.

18. Of the fifty-one (51) total informal complaints, sixteen (16) related to billing complaints about incorrect rates, nine (9) alleged high bills, six (6) related to customers not receiving notifications for changes to their rate and/or bill, and twenty (20) of the complaints related to enrollment disputes.

19. In its responses to I&E's Data Requests, the Company admitted to overbilling fifteen (15) customers and invalidly enrolling one (1) customer but reported that such customers had been refunded.

20. NG&E alleged that the remaining thirty-five (35) complaints were unfounded, but that the Company issued courtesy refunds to those customers who submitted complaints.

21. To ensure that customers were being properly enrolled and that the Company was abiding by Commission regulations and relevant statutes, I&E requested, by way of I&E Data Requests—Set III, that NG&E provide copies of all the third-party verifications ("TPV") recorded by the Company and/or its agent(s) within the six (6) month time period from April 2019 to October 29, 2019.

22. In response, NG&E provided I&E with approximately 907 recordings of TPVs completed from May 5, 2019 to September 16, 2019. NG&E reported that the TPVs were conducted by TPV.com, the company NG&E contracted for TPV services.

23. Through these recordings, I&E asserted that NG&E and/or its third-party vendor, TPV.com, engaged in six (6) unauthorized customer enrollments, four (4) instances of deceptive marketing and sales practices, two (2) instances of an unauthorized person acting on behalf of a customer, and five (5) instances where the verification process was not separated from the transaction process.<sup>6</sup>

## III. Alleged Violations

24. I&E concluded from its investigation that NG&E<sup>7</sup> violated provisions of Chapter 54 of the *Pennsylvania Code* concerning Electricity Generation Customer Choice, 52 Pa. Code §§ 54.1, et seq., with regard to the six (6) instances of switching the EGS of an account without the proper authorization of the consumer or without proper verification and the four (4) instances of fraudulent, deceptive or otherwise unlawful acts in the process of marketing and selling EGS services.

25. I&E determined from its investigation that NG&E<sup>8</sup> violated provisions of Chapter 57 of the *Pennsylvania Code* concerning the Standards for Changing a Customer's Electricity Generation Supplier, 52 Pa. Code §§ 57.171—180, regarding the six (6) instances of switching the EGS of an account without the proper authorization of the consumer or without proper verification and the two (2) instances of entering into a sales agreement or changing the commodity provider for a consumer that was not personally accepted by the EDC Customer of Record.

26. I&E also concluded that NG&E<sup>9</sup> violated provisions of Chapter 111 of the *Pennsylvania Code* concerning the Marketing and Sales Practices for the Retail Residential Energy Market, 52 Pa. Code §§ 111.1—14, with regard to the six (6) instances of switching the EGS of an account without the proper authorization of the consumer or without proper verification, the four (4) instances of fraudulent, deceptive or otherwise unlawful acts in the process of marketing and selling EGS services, and the five (5) instances of initiating the verification process before finalizing transaction process.

27. Based on information obtained through its investigation, as described above, and a review of the Commission's regulations and relevant statutes, I&E was prepared to contend by the filing of a formal complaint that NG&E committed the following violations:

A. NG&E failed to comply with the Commission's regulations at 52 Pa. Code §§ 54.42(a)(9), 54.43(f), 54.122(3), 57.171—179, and 111.12(d)(1) in that the Company and/or its agents failed to obtain direct oral confirmation or written authorization from the customer to change the

<sup>6</sup> These alleged violations occurred from September 13, 2019 through September 16, 2019.

<sup>7</sup> NG&E is responsible for the actions of its agents pursuant to the Commission's regulations. See 52 Pa. Code §§ 54.43(f) and 111.3(b).

<sup>8</sup> See supra note 3.

<sup>9</sup> See supra note 3.

EGS which resulted in physically switching the EGS of that account without the proper authorization of the customer or without proper verification.

If proven, this would be a violation of 52 Pa. Code §§ 54.42(a)(9), 54.43(f), 54.122(3), 57.171—179, and 111.12(d)(1) (multiple counts).

B. NG&E failed to comply with the Commission's regulations at 52 Pa. Code §§ 54.43(f), 54.122(3), and 111.12(d)(1) in that the Company and/or its agents engaged in fraudulent, deceptive or otherwise unlawful acts in the process of marketing and selling EGS services of the Company to Pennsylvania consumers.

If proven, this would be a violation of 52 Pa. Code §§ 54.43(f), 54.122(3), and 111.12(d)(1) (multiple counts).

C. NG&E failed to comply with the Commission's regulations at 52 Pa. Code § 57.175 in that the Company and/or its agents entered into a sales agreement or changed the commodity provider for a consumer that was not personally accepted by the EDC Customer of Record.

If proven, this would be a violation of 52 Pa. Code § 57.175 (two counts).

D. NG&E failed to comply with the Commission's regulations at 52 Pa. Code § 111.7(b)(2) in that the Company and/or its agents failed to finalize the transaction process before initiating the verification process, which resulted in the verification process not being separated from the transaction process.

If proven, this would be a violation of 52 Pa. Code § 111.7(b)(2) (five counts).

28. NG&E understands the nature of the allegations that I&E would have asserted in a formal complaint, acknowledges the errors of its agents, for whom NG&E is legally responsible, and has put into effect appropriate measures that have been approved by I&E to ensure that such issues would not be likely to reoccur.

29. As a mitigating factor to the above allegations, I&E acknowledges that NG&E fully cooperated with I&E's investigation. During the investigatory process, NG&E fully complied with I&E's requests for information and documentation and timely provided I&E with records, correspondences, and other documents as requested by I&E.

#### IV. Settlement Terms

30. Pursuant to the Commission's policy of encouraging settlements that are reasonable and in the public interest,<sup>10</sup> I&E and NG&E held a series of discussions that culminated in this Settlement. The purpose of this Joint Petition for Approval of Settlement is to terminate I&E's informal investigation and to settle this matter completely without litigation. There has been no Formal Complaint filed, no evidentiary hearing before any tribunal, and no sworn testimony taken in any proceeding related to this incident.

31. Other than as set forth in Paragraph 20 above, NG&E does not dispute I&E's allegations above and fully acknowledges the seriousness of those allegations as well as the need to prevent the occurrence or reoccurrence of unauthorized customer enrollments, deceptive marketing and sales practices, unauthorized person(s) acting on behalf of a customer, and initiating the verification process before finalizing the transaction process.

32. I&E and NG&E, intending to be legally bound and for consideration given, desire to fully and finally conclude this informal investigation and agree to stipulate as to the following terms solely for the purposes of this Settlement Agreement:

A. NG&E will pay a civil penalty in the amount of Fifteen Thousand Two Hundred and Fifty Dollars (\$15,250.00), broken down as follows:

i. A civil penalty of One Thousand Dollars (\$1,000) for each of the six (6) unauthorized customer enrollments, totaling Six Thousand Dollars (\$6,000);

ii. A civil penalty of One Thousand Dollars (\$1,000) for each of the four (4) instances of deceptive marketing and sales practices, totaling Four Thousand Dollars (\$4,000);

iii. A civil penalty of Seven Hundred and Fifty Dollars (\$750) for each of the two (2) instances of an unauthorized person acting on behalf of a customer, totaling One Thousand Five Hundred Dollars (\$1,500); and

iv. A civil penalty of Seven Hundred and Fifty Dollars (\$750) for each of the five (5) instances where the verification process was not separated from the transaction process, totaling Three Thousand Seven Hundred and Fifty Dollars (\$3,750).

Said payment shall be made by wire transfer directly to the Commonwealth of Pennsylvania (utilizing wire transfer instructions provided by the Bureau of Investigation and Enforcement to NG&E) within thirty (30) days of the entry date of the Commission's Final Order approving the Settlement Agreement. The civil penalty shall not be tax deductible pursuant to Section 162(f) of the Internal Revenue Code, 26 U.S.C.S. § 162(f) and shall not be passed through as an additional charge to NG&E's customers in Pennsylvania.

B. NG&E will take or has taken corrective action and implemented revisions to its operating procedures which will act as safeguards against future instances of unauthorized customer enrollments, deceptive marketing and sales practices, unauthorized person(s) acting on behalf of a customer, and initiating the verification process before finalizing the transaction process. The pertinent portions of NG&E's modified procedures are briefly described as follows:

i. NG&E will provide I&E staff with a monthly report of the number of customer complaints received by the Company directly from customers in Pennsylvania related to allegations of overbilling, slamming and/or fraudulent, deceptive or other unlawful marketing and sales of EGS products and/or services performed by NG&E or its agent. The report will categorize the complaints by type of allegation (i.e., unauthorized enrollment, deceptive marketing/sales, charged incorrect rate, etc.) and the form of marketing utilized by the Company (i.e., door-to-door, telemarketing, mailing, other). The report will be provided to I&E staff by the 15th of each month containing the customer complaint data from the previous month. This requirement will remain in effect for one (1) year after the entry of a Commission final order in this matter and may be extended at the discretion of I&E staff.

<sup>10</sup> See 52 Pa. Code § 5.231(a).



ii. For each customer identified in I&E's informal investigation that was invalidly enrolled with NG&E, the Company will provide a refund equal to that customer's first two (2) months of EGS charges pursuant to 52 Pa. Code § 57.177(b). NG&E will issue the customer refunds within thirty (30) days of the entry date of the Commission's Final Order approving the Settlement Agreement. Pursuant to 52 Pa. Code § 5.591, following payment of the refunds, NG&E will file with the Commission a verification acknowledging that all refund payments have been disbursed, satisfying this settlement provision.

iii. NG&E will provide training to all marketing and sales persons on conducting a no-pressure sales call and enforcing the concept that a customer is not required to choose a supplier or switch suppliers.

iv. NG&E shall add the following questions to all TPVs, whether via live agent or an interactive voice response system:

1. Do you understand that NG&E is not your electric utility?

2. Do you understand that you are not required to switch to NG&E in order to continue receiving electric service?

3. Does your name appear on the electric bill?

v. NG&E and its agents will commit to complying with 52 Pa. Code § 57.175 and shall not enter into a sales agreement or change the commodity provider for any consumer that is not personally accepted by the EDC Customer of Record or by a person purporting to be authorized to act on behalf of the Customer of Record. If the consumer answers that his/her name does not appear on the electric bill, NG&E and its agents shall first request that the consumer produce the person whose name appears on the electric bill to verify authorization to switch. If the customer of record is not available, NG&E and its agents shall then request that the consumer verify that he or she is authorized by the person whose name is on the bill to consent to changes in electric generation service for the account. If the consumer cannot verify such authorization, the sales solicitation and TPV must immediately end.

vi. NG&E and its agents shall fully comply with the Commission's regulations for third-party verifications, including but not limited to 52 Pa. Code § 111.7 and agrees that all TPVs will be performed outside the presence of the NG&E sales representative. The NG&E in-person sales representative shall leave the premises during the TPV in accordance with the Commission's regulations.

vii. NG&E and its agents shall not prompt consumers' responses to TPV questions, instruct the consumers as to the manner in which to respond to TPV questions, or otherwise participate in the TPV of any sale.

viii. As part of the quality assurance process, NG&E and its agents shall be instructed to reject an enrollment, even if it had cleared TPV, if the customer sounded uncertain, confused, or suspicious in any way.

33. In consideration of NG&E's payment of a monetary civil penalty and its compliance with the non-monetary terms of this settlement, as specified herein, I&E agrees that its informal investigation relating to NG&E's conduct as described in the Settlement Agreement shall be termi-

nated and marked closed upon approval by the Commission of the Settlement Agreement without modification and receipt of the civil penalty.

34. Upon Commission approval of the Settlement in its entirety without modification, I&E will not file any complaints or initiate other action against NG&E at the Commission with respect to the allegations which were the subject of I&E's instant investigation.

35. I&E and NG&E jointly acknowledge that approval of this Settlement Agreement is in the public interest and fully consistent with the Commission's Policy Statement regarding Factors and Standards for Evaluating Litigated and Settled Proceedings, 52 Pa. Code § 69.1201. The Parties submit that the Settlement Agreement is in the public interest because it effectively addresses I&E's allegations that are the subject of the I&E's informal investigation and avoids the time and expense of litigation, which entails hearings, travel for out-of-state witnesses, and the preparation and filing of briefs, exceptions, and reply exceptions, as well as possible appeals. Attached as Appendices B and C are Statements in Support submitted by I&E and NG&E, respectively, setting forth the bases upon which the Parties believe the Settlement Agreement is in the public interest.

#### V. *Conditions of Settlement*

36. This document represents the Settlement Agreement in its entirety. No changes to obligations set forth herein may be made unless they are in writing and are expressly accepted by the parties involved. This Settlement Agreement shall be construed and interpreted under Pennsylvania law.

37. The Settlement is conditioned upon the Commission's approval of the terms and conditions contained in this Joint Petition for Approval of Settlement without modification. If the Commission modifies this Settlement Agreement, any party may elect to withdraw from this Settlement Agreement and may proceed with litigation and, in such event, this Settlement Agreement shall be void and of no effect. Such election to withdraw must be made in writing, filed with the Secretary of the Commission and served upon all parties within twenty (20) business days after entry of an Order modifying the Settlement.

38. The Parties agree that the underlying allegations were not the subject of any hearing or formal procedure and that there has been no order, findings of fact or conclusions of law rendered in this complaint proceeding. It is further understood that, by entering into this Settlement Agreement, NG&E has made no concession or admission of fact or law and may dispute all issues of fact and law for all purposes in all proceedings that may arise as a result of the circumstances described in this Settlement Agreement.

39. The Parties acknowledge that this Settlement Agreement reflects a compromise of competing positions and does not necessarily reflect any party's position with respect to any issues raised in this proceeding.

40. This Settlement Agreement is being presented only in the context of this proceeding in an effort to resolve the proceeding in a manner that is fair and reasonable. This Settlement Agreement is presented without prejudice to any position that any of the parties may have advanced and without prejudice to the position any of the parties may advance in the future on the merits of the issues in

future proceedings, except to the extent necessary to effectuate the terms and conditions of this Settlement Agreement. This Settlement does not preclude the Parties from taking other positions in any other proceeding but is conclusive in this proceeding and may not be reasserted in any other proceeding or forum except for the limited purpose of enforcing the Settlement by a Party.

41. The terms and conditions of this Settlement Agreement constitute a carefully crafted package representing reasonably negotiated compromises on the issues addressed herein. Thus, the Settlement Agreement is consistent with the Commission’s rules and practices encouraging negotiated settlements set forth in 52 Pa. Code §§ 5.231 and 69.1201.

Wherefore, the Pennsylvania Public Utility Commission’s Bureau of Investigation and Enforcement and National Gas & Electric, LLC respectfully request that the Commission issue an Order approving the terms of this Settlement Agreement in their entirety as being in the public interest.

Respectfully Submitted,  
Pennsylvania Public Utility Commission,  
Bureau of Investigation and Enforcement  
By  
Kourtney L. Myers, Prosecutor  
Pennsylvania Public Utility Commission  
Bureau of Investigation and Enforcement  
400 North Street  
Harrisburg, PA 17120  
717.705.4366  
komyers@pa.gov  
Date: August 29, 2022  
National Gas & Electric, LLC  
By  
Gary Lancaster, General Counsel  
National Gas & Electric, LLC  
12140 Wickchester Lane  
Suite 100  
Houston, TX 77079  
glancaster@ngande.com  
Date: August 29, 2022

**Appendix A**  
**BEFORE THE**  
**PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Pennsylvania Public Utility Commission,  
Bureau of Investigation and Enforcement

v.

National Gas & Electric, LLC

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Docket No. M-2022-2633098

**PROPOSED ORDERING PARAGRAPHS**

1. That the Joint Petition for Approval of Settlement filed on August 29, 2022 between the Pennsylvania Public Utility Commission’s Bureau of Investigation and Enforcement and National Gas & Electric, LLC is approved in its entirety without modification.

2. That, in accordance with Section 3301(c) of the Public Utility Code, 66 Pa.C.S. § 3301(c), within thirty (30) days of the date this Order becomes final, National Gas & Electric, LLC shall pay a civil penalty of Fifteen Thousand Two Hundred and Fifty Dollars (\$15,250.00). Said payment shall be made by wire transfer directly to the Commonwealth of Pennsylvania (utilizing wire transfer instructions provided by the Bureau of Investigation and Enforcement to National Gas & Electric, LLC).

3. That the civil penalty shall not be tax deductible nor passed through as an additional charge to National Gas

and Electric, LLC’s customers in Pennsylvania.

4. Within thirty (30) days of the date this Order becomes final, National Gas & Electric, LLC shall provide to each of the customers, who were invalidly enrolled with National Gas & Electric, LLC, a refund equal to that customer’s first two (2) months of electric generation supply charges pursuant to 52 Pa. Code § 57.177(b). Following payment of the refunds, National Gas & Electric, LLC shall file with the Commission a verification acknowledging that all refund payments have been disbursed.

5. A copy of this Opinion and Order shall be served upon the Financial and Assessment Chief, Bureau of Administration.

6. That the above-captioned matter shall be marked closed upon receipt of the civil penalty and verification indicating that all customer refunds have been disbursed.

**Appendix B**  
**BEFORE THE**  
**PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Pennsylvania Public Utility Commission,  
Bureau of Investigation and Enforcement

v.

National Gas & Electric, LLC

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Docket No. M-2022-2633098

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**THE BUREAU OF INVESTIGATION AND ENFORCEMENT'S STATEMENT IN SUPPORT OF THE JOINT  
PETITION FOR APPROVAL OF SETTLEMENT**

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TO THE HONORABLE PENNSYLVANIA PUBLIC UTILITY COMMISSION:

Pursuant to 52 Pa. Code §§ 5.231, 5.232 and 69.1201, the Pennsylvania Public Utility Commission's ("Commission") Bureau of Investigation and Enforcement ("I&E"), a signatory party to the Joint Petition for Approval of Settlement ("Settlement" or "Settlement Agreement") filed in the matter docketed above, submits this Statement in Support of the Settlement Agreement between I&E and National Gas & Electric, LLC ("NG&E" or "Company").<sup>11</sup> I&E avers that the terms and conditions of the Settlement are just and reasonable and in the public interest for the reasons set forth herein.

### 1. Background

The Commission's Office of Competitive Market Oversight ("OCMO") initiated a referral to I&E regarding six (6) informal complaints made by NG&E's customers. According to OCMO, the complaints reflected the possibility that customers were being charged more than the rate they contracted for with NG&E or enrolled without proper authorization.

To ensure that customers were being properly enrolled and that the Company was abiding by Commission regulations and relevant statutes, I&E initiated an informal investigation requesting, inter alia, that NG&E provide copies of all third-party verifications ("TPV") recorded by the Company and/or its agent(s) within the six (6) month time period from April 2019 to October 29, 2019. In response, NG&E provided I&E with approximately 907 recordings of TPVs completed from May 5, 2019 to September 16, 2019.

I&E's informal investigation concluded that sufficient data had been gathered to substantiate alleged violations<sup>12</sup> of the Commission's regulations in connection with the TPVs recorded by NG&E and/or its agents. Specifically, I&E alleged that NG&E and/or its agents failed to obtain direct oral confirmation or written authorization from the customer to change the EGS which resulted in physically switching the EGS of that account without the proper authorization of the customer or without proper verification (hereinafter referred to as "slamming") in violation of 52 Pa. Code §§ 54.42(a)(9), 54.43(f), 54.122(3), 57.171—179, and 111.12(d)(1) (multiple counts), engaged in fraudulent, deceptive or otherwise unlawful acts in the process of marketing and selling EGS services of the Company to Pennsylvania consumers in violation of 52 Pa. Code §§ 54.43(f), 54.122(3), and 111.12(d)(1) (multiple counts), entered into a sales agreement or changed the commodity provider for a consumer that was not personally accepted by the EDC Customer of Record in violation of 52 Pa. Code § 57.175 (two counts), and failed to finalize the transaction process before initiating the verification process, which resulted in the verification process not being separated from the transaction process in violation of 52 Pa. Code § 111.7(b)(2) (five counts).

While the source of the issue appears to have been the actions of NG&E's third-party vendor, Commission precedent holds the licensed entity responsible for the actions of its employees, agents, vendors, or contractors. See 52 Pa. Code § 54.43(f). In making a determination that the

instant Settlement was appropriate, I&E weighed the Commission's clear "zero tolerance" policy regarding slamming against various mitigating circumstances that are present here.

Importantly, NG&E has been cooperative with I&E by identifying policies and procedures that can be further improved to assist NG&E in enhancing consumer protection and its marketing and sales practices and to satisfy the commitments that I&E has required in the settlement process. I&E also acknowledges that NG&E fully cooperated with I&E's investigation. NG&E responded to I&E's requests for information regarding the alleged violations and provided I&E with records, correspondence, and other documents associated with such allegations. Moreover, I&E and NG&E actively explored the possibility of resolving this investigation.

On August 29, 2022, the Parties filed a Joint Petition for Approval of Settlement resolving all issues between I&E and NG&E in the instant matter. This Statement in Support is submitted in conjunction with the Settlement Agreement.

### 2. The Public Interest

Pursuant to the Commission's policy of encouraging settlements that are reasonable and in the public interest, the Parties held a series of settlement discussions. These discussions culminated in this Settlement Agreement, which, once approved, will resolve all issues related to I&E's informal investigation.

I&E intended to prove the factual allegations set forth in its investigation at hearing. This Settlement Agreement results from the compromises of the Parties. NG&E recognizes the concerns related to the unauthorized customer enrollments, deceptive marketing and sales practices, unauthorized person(s) acting on behalf of a customer, and initiation of the verification process before finalizing the transaction process. NG&E commits to fully complying with the Commission's regulations in the future.

Further, I&E recognizes that, given the inherent unpredictability of the outcome of a contested proceeding, the benefits to amicably resolving the disputed issues through settlement outweigh the risks and expenditures of litigation. I&E submits that the Settlement constitutes a reasonable compromise of the issues presented and is in the public interest as it provides for a number of relevant remedial measures as well as a civil penalty. As such, I&E respectfully requests that the Commission approve the Settlement without modification.

### 3. Terms of Settlement

Under the terms of the Settlement Agreement, I&E and NG&E have agreed to the following:

A. NG&E will pay a civil penalty in the amount of Fifteen Thousand Two Hundred and Fifty Dollars (\$15,250.00), broken down as follows:

i. A civil penalty of One Thousand Dollars (\$1,000) for each of the six (6) unauthorized customer enrollments, totaling Six Thousand Dollars (\$6,000);

<sup>11</sup> I&E and NG&E are collectively referred to herein as the "Parties."

<sup>12</sup> These alleged violations occurred from September 13, 2019 through September 16, 2019.



ii. A civil penalty of One Thousand Dollars (\$1,000) for each of the four (4) instances of deceptive marketing and sales practices, totaling Four Thousand Dollars (\$4,000);

iii. A civil penalty of Seven Hundred and Fifty Dollars (\$750) for each of the two (2) instances of an unauthorized person acting on behalf of a customer, totaling One Thousand Five Hundred Dollars (\$1,500); and

iv. A civil penalty of Seven Hundred and Fifty Dollars (\$750) for each of the five (5) instances where the verification process was not separated from the transaction process, totaling Three Thousand Seven Hundred and Fifty Dollars (\$3,750).

Said payment shall be made by wire transfer directly to the Commonwealth of Pennsylvania (utilizing wire transfer instructions provided by the Bureau of Investigation and Enforcement to NG&E) within thirty (30) days of the entry date of the Commission's Final Order approving the Settlement Agreement. The civil penalty shall not be tax deductible pursuant to Section 162(f) of the Internal Revenue Code, 26 U.S.C.S. § 162(f) and shall not be passed through as an additional charge to NG&E's customers in Pennsylvania.

B. NG&E will take or has taken corrective action and implemented revisions to its operating procedures which will act as safeguards against future instances of unauthorized customer enrollments, deceptive marketing and sales practices, unauthorized person(s) acting on behalf of a customer, and initiating the verification process before finalizing the transaction process. The pertinent portions of NG&E's modified procedures are briefly described as follows:

i. NG&E will provide I&E staff with a monthly report of the number of customer complaints received by the Company directly from customers in Pennsylvania related to allegations of overbilling, slamming and/or fraudulent, deceptive or other unlawful marketing and sales of EGS products and/or services performed by NG&E or its agent. The report will categorize the complaints by type of allegation (i.e., unauthorized enrollment, deceptive marketing/sales, charged incorrect rate, etc.) and the form of marketing utilized by the Company (i.e., door-to-door, telemarketing, mailing, other). The report will be provided to I&E staff by the 15th of each month containing the customer complaint data from the previous month. This requirement will remain in effect for one (1) year after the entry of a Commission final order in this matter and may be extended at the discretion of I&E staff.

ii. For each customer identified in I&E's informal investigation that was invalidly enrolled with NG&E, the Company will provide a refund equal to that customer's first two (2) months of EGS charges pursuant to 52 Pa. Code § 57.177(b). NG&E will issue the customer refunds within thirty (30) days of the entry date of the Commission's Final Order approving the Settlement Agreement. Pursuant to 52 Pa. Code § 5.591, following payment of the refunds, NG&E will file with the Commission a verification acknowledging that all refund payments have been disbursed, satisfying this settlement provision.

iii. NG&E will provide training to all marketing and sales persons on conducting a no-pressure sales call and enforcing the concept that a customer is not required to choose a supplier or switch suppliers.

iv. NG&E shall add the following questions to all TPVs, whether via live agent or an interactive voice response system:

1. Do you understand that NG&E is not your electric utility?

2. Do you understand that you are not required to switch to NG&E in order to continue receiving electric service?

3. Does your name appear on the electric bill?

v. NG&E and its agents will commit to complying with 52 Pa. Code § 57.175 and shall not enter into a sales agreement or change the commodity provider for any consumer that is not personally accepted by the EDC Customer of Record or by a person purporting to be authorized to act on behalf of the Customer of Record. If the consumer answers that his/her name does not appear on the electric bill, NG&E and its agents shall first request that the consumer produce the person whose name appears on the electric bill to verify authorization to switch. If the customer of record is not available, NG&E and its agents shall then request that the consumer verify that he or she is authorized by the person whose name is on the bill to consent to changes in electric generation service for the account. If the consumer cannot verify such authorization, the sales solicitation and TPV must immediately end.

vi. NG&E and its agents shall fully comply with the Commission's regulations for third-party verifications, including but not limited to 52 Pa. Code § 111.7 and agrees that all TPVs will be performed outside the presence of the NG&E sales representative. The NG&E in-person sales representative shall leave the premises during the TPV in accordance with the Commission's regulations.

vii. NG&E and its agents shall not prompt consumers' responses to TPV questions, instruct the consumers as to the manner in which to respond to TPV questions, or otherwise participate in the TPV of any sale.

viii. As part of the quality assurance process, NG&E and its agents shall be instructed to reject an enrollment, even if it had cleared TPV, if the customer sounded uncertain, confused, or suspicious in any way.

In consideration of NG&E's payment of a monetary civil penalty and its compliance with the non-monetary terms of this settlement, as specified herein, I&E agrees that its informal investigation relating to NG&E's conduct as described in the Settlement Agreement referenced herein shall be terminated and marked closed upon approval by the Commission of the Settlement Agreement without modification and receipt of the civil penalty.

Upon Commission approval of the Settlement in its entirety without modification, I&E will not file any complaints or initiate other action against NG&E at the Commission with respect to the allegations which were the subject of I&E's instant investigation.

#### 4. *Legal Standard for Settlement Agreements*

Commission policy promotes settlements. See 52 Pa. Code § 5.231. Settlements lessen the time and expense that the parties must expend litigating a case and, at the same time, conserve precious administrative resources. Settlement results are often preferable to those

achieved at the conclusion of a fully litigated proceeding. “The focus of inquiry for determining whether a proposed settlement should be recommended for approval is not a ‘burden of proof’ standard, as is utilized for contested matters.” *Pa. Pub. Util. Comm’n, et al. v. City of Lancaster—Bureau of Water*, Docket Nos. R-2010-2179103, et al. (Order entered July 14, 2011) at p. 11. Instead, the benchmark for determining the acceptability of a settlement is whether the proposed terms and conditions are in the public interest. *Pa. Pub. Util. Comm’n v. Philadelphia Gas Works*, Docket No. M-00031768 (Order entered January 7, 2004).

I&E submits that approval of the Settlement Agreement in the above-captioned matter is consistent with the Commission’s Policy Statement regarding Factors and Standards for Evaluating Litigated and Settled Proceedings Involving Violations of the Public Utility Code and Commission Regulations (“Policy Statement”), 52 Pa. Code § 69.1201; See also *Joseph A. Rosi v. Bell-Atlantic-Pennsylvania, Inc.*, Docket No. C-00992409 (Order entered March 16, 2000). The Commission’s Policy Statement sets forth ten (10) factors that the Commission may consider in evaluating whether a civil penalty for violating a Commission order, regulation, or statute is appropriate, as well as whether a proposed settlement for a violation is reasonable and in the public interest. 52 Pa. Code § 69.1201.

The Commission will not apply the factors as strictly in settled cases as in litigated cases. 52 Pa. Code § 69.1201(b). While many of the same factors may still be considered, in settled cases, the parties “will be afforded flexibility in reaching amicable resolutions to complaints and other matters as long as the settlement is in the public interest.” *Id.*

The first factor considers whether the conduct at issue was of a serious nature, such as willful fraud or misrepresentation, or if the conduct was less egregious, such as an administrative or technical error. Conduct of a more serious nature may warrant a higher civil penalty while conduct that is less egregious warrants a lower amount. 52 Pa. Code § 69.1201(c)(1). I&E submits that the violations at issue in this matter are of a serious nature in that they involve allegations of slamming and deceptive marketing and sales practices. The Commission has stated that it maintains a “zero tolerance” policy regarding slamming and unlawful activity that threatens to harm consumers and the burgeoning retail electricity market in Pennsylvania. See *Pa. Pub. Util. Comm’n v. MXenergy Electric Inc.*, M-2012-2201861 (Order entered May 3, 2012). Consequently, the seriousness of these violations is reflected in the agreed-upon civil penalty set forth in the Settlement.

The second factor considers whether the resulting consequences of NG&E’s alleged conduct were of a serious nature. When consequences of a serious nature are involved, such as personal injury or property damage, the consequences may warrant a higher penalty. 52 Pa. Code § 69.1201(c)(2). I&E submits that no personal injury or property damage occurred as a result of the alleged violations. However, the consequences of the alleged violations may have resulted in customers, who received electric generation supplied by NG&E, being charged a more expensive rate than what they had been charged by the local electric distribution company’s default service

price or the rate of another EGS. Accordingly, I&E avers that some customers may have experienced financial consequences as a result of the actions of NG&E’s agents and such consequences should be deemed serious. Nevertheless, under the Settlement, NG&E will provide a full refund for the entire electric generation supply portion on these customers’ bills for the first two (2) months of EGS charges which will serve to alleviate these consequences.

The third factor to be considered under the Policy Statement is whether the alleged conduct was intentional or negligent. 52 Pa. Code § 69.1201(c)(3). “This factor may only be considered in evaluating litigated cases.” *Id.* Whether NG&E’s alleged conduct was intentional or negligent does not apply since this matter is being resolved by settlement of the Parties.

The fourth factor to be considered is whether NG&E has made efforts to change its practices and procedures to prevent similar conduct in the future. 52 Pa. Code § 69.1201(c)(4). NG&E has extensive practices and procedures in place to train agents, conduct quality assurance, and ensure the proper enrollment of customers. NG&E has also agreed to provide I&E with a monthly report by the 15th of each month, for a period of one (1) year, detailing complaints from Pennsylvania consumers that were received by the Company related to allegations of overbilling, slamming and/or fraudulent, deceptive or other unlawful marketing and sales of EGS products and/or services performed by NG&E or its agents. Each of these remedial actions and commitments address the conduct at issue and are designed to enhance consumer protection and NG&E’s marketing and sales practices and prevent similar conduct from occurring again.

The fifth factor to be considered relates to the number of customers affected by the Company’s actions and the duration of the violations. 52 Pa. Code § 69.1201(c)(5). I&E’s investigation revealed that ten (10) customers were affected by NG&E’s misconduct. Specifically, six (6) customer accounts were switched to receive electric generation service provided by NG&E without proper authorization.

The sixth factor to be considered relates to the compliance history of NG&E. 52 Pa. Code § 69.1201(c)(6). An isolated incident from an otherwise compliant company may result in a lower penalty, whereas frequent, recurrent violations by a company may result in a higher penalty. *Id.*

In *Pa. Pub. Util. Comm’n v. National Gas & Electric, LLC*, Docket No. M-2020-2637688 (Order entered August 5, 2021), I&E initiated an investigation of NG&E regarding the Company’s marketing material which improperly contained the confidential and personal information of a PPL Electric Utilities (“PPL”) customer and was mailed to 90,634 prospective customers. The marketing material also contained information about PPL’s default rate that was outdated by the time it reached 2,500 prospective customers. While the Company advised that such misconduct was due to the fault of its third-party vendor, I&E determined that NG&E failed to maintain the confidentiality of a consumer’s personal information in violation of 52 Pa. Code § 54.43(d), misrepresented savings offered by NG&E in violation of 52 Pa. Code § 111.12(d)(2), provided inaccurate and untimely information about PPL’s rates being offered in violation of 52 Pa. Code § 111.12(d)(4),

and as a result of the marketing material that misrepresented savings with NG&E and provided inaccurate and untimely information about PPL's rates, customers were enrolled with NG&E in violation of 52 Pa. Code § 111.12(d)(1). Id. In this case, the Commission approved a settlement agreement ordering NG&E to pay a civil penalty of \$120,000 and a contribution into PPL's hardship fund in the amount of \$30,000. Id.

To date, I&E is not aware of any formal complaint being filed against NG&E regarding this matter. Other than the aforementioned matter involving NG&E, there have been no proceedings in which the Commission has made findings of violations against NG&E. Therefore, I&E submits that the compliance history of the Company poses no barrier to approval of the Settlement between the Parties.

The seventh factor to be considered relates to whether the Company cooperated with the Commission's investigation. 52 Pa. Code § 69.1201(c)(7). I&E submits that NG&E fully cooperated in the investigation in this matter, including cooperating in both informal discovery as well as settlement discussions.

The eighth factor to be considered is the appropriate settlement amount necessary to deter future violations. 52 Pa. Code § 69.1201(c)(8). The size of the company may be considered to determine an appropriate penalty amount. Id. I&E submits that a civil penalty amount of \$15,250.00 is substantial and sufficient to deter NG&E from committing future violations.

The ninth factor to be considered relates to past Commission decisions in similar situations. 52 Pa. Code § 69.1201(c)(9). The Settlement Agreement between I&E and NG&E provides a civil penalty of \$1,000 for each instance of slamming and for each instance of deceptive marketing and sales practices. This \$1,000 per instance civil penalty is identical to the penalty imposed by the Commission in previous slamming cases and matters involving deceptive sales practices and misrepresentations committed by third-party agents. See *Pa. Pub. Util. Comm'n v. MXenergy Electric Inc.*, Docket No. M-2012-2201861 (Order entered August 29, 2013), *Pa. Pub. Util. Comm'n v. Energy Services, Providers, Inc. d/b/a Pa. Gas & Electric and U.S. Gas & Electric, Inc. d/b/a Pa. Gas & Electric*, Docket No. M-2013-2325122 (Order entered October 2, 2014), *Pa. Pub. Util. Comm'n v. ResCom Energy LLC*, Docket No. M-2013-2320112 (Order entered November 13, 2014), and *Pa. Pub. Util. Comm'n v. Liberty Power Holdings, LLC*, Docket No. M-2019-2568471 (Order entered April 15, 2021).

Further, just as was the case in prior matters concerning slamming and deceptive sales practices, NG&E has since undertaken additional non-monetary corrective actions designed to prevent similar misconduct from occurring in the future.

The tenth factor considers "other relevant factors." 52 Pa. Code § 69.1201(c)(10). I&E submits that an additional relevant factor—whether the case was settled or litigated—is of pivotal importance to this Settlement Agreement. A settlement avoids the necessity for the governmental agency to prove elements of each allegation. In return, the opposing party in a settlement agrees to a lesser fine or penalty, or other remedial action. Both parties negotiate from their initial litigation positions. The fines and penalties, and other remedial actions resulting from a fully litigated proceeding are difficult to predict and can differ from those that result from a settlement. Reasonable settlement terms can represent economic and programmatic compromise while allowing the parties to move forward and to focus on implementing the agreed upon remedial actions.

In conclusion, I&E fully supports the terms and conditions of the Settlement Agreement. The terms of the Settlement Agreement reflect a carefully balanced compromise of the interests of the Parties in this proceeding. The Parties believe that approval of this Settlement Agreement is in the public interest. Acceptance of this Settlement Agreement avoids the necessity of further administrative and potential appellate proceedings at what would have been a substantial cost to the Parties.

Wherefore, I&E supports the Settlement Agreement as being in the public interest and respectfully requests that the Commission approve the Settlement in its entirety without modification.

Respectfully submitted,  
 Kourtney L. Myers  
 Prosecutor  
 Bureau of Investigation & Enforcement  
 PA Attorney ID No. 316494

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 Dated: August 29, 2022

**Appendix C**

**BEFORE THE  
 PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Pennsylvania Public Utility Commission, Bureau  
 of Investigation and Enforcement  
 Complainant

v.

National Gas & Electric, LLC  
 Respondent

Docket No. M-2022-2633098



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**STATEMENT IN SUPPORT OF SETTLEMENT OF NATIONAL GAS & ELECTRIC, LLC**


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Pursuant to 52 Pa. Code §§ 5.231, 5.232, and 69.1201, Respondent, National Gas & Electric, LLC (“NG&E” or the “Company”), a signatory party to the Joint Petition for Approval of Settlement (“Settlement” or “Settlement Agreement”) filed in the matter docketed above, submits this Statement in Support of the Settlement Agreement between I&E and National Gas & Electric, LLC (“NG&E” or “Company”).<sup>13</sup> For the reasons set forth below, NG&E avers that the terms and conditions of the Settlement are just, reasonable, and in the public interest, and, therefore, should be approved by the Pennsylvania Public Utility Commission (“Commission”).

### I. Background

This Settlement provides for an expeditious resolution of a contested matter initiated by a referral from the Commission’s Office of Competitive Market Oversight (“OCMO”) to I&E regarding six (6) informal complaints made by NG&E. According to OCMO, the six complaints reflected the possibility that NG&E’s customers were charged more than the rate they contracted for with NG & E or were enrolled without proper authorization.

To ensure that customers were being properly enrolled by NG&E in accordance with pertinent Commission regulations and statutes, I&E initiated an informal investigation requesting, among other things, that NG&E provide copies of all third-party verifications (“TPV”) recorded by the Company and/or its agent(s) within the six (6) month time period from April 2019 to October 29, 2019. In response, NG&E furnished I&E with approximately 907 recordings of TPVs that had completed from May 5, 2019 to September 16, 2019, and I&E determined that the six violations referenced herein occurred between September 13—16, 2019.

Specifically, I&E alleged that NG&E and/or its agents: (a) failed to obtain direct oral confirmation or written authorization from the customer to change the EGS which resulted in physically switching the EGS of that account without the proper authorization of the customer or without proper verification (i.e., “slamming”) in violation of 52 Pa. Code §§ 54.42(a)(9), 54.43(f), 54.122(3), 57.171—179, and 111.12(d)(1) (multiple counts); (b) engaged in fraudulent, deceptive or otherwise unlawful acts in the process of marketing and selling EGS services of the Company to Pennsylvania consumers in violation of 52 Pa. Code §§ 54.43(f), 54.122(3), and 111.12(d)(1) (multiple counts); (c) entered into a sales agreement or changed the commodity provider for a consumer that was not personally accepted by the EDC Customer of Record in violation of 52 Pa. Code § 57.175 (two counts); and (d) failed to finalize the transaction process before initiating the verification process, which resulted in the verification process not being separated from the transaction process in violation of 52 Pa. Code § 111.7(b)(2) (five counts).

While the Commission recognizes that the actions that resulted in the violations detailed above were the actions of a third party vendor of NG&E, as the licensed entity privileged to engage in the retail energy business in the Commonwealth of Pennsylvania, NG&E acknowledges and accepts responsibility for the actions of our employees, agents, contractors, and vendors See 52 Pa. Code

§ 54.43(f). In addition to acknowledging responsibility for the actions of its vendor, NG&E would also emphasize that, as further mitigating circumstances, NG&E provided I&E with records, correspondence, and other documentation responsive to I&E’s requests; identified policies and procedures with respect to its marketing and sales practices in which NG&E could enhance consumer protection; and has otherwise fully cooperated with I&E throughout the investigation and settlement process.

Furthermore, NG&E would point that it has taken strong corrective action by implementing revisions to its training and operating procedures for not only its own employees, but by ensuring that the Company practices and procedures are adopted and uniformly observed by its contractors and third party vendors. NG&E and I&E both assert that this corrective action will act as safeguards against future instances of unauthorized customer enrollments, deceptive marketing and sales practices, unauthorized person(s) acting on behalf of a customer and initiating the verification process before finalizing the transaction process.

### II. This Settlement is in the Public Interest

The Commission has stated that settlement results are often preferable to those achieved at the conclusion of a fully litigated proceeding. 52 Pa. Code § 69.401. “The focus of inquiry for determining whether a proposed settlement should be recommended for approval is not a ‘burden of proof’ standard as would be utilized for contested matters.” *Pa. Pub. Util. Comm’n, et al. v. City of Lancaster—Bureau of Water*, Docket Nos. R-2010-2179103, et al. (Order entered July 14, 2011) at p. 11. Instead, the benchmark for determining the acceptability of a settlement is whether the proposed terms and conditions are in the public interest. See *Pa. Pub. Util. Comm’n LBPS v. PPL Utilities Corporation*, M-2009-2058182 (Order entered November 23, 2009); *Pa. Pub. Util. Comm’n v. Philadelphia Gas Works*, M-00031768 (Order entered January 7, 2004); 52 Pa. Code § 69.1201; *Warner v. GTE North, Inc.*, Docket No. C-00902815 (Order entered April 1, 1996); *Pa. Pub. Util. Comm’n v. CS Water and Sewer Associates*, 74 Pa. PUC 767 (1991).

NG&E submits that approval of the Settlement in this matter is consistent with the Commission’s Policy for Litigated and Settled Proceedings Involving Violations of the Code and Commission Regulations (“Policy Statement”). 52 Pa. Code § 69.1201; See also *Joseph A. Rosi v. Bell-Atlantic Pa., Inc.*, Docket No. C-00992409 (Order entered March 16, 2000). The Commission will not apply the standards as strictly in settled cases as in litigated cases. *Id.* at § 69.1201(b). In settled cases, the parties “will be afforded flexibility in reaching amicable resolutions to complaints and other matters so long as the settlement is in the public interest.” *Id.* NG&E submits that the Settlement is in the public interest because it: (a) is a complete and final resolution of this proceeding; (b) effectively addresses the issues of concern to I&E; and (c) avoids the time and expense of litigation and possible appeals.

### III. This Settlement Agreement Meets All Legal Standards

The Commission’s Policy Statement sets forth ten factors that the Commission may consider in evaluating

<sup>13</sup> I&E and NG&E are collectively referred to herein as the “Parties.”

whether a civil penalty for violating a Commission order, regulation, or statute is appropriate, as well as whether a proposed settlement for an alleged violation is reasonable and in the public interest. 52 Pa. Code § 69.1201(a):

1. The first factor to be considered under the Policy Statement is whether the alleged actions were of a serious nature, such as willful fraud or misrepresentation, or were merely administrative or technical errors. 52 Pa. Code § 69.1201(c)(1). Since the alleged violations pertained to slamming and other deceptive marketing and sales practices, NG&E acknowledges that any such actions of NG&E's third party vendor would constitute serious violations as well as violation of Company practices and procedures. Accordingly, NG&E accepts responsibility for the actions of its vendors that prompted this investigation and finding of six violations by I&E, and NG&E has taken affirmative action to ensure that these mistakes are not repeated.

2. The second factor considers whether the resulting consequences of the actions were of a serious nature. 52 Pa. Code § 69.1201(c)(2). Section 69.1201(c)(2) of the Commission's regulations state that "[w]hen consequences of a serious nature are involved, such as personal injury or property damage, the consequences may warrant a higher penalty." *Id.* While no personal injury or property damage occurred as a result of the alleged violations, NG&E's electrical customers may have been charged a higher electricity rate than what they may have been charged by the local distribution company or by a competing supplier. To address this concern, NG&E has agreed to provide a full refund for the entire electric generation supply on the affected customers' bills for the first two (2) months of EGS charges under the terms of the Settlement.

3. The third factor to be considered under the Policy Statement is whether the alleged conduct was intentional or negligent. 52 Pa. Code § 69.1201(c)(3). In this case the conduct was caused by the actions of the Company's third party vendor so the conduct of NG&E on this factor should not be applicable by virtue of the Settlement.

4. The fourth factor to be considered under the Policy Statement is whether the Respondent has made efforts to change its practices and procedures to prevent similar conduct in the future. 52 Pa. Code § 69.1201(c)(4). NG&E already has extensive practices and procedures in place, but the Settlement outlines steps that the Company has agreed to undertake in regard to additional reporting and other remedial actions to address the conduct at issue in this investigation and to prevent the occurrence of similar conduct in the future.

5. The fifth factor to be considered under the Policy Statement relates to the number of customers affected by the Company's actions and the duration of its violations. 52 Pa. Code § 69.1201(c)(5). A total of ten (10) customers were affected by the improper conduct in this case and that six (6) accounts were switched to receive electric service without proper authorization.

6. The sixth factor to be considered under the Policy Statement is the compliance history of the regulated entity. 52 Pa. Code § 69.1201(c)(6). "An isolated incident from an otherwise compliant company may result in a lower penalty." *Id.* In *Pa. Pub. Util. Comm'n v. National Gas & Electric, LLC*, Docket No. M-2020-2637688 (Order

entered August 5, 2021), I&E initiated an investigation of NG&E regarding the Company's marketing material which improperly contained the confidential and personal information of a PPL Electric Utilities ("PPL") customer that was used in a postcard marketing campaign due to a mail merge error of its third party vendor which also failed to timely mail certain postcards, causing the rate savings to become outdated by the time it had received by about 2,500 prospective customers. In light of the civil penalties paid by NG&E and its contribution to the PPL hardship fund in this prior matter and the Company's overall compliance history with the Public Utility Code and the Commission's regulations should not pose any barrier to approval of the Settlement in this matter. NG&E would also point out that no formal complaint has been filed against NG&E in this matter.

7. The seventh factor to be considered under the Policy Statement relates to whether the Respondent cooperated with the Commission's investigation. 52 Pa. Code § 69.1201(c)(7). NG&E fully cooperated with I&E during the investigation of this matter as well as in the informal discovery conducted by I&E and in the settlement discussions leading up to the Settlement.

8. The eighth factor to be considered is whether the settlement amount is sufficient to deter future violations. 52 Pa. Code § 69.1201(c)(8). NG&E respectfully submits that the size of the civil penalty agreed to is a significant deterrent to future violations and, therefore, constitutes a reasonable and appropriate amount to resolve this matter.

9. The ninth factor to be considered under the Policy Statement relates to past Commission decisions in similar matters. 52 Pa. Code § 69.1201(c)(9). The Settlement Agreement between I&E and NG&E provides a civil penalty of \$1,000 for each instance of slamming and for each instance of deceptive marketing and sales practices. This \$1,000 per instance civil penalty is identical to the penalty imposed by the Commission in previous slamming cases and matters involving deceptive sales practices and misrepresentations committed by third-party agents. See *Pa. Pub. Util. Comm'n v. MXenergy Electric Inc.*, Docket No. M-2012-2201861 (Order entered August 29, 2013), *Pa. Pub. Util. Comm'n v. Energy Services, Providers, Inc. d/b/a Pa. Gas & Electric and U.S. Gas & Electric, Inc. d/b/a Pa. Gas & Electric*, Docket No. M-2013-2325122 (Order entered October 2, 2014), *Pa. Pub. Util. Comm'n v. ResCom Energy LLC*, Docket No. M-2013-2320112 (Order entered November 13, 2014), and *Pa. Pub. Util. Comm'n v. Liberty Power Holdings, LLC*, Docket No. M-2019-2568471 (Order entered April 15, 2021). NG&E would further point out that it has undertaken additional corrective actions of a non-monetary nature to ensure that similar misconduct does not occur in the future. Accordingly, the Company submits that approval of the Settlement Agreement is reasonable and appropriate as well as consistent with prior Commission decisions.

10. The tenth factor to consider is "other relevant factors." 52 Pa. Code § 69.1201(c)(10). Settlements avoid the time, expense, and uncertainty of litigation and the Commission generally encourages settlements as being in the public interest for this reason. Approval of the Settlement of the present case is warranted because of the mitigating factors outlined above that demonstrate that NG&E already had extensive practices and procedures to prevent the type of impermissible sales and marketing conduct by its third party vendor and that

NG&E has agreed to undertake additional training, reporting, and other remedial measures to prevent similar conduct in the future as well as to compensate the persons affected by the conduct in this matter. For these reasons and other reasons articulated in this Appendix C, NG&E respectfully submits that the Settlement meets the criteria for approval of settlements set forth in 52 Pa. Code § 69.1201.

In summary, NG&E respectfully submits that an evaluation of the Settlement Agreement under the factors and standards enunciated in the Commission’s Policy Statement justifies expeditious approval of the Settlement without modification. The Settlement provides for a significant civil penalty and business modifications that are

commensurate with the nature of the allegations and the number of customers affected, while avoiding the significant time, expense, and uncertainty of litigating the matter to conclusion.

Wherefore, NG&E respectfully submits that the above-captioned Settlement is in the public interest and should be approved and, therefore, requests that the Commission approve such Settlement without modification.

Respectfully Submitted,  
National Gas & Electric, LLC  
By:  
Name: Justin Snyder  
Title: President

**BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Pennsylvania Public Utility Commission,  
Bureau of Investigation and Enforcement

v.

National Gas & Electric, LLC

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Docket No. M-2022-2633098

**CERTIFICATE OF SERVICE**

I hereby certify that I have this day served a true copy of the foregoing document upon the parties, listed below, in accordance with the requirements of 52 Pa. Code § 1.54 (relating to service by a party).

*Service by Electronic Mail:*

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Dated: August 29, 2022

[Pa.B. Doc. No. 22-1766. Filed for public inspection November 11, 2022, 9:00 a.m.]

**PENNSYLVANIA PUBLIC  
UTILITY COMMISSION**

**T-Mobile Northeast, LLC and T-Mobile Central, LLC  
Petition for Relinquishment of Eligible Telecommunications Carrier Designation for Purposes of Receiving Low Income Support Only**

Public Meeting held  
October 27, 2022

*Commissioners Present:* Gladys Brown Dutrieuille, Chairperson; Stephen M. DeFrank, Vice Chairperson; Ralph V. Yanora; Kathryn L. Zerfuss; John F. Coleman, Jr.

*T-Mobile Northeast, LLC and T-Mobile Central, LLC  
Petition for Relinquishment of Eligible  
Telecommunications Carrier Designation for Purposes of  
Receiving Low Income Support Only; Docket Number  
P-2011-2275748*

**Order**

*By the Commission:*

On September 1, 2022, T-Mobile Northeast LLC and T-Mobile Central LLC (T-Mobile) filed a Petition with this Commission pursuant to 47 U.S.C. § 214(e)(4) of the United States Code and 47 CFR § 54.205 of the Code of Federal Regulations, seeking relinquishment of its eligible telecommunications carrier (ETC) designation for purposes of seeking low-income support only, effective



December 31, 2022.<sup>1</sup> T-Mobile's Petition was verified, satisfying 52 Pa. Code § 1.36. T-Mobile's Certificate of Service indicates that it served its Petition on the Office of Consumer Advocate, the Office of Small Business Advocate, the Commission's Bureau of Investigation and Enforcement and all carriers which are alternative ETCs in Pennsylvania. No responses were filed to the Petition.

T-Mobile is currently a facilities-based provider of mobile wireless service that was approved by the Pennsylvania Public Utility Commission (Commission) to operate as a Lifeline-only eligible telecommunications carrier (ETC) throughout the Commonwealth of Pennsylvania on May 24, 2012, at Docket Number P-2011-2275748 for the purposes of receiving low-income Lifeline support. In its Petition, T-Mobile states that upon reviewing its ongoing business plans, it has decided to relinquish its Lifeline-only ETC designation in Pennsylvania.<sup>2</sup> T-Mobile explains that it currently offers a variety of low-cost service plans to various customers in Pennsylvania including Connect by T-Mobile and Project 10 Million.<sup>3</sup> T-Mobile further explains that Connect by T-Mobile plans include talk, text and high speed data starting at \$10 per month.<sup>4</sup> Project 10 Million represents a \$10.7 billion investment over five years that offers individuals students and school districts free Internet access of 100 GB of data per year and mobile hotspots for 10 million eligible households.<sup>5</sup>

Furthermore, T-Mobile notes that its affiliates Assurance Wireless, USA L.P. and MetroPCS Pennsylvania LLC participate in the Federal Communications Commission's (FCC) Affordable Connectivity Program, which is an FCC benefit program that provides up to \$30 per month toward Internet service for eligible households, in addition other benefits.<sup>6</sup> Moreover, Assurance Wireless is also a Lifeline Provider in Pennsylvania.<sup>7</sup> Based upon these and other initiatives that T-Mobile is involved in, T-Mobile states that it has made the business decision to cease providing service as a Lifeline-only ETC in Pennsylvania.<sup>8</sup> Lastly T-Mobile states that it will no longer seek federal Lifeline support after December 31, 2022.<sup>9</sup> Based upon the foregoing, T-Mobile avers that its customers will not be disadvantaged by its abandonment of Lifeline service in Pennsylvania.

ETCs seeking to relinquish their ETC status in Pennsylvania must petition the Commission before relinquishing service. The Commission's rules and requirements for relinquishing ETC status is set forth in the Commission's September 3, 2013 Secretarial Letter that was sent to all Pennsylvania ETC's at Docket No. M-2013-2380576. Under the Telecommunications Act of 1998 (TA-96) and our rules governing petitions for relief, this Commission may grant a request to relinquish ECT status if the petitioning ETC demonstrates reliable, probative and substantial evidence of the following:

1. More than one ETC serves the service area(s) in question;

2. The ETC seeking to relinquish is ETC designation has provided advance notice to the Commission of such relinquishment;

3. The Commission, prior to authorizing the relinquishment, requires:

a. Remaining ETC(s) to ensure that all customers served by the relinquishing carrier will continue to be served;

b. Sufficient notice to permit the purchase or construction of adequate facilities by any remaining eligible telecommunications carrier.

47 U.S.C. § 214(e)(4). While the statute allows an ETC to relinquish its ETC status, and thus forego access to various federal funding sources, we note that the relinquishment process remains focused on preservation of universal service. To further the federal and its own state universal service goals, the Commission also requires the following:

1. All Petitions to relinquish ETC status must be accompanied by an affidavit or verification of an authorized individual;

2. The Petition must be served upon the statutory advocates, the Office of Consumer Advocate, Office of Small business Advocate, the Commission's Bureau of Enforcement & Investigation and all carriers referenced in the petition as being alternative ETCs;

3. Notice must be provided to all affected Lifeline customers as follows:

a. Written notice 90 days prior to the discontinuation of Lifeline service in the form of a stand-alone mailing separate from any billing or collections mailing;

b. Telephonic notice 60 days prior to the discontinuation of Lifeline service

c. Written notice 30 days prior to the discontinuation of Lifeline service in the form of a billing insert or stand-alone mailing;

4. The notices should inform affected customers of a date certain that Lifeline service will end, list alternative lifeline providers and offer assistance to those customers who wish to retain Lifeline service;

5. These notices must be attached to the Petition to Relinquish;

6. Petitioners are directed to ensure that the transition to another Lifeline provider is seamless for the Lifeline customer and ensure that the customer is not subject to additional connection fees or deposits. Also, the Petitioner is to assist the Lifeline customer with any lifeline certification occasioned by the petition.

In support of its Petition, T-Mobile states that it currently has approximately 995 customers in Pennsylvania and that it will provide the following notice to its customers:

- Written notice issued 90 days prior to the discontinuation of Lifeline service in the form of a stand-alone mailing that will be separate from any billing or collections mailing.

- A text message sent 60 days prior to the discontinuation of Lifeline service notifying customers of the discontinuation.

- Written notice issued 30 days prior to discontinuation of Lifeline service in the form of a billing insert or stand-alone mailing.<sup>10</sup>

T-Mobile attached a copy of the 90-day written notice to its Petition as Exhibit B. In a supplemental filing, which was filed on September 30, 2022, T-Mobile attached a copy of the text message and second letter that it had proposed it would send to its existing Lifeline customers.<sup>11</sup>

<sup>1</sup> By Commission Order entered March 11, 2021, T-Mobile relinquished its Mobility Fund Phase I High Cost ETC designation in the Commonwealth of Pennsylvania, effective December 31, 2020.

<sup>2</sup> Petition at 2.

<sup>3</sup> Id.

<sup>4</sup> Id. at 2, 3. See also, Press Release, T-Mobile, T-Mobile Launches Early to Help the Most Vulnerable in America Get and Stay Connected (March 23, 2020); <https://www.t-mobile.com/news/offers/tmobile-connect-launch>. See <https://prepaid.t-mobile.com/prepaid-plans/connect>.

<sup>5</sup> Id. at 3. See also, Project 10 Million Launch Page, T-Mobile.com, <https://www.t-mobile.com/business/education/project-10-million>.

<sup>6</sup> Id. at 3.

<sup>7</sup> Id. at 3.

<sup>8</sup> Id. at 3.

<sup>9</sup> Id. at 3.

<sup>10</sup> Id. at 6.

<sup>11</sup> September 30, 2022 Supplemental filing.

As mentioned earlier, T-Mobile states in its Petition that it will cease its provision of wireless telephone service to its existing customers effective December 31, 2022. In addition, following relinquishment of its ETC designation, effective December 31, 2022, T-Mobile states that it will provide customers with 60 additional days of courtesy credits in the amount of their Lifeline discount.<sup>12</sup> T-Mobile avers that this will afford its Lifeline customers with even more time to select an alternative calling plan, remain on their existing plan without the Lifeline discount, or obtain discounted Lifeline service from another Lifeline provider.<sup>13</sup>

T-Mobile further asserts that it satisfies or has made detailed plans to comply with all of the federal and state criteria for obtaining relinquishment of its ETC designation. Specifically, T-Mobile states 1) there is currently more than one ETC serving T-Mobile's service area; 2) T-Mobile is providing advance notice to the Commission of its cessation of service to its customers; 3) the remaining ETCs in the market are able to serve the Lifeline needs of consumers within their respective designated ETC service areas that cover the ETC service area; and 4) no additional facilities will need to be purchased or constructed by the remaining ETCs.<sup>14</sup>

Based on its Petition and the evidence submitted thereafter in this proceeding, we find that T-Mobile has given appropriate and sufficient notice to us regarding its planned abandonment. We also note that T-Mobile plans to issue a 90-day written notice as well as other subsequent communications to its existing Lifeline customers. We determine that these communications will give T-Mobile's existing Lifeline customers detailed information regarding its planned cessation of Lifeline service and also ample time to obtain service from an alternative Lifeline provider operating in that same geographic region. Therefore, we conclude that by issuing its planned 90-day written notice and the other subsequent communications to its Lifeline customers, T-Mobile would have made "good faith" efforts to ensure that its remaining Lifeline customers can take the adequate steps to make the preparatory arrangements to obtain service from alternative Lifeline providers in this same service area. Notwithstanding, we will direct T-Mobile to provide us with dates of the issuance of its planned communications with its Lifeline customers and the number of its remaining Lifeline customers, if any, by no later than December 1, 2022.

Upon full consideration of all matters of record pertaining to the Petition, we find that approval of T-Mobile's Petition to relinquish its ETC designation is in the public interest; *Therefore,*

*It Is Ordered That:*

1. T-Mobile Northeast LLC and T-Mobile Central LLC's request to relinquish its ETC designation, effective December 31, 2022, is hereby approved as being in the public interest.

2. T-Mobile Northeast LLC and T-Mobile Central LLC shall file a report with the Commission that provides the dates of its communications with its existing Lifeline customer base and also with the number of its remaining Lifeline customers, if any, by no later than December 1, 2022.

3. The Secretary serve a copy of this Order upon the Office of Consumer Advocate, the Office of Small Business Advocate, and the Bureau of Investigation & Enforcement.

<sup>12</sup> Petition at 6.

<sup>13</sup> *Id.* at 7.

<sup>14</sup> *Id.* at 4, 5.

4. A copy of this Order be published in the *Pennsylvania Bulletin*.

5. This docket shall be marked closed as of December 31, 2022.

ROSEMARY CHIAVETTA,  
*Secretary*

ORDER ADOPTED: October 27, 2022

ORDER ENTERED: October 27, 2022

[Pa.B. Doc. No. 22-1767. Filed for public inspection November 11, 2022, 9:00 a.m.]

## PENNSYLVANIA PUBLIC UTILITY COMMISSION

### Telecommunications

**A-2022-3036435. Commonwealth Telephone Company, LLC, d/b/a Frontier Communications Commonwealth Telephone Company and CenturyLink Communications, LLC.** Joint petition of Commonwealth Telephone Company, LLC, d/b/a Frontier Communications Commonwealth Telephone Company and CenturyLink Communications, LLC for approval of a second amendment to interconnection agreement under section 252(e) of the Telecommunications Act of 1996.

Commonwealth Telephone Company, LLC, d/b/a Frontier Communications Commonwealth Telephone Company and CenturyLink Communications, LLC, by their counsel, filed on October 31, 2022, at the Pennsylvania Public Utility Commission (Commission), a joint petition for approval of a second amendment to the interconnection agreement under sections 251 and 252 of the Telecommunications Act of 1996.

Interested parties may file comments concerning the petition and agreement with the Secretary, Pennsylvania Public Utility Commission, 400 North Street, Harrisburg, PA 17120. Comments are due on or before 10 days after the date of publication of this notice. The documents filed in support of Commonwealth Telephone Company, LLC, d/b/a Frontier Communications Commonwealth Telephone Company and CenturyLink Communications, LLC joint petition are available for inspection at the Commission's web site at [www.puc.pa.gov](http://www.puc.pa.gov) and at the applicant's business web site.

The contact person is Kathryn Sophy, Director, Office of Special Assistants, (717) 787-1827.

ROSEMARY CHIAVETTA,  
*Secretary*

[Pa.B. Doc. No. 22-1768. Filed for public inspection November 11, 2022, 9:00 a.m.]

## PENNSYLVANIA PUBLIC UTILITY COMMISSION

### Telecommunications

**A-2022-3036436. Frontier Communications of Breezewood, LLC, Frontier Communications of Canton, LLC, Frontier Communications of Lakewood, LLC, Frontier Communications of Oswayo River, LLC, Frontier Communications of Pennsylvania, LLC and**

**CenturyLink Communications, LLC.** Joint petition of Frontier Communications of Breezewood, LLC, Frontier Communications of Canton, LLC, Frontier Communications of Lakewood, LLC, Frontier Communications of Oswayo River, LLC, Frontier Communications of Pennsylvania, LLC and CenturyLink Communications, LLC for approval of a second amendment to the interconnection agreement under section 252(e) of the Telecommunications Act of 1996.

Frontier Communications of Breezewood, LLC, Frontier Communications of Canton, LLC, Frontier Communications of Lakewood, LLC, Frontier Communications of Oswayo River, LLC, Frontier Communications of Pennsylvania, LLC and CenturyLink Communications, LLC, by their counsel, filed on October 31, 2022, at the Pennsylvania Public Utility Commission (Commission), a joint petition for approval of a second amendment to the interconnection agreement under sections 251 and 252 of the Telecommunications Act of 1996.

Interested parties may file comments concerning the petition and agreement with the Secretary, Pennsylvania Public Utility Commission, 400 North Street, Harrisburg, PA 17120. Comments are due on or before 10 days after the date of publication of this notice. The documents filed in support of Frontier Communications of Breezewood, LLC, Frontier Communications of Canton, LLC, Frontier Communications of Lakewood, LLC, Frontier Communications of Oswayo River, LLC, Frontier Communications of Pennsylvania, LLC and CenturyLink Communications, LLC joint petition are available for inspection at the Commission's web site at [www.puc.pa.gov](http://www.puc.pa.gov) and at the applicant's business web site.

The contact person is Kathryn Sophy, Director, Office of Special Assistants, (717) 787-1827.

ROSEMARY CHIAVETTA,  
*Secretary*

[Pa.B. Doc. No. 22-1769. Filed for public inspection November 11, 2022, 9:00 a.m.]

## STATE ATHLETIC COMMISSION

### Public Meetings for 2023

The State Athletic Commission (Commission) of the Department of State announces its schedule for regular meetings to be held at least once every 2 months in 2023 under 5 Pa.C.S. § 103 (relating to duties of Commission). These meetings will be held in Room 303, North Office Building, Harrisburg, PA 17120, at 11 a.m. These meetings are open to the public and are scheduled as follows:

February 22, 2023  
April 26, 2023  
June 28, 2023  
August 23, 2023  
October 25, 2023  
December 20, 2023

Individuals with questions regarding these meetings should contact the Commission at (717) 787-5720.

GREGORY P. SIRB,  
*Executive Director*

[Pa.B. Doc. No. 22-1770. Filed for public inspection November 11, 2022, 9:00 a.m.]







